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H. R. 3764

To provide that an Indian group may receive Federal acknowledgment as an Indian tribe only by an Act of Congress, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 20, 2015

Mr. BISHOP of Utah introduced the following bill; which was referred to the Committee on Natural Resources

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A BILL

To provide that an Indian group may receive Federal acknowledgment as an Indian tribe only by an Act of Congress, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Tribal Recognition Act of 2015''.

SEC. 2. FINDINGS.

Congress finds as follows:

(1) Article I, section 8, clause 3 of the Constitution (commonly known as the ''Indian Com-

merce Clause'') gives Congress authority over Indian affairs.

(2) Such authority is plenary and exclusive.

(3) Such authority may not be exercised by the executive branch, except as expressly delegated by an Act of Congress (or by a treaty ratified by the Senate before March 1871).

SEC. 3. DEFINITIONS.

As used in this Act:

(1) ASSISTANT SECRETARY.—The term ''Assistant Secretary'' means the Assistant Secretary of Indian Affairs, or that officer's authorized representative.

(2) AUTONOMOUS.—The term ''autonomous'' means the exercise of political influence or authority independent of the control of any other Indian governing entity. Autonomous must be understood in the context of the history, geography, culture and social organization of the petitioning group.

(3) COMMUNITY.—The term ''Community'' means any group of people which can demonstrate that consistent interactions and significant social relationships exist within its membership and that its members are differentiated from and identified as distinct from nonmembers. Community must be un-

derstood in the context of the history, geography, culture and social organization of the group.

(4) CONTINENTAL UNITED STATES.—The term ''continental United States'' means the contiguous 48 States and Alaska.

(5) CONTINUOUSLY OR CONTINUOUS.—The term ''continuously or continuous'' means extending from first sustained contact with non-Indians throughout the group's history to the present substantially without interruption.

(6) DOCUMENTED PETITION.—The term ''documented petition'' means the detailed arguments made by a petitioner to substantiate its claim to continuous existence as an Indian tribe, together with the factual exposition and all documentary evidence necessary to demonstrate that these arguments address the mandatory criteria.

(7) HISTORICALLY, HISTORICAL OR HISTORY.—The term ''historically, historical or history'' means dating from first sustained contact with non-Indians.

(8) INDIAN GROUP OR GROUP.—The term ''Indian group or group'' means any Indian or Alaska Native aggregation within the continental United States that the Secretary of the Interior does not acknowledge to be an Indian tribe. Indian tribe, also

referred to herein as tribe, means any Indian or Alaska Native tribe, band, pueblo, village, or community within the continental United States that the Secretary of the Interior has lawfully acknowledged as an Indian tribe.

(9) INDIGENOUS.—The term ''indigenous'' means native to the continental United States in that at least part of the petitioner's territory at the time of sustained contact extended into what is now the continental United States.

(10) INFORMED PARTY.—The term ''informed party'' means any person or organization, other than an interested party, who requests an opportunity to submit comments or evidence or to be kept informed of general actions regarding a specific petitioner.

(11) INTERESTED PARTY.—The term ''interested party'' means any person, organization or other entity who can establish a legal, factual or property interest in an acknowledgment determination and who requests an opportunity to submit comments or evidence or to be kept informed of general actions regarding a specific petitioner. ''Interested party'' includes the governor and attorney general of the State in which a petitioner is located, and may include, but is not limited to, local govern-

mental units, and any recognized Indian tribes and unrecognized Indian groups that might be affected by an acknowledgment determination.

(12) LETTER OF INTENT.—The term ''letter of intent'' means an undocumented letter or resolution by which an Indian group requests Federal acknowledgment as an Indian tribe and expresses its intent to submit a documented petition.

(13) PETITIONER.—The term ''petitioner'' means any entity that has submitted a letter of intent to the Secretary requesting acknowledgment that it is an Indian tribe.

