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LUMBEE RECOGNITION ACT

JANUARY 20, 2010.—Ordered to be printed

Mr. DORGAN, from the Committee on Indian Affairs, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany S. 1735]

The Committee on Indian Affairs, to which was referred the bill (S. 1735) 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 S. 1735 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 as an Indian tribe.

BACKGROUND AND HISTORY

The question 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

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have been numerous bills introduced in Congress to recognize the group, but none has 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 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 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 between the United States and the tribe. Once a tribe is federally recognized, it and its members have access to federal benefits and programs, and the tribal government incurs a formal 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 Regula-

[1] See 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.; H. Rep. No. 110–164, 110th Cong., 1st Sess.; and H. Rep. No. 111–103, 111th Cong., 1st Sess.

[2] The 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.

tions, Part 83, "Procedures for Establishing That an American Indian Group Exists as an Indian Tribe."

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 remained essentially unchanged since 1978, with the exception of revisions clarifying the evidence needed to support a recognition petition (1994), updated guidelines on the process (1997), a notice regarding BIA's internal processing of federal acknowledgment petitions (2000), and a notice to provide guidance and direction to make the process more streamlined and efficient (2008).[3]

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 November 4, 2009, the Department has resolved 45 petitions using the federal recognition regulations—16 have been acknowledged as tribes and 29 were denied acknowledgment. Since the regulations were first drafted in 1978, 67 petitions have been resolved—45 thru the regulatory process and 22 by Congress or other means.

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.[4] 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

[3] 73 Fed. Reg. 30146–48 (May 23, 2008).
[4] See Pub. L. 106–568 (2000).

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 introduced in Congress to recognize the Lumbee Indians, though none have been enacted into law.[5]

The Lumbees have been unable to 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 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.[6] 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.[7] In a 1934 report to the Senate Committee on Indian Affairs, the Department of the Interior described the Lumbee as follows:

> The evidence available thus seems to indicate that the Indians of Robeson County who have been called Croatan and Cherokee are descended mainly from certain Siouan Tribes of which the most prominent were the Cheraw and Keyauwee, but they probably included as well remnants of the Eno and Shakori, and very likely some of the coast groups such as the Waccamaw and Cape Fear.[8]

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."[9]

A report conducted in 1934 by J.R. Swanton, a 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

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[5] 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.

[6] 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.

[7] 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.

[8] See S. Rep. No. 204, 73d Cong., 2d Sess.

[9] 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.

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 opposed providing the Lumbee with any federal wardship or any other governmental rights or benefits.[10]

The uncertainty of the origins of the Lumbee led past Administrations to oppose federal recognition of the Lumbee Indians as a tribe. However, as will be noted below, the current Administration recognizes the unique circumstances surrounding the Lumbee and supports congressional action to recognize the Lumbee Indians as a tribe.[11]

When Congress previously considered bills to recognize the Lumbee, the Department of the Interior consistently requested that any recognition of the group 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."[12] 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.[13]

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.[14]

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.
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> 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-

[10] See S. Rep. No. 204, 73d Cong., 2d Session.

[11] See Legislative Hearing on H.R. 31 and H.R. 1385: Hearing before the House Comm. on Natural Resources, 111th Cong. (Mar. 18, 2009) (statement of George Skibine, Deputy Assistant Secretary for Policy and Economic Development for Indian Affairs, U.S. Department of the Interior).

[12] 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.

[13] See North Carolina General Assembly 1953, chap. 874.

[14] See 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.[15]

The Department of the Interior objected to the bill based on the lack of a treaty or other statutory obligation on the part of the United States to provide services to the Lumbee Indians. 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.[16]

Ultimately, 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."[17] Thus, the Indians of Robeson and adjoining counties were designated as Lumbee Indians, but not granted any eligibility for services or benefits under the Act of 1956.

As noted above, one of the Interior Department's seven requirements under the existing 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. The Department of the Interior has interpreted the Act of 1956 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 Act of 1956 forbids a government-to-government relationship with the Lumbee Indians.[18] Thus, the Lumbee Indians, unlike most Indian groups, cannot pursue the normal administrative process to obtain federal recognition.

The Committee notes that Congress has placed one other Indian tribe in a position similar to the Lumbee. This was accomplished

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[15] Hearing 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.

[16] S. Rep. No. 2012, 84th Cong., 2d Sess.

