

PROVIDING FOR THE RECOGNITION OF THE LUMBEE
TRIBE OF NORTH CAROLINA, AND FOR OTHER PURPOSES

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JULY 8, 2008.—Ordered to be printed
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Mr. DORGAN, from the Committee on Indian Affairs,
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 65]

The Committee on Indian Affairs, to which was referred the bill (H.R. 65) to provide for the recognition of the Lumbee Tribe of North Carolina, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of H.R. 65 is to provide for the federal recognition of the Lumbee Tribe of North Carolina (as designated as petitioner number 65 by the Office of Federal Acknowledgment at the Department of the Interior), make applicable to the group and its members all laws that are generally applicable to American Indians and federally-recognized Indian tribes, and make available all services for which such groups are eligible. Further, the bill authorizes any group of Indians in Robeson and adjoining counties in North Carolina, whose members are not enrolled in the Lumbee Tribe of North Carolina, to submit a petition to the Department of the Interior for acknowledgment of tribal existence.

BACKGROUND AND HISTORY

The issue of whether to provide federal recognition to the Lumbee Indians is a longstanding one. Attempts to obtain federal recognition for the group began in 1888. Since that time, there have been numerous bills introduced in Congress to recognize the

group, but none has been passed into law. There have also been numerous reports and studies conducted on the history of the Lumbee Indians. A history of these bills and some of the studies are better described in previous reports of the House of Representatives and Senate.¹ The information in this report is primarily derived from previous congressional reports, Committee hearing records, and letters submitted by interested parties.

Although the Lumbee Indians have so far failed to gain federal recognition, the State of North Carolina has recognized the group as an Indian tribe, under various names and for varying purposes, since approximately 1885.²

Given the history of the Lumbee Indians and the inability of the group to utilize the Federal Acknowledgment Process, the Committee supports congressional action to extend federal recognition to the Lumbee Indians (as designated as petitioner number 65 by the Office of Federal Acknowledgment at the Department of the Interior). Further, the Committee supports clarifying that other groups of Indians in Robeson and adjoining counties who are not enrolled in the Lumbee Tribe under Section 3(c) of the bill are authorized to utilize the Federal Acknowledgment Process.

HISTORY OF RECOGNIZING INDIAN TRIBES

The recognition of an Indian group as a federally recognized Indian tribe is an important action. It is an affirmation by the United States of a tribe's right to self-government and the existence of a formal government-to-government relationship with the tribe. Once a tribe is federally recognized, it has access to federal benefits and programs, and incurs a responsibility to its members as the primary governing body of the community.

Before Congress ended the practice of treaty-making with Indian tribes in 1871, treaties were the usual manner of recognizing a government-to-government relationship between the United States and an Indian tribe. Since the abolishment of treaty-making, the United States has recognized Indian tribes by executive order, legislation, and administrative decisions by the Executive Branch.

Additionally, federal courts may clarify the status of an Indian group, though in many cases, the courts defer to the Bureau of Indian Affairs at the Department of the Interior.

In order to provide a uniform and consistent process in which to recognize an Indian group, the Department of the Interior developed an administrative process in 1978 through which Indian groups could petition for acknowledgment of a government-to-government relationship with the United States. The standards for this process are set forth in Title 25 of the Code of Federal Regulations, Part 83, "Procedures for Establishing That an American Indian Group Exists as an Indian Tribe."

¹See H. Rep. No. 1752, 73d Cong., 2d Sess.; S. Rep. No. 204, 73d Cong., 2d Sess.; H. Rep. No. 1654, 84th Cong., 2d Sess.; S. Rep. No. 84-2012, 84th Cong., 2d Sess.; S. Rep. No. 100-579, 100th Cong., 2d Sess.; H. Rep. No. 102-215, 102d Cong., 1st Sess.; H. Rep. No. 103-290, 103d Cong., 1st Sess.; S. Rep. No. 108-213, 108th Cong., 1st Sess.; S. Rep. No. 109-334, 109th Cong., 2d Sess.; and H. Rep. No. 110-164, 110th Cong., 1st Sess.

²The Lumbee Indians have been recognized by the State of North Carolina as Croatans, Indians of Robeson County, Cherokee Indians of Robeson County, and Lumbee Indians. One of the primary purposes of the initial state recognition was to fund a segregated school system operated and attended exclusively by children of the Lumbee Indians.

The regulations establish seven mandatory criteria; each of which must be met before a group can achieve status as a federally recognized Indian tribe. The criteria are as follows:

(1) The petitioner has been identified as an American Indian entity on a substantially continuous basis since 1900;

(2) A predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present;

(3) The petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present;

(4) The group must provide a copy of its present governing documents and membership criteria;

(5) The petitioner's membership consists of individuals who descend from a historical Indian tribe or tribes, which combined and functioned as a single autonomous political entity;

(6) The membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe; and

(7) Neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the federal relationship.

The regulations have essentially remained unchanged since 1978, with the exception of revisions clarifying the evidence needed to support a recognition petition (1994), updated guidelines on the process (1997), and a notice regarding BIA's internal processing of federal acknowledgment petitions (2000).

There have been numerous complaints about the process since 1978, but the primary complaints have been about the high cost of gathering documentary evidence to meet the seven criteria and the length of time it takes the Department to review a petition. Out of hundreds of petitioners that have filed petitions under the process, as of January 1, 2008, the Department has issued only 41 decisions. Of that number, 16 petitioners were acknowledged as Indian tribes, and 25 petitioners were denied acknowledgment.

Due to the problems associated with the Federal Acknowledgment Process, an increasing number of tribal groups have asked Congress to recognize or restore their status as federally-recognized Indian tribes. Congress retains the authority to recognize tribal groups, as Congress did with the Loyal Shawnee Tribe of Oklahoma and the Graton Rancheria of California in 2000 in the Omnibus Indian Advancement Act.³ According to a report issued by the Congressional Research Service in September 2003, Congress has recognized, restored or otherwise changed the status of 28 tribal groups since the Federal Acknowledgment Process was created in 1978. Extending back to 1960, a total of 47 groups have had their tribal status clarified by congressional action.

