

Union Calendar No. 512

110TH CONGRESS
2D SESSION

H. R. 1575

[Report No. 110-794]

To reaffirm and clarify the Federal relationship of the Burt Lake Band as a distinct federally recognized Indian Tribe, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 19, 2007

Mr. STUPAK (for himself and Mr. KILDEE) introduced the following bill; which was referred to the Committee on Natural Resources

JULY 29, 2008

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on March 19, 2007]

A BILL

To reaffirm and clarify the Federal relationship of the Burt Lake Band as a distinct federally recognized Indian Tribe, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Burt Lake Band of Ot-*
3 *tawa and Chippewa Indians Reaffirmation Act”.*

4 **SEC. 2. FINDINGS.**

5 *Congress finds as follows:*

6 *(1) The members of the Burt Lake Band of Ot-*
7 *tawa and Chippewa Indians, whose historic name is*
8 *the Cheboigan (or Cheboygan) Band, are descendants*
9 *and a political successor to signatories of the 1836*
10 *Treaty of Washington and the 1855 Treaty of Detroit.*
11 *The treaty signatories were twice recognized by the*
12 *United States, on a government-to-government rela-*
13 *tionship basis, through the execution and ratification*
14 *of those treaties.*

15 *(2) The 1836 Treaty of Washington provided*
16 *that the Cheboigan Band would receive a reservation*
17 *of 1,000 acres on the Cheboigan, within its aboriginal*
18 *territory, for a period of 5 years after ratification of*
19 *that treaty but the United States failed to provide*
20 *that reservation. The 1855 Treaty of Detroit provided*
21 *that Ottawa and Chippewa Indians could select indi-*
22 *vidual allotments of land within designated reserves,*
23 *and 2 townships were set aside for selection by the*
24 *“Cheboygan Band” in Cheboygan County. Those*
25 *members who selected allotments within that area*
26 *were not awarded those individual land holdings*

1 *until 3 years after a special Act of Congress was*
2 *passed in 1872.*

3 *(3) Between 1845 and 1850 the Band's members*
4 *used treaty annuity payments to purchase land for*
5 *the Band in Burt Township, Cheboygan County,*
6 *Michigan. That land, called Colonial Point, was*
7 *placed in trust with the Governor of Michigan on the*
8 *advice of Federal Indian agents.*

9 *(4) During the next 50 years, questions arose re-*
10 *garding the taxability of the property, and the acre-*
11 *age was ultimately sold for back taxes in 1900.*

12 *(5) After the Band was forcibly evicted from Co-*
13 *lonial Point and its village was burned to the ground*
14 *by its new owner, John McGinn, the majority of the*
15 *Band's families took up residency on nearby Indian*
16 *Road on lands which other Band members had pur-*
17 *chased or received as treaty allotments or homesteads.*

18 *(6) In 1911, the United States filed suit in the*
19 *United States Federal District Court for Eastern*
20 *Michigan seeking to regain possession of the Colonial*
21 *Point Lands (United States v. McGinn, Equity No.*
22 *94, filed June 11, 1911). In its complaint, the United*
23 *States advised the Court that it was suing on behalf*
24 *of the "Cheboygan band of Indians [which] is now*
25 *and was at all the times mentioned in this bill of*

1 *complaint a tribe of indians [sic] under the care, con-*
2 *trol, and guardianship of the plaintiff and said band*
3 *is now and was at all times mentioned in this bill*
4 *of complaint recognized by the plaintiff through its*
5 *chiefs or head men which it annually elects.”.*

6 *(7) In 1917, the Federal District Court decided*
7 *the McGinn case against the United States finding*
8 *that the language in the Colonial Point deeds did not*
9 *prevent the Colonial Point land from being taxed.*

10 *(8) Over the next 20 years, Acting Chief Enos*
11 *Cabinaw, acting on behalf of the Cheboygan Band,*
12 *asked the United States to appeal or otherwise rectify*
13 *the District Court’s decision, but no Federal action*
14 *was taken. Throughout this period, the United States*
15 *continued to provide the Band and its members with*
16 *many of the same Federal services that were being*
17 *provided to other Indian tribes in Michigan.*