[17] See Pub. L. 570, Act of June 7, 1956, 70 Stat. 254.

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

in 1968 when Congress enacted a law for the Tiwa Indians of Texas.[19] The 1968 Act proclaimed that nothing in the Act made the Tiwa Indians "eligible for any services performed by the United States. As a result, Congress enacted the Ysleta del Sur Pueblo Restoration Act of 1987, extending federal recognition as an Indian tribe to the Indians formerly known as the Tiwa of Texas.[20]

Acknowledging these "rare circumstances," the Department of the Interior supports H.R. 31 as amended, which would provide congressional recognition of the Lumbee Indians.[21] H.R. 31 as passed by the House of Representatives on June 3, 2009, is identical to S. 1735 that is currently before the Senate.

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: (1) the impact recognition of the Lumbee Tribe may have on other groups of Indians in Robeson and adjoining counties, (2) the large membership of the Lumbee and the cost associated with providing federal services and benefits to the Lumbee tribe, and (3) the lack of a conclusive lineage to one historical Indian tribe.

Regarding the first concern of the impact of S. 1735 on other Indian groups in North Carolina,[22] it is not the Committee's intent to deem Indians who are not historically Lumbee Indians as such. S. 1735 will extend federal recognition as an Indian tribe to the Lumbee Indians and will 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.

With regard to the size of the Lumbee, it is true that the Lumbee represent the largest non-federally recognized tribe in the United States. On March 18, 2009, the Interior Department testified before the House Natural Resources Committee that there are approximately 40,000 members.[23] The Congressional Budget Office (CBO) cost estimate for S. 1735 was based on a membership of 54,000. The Lumbee concurs that its membership based on the 2001 Lumbee Constitution is approximately 54,000. 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 receive approximately $11 million in federal funding for housing programs through the Department of Housing and Urban Development. However, the size of the group is not a factor under the administrative Federal acknowledgement process, and should not prevent justice from being done.

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[19] See Public Law 90–287, 82 Stat. 93 (1968). The Committee notes that the two Acts are not identical, and that the Act of 1968 refers to a delegation of "[r]esponsibility, if any, for the Tiwa Indians."

[20] See 25 U.S.C. 1300g et seq., Public Law 100–89, 101 Stat. 667 (1987).

[21] Legislative Hearing on H.R. 31 and H.R. 1385: Hearing before the House Comm. on Natural Resources, 111th Cong. (Mar. 18, 2009) (statement of George Skibine, Deputy Assistant Secretary for Policy and Economic Development for Indian Affairs, U.S. Department of the Interior).

[22] The historic Tuscorara Tribe located in North Carolina has expressed concern that they not be deemed Lumbee, either for purposes of this recognition bill or for being subject to the provisions of the 1956 law.

[23] Legislative Hearing on H.R. 31 (statement of George Skibine).

Finally, while there appears to be no conclusive evidence of a relationship between the Lumbee Indians and a single historic tribe, there is support for the conclusion that individual members of the Lumbee 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. S. 1735 would extend federal recognition to the Lumbee Indians as an Indian tribe.

The State of North Carolina has expressed longstanding recognition of the Lumbee Indians as an Indian tribe. 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 1770s. 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, reports and documents show that the Lumbee Indians have had a strong community for more than the past one hundred years. 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.[24] If a person cannot identify an ancestor, the person's ancestry is considered by an Elders' Review Committee.[25]

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 system was established.[26] Additionally, the Committee was informed that seventy percent of Lumbee marriages are between tribal members.

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

[24] Legislative Hearing on S. 660: Hearing before the Senate Comm. on Indian Affairs, 109th Cong. (July 12, 2006) (testimony of James Ernest Goins, Chairman, Lumbee Tribe of North Carolina).

[25] Legislative Hearing on H.R. 1294 and H.R. 65: Hearing Before the House Comm. on Natural Resources, 110th Cong. (Apr. 18, 2007) (testimony of Dr. Jack Campisi, Anthropologist and Consultant for the Lumbee Tribe of North Carolina).