HISTORY OF THE LUMBEE INDIANS

Congress has deliberated on the status of the Lumbee Indians for more than a century. Since 1899, numerous bills have been intro-

³See Pub. L. 106-568 (2000).

duced in Congress to recognize the Lumbee Indians, though none have been enacted into law.⁴

It appears that one of the reasons that the Lumbees have not been recognized yet is uncertainty over the group's origins. Unlike many other Indian tribes, the Lumbees cannot trace their lineage back to any tribal group that had a treaty relationship with the United States. The name "Lumbee" comes from the Indians themselves and is a recent designation from the 1950's based upon the name of the Lumber River, on which the Lumbee Indians reside.

Several reports were issued by the Department of the Interior between 1900 and 1935 regarding the origins of the Lumbee Indians and their status.⁵ None of these reports provide conclusive evidence of Lumbee origins. In fact, the reports indicate that the Lumbee Indians, at various times, have been considered to be Croatan Indians, Siouan Indians, Cherokee Indians, and Cheraw Indians.

In 1885, the Lumbees were believed to be descendants of the lost Raleigh colony and were designated as Croatan Indians.⁶ In a 1934 report by the Department of the Interior to the Senate Committee on Indian Affairs the Lumbee were described as:

. . . a people who combine in themselves the blood of the wasted native tribes, the early colonists or forest rovers, the runaway slaves or other Negroes, and probably also of stray seamen of the Latin races from coasting vessels in the West Indian or Brazilian trade.⁷

In 1955, the leader of the Lumbee Indians testified before the House of Representatives that the Indians of Robeson County were an "admixture of seven different tribes of Indians, including the Cherokee, Tuscarora, Hatteras, Pamli and Croatan."⁸

A report conducted in 1934 by J.R. Swanton, a well-respected specialist on southeastern Indians with the Smithsonian Institution, is considered to be the most reliable report on the origins of the Lumbee Indians. His report entitled the "Probable Identity of The 'Croatan' Indians" concludes that the Croatan Indians [now called the Lumbee] are likely descendants from the Cheraw and other related tribes. Mr. Swanton also concluded that the Cheraw Indians were "very probably of Siouan stock." At that time, the Secretary of the Interior adopted the view of Mr. Swanton, but op-

⁴ See H.R. 4009, 56th Cong., 1st Sess.; H.R. 19036, 61st Cong., 2d Sess.; S. 3258, 62d Cong., 1st Sess. [House companion H.R. 20728]; H.R. 8083, 68th Cong., 1st Sess.; S. 4595, 72d Cong., 2d Sess.; H.R. 5365, 73d Cong., 1st Sess. [Senate companion S. 1632]; H.R. 4656, 84th Cong., 1st Sess.; H.R. 5042, 100th Cong., 1st Sess. [Senate companion S. 2672]; H.R. 2335, 101st Cong., 1st Sess. [Senate companion S. 901]; H.R. 1426, 102d Cong., 1st Sess. [Senate companion S. 1036]; H.R. 334, 103d Cong., 1st Sess.; S. 420, 108th Cong., 1st Sess. [House companion H.R. 898]; S. 660, 109th Cong., 1st Sess.

⁵ See Indian School Supervisor Pierce Report, filed with Senate on April 4, 1912; Special Indian Agent McPherson report, Doc. No. 677, 53d Cong., 2d Sess., prepared in 1914; Report of J.R. Swanton, Smithsonian Institution, at request of Bureau of Indian Affairs and submitted to Congress in 1933; and Fred A. Baker Report on the Siouan Tribe of Indians of Robeson County, July 9, 1935.

⁶ Report of J.R. Swanton, Smithsonian Institution, at request of Bureau of Indian Affairs and submitted to Congress in 1933 and included within S. Rep. No. 204, 73d Cong., 2d Sess.

⁷ See S. Rep. No. 204, 73d Cong., 2d Sess.

⁸ See Statement of Reverend D.F. Lowery of Pembroke, North Carolina before the Subcommittee on Indian Affairs, Committee on Interior and Insular Affairs, United States House of Representatives, Hearing on H.R. 4656 Relating to the Lumbee Indians of North Carolina, July 22, 1955.

posed providing the Lumbee with any federal wardship or any other governmental rights or benefits.⁹

The uncertainty of the origins of the Lumbee has led the Department of the Interior to consistently oppose federal recognition of the Lumbee Indians as a tribe. The Department has historically stated that the United States has never entered into treaty relations with the Lumbee, the federal government is in no way indebted to the Lumbee, and that claims for assistance by the Lumbee Indians have no merit other than that which would attach to other needy citizens.

When Congress previously considered bills to recognize the Lumbee, the Department consistently requested that any recognition not be construed as conferring a federal wardship or any other governmental rights or benefits upon the Lumbee Indians. Such was the case in 1956, when Congress finally passed legislation designating the Indians of Robeson and adjoining counties in North Carolina as Lumbee Indians.

Between 1913 and 1953, the State of North Carolina recognized the Indians of Robeson County as Cherokee Indians. In 1951, the County Commissioners held a referendum at which the choice of a name for the Indians of Robeson and adjoining counties was determined. The result of this referendum was 2,169 votes for "Lumbee Indians of North Carolina" and 35 votes to remain "Cherokee Indians of Robeson County."¹⁰ As a result of the referendum, the State of North Carolina modified its recognition of the Indians in 1953 and recognized them as Lumbee Indians.¹¹

Thereafter, the Lumbee Indians went to Congress seeking passage of a bill similar to that passed by the State of North Carolina. A bill was introduced and passed by the House of Representatives, which designated the Indians of Robeson County as Lumbee Indians.¹²

During consideration of the bill in the House, the purpose of the bill was thoroughly discussed between Members of Congress and representatives of the Lumbee during a hearing:

Mr. Aspinall. The next question would be: What benefit would they [the Lumbee Indians] expect to get from this? Just purely the name "Lumbee Indian Tribe" does not appear to me to give too much importance to it, unless they expect to get some recognition later on as members of some authorized tribe, and then come before Congress asking for the benefits that naturally go to recognized tribes.