(14) POLITICAL INFLUENCE OR AUTHORITY.—The term ''political influence or authority'' means a tribal council, leadership, internal process or other mechanism which the group has used as a means of influencing or controlling the behavior of its members in significant respects, and/or making decisions for the group which substantially affect its members, and/or representing the group in dealing with outsiders in matters of consequence. This process is to be understood in the context of the history, culture and social organization of the group.

(15) PREVIOUS FEDERAL ACKNOWLEDGMENT.—The term ''previous Federal acknowledg-

ment'' means action by the Federal Government clearly premised on identification of a tribal political entity and indicating clearly the recognition of a relationship between that entity and the United States.

(16) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior or that officer's authorized representative.

(17) SUSTAINED CONTACT.—The term ''sustained contact'' means the period of earliest sustained non-Indian settlement and/or governmental presence in the local area in which the historical tribe or tribes from which the petitioner descends was located historically.

SEC. 4. GROUPS ELIGIBLE TO SUBMIT PETITIONS.

(a) ELIGIBLE GROUPS.—Indian groups indigenous to the continental United States that are not federally recognized Indian tribes on the date of the enactment of this Act may submit a petition under this Act.

(b) INELIGIBLE GROUPS.—The following may not submit a petition under this Act:

(1) Splinter groups, political factions, communities or groups of any character that separate from the main body of a federally recognized Indian tribe, unless they can establish clearly that they have func-

tioned throughout history until the present as an autonomous tribal entity, even if they have been regarded by some as part of or have been associated in some manner with a federally recognized Indian tribe.

(2) Indian tribes, organized bands, pueblos, Alaska native villages, or communities that have been lawfully acknowledged to be federally recognized Indian tribes and are receiving services from the Bureau of Indian Affairs.

(3) Groups that petitioned and were denied Federal acknowledgment under part 83 of title 25, Code of Federal Regulations, including reorganized or reconstituted petitioners previously denied, or splinter groups, spin-offs, or component groups of any type that were once part of petitioners previously denied.

(c) GROUPS WITH PETITIONS IN PROGRESS.—This Act, including the criteria in section 7, shall apply to any Indian group whose documented petition was submitted and not denied on the date of the enactment of this Act.

SEC. 5. FILING A LETTER OF INTENT.

Any Indian group in the continental United States that believes it should be acknowledged as an Indian tribe and that it can satisfy the criteria in this Act may submit

a letter of intent requesting acknowledgment that an Indian group exists as an Indian tribe. The letter of intent submitted under this section—

(1) shall be filed with the Assistant Secretary—Indian Affairs, Department of the Interior;

(2) may be filed in advance of, or at the same time as, a group's documented petition; and

(3) shall be produced, dated and signed by the governing body of an Indian group.

SEC. 6. DUTIES OF THE ASSISTANT SECRETARY.

(a) GUIDELINES.—The Assistant Secretary shall make available guidelines for the preparation of documented petitions. These guidelines shall—

(1) include an explanation of the criteria, a discussion of the types of evidence which may be used to demonstrate particular criteria, and general suggestions and guidelines on how and where to conduct research;

(2) include an example of a documented petition format which shall provide guidance, but not preclude the use of any other format; and

(3) may be supplemented or updated as necessary.

(b) RESEARCH AND PREPARATION OF PETITION.—The Assistant Secretary—

(1) shall provide petitioners with suggestions and advice regarding preparation of the documented petition; and

(2) shall not be responsible for the actual research on behalf of the petitioner.

SEC. 7. CRITERIA FOR FEDERAL ACKNOWLEDGMENT.

The criteria for consideration for Federal acknowledgment is, at a minimum, the following:

(1) The petitioner has been identified as an American Indian entity on a substantially continuous basis since 1900. Evidence that the group's character as an Indian entity has from time to time been denied shall not be considered to be conclusive evidence that this criterion has not been met. Evidence to be relied upon in determining a group's Indian identity may include one or a combination of the following, as well as other evidence of identification by other than the petitioner itself or its members:

(A) Identification as an Indian entity by Federal authorities.