[26] Legislative Hearing on S. 660: Hearing before the Senate Comm. on Indian Affairs, 109th Cong. (July 12, 2006) (testimony of Dr. Jack Campisi, Anthropologist and Consultant for the Lumbee Tribe of North Carolina).

in the Lumbee schools. In 1921, the State legislature confirmed the Lumbees' authority to decide enrollment in its schools.[27]

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.[28]

SUMMARY OF MAJOR PROVISIONS

S. 1735 amends Pub. L. 84–570 (hereinafter "the Act of 1956") 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, S. 1735 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 S. 1735 adds additional findings clauses to the preamble of the Act of 1956.

Section 3 amends the Act of 1956 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). Section 2 as amended also 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.[29]

Section 3 of the bill adds a new Section 3 to the Act of 1956, which provides that the Lumbee 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(b) provides for verification of the tribal membership roll by the Secretary of the Interior and the Secretary of Health and Human Services for purposes of delivery of services. New Section 3(c) of the Act of 1956 requires the Secretary to verify the tribal roll within two years after date of enactment of the bill. The Secretary's verification is limited to confirming that tribal members meet the membership criteria of the Lumbee Constitution adopted on November 16, 2001.

The bill will insert a new Section 4 into the Act of 1956 to authorize the Secretary to take land into trust for the Lumbee Tribe.

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[27] Id. (testimony of James Ernest Goins, Chairman, Lumbee Tribe of North Carolina).

[28] Id.

[29] The Committee received testimony at a hearing on July 12, 2006 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. Legislative Hearing on S. 660: Hearing before the Senate Comm. on Indian Affairs, 109th Cong. (July 12, 2006) (testimony of Lee Fleming, Director, Office of Federal Acknowledgment, Department of the Interior). In addition, more than 80 other groups that have contacted the Office of Federal Acknowledgment are affected by the Lumbee Act of 1956.

The provision also states that any application by the Lumbee for land into trust in Robeson County, North Carolina, will be treated as on-reservation for purposes of the fee-to-trust process. New Section 4(a) prohibits the Lumbee Tribe from conducting gaming activities as a matter of claimed inherent authority or under any Federal law or regulations.

Finally, the bill inserts a new Section 5 into the Act of 1956 that provides that the State of North Carolina will exercise civil and criminal jurisdiction over tribal members and any lands that may be acquired in trust for the Tribe.[30] However, 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. 31, the House companion to S. 1735, was introduced in the House of Representatives on January 6, 2009, by Representative Mike McIntyre (of North Carolina). The bill was referred to the Committee on Natural Resources in the House of Representatives. On March 18, 2009, the Committee on Natural Resources held a hearing on H.R. 31. On April 22, 2009, the Committee on Natural Resources met to consider the bill. Chairman Rahall (of West Virginia) offered an en bloc amendment to clarify the right of the Secretary of the Interior to take land into trust for the Lumbee Tribe and delete the requirement that the Secretaries of the Interior and Health and Human Services provide a budget to Congress to meet the needs of the Lumbee Tribe. The amendment was adopted by voice vote. The bill, as amended, was then ordered favorably reported to the House of Representatives by voice vote. On June 3, 2009, the House of Representatives passed H.R. 31 by a vote of 240–179.

Senator Burr with Senator Hagan introduced S. 1735 on October 1, 2009. The bill was referred to the Committee on Indian Affairs. At a business meeting on October 22, 2009, the Committee ordered the bill to be reported favorably without amendment, by voice vote to the full Senate. During the business meeting, Vice Chairman John Barrasso and Senators Tom Coburn and Mike Crapo requested to be recorded as opposing the legislation.

SECTION-BY-SECTION ANALYSIS OF S. 1735

Section 1. Short title

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

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[30] The 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 longstanding 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 2. Preamble

Section 2 adds clauses to the Act of 1956 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.

Section 3. Federal recognition

Section 3 amends the Act of 1956 by striking the current Section 2, and inserting a new Section 2 that will provide Federal recognition to the Lumbee Tribe of North Carolina (designated as petitioner number 65 by the Office of Federal Acknowledgment).

The new Section 2(b) of the Act of 1956 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.

Section 3 of the bill also adds a new Section 3 to the Act of 1956 that provides that the Lumbee 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 ensure 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.[31] The bill states that noth-

[31] The 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

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ing 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 S. 1735 on October 22, 2009. The Committee then voted, by voice vote, to report S. 1735 favorably to the full Senate, without amendment. During the business meeting, Vice Chairman John Barrasso and Senators Tom Coburn and Mike Crapo requested to be recorded as opposing the legislation.