Mr. Carlyle. No one has ever mentioned to me any interest in that, that they had any interest in becoming a part of a reservation or asking the Federal Government for any-

⁹See S. Rep. No. 204, 73d Cong., 2d Session. Recently, staff at the Department of the Interior that administer the administrative acknowledgment process have expressed some concern about the absence of a genealogical connection between the modern day Lumbee Tribe and the historic Cheraw Tribe. Representatives of the Lumbee Tribe acknowledge the lack of a genealogical connection, but state that this is due to a lack of recording the births and deaths of tribal members by the dominant society in the early 1700's. The Lumbee Tribe does state that it can connect modern day members to the Lumbee community located at Drowning Creek, the known home of the Cheraw Tribe, as far back as 1790.

¹⁰See Statement of Reverend D.F. Lowery of Pembroke, North Carolina before the Subcommittee on Indian Affairs, Committee on Interior and Insular Affairs, United States House of Representatives, Hearing on H.R. 4656 Relating to the Lumbee Indians of North Carolina, July 22, 1955.

¹¹See North Carolina General Assembly 1953, chap. 874.

¹²See H.R. 4656, 84th Cong., 2d Sess.

thing. Their purpose in this legislation is to have a name that they think is appropriate to their group. I do not know that they refer to themselves as a tribe. They are citizens who belong to the Indian race and they were interested in having a name that would have, they think, some significance.

* * * * *

Mr. Carlyle. Now let me direct your attention to this subject: What is the main purpose that the Indians of Robeson County have in asking that their names be designated as Lumbee Indians of North Carolina?

Reverend Lowery. Since the Indians of Robeson County are mixed, an admixture of seven different tribes of Indians, including the Cherokee, Tuscarora, Hatteras, Pamli and Croatan—about seven different tribes were mixed with them and intermarried with the first colonies.

Among these Indians were found 42 names on the roster of White's Colony sent over by Walter Raleigh. They were killed.

Later on the Cherokee Indians, the Cherokee Indians in the West, resented that. They introduced a bill at Raleigh to name us "Cherokee Indians of North Carolina" and the senator from Cherokee County wired up there and they sent a delegation down there to object to it. Then they had to change the bill and designate us as "Cherokee Indians of Robeson County" so when our boys go off to college, prior to this, they would say to them,

"What nationality are you?"

"I am an Indian."

"Where are you from? What tribe are you from?"

"Cherokee."

"I have a cousin teaching at the Government School up there, Mary Butler. How do you like her?"

"I never heard of her."

"How do you like the president of the school?"

"Never heard of him."

"You said you were a Cherokee Indian."

"Yes, but I am not from up there. I am from Robeson County."

"Oh, I didn't know there was any Cherokee Indian in Robeson County."

So that boy or girl was embarrassed. We go off to the various states and are embarrassed. While we were Cherokee Indians, after we told them we're Cherokees and then they told them about the teachers and the school, and they did not know anything about them, they did not believe anything they said.

If we get the name "Lumbee" we can go to any school in the United States and tell them we are Lumbee Indians. We can pick up the Act of the Legislature and pick up the bill and read that the Lumbee Indians are descendants of the seven tribes of Indians that settled on the Lumber River, and are Lumbee Indians just like the Hatteras and Mississippi Indians. Then they would have no trouble telling the people, "We are Lumbee Indians."

They could look us up and find we are in the law; in the books at Raleigh, and therefore we are honest in their sight. That is No. 1.

* * * * *

Mr. Aspinall. Do you or any members of your organization anticipate that after you might receive this designation you would come to Congress and ask for any of the benefits that otherwise go to Indian Tribes?

Reverend Lowery. No, sir. We would leave the county before we would come under a reservation or anything like wards of the government. We are citizens and always have been citizens. We would leave before we would come on this reservation.¹³

The transcript of the hearing record makes clear that the Lumbee Indians were not expecting to receive any federal benefits or privileges as a result of the 1956 law. Nonetheless, the Department of the Interior objected to the bill because the United States has no treaty or other obligation to provide services to these Indians. Because of this, the Secretary of the Interior stated:

We are therefore unable to recommend that the Congress take any action which might ultimately result in the imposition of additional obligations on the Federal Government or in placing additional persons of Indian blood under the jurisdiction of this Department.

The persons who constitute this group of Indians have been recognized and designated as Indians by the State legislature. If they are not completely satisfied with such recognition, they, as citizens of the State, may petition the legislature to amend or otherwise to change that recognition. Except for the possibility of becoming entitled to Federal services as Indians, the position of this group of Indians would not be enhanced by enactment of this bill.¹⁴

Ultimately, the Congress amended the bill as requested by the Department of the Interior by including the following language: "Nothing in this Act shall make such Indians eligible for any services performed by the United States for Indians because of their status as Indians, and none of the statutes of the United States which affect Indians because of their status as Indians shall be applicable to the Lumbee Indians."¹⁵ Thus, the Indians of Robeson and adjoining counties were designated as Lumbee Indians, but not granted any eligibility for services or benefits.

The Department of the Interior has interpreted the 1956 law as preventing the Lumbee Indians from utilizing the Federal Acknowledgment Process to become a federally-recognized Indian tribe. In 1989, the Solicitor for the Department of the Interior concluded that the 1956 law forbids a government-to-government relationship with the Lumbee Indians.¹⁶ One of the seven requirements

¹³Hearing on H.R. 4656 Relating to the Lumbee Indians of North Carolina, Subcommittee on Indian Affairs, Committee on Natural Resources, House of Representatives, July 22, 1955.