(B) Relationships with State governments based on identification of the group as Indian.

(C) Dealings with a county, parish, or other local government in a relationship based on the group's Indian identity.

(D) Identification as an Indian entity by anthropologists, historians, and/or other scholars.

(E) Identification as an Indian entity in newspapers and books.

(F) Identification as an Indian entity in relationships with Indian tribes or with national, regional, or State Indian organizations.

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

(A) This criterion may be demonstrated by some combination of the following evidence and/or other evidence that the petitioner meets the definition of community:

(i) Significant rates of marriage within the group, and/or, as may be culturally required, patterned out-marriages with other Indian populations.

(ii) Significant social relationships connecting individual members.

(iii) Significant rates of informal social interaction which exist broadly among the members of a group.

(iv) A significant degree of shared or cooperative labor or other economic activity among the membership.

(v) Evidence of strong patterns of discrimination or other social distinctions by nonmembers.

(vi) Shared sacred or secular ritual activity encompassing most of the group.

(vii) Cultural patterns shared among a significant portion of the group that are different from those of the non-Indian populations with whom it interacts. These patterns must function as more than a symbolic identification of the group as Indian. They may include, but are not limited to, language, kinship organization, or religious beliefs and practices.

(viii) The persistence of a named, collective Indian identity continuously over a period of more than 50 years, notwithstanding changes in name.

(ix) A demonstration of historical political influence under the criterion in paragraph (3) shall be evidence for demonstrating historical community.

(B) A petitioner shall be considered to have provided sufficient evidence of community at a given point in time if evidence is provided to demonstrate any one of the following:

(i) More than 50 percent of the members reside in a geographical area exclusively or almost exclusively composed of members of the group, and the balance of the group maintains consistent interaction with some members of the community.

(ii) At least 50 percent of the marriages in the group are between members of the group.

(iii) At least 50 percent of the group members maintain distinct cultural patterns such as, but not limited to, language, kinship organization, or religious beliefs and practices.

(iv) There are distinct community social institutions encompassing most of the members, such as kinship organizations,

formal or informal economic cooperation, or religious organizations.

(v) The group has met the criterion in paragraph (3) using evidence described in paragraph (3)(B).

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

(A) This criterion may be demonstrated by some combination of the evidence listed below and/or by other evidence that the petitioner meets the definition of political influence or authority:

(i) The group is able to mobilize significant numbers of members and significant resources from its members for group purposes.

(ii) Most of the membership considers issues acted upon or actions taken by group leaders or governing bodies to be of importance.

(iii) There is widespread knowledge, communication and involvement in political processes by most of the group's members.

(iv) The group meets the criterion in paragraph (2) at more than a minimal level.

(v) There are internal conflicts which show controversy over valued group goals, properties, policies, processes and/or decisions.

(B) A petitioning group shall be considered to have provided sufficient evidence to demonstrate the exercise of political influence or authority at a given point in time by demonstrating that group leaders and/or other mechanisms exist or existed which—

(i) allocate group resources such as land, residence rights and the like on a consistent basis;

(ii) settle disputes between members or subgroups by mediation or other means on a regular basis;

(iii) exert strong influence on the behavior of individual members, such as the establishment or maintenance of norms and the enforcement of sanctions to direct or control behavior; and

(iv) organize or influence economic subsistence activities among the members, including shared or cooperative labor.

(C) A group that has met the requirements in paragraph (2)(B) at a given point in time shall be considered to have provided sufficient evidence to meet this criterion at that point in time.

(4) A copy of the group's present governing document including its membership criteria. In the absence of a written document, the petitioner must provide a statement describing in full its membership criteria and current governing procedures.

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

(A) Some types of evidence that can be used for this purpose include the following:

(i) Rolls prepared by the Secretary on a descendancy basis for purposes of distributing claims money, providing allotments, or other purposes.