COST AND BUDGETARY CONSIDERATIONS

The cost estimate for S. 1735 as calculated by the Congressional Budget Office, is set forth below:

OCTOBER 29, 2009.

Hon. BYRON L. DORGAN,
Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1735, the Lumbee Recognition Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Jeff LaFave (for programs of the Bureau of Indian Affairs), and Robert Stewart (for programs of the Indian Health Service).

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 1735—Lumbee Recognition Act

Summary: S. 1735 would provide federal recognition to the Lumbee Tribe of North Carolina, thereby making the tribe eligible to receive funding from various federal programs. CBO estimates that implementing this legislation would cost $786 million over the 2010–2014 period, assuming appropriation of the necessary funds. Enacting S. 1735 would not affect direct spending or revenues.

S. 1735 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1735 is shown in the following table. The costs of this legislation fall within budget functions 450 (community and regional development) and 550 (health).

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is to maintain the status quo with respect to jurisdiction, since the Tribe has enjoyed a longstanding 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.

	By fiscal year, in millions of dollars—					
	2010	2011	2012	2013	2014	2010–2014
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Bureau of Indian Affairs:						
Estimated Authorization Level	28	29	29	30	30	146
Estimated Outlays	21	28	29	30	30	138
Indian Health Service:						
Estimated Authorization Level	126	129	132	135	139	661
Estimated Outlays	113	129	132	135	139	648
Total Changes:						
Estimated Authorization Level	154	158	161	165	169	807
Estimated Outlays	134	157	161	165	169	786

Basis of estimate: For this estimate, CBO assumes that S. 1735 will be enacted early in fiscal year 2010. The bill would provide federal recognition to the Lumbee Tribe of North Carolina. Such recognition would allow the Lumbee, with membership of about 54,000 people, to receive benefits from various programs administered by the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS). Based on the average expenditures from those agencies for other Indian tribes, CBO estimates that implementing S. 1735 would cost $786 million over the 2010–2014 period, assuming appropriation of the necessary funds.

Bureau of Indian Affairs

BIA provides funding to federally recognized 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 in the tribe's service area. (A service area is where BIA services are generally provided.) Based on information from BIA, CBO expects that the Lumbee Tribe would receive approximately $6 million per year in such funding, assuming that about 75 percent of the total membership lives within the tribe's designated service area. In addition to the tribal priority allocation, the Lumbee Tribe would probably receive BIA funding based on other needs and characteristics of the tribe's members.

In total, CBO estimates that providing BIA services would cost $138 million over the 2010–2014 period, assuming appropriation of the necessary funds. This estimate is based on per capita expenditures for other federally recognized tribes located in the eastern United States.

Indian Health Service

S. 1735 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 56µpercent 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 IHS beneficiaries—about $4,000 per individual in 2009. Assuming appropriation of the necessary funds and adjusting for anticipated inflation, CBO estimates that IHS benefits for the Lumbee Tribe would cost $648 million over the 2010–2014 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 recognized by North Carolina, the Lumbee are already eligible to receive funding from those departments. Thus, CBO esitmates that implementing S. 1735 would not add to the cost of those programs.

Intergovernmental and private-sector impact: S. 1735 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Previous CBO estimate: On April 29, 2009, CBO transmitted a cost estimate for H.R. 31, the Lumbee Recognition Act, as ordered reported by the House Committee on Natural Resources on April 22, 2009. The two bills are very similar, and the CBO cost estimates are the same.

Estimate prepared by: Federal Costs: Jeff LaFave—Bureau of Indian Affairs; Robert Stewart—Indian Health Service. Impact on State, Local, and Tribal Governments: Melissa Merrell. Impact on the Private Sector: Marin Randall.

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 S. 1735 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 George Skibine, Deputy Assistant Secretary for Policy and Economic Development for Indian Affairs, U.S. Department of the Interior testified before the Committee on Natural Resources in the House of Representatives on March 18, 2009 in support of H.R. 31, the House companion legislation to S. 1735. His testimony is reproduced below:

TESTIMONY OF GEORGE SKIBINE, DEPUTY ASSISTANT SECRETARY FOR POLICY AND ECONOMIC DEVELOPMENT FOR INDIAN AFFAIRS

Good afternoon, Mr. Chairman, Mr. Ranking Member, and Members of the Committee. My name is George Skibine. I am currently the Deputy Assistant Secretary for Policy and Economic Development for Indian Affairs at the Department of the Interior. I am here today to provide the Administration's testimony on H.R. 31, the "Lumbee Recognition Act" and H.R. 1385, the "Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2009."