18 *(9) The Act of June 18, 1934 (hereafter in this*
19 *Act referred to as the “Indian Reorganization Act”),*
20 *authorized and directed the Bureau of Indian Affairs*
21 *to provide technical assistance and Federal funds to*
22 *petitioning tribes to assist them in reorganizing their*
23 *governments and improving their economies. Members*
24 *of the Cheboigan Band, as well as members of other*
25 *landless treaty Tribes in Michigan, submitted peti-*

1 *tions to receive that assistance. Similar petitions were*
2 *also submitted by 4 Michigan bands that still held*
3 *communal lands. Possession of a tribal land base was*
4 *a prerequisite to the receipt of most of the Federal*
5 *funds and services provided for in the Indian Reorga-*
6 *nization Act.*

7 *(10) While the Indian Reorganization Act di-*
8 *rected the Secretary to assist landless bands, like Burt*
9 *Lake, and authorized Federal funds to acquire land,*
10 *no Federal funds were appropriated to acquire new*
11 *tribal lands for any of the landless bands in Michi-*
12 *gan. After struggling with this dilemma, the Bureau*
13 *of Indian Affairs extended the benefits of the Indian*
14 *Reorganization Act to only those 4 Michigan tribes*
15 *that had an existing land base on the date of the en-*
16 *actment of the Indian Reorganization Act. Of the Ot-*
17 *tawa and Chippewa Tribes who signed the 1836 and*
18 *1855 Treaties, only 1 group, the Bay Mills Indian*
19 *Community, was organized under the Indian Reorga-*
20 *nization Act.*

21 *(11) The failure of the Bureau of Indian Affairs*
22 *to grant Indian Reorganization Act benefits to the*
23 *Cheboigan Band did not terminate the band's govern-*
24 *ment-to-government relationship with the United*
25 *States, and Congress has never taken any action to*

1 *terminate Federal acknowledgment of the Burt Lake*
2 *Band.*

3 (12) *The Bureau of Indian Affairs does not have*
4 *the legal authority to terminate a tribe that has been*
5 *acknowledged by an Act of Congress.*

6 (13) *Since 1972, the following Michigan tribes*
7 *that were not organized under the Indian Reorganiza-*
8 *tion Act, have been recognized or reaffirmed as feder-*
9 *ally recognized Indian tribes:*

10 (A) *The Sault Ste. Marie Tribe of Chip-*
11 *pewa was reaffirmed by a Memorandum of the*
12 *Commissioner of Indian Affairs on September 7,*
13 *1972.*

14 (B) *The Grand Traverse Band of Ottawa*
15 *and Chippewa Indians was acknowledged by the*
16 *Assistant Secretary of Indian Affairs on May 27,*
17 *1980.*

18 (C) *The Little Traverse Bay Bands of*
19 *Odawa Indian and the Little River Band of Ot-*
20 *tawa Indians each had its Federal status re-*
21 *affirmed by an Act of Congress on September 21,*
22 *1994.*

23 (D) *The Lac Vieux Desert Band of Lake*
24 *Superior Chippewa Indians had its Federal sta-*
25 *tus as a separate Indian tribe reaffirmed by an*

1 *Act of Congress at the request of the Administra-*
2 *tion on September 8, 1988.*

3 *(E) The Pokagon Indian Nation had its*
4 *Federal status reaffirmed by an Act of Congress*
5 *on September 21, 1994.*

6 *(F) The Huron Potawatomi Nation had its*
7 *Federal status acknowledged by the Assistant*
8 *Secretary of Indian Affairs on March 17, 1996.*

9 *(G) The Gun Lake Tribe (Match-She-Be-*
10 *Nash-She-Wish) had its Federal status acknowl-*
11 *edged by the Assistant Secretary of Indian Af-*
12 *airs on August 23, 1999.*

13 *(14) The Burt Lake Band has been consistently*
14 *recognized by third parties as a distinct Indian com-*
15 *munity since well before 1900.*

16 *(15) The Burt Lake Band consists of members*
17 *who are the children, grandchildren, or great grand-*
18 *children of Indian persons who resided on or near Co-*
19 *lonial Point or Indian Road prior to 1910. The ma-*
20 *jority of the Band's adult members grew up on or*
21 *near Indian Road or had an immediate family mem-*
22 *ber who did. As the result, the Band's members have*
23 *maintained very close social and political ties. The*
24 *Band has its own, well-defined membership criteria,*
25 *which requires the maintenance of tribal relations.*

