reality: Any legislator who votes for the Pentagon's budget is voting to cut domestic spending. Legislators must learn there is a cost to feeding the Pentagon's bloat.

INDIAN FEDERAL RECOGNITION ADMINISTRATIVE PROCEDURES ACT OF 1997

HON. ENI F.H. FALEOMAVAEGA

OF AMERICAN SAMOA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 20, 1997

Mr. FALEOMAVAEGA. Mr. Speaker, today I am introducing the Indian Federal Recognition Administrative Procedures Act of 1997, a bill to simplify and objectify the existing procedures for extending Federal recognition to Indian tribes. This bill is identical to legislation that I introduced in the 104th Congress, and is similar to legislation that the House passed in the 103d Congress.

The reason I am introducing this bill is because the process by which the Federal Government traditionally chooses to recognize Indian tribes is broken. It is broken because it is biased, it is too expensive, it is incomprehensible to all but the most trained technicians, and the BIA which makes the recognition determinations has applied its criteria in an uneven manner. In fact, in the only appeal of a negative recognition decision to be decided to date involving the Samish Tribe of Washington, the Interior Department's own board of appeals found that the BIA's recognition process ''did not give [the tribe] due process'' and rejected the BIA's position ''as not being supported by the evidence.''

But even more interestingly, a Federal court found in the same case that the attorneys for the United States who had been arguing against recognizing the Samish violated the law and the constitutional rights of the Samish Tribe. The court lambasted the actions of the Interior Department—including both the Solicitor's Office and the Assistant Secretary for Indian Affairs—because they had conspired to alter key findings of the Department relating to Samish land claims in closed-door meetings. The court found that the tribe's case had been ''marred by both lengthy delays and a pattern of serious procedural due process violations.''

Sadly, all of this could have been avoided—much of it at public expense—were it not for a clerical error of the Bureau of Indian Affairs which 27 years ago inadvertently left the Samish Tribe's name off the list of recognized tribes in Washington.

With a record like this, it is little wonder that many tribes have lost faith in the Government's current recognition procedures. Even the President recognizes the problem. In a letter last year to the Chinook Tribe of Washington, the President wrote, ''I agree that the current Federal Acknowledgment process must be improved.'' He said that some progress has been made, ''but much more must be done.'' My bill will finish the job. If we can pass my bill then the Federal recognition process will be impartial, easy to understand, open to public scrutiny, and more affordable. then finally, perhaps, we can begin doing justice to the hundreds of tribes that we wrongfully terminated, forgot about, or accidentally left off some list. I hope that Congress and the President will support my efforts to address these problems.

Let me go into some detail why the recognition process is broken and why it needs to be fixed.

First, it is too expensive for Indian tribes. Experts estimate that the cost of producing an average petition ranges from $300,000 to $500,000. Over the past 16 years, the BIA has spent more than $6 million to evaluate petitions.

Second, it takes too long. Since 1978, when the BIA recognition regulations were put into place, only 14 tribes have been acknowledged, and 15 have been denied. During the same period, the BIA has received over 160 petitions or letters of intent to petition. In 1978, there were already 40 petitions pending. Bud Shapard, the former head of the Bureau of Acknowledgment and Research and primary author of the existing regulations testified before this Committee that ''the current process is impossibly slow. [The BIA's acknowledgment rate] works out statistically to be 1.3 cases a year. At that rate, it will take 110 years to complete the process.''

Third, it is subjective, flawed, and has been applied in an uneven manner. The BIA's handling of the Samish case demonstrates the lack of fairness in the process. The Federal courts and the Interior Department's own board of appeals found that the BIA's recognition process ''did not give [the tribe] due process'' and rejected the BIA's position ''as not being supported by the evidence.'' This was compounded by the fact that the Solicitor's Office and the BIA attempted to hide from the public the judge's findings that the BIA's tribal purity test was flawed, that the BIA's research and methods were ''sloppy and unprofessional'', and that the BIA had ''prejudged'' the Samish case in violation of due process.

Furthermore, Bud Shapard testified before Congress that,

> [b]ecause there is no clear definition of what the petitioners are attempting to prove and what the BIA is attempting to verify, the regulations require nonsensical levels of research and documentation. This results in regulations full of vague phrases requiring subjective interpretations. By my count the 1978 original regulations contained 35 phrases that required a subjective determination. The 1994 revised and streamlined regulations not only doubled the length of the regulations, they more than doubled the areas that required a subjective determination.