¹⁴S. Rep. No. 2012, 84th Cong., 2d Sess.

¹⁵See Pub. L. 570, Act of June 7, 1956, 70 Stat. 254.

¹⁶See Memorandum to Assistant Secretary—Indian Affairs, U.S. Department of the Interior, Office of the Solicitor [BIA-IA-0929] (1989) in H.R. Rep. No. 102-215 (1991).

of the Department's administrative process for federal acknowledgment as an Indian tribe is that neither the group nor its members be the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship. Thus, the Lumbee Indians, unlike most Indian groups, cannot pursue the normal administrative process to obtain federal recognition.

The Department of the Interior has recognized the consequences of its 1989 Solicitor's opinion. However, rather than directly recognize the Lumbee Indians as a tribe the Department would prefer that Congress amend the 1956 law to allow the Lumbee Indians to pursue the Department's administrative process.¹⁷ Representatives of the Lumbee Indians testified that requiring them to do so would delay their recognition by at least another ten years.

The Committee is sympathetic to the plight of the Lumbee Indians. Although there appears to be no conclusive evidence of a relationship between the Lumbee Indians and one historic tribe, there is ample evidence that individual Lumbees are Indians. The various reports submitted to Congress and testimony provided to the Committee during the last one hundred years all recognize the Lumbees as Indians. The 1956 law passed by Congress also recognizes the Lumbees as Indians. H.R. 65 would extend federal recognition to the Lumbee Indians as an Indian tribe.

This recognition would be consistent with the longstanding recognition of the Lumbee Indians as an Indian tribe by the State of North Carolina. In 1885, the State of North Carolina recognized the Lumbee Indians (then designated as Croatan Indians) as an Indian tribe and established a separate school system for their children, one that the Lumbee tribe itself ran. Enrollment in the school was restricted to Lumbee children who could demonstrate Lumbee descent four generations back, or into the 1770's. The State of North Carolina established the Indian Normal School in 1888 to train Lumbee teachers for the Tribe's school system. The Indian Normal School has been in continuous operation since that time and is today the University of North Carolina at Pembroke.

In addition to the school system, there is ample evidence that the Lumbee Indians have had a strong community for more than the past one hundred years. There are between 53,000–75,000 Lumbee Indians today. There are two criteria for membership as a Lumbee. First, a person must prove descent from an ancestor on the base roll, which was developed using school and church records and the 1900 and 1910 federal census. Second, a person must maintain contact with the Lumbee community.¹⁸ If a person cannot identify an ancestor, the person's ancestry is considered by an Elders' Review Committee.¹⁹

The Lumbees continue to maintain a strong tribal community and live in communities that are nearly exclusively Lumbee. In 2006, the Committee heard expert testimony revealing that sixty-four percent of the Lumbee members live within fifteen miles of Pembroke, North Carolina, where the original Lumbee school sys-

¹⁷ See Testimony of R. Lee Fleming, Director, Office of Federal Acknowledgment, Department of the Interior, before the Committee on Indian Affairs, U.S. Senate, July 12, 2006.

¹⁸ Testimony of James Ernest Goins, Chairman, Lumbee Tribe of North Carolina, before the Committee on Indian Affairs, U.S. Senate, July 12, 2006.

¹⁹ Testimony of Dr. Jack Campisi, Anthropologist and Consultant for the Lumbee Tribe of North Carolina, before the Committee on Natural Resources, U.S. House of Representatives, April 18, 2007.

tem was established.²⁰ Additionally, the Committee was informed that seventy percent of Lumbee marriages are between tribal members. This information shows a remarkable rate of social cohesion within the tribal community.

The Lumbees have a longstanding history of functioning like an Indian tribe and being recognized as such by State and local authorities. Since 1885, the Lumbees have maintained an active political relationship with the State of North Carolina. For nearly 100 years, the Lumbees operated their own school system, established by the State. In defense of their schools, the Lumbee tribal leaders lobbied the State of North Carolina to set aside a 1913 Attorney General's opinion that held that the Robeson County Board of Education could overrule the tribal leader's decisions about enrollment in the Lumbee schools. In 1921, the State legislature confirmed the Lumbees' authority to decide enrollment in its schools.²¹

Religion and culture have also remained strong in the Lumbee community, and often Churches operate in a semi-government fashion. There are more than 130 all-Indian churches among the Lumbees in Robeson County. Historically, leadership of the Lumbees arose out of the Lumbee churches. Most recently, the church leaders directed the effort to adopt a formal tribal constitution. Following a church-organized constitutional assembly, the Lumbees adopted its constitution in a special referendum in 2001.²²

The Committee has received letters and testimony from other Indian groups and Indian tribes opposing federal recognition of the Lumbee Indians as a tribe. The main concerns expressed are the lack of a conclusive lineage to one historical Indian tribe, the large membership of the Lumbee, the cost associated with providing federal services and benefits to the Lumbee tribe, and the impact recognition of the Lumbee Tribe may have on other groups of Indians in Robeson and adjoining counties.

The Lumbee represent the largest non-federally recognized tribe in the country. The Lumbee Indians have never had a reservation or received services from the Bureau of Indian Affairs or the Indian Health Service, though they are eligible for and do receive funds from other federal Indian programs because of their recognition by the State of North Carolina. The Lumbee Tribe receives approximately \$11 million in federal funding for housing programs through the Department of Housing and Urban Development. As noted in the report provided to the Committee by the Congressional Budget Office, making the Lumbee Tribe eligible for federal services will result in a substantial budgetary impact on all the administrative agencies that provide programs and services for Indian tribes. However, the cost of providing justice to the Lumbee Indians is not so high that it should prevent justice from being done.