The acknowledgment of the continued existence of another sovereign is one of the most solemn and important responsibilities delegated to the Secretary of the Interior. Federal acknowledgment enables Indian tribes to participate in Federal programs and establishes a government-to-government relationship between the United States and the Indian tribe, and has considerable social and economic impact on the petitioning group, its neighbors, and Federal, state, and local governments. Acknowledgment carries with it certain immunities and privileges, including governmental activities exempt from state and local jurisdictions and the ability of newly acknowledged Indian tribes to undertake certain economic opportunities.

We recognize that under the United States Constitution, Congress has the authority to recognize a "distinctly Indian community" as an Indian tribe. But along with that authority, it is important that all parties have the opportunity to review all the information available before recognition is granted. That is why we support the Department's administrative recognition process that requires groups to go through the Federal acknowledgment process because it provides a deliberative uniform mechanism to review and consider groups seeking Indian tribal status.

To be granted Federal acknowledgment under the Department's Part 83 regulations, petitioning groups must demonstrate that they meet each of seven mandatory criteria. The petitioner must:

(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 a 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.

A criterion shall be considered met if the available evidence establishes a reasonable likelihood of the validity of the facts relating to that criterion. A petitioner must satisfy all seven of the mandatory criteria in order for the Department to acknowledge the continued tribal existence of a group as an Indian tribe under the Part 83 regulatory process.

H.R. 31, THE "LUMBEE RECOGNITION ACT"

In 1956, Congress designated Indians then "residing in Robeson and adjoining counties of North Carolina" as the "Lumbee Indians of North Carolina" in the Act of June 7, 1956 (70 Stat. 254). Congress went on to note the following:

> 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.

In 1989, the Department's Office of the Solicitor advised that the 1956 Act forbade the federal relationship within the meaning of the acknowledgment regulations, and that the Lumbee Indians were therefore precluded from consideration for federal acknowledgment under the administrative process. Because of the 1956 Act, the Lumbee Indians have been deprived of the ability to seek Federal acknowledgment through administrative means.

There are rare circumstances when Congress should intervene and recognize a tribal group, and the case of the Lumbee Indians is one such rare case. We support H.R. 31 with amendments as discussed below.

H.R. 31 extends Federal recognition to the "Lumbee Tribe of North Carolina" and permits any other group of Indians in Robeson and adjoining counties whose members are not enrolled in the Lumbee Tribe to petition under the Department's acknowledgment regulations. The Office of Federal Acknowledgment has received letters of intent to petition from six groups that may overlap with each other. In addition, we have identified over 80 names of groups that derive from these counties and are affected by the 1956 Lumbee Act. Some of these groups claim to be the "Lumbee Tribe". Therefore, we recommend Congress clarify the Lumbee group that would be granted recognition under this bill based on the group's current governing document and its current membership list. Not doing so could potentially expose the Federal government to unwarranted lawsuits and possibly delay the recognition process for the other groups of Indians in Robeson and adjoining counties not enrolled in the Lumbee Tribe.

Under H.R. 31, any fee land that the Lumbee seeks to convey to the United States to be held in trust shall be considered an "on-reservation" trust acquisition if the

land is located within Robeson County, North Carolina. The current language in the bill implies that the Secretary has the authority to take land into trust; however, the bill does not expressly provide that authority. Section 4 of the bill should be amended to clarify that Congress intends to delegate authority to the Secretary to acquire land in trust for the Lumbee Indians.

In addition, the bill would prohibit the Lumbee Indians from conducting gaming activities under any federal law, including the Indian Gaming Regulatory Act or its corresponding regulations.

Under H.R. 31, the State of North Carolina has jurisdiction over criminal and civil offenses and actions on lands within North Carolina owned by or held in trust for the Lumbee Tribe or "any dependent Indian community of the Lumbee Tribe." The legislation, however, does not address the State's civil regulatory jurisdiction, which includes jurisdiction over zoning, and environmental regulations. Additionally, the Secretary of the Interior is authorized to accept a transfer of jurisdiction over the Lumbee from the State of North Carolina, after consulting with the Attorney General of the United States and pursuant to an agreement between the Lumbee and the State of North Carolina. Such transfer may not take effect until two years after the effective date of such agreement.