Fourth, it is a closed or hidden process. The current process does not allow a petitioning tribe to cross-examine evidence or the researchers, and does not allow the tribe to even review the evidence on which the determination was made until the end of the process.

Fifth, it is biased. The same Department responsible for deciding whether to recognize a tribe is also institutionally biased against recognition. An earlier House report recognized that the BIA has an ''internal disincentive to recognize new tribes when it has difficulty serving existing tribes and more new tribes would increase the BIA workload.''

My bill addresses these problems.

First, to eliminate any conflict of interest and institutional bias, my bill establishes an independent presidentially appointed three-member commission outside of the Department of the Interior to review tribal recognition petitions. The bill also allows the new independent commission to give research advice to petitioners, and provide financial assistance to petitioners. Tribes currently receive little, if any assistance with their applications.

Second, my bill gives petitioning tribes the opportunity for formal, on-the-record hearings. Such hearings will open the decisionmaking process giving petitioners a much better idea of what their obligations are and more confidence in the ultimate decision. Such hearings will also focus the examination of the Commission and the staff in a manner that is completely lacking in the present process. Furthermore, my bill also makes clear that the Commission itself will preside at both the preliminary and adjudicatory hearings.

Third, my bill makes clear that records relied upon by the Commission will be made available in a timely manner to petitioners. In order to facilitate proper and accurate recognition decisions, it is important that the Commission and its staff provide petitioners with the documents and other records relied upon in making preliminary decisions.

Fourth, my bill explains the precedential value of prior BIA recognition decisions and to make the records of those decisions readily available to petitioners. The BIA has stated that it views its prior decisions as providing guidance to petitioners. Tribes, however, have found it very difficult to gain access to copies of the records relating to those decisions. If those prior decisions are considered precedent, the records of those decisions should be made available to petitioners.

Fifth, my bill would make several changes to the Federal recognition criteria. The bill would eliminate the requirement of descendence from an historical tribe. Compelling petitioners to demonstrate descendence from a historic tribe violates policy established by Congress—section 5(b) of the act of May 31, 1994, Public Law 103–263. In that statute, Congress acted to remove any distinction that the Department might make between historic and nonhistoric tribes. In addition, the genealogical requirements inherent in showing descendence from a historical tribe seem to emphasize race over the political relationship that really should be at issue in deciding whether to recognize a tribe.

In addition, the bill would reconfigure the present recognition criteria to more closely follow the so-called Cohen criteria. Before 1978, the Department of the Interior made acknowledgment decisions on an ad hoc basis using the criteria roughly summarized by Assistant Solicitor Felix S. Cohen in his ''Handbook of Federal Indian Law'' (1942 edition) at pages 268–72. In 1978, the Department issued acknowledgment regulations in an attempt to standardize the process. Both the process and the criteria established in the regulations were different than those used before 1978. Under the Cohen criteria, a tribe needed to show at least one of the following: it had treaty relations with the United States; it had been called a tribe by Congress or Executive Order; it had communal rights in lands or resources; it had been treated ads a tribe by other Indian tribes; or it had exercised political authority over its members.

My bill would require a petitioning tribe to prove: that it and its members have been identified as Indians since 1934; that it has exercised political leadership over its members since 1934; that it has a membership roll; and that it exists as a community by showing at least one of the following: first, distinct social

boundaries; second, exercise of communal rights with respect to resources or subsistence activities; third, retention of a native language or other customs; or fourth, that it is state-recognized.

Finally, my bill sets strict time limits for the Commission to act, thus eliminating delay. It requires the new Commission to publish petition in Federal Register within 30 days of receipt. It requires the Commission, within 60 days of receipt, to set a date for a preliminary hearing. It requires the Commission, within 30 days of the preliminary hearing, to decide whether to extend recognition or require a trial-type hearing. And it requires the Commission to hold the trial-type hearing within 180 days of the preliminary hearing and make a decision within 60 days after the hearing.

These are all important measures and I hope that my colleagues will support me in my endeavor to set right much of the injustices that the United States has visited upon the Indian tribes.