1 (16) *The Burt Lake Band consists of families*
2 *who have and continue to provide mutual aid to each*
3 *other, visit each other regularly, mobilize to assist*
4 *each other in times of need, practice traditional arts*
5 *and crafts, gather for Ghost Suppers, decorate the*
6 *graves of their ancestors, and participate in other tra-*
7 *ditional tribal ceremonies and events.*

8 (17) *Since 1829 the Burt Lake Band's members*
9 *have attended and consistently mobilized to maintain*
10 *the Indian Mission Church of St. Mary's, first on Co-*
11 *lonial Point and later on Indian Road. The Burt*
12 *Lake Band's members have also worked together to*
13 *maintain the Tribe's 2 Indian cemeteries. They have*
14 *also dug the graves and buried their relatives in those*
15 *2 Indian cemeteries for almost 200 years.*

16 (18) *The Burt Lake Band's members have*
17 *throughout time made formal and informal decisions*
18 *for the community. The Burt Lake Band has also or-*
19 *ganized its own modern tribal government without*
20 *the assistance of the Bureau of Indian Affairs.*

21 (19) *The majority of the Band's elders have a*
22 *high degree of Indian blood and continue to speak the*
23 *Ottawa language when they gather with each other.*
24 *Before World War II, more than 50 percent of the*
25 *Burt Lake families were still speaking the traditional*

1 *language in their homes, and more than 50 percent*
2 *of those tribal members who were married were mar-*
3 *ried to other Ottawa and Chippewa individuals.*

4 *(20) There is no evidence that the Band has will-*
5 *fully abandoned tribal relations and there is no evi-*
6 *dence that the Congress has taken any legal action to*
7 *terminate its government-to-government relations*
8 *with the Burt Lake Band.*

9 *(21) Because the Bureau of Indian Affairs failed*
10 *to review the Band's petition for over 20 years, a per-*
11 *centage of the Band's members enrolled in other*
12 *Tribes in order to obtain the Federal services, most*
13 *notably health care and prescription drug assistance,*
14 *that they were legally entitled to, but denied as mem-*
15 *bers of Burt Lake. This step was often taken on the*
16 *advice of one or more employees of the Bureau of In-*
17 *Indian Affairs. This dual enrollment situation has now*
18 *created a new problem for the Band's reaffirmation,*
19 *because the Bureau of Indian Affairs' current regula-*
20 *tions prohibit it from recognizing a tribe when a part*
21 *of the tribe's community is or was enrolled in another*
22 *federally recognized tribe.*

23 *(22) In September 2006, the Assistant Secretary*
24 *of Indian Affairs denied the Burt Lake Band's peti-*
25 *tion for recognition even though it found that the*

1 *Burt Lake Band has been identified as an Indian en-*
2 *tity by scholars, local and State officials, and other*
3 *tribes, and even though it found that the members of*
4 *the Burt Lake Band maintain a strong Indian com-*
5 *munity. In its letter denying the Burt Lake Band's*
6 *petition, the Bureau of Indian Affairs stated that*
7 *“Congress may consider taking legislative action to*
8 *recognize petitioners that do not meet the specific re-*
9 *quirements of the acknowledgment regulations but*
10 *may have merit.”.*

11 *(23) The Burt Lake Band has exhausted its ad-*
12 *ministrative remedies, therefore this Act is both nec-*
13 *essary and appropriate.*

14 **SEC. 3. DEFINITIONS.**

15 *For purposes of this Act, the following definitions*
16 *apply:*

17 *(1) The term “Burt Lake Band” means the Burt*
18 *Lake Band of Ottawa and Chippewa Indians, a con-*
19 *tinuously existing historical tribe of Indians descend-*
20 *ing from the Cheboygan band which was included in*
21 *treaties with the United States in 1836 and 1855 and*
22 *descending from the Indian Village at Burt Lake in*
23 *1900.*

1 (2) *The term “Indian Reorganization Act”*
2 *means the Act of June 18, 1934 (25 U.S.C. 461 et*
3 *seq.).*