(ii) State, Federal, or other official records or evidence identifying present

members or ancestors of present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.

(iii) Church, school, and other similar enrollment records identifying present members or ancestors of present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.

(iv) Affidavits of recognition by tribal elders, leaders, or the tribal governing body identifying present members or ancestors of present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.

(v) Other records or evidence identifying present members or ancestors of present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.

(B) The petitioner must provide an official membership list, separately certified by the

group's governing body, of all known current members of the group. This list must include each member's full name (including maiden name), date of birth, and current residential address. The petitioner must also provide a copy of each available former list of members based on the group's own defined criteria, as well as a statement describing the circumstances surrounding the preparation of the current list and, insofar as possible, the circumstances surrounding the preparation of former lists.

(6) The membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe. However, under certain conditions a petitioning group may be acknowledged even if its membership is composed principally of persons whose names have appeared on rolls of, or who have been otherwise associated with, an acknowledged Indian tribe. The conditions are that the group must establish that it has functioned throughout history until the present as a separate and autonomous Indian tribal entity, that its members do not maintain a bilateral political relationship with the acknowledged tribe, and that its members have provided written

confirmation of their membership in the petitioning group.

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

SEC. 8. PREVIOUS FEDERAL ACKNOWLEDGMENT.

(a) IN GENERAL.—Unambiguous previous Federal acknowledgment shall be acceptable evidence of the tribal character of a petitioner to the date of the last such previous acknowledgment. If a petitioner provides substantial evidence of unambiguous Federal acknowledgment, the petitioner shall only be required to demonstrate that it meets the requirements of section 7 to the extent required by this section. A determination of the adequacy of the evidence of previous Federal action acknowledging tribal status shall be made during the technical assistance review of the documented petition conducted pursuant to section 10(b).

(b) EVIDENCE.—Evidence to demonstrate previous Federal acknowledgment includes evidence that the group—

(1) has had treaty relations with the United States;

(2) has been denominated a tribe by an Act of Congress or Executive order; and

(3) has been treated by the Federal Government as having collective rights in tribal lands or funds.

SEC. 9. NOTICE OF RECEIPT OF A PETITION.

(a) IN GENERAL.—Not later than 30 days after receiving a letter of intent, or a documented petition if a letter of intent has not previously been received and noticed, the Assistant Secretary shall acknowledge to the sender such receipt in writing. Notice under this subsection shall—

(1) include the name, location, and mailing address of the petitioner and such other information to identify the entity submitting the letter of intent or documented petition and the date it was received;

(2) serve to announce the opportunity for interested parties and informed parties to submit factual or legal arguments in support of or in opposition to the petitioner's request for acknowledgment or to request to be kept informed of all general actions affecting the petition; and

(3) indicate where a copy of the letter of intent and the documented petition may be examined.

(b) NOTICE TO STATE GOVERNMENTS.—The Assistant Secretary shall notify, in writing—

(1) the Governor and Attorney General of the State or States in which a petitioner is located; and

(2) any recognized tribe and any other petitioner that—

(A) appears to have a historical or present relationship with the petitioner; or

(B) may otherwise be considered to have a potential interest in the acknowledgment determination.

(c) PUBLICATION.—Not later than 60 days after receiving a letter of intent, or a documented petition if a letter of intent has not previously been received and noticed, the Assistant Secretary shall have the notice required under this section published—

(1) in the Federal Register; and

(2) in a major newspaper or newspapers of general circulation in the town or city nearest to the petitioner.

SEC. 10. PROCESSING OF THE DOCUMENTED PETITION.

(a) REVIEW.—Upon receipt of a documented petition, the Assistant Secretary—

(1) shall cause a review to be conducted to determine the extent to which the petitioner has met the criteria set forth in section 7;

(2) shall include consideration of the documented petition and the factual statements contained therein;

(3) may initiate other research for any purpose relative to analyzing the documented petition and obtaining additional information about the petitioner's status; and

(4) may consider any evidence which may be submitted by interested parties or informed parties.