Additionally, other local Indian groups that identify with the historic Tuscarora Tribe located in North Carolina have expressed concern that they not be deemed Lumbee, either for purposes of this recognition bill or for being subject to the provisions of the

²⁰Testimony of Dr. Jack Campisi, Anthropologist and Consultant for the Lumbee Tribe of North Carolina before the Committee on Indian Affairs, U.S. Senate, July 12, 2006.

²¹Testimony of James Ernest Goins, Chairman, Lumbee Tribe of North Carolina, before the Committee on Indian Affairs, U.S. Senate, July 12, 2006.

²²Testimony of James Ernest Goins, Chairman, Lumbee Tribe of North Carolina, before the Committee on Indian Affairs, U.S. Senate, July 12, 2006.

1956 law. It is not the Committee's intent to deem Indians who are not historically Lumbee Indians as such. H.R. 65 is intended to extend federal recognition to the Lumbee Indians as an Indian tribe and allow other Indians in Robeson and adjoining counties to utilize the Federal Acknowledgment Process at the Department of the Interior. Thus, those Indians who are of Tuscarora descent should be able to pursue recognition through the administrative process.

SUMMARY OF MAJOR PROVISIONS

H.R. 65 amends Pub. L. 84-570, the 1956 Lumbee Act, to extend federal recognition to the Lumbee Tribe of North Carolina and to apply to the Tribe all Federal laws of general application to Indians and Indian tribes. Further, H.R. 65 allows any other group of Indians in Robeson or adjoining counties to utilize the Federal Acknowledgment Process at the Department of the Interior.

Section 2 of H.R. 65 adds additional findings clauses to the preamble of the 1956 Lumbee Act.

Section 3 amends the 1956 Lumbee Act by striking the current Section 2 of the 1956 Lumbee Act, and inserting a new Section 2 that will provide federal recognition to the Lumbee Tribe of North Carolina (as designated as petitioner number 65 by the Office of Federal Acknowledgment). Language of this new section further provides that any other group of Indians in Robeson and adjoining counties, North Carolina, which heretofore has been prevented from pursuing petitions pursuant to 25 C.F.R. Part 83, will be deemed eligible to have their petitions for tribal acknowledgment considered. The Committee received testimony at its July 12, 2006, hearing from the Bureau of Indian Affairs Office of Federal Acknowledgment Director, who indicated that six other groups in Robeson and adjoining counties in North Carolina, who have petitioned under the Federal Acknowledgment Process, have been determined ineligible to petition based on the 1989 Solicitor's opinion interpreting the 1956 Lumbee Act. In addition, more than 80 other groups that have contacted the Office of Federal Acknowledgment are affected by the 1956 Lumbee Act.

Section 3 of the bill further amends the 1956 Lumbee Act to provide a new Section 3 that provides that the Tribe and its members will be eligible for the programs and services that are available to other federally recognized tribes. The bill does not automatically create an Indian reservation but defines a service delivery area within which the Tribe and its members will be eligible to receive federal services. The new Section 3 also provides for verification of the tribal membership roll by the Secretary of the Interior for purposes of delivery of services. The Committee notes that this verification is not intended to authorize the Secretary to independently impose eligibility standards for membership. Rather it is simply intended to provide the Secretary, in keeping with trust responsibilities, with oversight to insure that each enrolled member actually appears on the Tribe's membership roll with the supporting documentation required by the Tribe. The bill requires the Secretary to verify the tribal roll within two years after date of enactment of the bill.

With regard to land, the bill will insert a new Section 4 into the 1956 Lumbee Act. This new section will provide that land within Robeson County, North Carolina, will be eligible to be taken into

trust by the United States and will be treated as on-reservation for purposes of the fee-to-trust process. The bill prohibits the Lumbee Tribe from conducting gaming activities as a matter of claimed inherent authority or under any Federal law or regulations.

Notwithstanding the taking of land into trust for the Tribe, the bill will insert into the 1956 Lumbee Act a new Section 5 that provides that the State of North Carolina will continue to exercise civil and criminal jurisdiction over tribal members and any lands that may be acquired in trust for the Tribe.²³ However, the bill allows the State of North Carolina, with the agreement of the Lumbee tribe, to transfer criminal and civil jurisdiction to the United States after two years from the date of enactment of the bill. The bill states that nothing in the new Section 5 shall affect the application of Section 109 of the Indian Child Welfare Act of 1978.

LEGISLATIVE HISTORY

H.R. 65 was introduced in the House of Representatives on January 4, 2007, by Representative Mike McIntyre (N.C.). The bill was referred to the Committee on Natural Resources in the House of Representatives. On April 18, 2007, the Committee on Natural Resources held a hearing on H.R. 65. On April 25, 2007, the Committee on Natural Resources met and ordered favorably to report the bill, with an amendment. On June 7, 2007, the House of Representatives passed H.R. 65. by a vote of 256–128.

H.R. 65 was received in the Senate and referred to the Committee on Indian Affairs on June 12, 2007. The Committee ordered the bill to be reported favorably, without an amendment, on April 24, 2008.

SECTION-BY-SECTION ANALYSIS OF H.R. 65

Section 1. Short title

Section 1 provides the short title of the bill as the “Lumbee Recognition Act.”

Section 2. Preamble

Section 2 adds clauses to the 1956 Act finding that the Lumbee Indians are descendants of coastal North Carolina Indians; that the State of North Carolina has recognized the Lumbees as an Indian tribe since 1885; that Congress acknowledged the Lumbee Indians as an Indian tribe in 1956 but withheld the benefits, privileges and immunities that normally extend to Indians because of their status as Indians; and that Congress now finds that the Lumbee Indians should be entitled to full Federal recognition of their status as an Indian tribe.