4 (3) *The term “OFA” means the Office of Federal*
5 *Acknowledgment, a branch of the United States De-*
6 *partment of the Interior’s Bureau of Indian of Indian*
7 *Affairs.*

8 (4) *The term “Secretary” means the Secretary of*
9 *the Interior.*

10 **SEC. 4. FEDERAL RECOGNITION.**

11 (a) *FEDERAL RECOGNITION.—The Burt Lake Band of*
12 *Ottawa and Chippewa Indians is hereby reaffirmed as a*
13 *federally recognized Indian tribe. All laws and regulations*
14 *of the United States of general application to Indians or*
15 *nations, tribes, or bands of Indians, including the Indian*
16 *Reorganization Act, which are inconsistent with any spe-*
17 *cific provision of this Act shall not be applicable to the Burt*
18 *Lake Band and its members.*

19 (b) *FEDERAL SERVICES AND BENEFITS.—*

20 (1) *IN GENERAL.—Notwithstanding any other*
21 *provision of law, after the date of the enactment of*
22 *this Act, the Burt Lake Band and its members shall*
23 *be eligible for all services and benefits provided by the*
24 *Federal Government to Indians because of their status*
25 *as federally recognized Indians without regard to the*

1 *existence of a reservation or the location of the resi-*
2 *dence of any member on or near any Indian reserva-*
3 *tion.*

4 (2) *SERVICE AREA.—For purposes of the delivery*
5 *of Federal services to the enrolled members of the Burt*
6 *Lake Band and to other Indians, all of Cheboygan*
7 *County Michigan, and any area in the State of*
8 *Michigan that is outside of Cheboygan County, but lo-*
9 *cated within 25 miles of the Burt Lake Band’s Ceme-*
10 *tery at the St. Mary’s Indian Mission Church, shall*
11 *be deemed to be within the Service Area of the Burt*
12 *Lake Band. Nothing contained herein shall prohibit*
13 *the Federal Government from providing services to*
14 *members of the Burt Lake Band who reside or are*
15 *domiciled outside this Service Area, or from otherwise*
16 *expanding the Burt Lake Band’s Service Area in*
17 *compliance with applicable Federal law and policy.*
18 *Nothing in this subsection is intended to diminish or*
19 *alter the service area of another Federally recognized*
20 *Indian tribe. If any part of the Burt Lake Band’s*
21 *service area overlaps with the service area of another*
22 *federally recognized Indian tribe, that overlap shall be*
23 *addressed in compliance with existing Federal poli-*
24 *cies and regulations.*

1 **SEC. 5. REAFFIRMATION OF RIGHTS.**

2 (a) *IN GENERAL.*—All rights and privileges of the Burt
3 Lake Band and its members, which may have been abro-
4 gated or diminished before the date of the enactment of this
5 Act are hereby reaffirmed.

6 (b) *EXISTING RIGHTS OF BURT LAKE BAND.*—Noth-
7 ing in this Act shall be construed to diminish any right
8 or privilege of the Burt Lake Band or of its members that
9 existed before the date of the enactment of this Act. Except
10 as otherwise specifically provided in any other provision
11 of this Act, nothing in this Act shall be construed as altering
12 or affecting any legal or equitable claim the Burt Lake
13 Band may have to enforce any right or privilege reserved
14 by or granted to the Burt Lake Band which was wrongfully
15 denied to or taken from the Burt Lake Band before the date
16 of the enactment of this Act.

17 **SEC. 6. TRIBAL LANDS.**

18 The Secretary shall acquire real property in Che-
19 boygan County in trust for the benefit of the Burt Lake
20 Band of Ottawa and Chippewa Indians, if at the time of
21 such acceptance by the Secretary, there are no adverse legal
22 claims on such property, including outstanding liens, mort-
23 gages or taxes owed, and the Secretary has confirmed that
24 the National Environmental Policy Act of 1969 has been
25 complied with regarding the trust acquisition of the prop-
26 erty. After being taken into trust, such lands shall become

1 *part of the initial reservation of the Burt Lake Band at*
2 *the request of the Burt Lake Band. The Secretary is also*
3 *authorized to acquire and accept real property in other geo-*
4 *graphic areas into trust for the benefit of the Burt Lake*
5 *Band and to declare those lands to be a part of the Burt*
6 *Lake Band's Reservation consistent with applicable law.*