(b) TECHNICAL ASSISTANCE.—

(1) Prior to review of the documented petition under subsection (a), the Assistant Secretary shall conduct a preliminary review of the petition in order to provide technical assistance to the petitioner.

(2) The review under paragraph (1) shall be a preliminary review for the purpose of providing the petitioner an opportunity to supplement or revise the documented petition prior to the review under paragraph (1). Insofar as possible, technical assistance reviews under this paragraph will be conducted in the order of receipt of documented petitions. However, technical assistance reviews will not have pri-

ority over active consideration of documented petitions.

(3) After the technical assistance review, the Assistant Secretary shall notify the petitioner by letter of any obvious deficiencies or significant omissions apparent in the documented petition and provide the petitioner with an opportunity to withdraw the documented petition for further work or to submit additional information.

(4) If a petitioner's documented petition claims previous Federal acknowledgment or includes evidence of previous Federal acknowledgment, the technical assistance review shall also include a review to determine whether that evidence is sufficient to meet the requirements of previous Federal acknowledgment.

(c) RESPONSE TO TECHNICAL ASSISTANCE REVIEW.—

(1) Petitioners may respond in part or in full to the technical assistance review letter or request, in writing, that the Assistant Secretary proceed with the active consideration of the documented petition using the materials already submitted.

(2) If the petitioner requests that the materials submitted in response to the technical assistance re-

view letter be again reviewed for adequacy, the Assistant Secretary shall provide the additional review.

(3) If the assertion of previous Federal acknowledgment under section 8 cannot be substantiated during the technical assistance review, the petitioner may respond by providing additional evidence. A petitioner that claims previous Federal acknowledgment and fails to respond to a technical assistance review letter under this subsection, or whose response fails to establish the claim, shall have its documented petition considered on the same basis as documented petitions submitted by groups not claiming previous Federal acknowledgment. Petitioners that fail to demonstrate previous Federal acknowledgment after a review of materials submitted in response to the technical assistance review shall be so notified. Such petitioners may submit additional materials concerning previous acknowledgment during the course of active consideration.

(d) CONSIDERATION OF DOCUMENTED PETITIONS.—The Assistant Secretary shall—

(1) review documented petitions in the order that they are determined ready for review;

(2) establish and maintain a numbered register of documented petitions which have been determined ready for active consideration;

(3) maintain a numbered register of letters of intent or incomplete petitions based on the original date received by the Department of the Interior; and

(4) use the register of letters of intent or incomplete petitions to determine the order of review by the Assistant Secretary if two or more documented petitions are determined ready for review on the same date.

(e) REPORT.—Not later than 1 year after notifying the petitioner that review of the documented petition has begun, the Assistant Secretary shall—

(1) submit a report including a summary of the evidence, findings, petition, and supporting documentation, to the Committee on Natural Resources of the House of Representatives and the Committee on Indian Affairs of the Senate;

(2) notify the petitioner and interested parties that the review is complete and the report required under paragraph (1) has been submitted;

(3) provide copies of the report to the petitioner and interested parties; and

(4) provide copies of the report to informed parties and others upon written request.

SEC. 11. CLARIFICATION OF FEDERAL RECOGNITION AUTHORITY.

(a) ACT OF CONGRESS REQUIRED.—An Indian group may receive Federal acknowledgment (or reacknowledgment) as an Indian tribe only by an Act of Congress. The Secretary may not grant Federal acknowledgment (or reacknowledgment) to any Indian group.

(b) PREVIOUS ACKNOWLEDGMENT.—This Act shall not affect the status of any Indian tribe that was lawfully federally acknowledged before the date of the enactment of this Act.

SEC. 12. FORCE AND EFFECT OF REGULATIONS.

Part 83 of title 25, Code of Federal Regulations, shall have no force or effect.

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