²³The Committee notes that this provision is a departure from long-established Federal Indian policy, which provides generally for exclusive Federal and tribal civil and criminal jurisdiction over tribal members and tribal lands. However, similar jurisdictional provisions have been provided by Federal statute on a case-by-case basis for specific Indian reservations or within specific states. See e.g. P.L. 83–280, 67 Stat. 589, Aug. 15, 1953. The intent of this provision is to maintain the status quo with respect to jurisdiction, since the Tribe has enjoyed a long-standing relationship with the State of North Carolina, and is well represented among elected members of local governments where tribal members are geographically concentrated. The Committee further notes that this bill makes provision for retrocession of that jurisdiction from the State of North Carolina to the United States upon agreement between the Tribe and the State of North Carolina.

Section 3. Federal recognition

Section 3 amends the 1956 Lumbee Act by striking the current Section 2 of the 1956 Lumbee Act, and inserting a new Section 2 that will provide federal recognition to the Lumbee Tribe of North Carolina (as designated as petitioner number 65 by the Office of Federal Acknowledgment). Language of this new section further provides that any other group of Indians in Robeson and adjoining counties, North Carolina, which heretofore has been prevented from pursuing petitions pursuant to 25 CFR Part 83, will be deemed eligible to have their petitions for tribal acknowledgment considered. The Committee received testimony at its July 12, 2006, hearing from the Bureau of Indian Affairs Office of Federal Acknowledgment Director, who indicated that six other groups in Robeson and adjoining counties in North Carolina, who have petitioned under the Federal Acknowledgment Process, have been determined ineligible to petition based on the 1989 Solicitor's opinion interpreting the 1956 Lumbee Act. In addition, more than 80 other groups that have contacted the Office of Federal Acknowledgment are affected by the 1956 Lumbee Act.

Section 3 of the bill further amends the 1956 Lumbee Act to provide a new Section 3 that provides that the Tribe and its members will be eligible for the programs and services that are available to other federally recognized tribes. The bill does not automatically create an Indian reservation but defines a service delivery area within which the Tribe and its members will be eligible to receive federal services. The new Section 3 also provides for verification of the tribal membership roll by the Secretary of the Interior for purposes of delivery of services. The Committee notes that this verification is not intended to authorize the Secretary to independently impose eligibility standards for membership. Rather it is simply intended to provide the Secretary, in keeping with trust responsibilities, with oversight to insure that each enrolled member actually appears on the Tribe's membership roll with the supporting documentation required by the Tribe. The bill requires the Secretary to verify the tribal roll within two years after date of enactment of the bill.

With regard to land, the bill will insert a new Section 4 into the 1956 Lumbee Act. This new section will provide that land within Robeson County, North Carolina, will be eligible to be taken into trust by the United States and will be treated as on-reservation for purposes of the fee-to-trust process. The bill prohibits the Lumbee Tribe from conducting gaming activities as a matter of claimed inherent authority or under any Federal law or regulations.

Notwithstanding the taking of land into trust for the Tribe, the bill will insert into the 1956 Lumbee Act a new Section 5 that provides that the State of North Carolina will continue to exercise civil and criminal jurisdiction over tribal members and any lands that may be acquired in trust for the Tribe.²⁴ However, the bill allows

²⁴The Committee notes that this provision is a departure from long-established Federal Indian policy, which provides generally for exclusive Federal and tribal civil and criminal jurisdiction over tribal members and tribal lands. However, similar jurisdictional provisions have been provided by Federal statute on a case-by-case basis for specific Indian reservations or within specific states. See e.g. P.L. 83-280, 67 Stat. 589, Aug. 15, 1953. The intent of this provision is to maintain the status quo with respect to jurisdiction, since the Tribe has enjoyed a long-standing relationship with the State of North Carolina, and is well represented among elected members of local governments where tribal members are geographically concentrated. The Com-

the State of North Carolina, with the agreement of the Lumbee tribe, to transfer criminal and civil jurisdiction to the United States after two years from the date of enactment of the bill. The bill states that nothing in the new Section 5 shall affect the application of Section 109 of the Indian Child Welfare Act of 1978.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

The Committee held a business meeting to consider H.R. 65 on April 24, 2008. The Committee then voted, by voice vote, to report H.R. 65 favorably to the full Senate, without amendment.

COST AND BUDGETARY CONSIDERATIONS

The cost estimate for H.R. 65 as calculated by the Congressional Budget Office, is set forth below:

H.R. 65—Lumbee Recognition Act

Summary: H.R. 65 would provide federal recognition to the Lumbee Tribe of North Carolina, thereby making that tribe eligible to receive funding from various federal programs. CBO estimates that implementing this legislation would cost \$768 million over the 2009–2013 period, assuming appropriation of the necessary funds. Enacting H.R. 65 would not affect direct spending or revenues.

H.R. 65 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no direct costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 65 is shown in the following table. The costs of this legislation fall within budget functions 450 (community and regional development) and 550 (health).

	By fiscal year, in millions of dollars—				
	2009	2010	2011	2012	2013
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Bureau of Indian Affairs					
Estimated Authorization Level	24	24	25	25	26
Estimated Outlays	17	23	24	24	25
Indian Health Service					
Estimated Authorization Level	124	128	133	139	144
Estimated Outlays	112	128	133	138	144
Total Changes					
Estimated Authorization Level	148	152	158	164	170
Estimated Outlays	129	151	157	162	169

Basis of estimate: For this estimate, CBO assumes that H.R. 65 will be enacted near the start of fiscal year 2009. H.R. 65 would provide federal recognition to the Lumbee Tribe of North Carolina. Such recognition would allow the Lumbee, with a membership of about 54,000 people, to receive funding from various programs administered by the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS). Based on the average expenditures for other Indian tribes, CBO estimates that implementing H.R. 65 would

mittee further notes that this bill makes provision for retrocession of that jurisdiction from the State of North Carolina to the United States upon agreement between the Tribe and the State of North Carolina.

cost \$768 million over the 2009–2013 period, assuming appropriation of the necessary funds.