We are concerned with the provision requiring the Secretary, within two years, to verify the tribal membership and then to develop a determination of needs and budget to provide Federal services to the Lumbee group's eligible members. Under the provisions of this bill, the "Lumbee Tribe", which the Department understands includes over 40,000 members, would be eligible for benefits, privileges and immunities that are similar to those possessed by other Federally recognized Indian tribes. In our experience verifying a tribal roll is an extremely involved and complex undertaking that can take several years to resolve with much smaller tribes. While we believe there are approximately 40,000 members, we do not currently have access to the Lumbee's membership list and thus do not have the appropriate data to estimate the time to verify them nor do we know how many Lumbee members may be eligible to participate in Federal needs based programs. Moreover, H.R. 31 is silent as to the meaning of verification for inclusion on the Lumbee group's membership list roll.

In addition, section 3 may raise a problem by purporting to require the Secretary of the Interior and the Secretary of Health and Human Services to submit to the Congress a written statement of a determination of needs and budget for the Lumbee Tribe for programs, services and benefits to the Lumbee Tribe. The appropriate means for communicating to Congress a determination of needs and budget for programs administered by the Department of the Interior and the Department of Health and Human Services is the President's Budget.

Should Congress choose not to enact H.R. 31, the Department feels that at a minimum, Congress should amend the 1956 Act to afford the Lumbee Indians and all groups "residing in Robeson and adjoining counties of North Carolina" the opportunity to petition for Federal acknowledgment as an Indian tribe under the Department's regulations.

H.R. 1385—"THOMASINA E. JORDAN INDIAN TRIBES OF VIRGINIA FEDERAL RECOGNITION ACT OF 2009"

H.R. 1385 would provide Federal recognition as Indian tribes to six Virginia groups: the Chickahominy Indian Tribe, the Chickahominy Indian Tribe—Eastern Division, the Upper Mattaponi Tribe, the Rappahannock Tribe, Inc., the Monacan Indian Nation, and the Nansemond Indian Tribe, all of which are currently petitioners in the Department's Federal acknowledgment process. Under 25 CFR Part 83, these six groups have submitted letters of intent and partial documentation to petition for Federal acknowledgment as Indian tribes. Some of these groups are awaiting technical assistance reviews under the Department's acknowledgment regulations. The purpose of the technical assistance reviews is to provide the groups with opportunities to supplement their petitions due to obvious deficiencies and significant omissions. To date, none of these petitioning groups have submitted completed documented petitions to demonstrate their ability to meet all seven mandatory criteria.

The Department acknowledges the authority of Congress to recognize Indian tribes, but again, in most circumstances we prefer the uniformity and certainty provided by the existing administrative process.

This concludes my prepared statement. I will be happy to answer any questions the Committee may have.

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.[1]

Currently, the Lumbee are prohibited from pursuing federal acknowledgment through this administrative process due to the 1956 Lumbee Act.[2]

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

[1] 25 CFR 83.7.
[2] See Pub. L. 84–570, Act of June 7, 1956, 70 Stat. 254.

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.

TIM JOHNSON.

ADDITIONAL VIEWS OF SENATOR TOM COBURN, M.D.

Chairman Dorgan, Vice-Chairman Barrasso, I want to thank you for this opportunity to register my opposition to S. 1178, the "Indian Tribes of Virginia Federal Recognition Act of 2009," and to S. 1735, the "Lumbee Recognition Act of 2009."

As the members of this committee know, S. 1778 will grant federal recognition to six tribal entities in the State of Virginia. The bill will also make members of the newly recognized tribes eligible for all federal benefits conferred to members of Indian tribes and allows the new tribal governments to place land into federal trust as part of its "reservation." The Congressional Budget Office (CBO) estimates that the new tribes will have 4,200 members and that new programs will cost taxpayers an estimated $65 million over five years.[1] Furthermore, as amended, the bill will give the newly formed tribe jurisdiction over child custody cases involving Indian children.

Similarly, S. 1735, the Lumbee Recognition Act of 2009, will grant federal recognition to the "Lumbee Tribe" of North Carolina, despite legitimate controversy surrounding its eligibility. If it approves the measure, Congress will have created one of the larger tribes in the nation, with an estimated 54,000 members. By conferring recognition, and the rights and benefits that come with such status, the Congressional Budget Office (CBO) estimates the bill will cost taxpayers $786 million over the next five years.[2]

I strongly oppose both bills and will object to any Unanimous Consent request to pass the bills in the full Senate.