7 **SEC. 7. MEMBERSHIP.**

8 *(a) IN GENERAL.—The initial membership of the Burt*
9 *Lake Band of Ottawa and Chippewa Indians shall consist*
10 *of persons who can present evidence, acceptable to the Burt*
11 *Lake Band, showing that they meet the requirements of sub-*
12 *section (b), and persons who meet such other requirements*
13 *as are specified by the Burt Lake Band in its Burt Lake*
14 *Band's Constitution and Enrollment Ordinance as the*
15 *same may be from time-to-time amended.*

16 *(b) MEMBERSHIP CRITERIA.—*

17 *(1) To qualify for membership in the Burt Lake*
18 *Band of Ottawa and Chippewa Indians, a person*
19 *must be able to demonstrate through evidence accept-*
20 *able to the Burt Lake Band that the person meets at*
21 *least 1 of the following requirements:*

22 *(A) The person descends from a tribal mem-*
23 *ber who was domiciled at Colonial Point, Burt*
24 *Township, Cheboygan County, Michigan, before*
25 *or at the time that the Burt Lake Band's village*

1 *was burned in October 1900, as the tribal mem-*
2 *bers are identified as Colonial Point residents in*
3 *the case files of the litigation initiated by John*
4 *W. McGinn to evict former residents from that*
5 *land, or in the list prepared in or about 1950 as*
6 *the Albert Shananaquet list of pre-1900 village*
7 *residents, or both.*

8 *(B) The person descends from a tribal mem-*
9 *ber who is listed on the 1900 or 1910 Burt Lake*
10 *Township Federal Census, Indian Enumeration*
11 *Schedule.*

12 *(C) The person has an Indian ancestor who*
13 *was, prior to 1910, living in tribal relations*
14 *with the Burt Lake Band of Ottawa and Chip-*
15 *pewa Indians as the Burt Lake Band is defined*
16 *in this Act.*

17 *(2) In addition to the requirements under para-*
18 *graph (1), to qualify for membership in the Burt*
19 *Lake Band of Ottawa and Chippewa Indians, a per-*
20 *son must be able to demonstrate through evidence ac-*
21 *ceptable to the Burt Lake Band that the person meets*
22 *all of the following criteria:*

23 *(A) That the person is in tribal relations*
24 *with other Burt Lake Band members.*

1 (B) *That the person's ancestors have lived*
2 *in tribal relations with other Burt Lake Band*
3 *members on a substantially continuous basis*
4 *from 1910 to the present.*

5 (C) *That the person has a completed tribal*
6 *membership enrollment file as prescribed by the*
7 *Tribal Enrollment Ordinance.*

8 (D) *That the person's membership applica-*
9 *tion has been processed and that the person has*
10 *been approved for membership in the Burt Lake*
11 *Band in the manner prescribed by the Tribal*
12 *Enrollment Ordinance.*

13 (c) *BASE ROLL.—The Burt Lake Band shall provide*
14 *a copy of the base roll of the Burt Lake Band of Ottawa*
15 *and Chippewa Indians to the Assistant Secretary for Indi-*
16 *ans Affairs not later than 12 months after the date of the*
17 *enactment of this Act. The base roll shall consist of the 320*
18 *persons whose names were listed on the official roll of the*
19 *Burt Lake Band which were members submitted by the*
20 *Burt Lake Band to the OFA on May 2, 2005, and shall*
21 *also include the biological sons and daughters who were*
22 *born to those members between the submission of that list*
23 *and the enactment of this Act. The Base Roll shall also in-*
24 *clude those descendants of Burt Lake members who—*

1 (1) *meet the enrollment criteria established by*
2 *this section;*

3 (2) *seek enrollment in the Burt Lake Band not*
4 *later than 12 months after the date of the enactment*
5 *of this Act; and*

6 (3) *are accepted for enrollment in the Burt Lake*
7 *Band in the manner prescribed by the Burt Lake*
8 *Band's Constitution.*

9 **SEC. 8. CONSTITUTION.**

10 *The initial constitution of the Burt Lake Band shall*
11 *be the constitution that the Burt Lake Band submitted to*
12 *the OFA on May 2, 2005.*

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