Bureau of Indian Affairs

BIA provides funding to federally recognized Indian tribes for various purposes, including child welfare services, adult care, community development, and general assistance. A portion of this funding (classified in the BIA budget as Tribal Priority Allocations), is awarded solely on the basis of population. Based on information from BIA, CBO expects that the Lumbee Tribe would receive approximately \$6 million per year in such funding, assuming a service population of 39,700 members. (The service population reflects those members living in the tribe's designated service area, where BIA services are generally provided.) In addition to the tribal priority allocation, the Lumbee would likely receive additional BIA funding based on other needs and characteristics of the tribe.

In total, CBO estimates that providing BIA services would cost \$113 million over the 2009–2013 period, assuming appropriation of the necessary funds. This estimate is based on expenditures for other federally recognized tribes located in the eastern United States; the Lumbee Tribe may qualify for more or fewer services than other tribes in the region.

Indian Health Service

H.R. 65 also would make members of the Lumbee Tribe eligible to receive health benefits from the IHS. Based on information from the IHS, CBO estimates that about 56 percent of tribal members—or about 31,000 people—would receive benefits each year. CBO assumes that the cost to serve those individuals would be similar to funding for current beneficiaries—about \$4,000 per individual in 2008. Assuming appropriation of the necessary funds, CBO estimates that IHS benefits for the Lumbee Tribe would cost \$655 million over the 2009–2013 period.

Other Federal agencies

In addition to BIA and IHS funding, certain Indian tribes also receive support from other federal programs within the Departments of Education, Housing and Urban Development, Labor, and Agriculture. Based on their status as a tribe currently recognized by the state of North Carolina, the Lumbee are already eligible to receive funding from those sources. Thus, CBO estimates that implementing H.R. 65 would not add to the cost of those programs.

Intergovernmental and private-sector impact: H.R. 65 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no direct costs on state, local, or tribal governments.

Previous CBO estimate:

On May 2, 2007, CBO transmitted a cost estimate for H.R. 65 as ordered reported by the House Committee on Natural Resources on April 25, 2007. The two versions of the legislation are nearly identical. Our estimate of spending under the Senate version is greater because it takes into account updated information on the likely cost of providing IHS services to the Lumbee. Specifically, this estimate assumes that the IHS would serve 9,000 additional people and reflects an estimated 30 percent increase in average costs per bene-

ficiary. Other differences in our estimates reflect a change in when we assume H.R. 65 will be enacted.

Estimate prepared by: Federal Costs: Leigh Angres—Bureau of Indian Affairs, Robert Stewart—Indian Health Service; Impact on State, Local, and Tribal Governments: Melissa Merrell; Impact on the Private Sector: Amy Petz.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that H.R. 65 will have a minimal impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

There have been no executive communications received by the Committee with regards to this legislation. However, the Committee notes that Carl J. Artman, Assistant Secretary for Indian Affairs at the Department of the Interior testified before the Committee on Natural Resources in the House of Representatives on April 18, 2007 regarding H.R. 65. In his testimony, Mr. Artman testified that the Department strongly supports all groups going through the federal acknowledgment process at the Department. Further, Mr. Artman expressed concern about the length of time that H.R. 65 provides the Secretary of the Interior to verify the tribal roll, and the meaning of verification for inclusion on the Lumbee group's membership roll. Finally, Mr. Artman raised a concern about whether the provision in H.R. 65 that requires the submission of an annual budget for programs, services and benefits to the Lumbee Indians is in compliance with the United States Constitution.

ADDITIONAL VIEWS OF SENATOR TIM JOHNSON

The ability to federally acknowledge, or terminate, the relationship that an American Indian tribe has with the United States is the most substantial power Congress has in the area of Indian Affairs. Acknowledgment carries with it great immunities and privileges, including the sovereign powers to exercise criminal and civil jurisdiction over tribal lands, to tax and to receive appropriations for federal programs serving tribes and other governments.

In 1978, the Department of the Interior published regulations that established an administrative process for Federal acknowledgment whereby petitioning groups must meet seven mandatory criteria. In brief, the mandatory criteria require the petitioner to:

- (1) demonstrate that it has been identified as an American Indian entity on a substantially continuous basis since 1900;
- (2) show that a predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present;
- (3) demonstrate that it has maintained political influence or authority over its members as an autonomous entity from historical times until the present;

(4) provide a copy of the group's present governing document including its membership criteria;

(5) demonstrate that its membership consists of individuals who descend from an historical Indian tribe or from historical Indian tribes that combined and functioned as a single autonomous political entity and provide a current membership list;

(6) show that the membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe; and

(7) demonstrate that neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship.²³

Currently, the Lumbee are prohibited from pursuing federal acknowledgment through this administrative process due to the 1956 Lumbee Act.²⁴ The Lumbee Act denied eligibility for the benefits and services available to Indians in accordance with the former Federal Indian policy of termination. The effect of the 1956 Lumbee Act was to both acknowledge and effectively terminate the Lumbee at the same time.

Accordingly, I believe that the proper path for the Lumbee acknowledgment is through legislation that would allow the Lumbee an expedited review of their petition by the Department of the Interior's Office of Federal Acknowledgment. The Office of Federal Acknowledgment, and not Congress, is the appropriate entity to determine whether this group's recognition is based on history, culture and science, rather than politics alone. I have, and will continue to support legislation that would allow the Lumbee to complete the administrative review process to ensure that recognition decisions are based solely on a technical review process.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by H.R. 65, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in *roman*). Enactment of H.R. 65 would affect no changes in existing law except the following amendments to the Act of June 7, 1956:

Public Law 84-570

AN ACT Relating to the Lumbee Indians of North Carolina.