Like many of my colleagues on this committee, I believe that the Congress is ill-equipped to make these kinds of determinations on a case-by-case basis. The list of groups seeking federal recognition as sovereign tribal governments is large and growing. Congress has neither the time, nor the expertise necessary to individually judge each application to ensure its authenticity, accuracy, or completeness. Frankly, Congressional recognition also lends itself to the kind of political corruption this committee has worked so hard to eradicate.

Proponents of these bills will argue that the established administrative process for federal recognition through the Department of Interior is flawed, takes too long, and may not be accessible in certain, rare cases (Lumbee). They are right on all accounts.

Rather than continuing its piecemeal, arbitrary legislative formula for conferring federal recognition, Congress must instead reform the administrative process that currently governs federal rec-

[1] Congressional Budget Office, "HR 1385: Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2009," April 29, 2009, http://www.cbo.gov/ftpdocs/101xx/doc10102/hr1385.pdf.

[2] Congressional Budget Office, "HR 31: the Lumbee Recognition Act of 2009," April 22, 2009, http://www.cbo.gov/ftpdocs/l01xx/doc10104/hr31.pdf.

ognition. This established administrative process, while highly inefficient, is the one vehicle this Congress has to ensure that all applicants are treated fairly, equitably, and with prompt consideration. I believe it meets the first two goals fairly well, but we must demand more on the latter.

To achieve this, our committee must continue its aggressive oversight of the Office of Federal Acknowledgement (OFA). While some will argue that long delays are simply a result of insufficient resources, I disagree.

For one, the Department of the Interior has not used the resources it has been given very effectively. In the thirty years since the acknowledgement process was created, the Department has received over 330 applicants, and resolved just 47 of the cases.[3] While government auditors note some improvement, the Government Accountability Office (GAO) suggests that much can be accomplished by simply adopting better time management, more consistent communications with third parties, and more accurate budgeting.[4]

Second, Congress must consider revising the standards that Interior uses to review applications so that it can focus its time and resources on the truly serious applicants who have demonstrated the desire and ability to meet the rigorous standards necessary for approval. For example, Interior must have the ability to quickly dismiss (and remove from consideration) insufficient applications, or applications involving individuals or groups who have a history of filing such applications. Similarly, Congress should prohibit consideration of "splinter groups" and other applicants who are unable to cohesively work with OFA officials to meet the rigorous documentation requirements.

Finally, in the rare instance that tribal groups have been officially barred from accessing the administrative review process, Congress may take steps to re-open that venue. In the case of the Lumbee Recognition Act, I believe Representative Heath Shuler's alternative proposal deserves consideration by this committee. Recognizing that the bureaucratic process has left the Lumbee with few options, but also understanding the inherent need for fairness in the recognition process, Representative Shuler has offered an expedited review alternative that will allow the Lumbee to access the established Interior process, to which they have been denied, while giving the agency deadlines to ensure prompt consideration. This will preserve the integrity of the tribal recognition process and allow for timely review.

While the proposal may need modification, I think it makes a lot of sense, and deserves our attention.

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[3] http://www.bia.gov/WhoWeAre/AS-lA/OFA/index.htm.
[4] http://www.gao.gov/new.items/d05347t.pdf.

While I am unable to support the recognition bills currently before this committee, it is my hope that we will use this opportunity to address the larger issues surrounding the federal recognition process. The number of tribes eligible for federal recognition is finite, and with a commitment to oversight of Bureau of Indian Affairs, this Congress can ensure that meritorious applicants receive fair, equitable, and timely consideration.

I thank my colleagues once again.

TOM COBURN, M.D.

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 S. 1735, 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 S. 1735 would effect 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]

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 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 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 within 2 years after the date of the enactment of this section.

Sec. 4. (a) The Secretary may take land into trust for the Lumbee Tribe pursuant to this Act. An application to take land located within Robeson County, North Carolina, into trust under this section shall be treated by the Secretary as an 'on reservation' trust acquisi-

tion under part 151 of title 25, Code of Federal Regulation (or a successor regulation).

(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 subsection (a) 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 section 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.

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