Whereas many Indians now living in Robeson and adjoining counties are descendants of that once large and prosperous tribe which occupied the lands along the Lumber River at the time of the earliest white settlements in that section; **[and]**

Whereas at the time of their first contacts with the colonists, these Indians were a well-established and distinctive people living in European-type houses in settled towns and communities, owning slaves and livestock, tilling the soil, and practicing many of the arts and crafts of European civilization; **[and]**

²³ 25 CFR 83.7

²⁴ See Pub. L. 84-570, Act of June 7, 1956, 70 Stat. 254.

Whereas by reason of tribal legend, coupled with a distinctive appearance and manner of speech and the frequent recurrence among them of family names such as Oxendine, Locklear, Chavis, Drinkwater, Bullard, Lowery, Sampson, and others, also found on the roster of the earliest English settlements, these Indians may, with considerable show of reason, trace their origin to an admixture of colonial blood with certain coastal tribes of Indians; [and]

Whereas these people are naturally and understandably proud of their heritage, and desirous of establishing their social status and preserving their racial history [Now, therefore,];

Whereas the Lumbee Indians of Robeson and adjoining counties in North Carolina are descendants of coastal North Carolina Indian tribes, principally Cheraw, and have remained a distinct Indian community since the time of contact with white settlers;

Whereas since 1885 the State of North Carolina has recognized the Lumbee Indians as an Indian tribe;

Whereas in 1956 the Congress of the United States acknowledged the Lumbee Indians as an Indian tribe, but withheld from the Lumbee Tribe the benefits, privileges and immunities to which the Tribe and its members otherwise would have been entitled by virtue of the Tribe's status as a federally recognized tribe; and

Whereas the Congress finds that the Lumbee Indians should now be entitled to full Federal recognition of their status as an Indian tribe and that the benefits, privileges and immunities that accompany such status should be accorded to the Lumbee Tribe: Now, therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Indians now residing in Robeson and adjoining counties of North Carolina, originally found by the first white settlers on the Lumber River in Robeson County, and claiming joint descent from remnants of early American colonists and certain tribes of Indians originally inhabiting the coastal regions of North Carolina, shall, from and after the ratification of this Act, be known and designated as Lumbee Indians of North Carolina and shall continue to enjoy all rights, privileges, and immunities enjoyed by them as citizens of the State of North Carolina and of the United States as they enjoyed before the enactment of this Act, and shall continue to be subject to all the obligations and duties of such citizens under the laws of the State of North Carolina and the United States. [Nothing in this Act shall make such Indians eligible for any services performed by the United States for Indians because of their status as Indians, and none of the statutes of the United States which affect Indians because of their status as Indians shall be applicable to the Lumbee Indians.]

[SEC. 2. All laws and parts of laws in conflict with this Act are hereby repealed.]

SEC. 2. (a) Federal recognition is hereby extended to the Lumbee Tribe of North Carolina, as designated as petitioner number 65 by the Office of Federal Acknowledgment. All laws and regulations of the United States of general application to Indians and Indian tribes shall apply to the Lumbee Tribe of North Carolina and its members.

(b) Notwithstanding the first section, any group of Indians in Robeson and adjoining counties, North Carolina, whose members

are not enrolled in the Lumbee Tribe of North Carolina as determined under section 3(c), may petition under part 83 of title 25 of the Code of Federal Regulations for acknowledgment of tribal existence.

SEC. 3. (a) The Lumbee Tribe of North Carolina and its members shall be eligible for all services and benefits provided to Indians because of their status as members of a federally recognized tribe. For the purposes of the delivery of such services, those members of the Tribe residing in Robeson, Cumberland, Hoke, and Scotland counties in North Carolina shall be deemed to be residing on or near an Indian reservation.

(b) Upon verification by the Secretary of the Interior of a tribal roll under subsection (c), the Secretary of the Interior and the Secretary of Health and Human Services shall develop, in consultation with the Lumbee Tribe of North Carolina, a determination of needs and budget to provide the services to which members of the Tribe are eligible. The Secretary of the Interior and the Secretary of Health and Human Services shall each submit a written statement of such needs and budget to Congress after the tribal roll is verified.

(c) For purposes of the delivery of Federal services, the tribal roll in effect on the date of the enactment of this section shall, subject to verification by the Secretary of the Interior, define the service population of the Tribe. The Secretary's verification shall be limited to confirming compliance with the membership criteria set out in the Tribe's constitution adopted on November 16, 2001, which verification shall be completed not less than 2 years after the date of the enactment of this section.

SEC. 4. (a) Fee lands which the Tribe seeks to convey to the United States to be held in trust shall be treated by the Secretary of the Interior as "on-reservation" trust acquisitions under part 151 of title 25 of the Code of Federal Regulations (or a successor regulation) if such lands are located within Robeson County, North Carolina.

(b) The tribe may not conduct gaming activities as a matter of claimed inherent authority or under the authority of any Federal law, including the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) or under any regulations thereunder promulgated by the Secretary or the National Indian Gaming Commission.

SEC. 5. (a) The State of North Carolina shall exercise jurisdiction over—

(1) all criminal offenses that are committed on; and

(2) all civil actions that arise on, lands located within the State of North Carolina that are owned by, or held in trust by the United States for, the Lumbee Tribe of North Carolina, or any dependent Indian community of the Lumbee Tribe of North Carolina.

(b) The Secretary of the Interior is authorized to accept on behalf of the United States, after consulting with the Attorney General of the United States any transfer by the State of North Carolina to the United States of any portion of the jurisdiction of the State of North Carolina described in paragraph (1) pursuant to an agreement between the Lumbee Tribe and the State of North Carolina. Such transfer of jurisdiction may not take effect until 2 years after the effective date of the agreement.

(c) The provisions of this subsection shall not affect the application of section 109 of the Indian Child Welfare Act of 1978 (25 U.S.C. 1919).

SEC. 6. There are authorized to be appropriated such sums as are necessary to carry out this Act.