NOT A HEARTBREAK HOTEL

HON. THOMAS E. PETRI

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 20, 1997

Mr. PETRI. Mr. Speaker, on March 6, the Christian Science Monitor printed a very perceptive and useful article on the Middle East peace process by Ralph Nurnberger, a fair-minded long-time expert in this area. For the benefit of my colleagues, I ask that it be reprinted in the RECORD at this point.

[From the Christian Science Monitor, Thursday, March 6, 1997]

NOT A HEARTBREAK HOTEL

(By Ralph Nurnberger)

The day before he left for his official visit to the United States, Yasser Arafat presided over the groundbreaking ceremony for a Marriott Hotel to be built on the beachfront in Gaza.

This project says, symbolically, that the Middle East peace process might, finally, produce tangible benefits for the people in the area, especially through direct involvement of the private sector. The construction and later operation of this hotel will provide employment for hundreds of Palestinians. It will contain a modern commercial center to enable international visitors and Palestinians to conduct business as it is done elsewhere in the world. The project will include a self-contained telecommunications center for international calls, faxes, and e-mail as well as excess telephone capacity for the local market.

This project will be the first major American private sector involvement in Gaza. The total investment will be approximately six times more than all other American investments in Gaza—combined!

While diplomatic achievements are essential, the real test of the peace process is how it affects the daily lives of Israelis and Palestinians. If substantive and visible improvements do not result, no international agreements can succeed. For the majority of Israelis, the key element is security. Israelis must feel safe riding buses, shopping in malls, and sending their children to schools. If random acts of violence occur, they must be assured that the Palestinian Authority will work with Israeli officials to find and prosecute the terrorists.

PEACE DIVIDENDS: LOWER INCOMES

Although more Israelis have been killed through terror attacks since the Sept. 13, 1993, signing than in any comparable period, it appears that the Palestinians finally understand their responsibility to work with Israelis to enhance security concerns. The test for most Palestinians is whether the peace accords will result in an improved quality of life. Developing a thriving economy that provides new employment opportunities will not only minimize hatreds and tensions, but will also bring about the promise of a new life.

Economic divergence exacerbates political and religious tensions. Since the first Rabin-Arafat signing, Israeli per capita income has increased from $13,800 to over $15,000, while Palestinian incomes have dropped by a third to under $1,200.

Delays and reallocations of internationally pledged contributions, the reluctance of foreign investors to establish projects in Gaza and the West Bank, border closures, the slow pace of diplomatic negotiations, and difficulties encountered in setting up a viable Palestinian economy have contributed to growing frustration. Public infrastructure and services, including education, health care, sanitation, water, waste water disposal, and electricity continue to be inadequate. Despite a minor building boom, a housing shortage remains.

While the Netanyahu government has eased some limits on Palestinians seeking employment in Israel, the numbers able to cross the borders are significantly below the 120,000 able to find daily work in Israel in 1992.

Rather than growing to absorb these workers, the Palestinian economy has declined over the past two years. Thus, workers have fewer opportunities to find employment within Palestinian areas. The unemployment rate in Gaza, always high, is now estimated at approximately 50 percent, with the rate in the West Bank estimated at 30 percent. Unemployment is highest among young, single men—the most likely recruits for terror-oriented groups.

BIG AID PLEDGES, LITTLE FOLLOW-THROUGH

The US hosted an international meeting on Oct. 1, 1993, at which $2.4 billion in assistance to the West Bank and Gaza was pledged. Most of these funds have not been delivered or have been diverted from long-term projects to emergency programs and costs of running the Palestinian Authority.

The United States committed $500 million, of which $75 million annually for five years is managed by the Agency for International Development (AID). The other $125 million was to come from the Overseas Private Investment Corporation (OPIC) to assist American investors through a combination of loans, loan guarantees, and political risk insurance.

AID has assisted a number of worthwhile projects, including $12 million for construction of six housing units with 192 apartments in Gaza called Al Karam Towers. AID is also helping to improve uses of scarce water resources and assisting private sector economic growth through technical assistance, training, loans to local firms, and establishment of industrial parks. But AID funds have been diverted from long-term projects to help in establishing Palestinian self-rule. For example, AID committed $2 million to support local elections in the West Bank and Gaza, and to assist Palestinians in promoting more responsible and accountable governance.

AID has minimized help for the agricultural sector, the one area where Palestinians could immediately develop profitable exports, especially under a new Free Trade Agreement with the US Allocating additional funds to farm exports would be cost efficient.

OPIC made a major effort to seek private sector projects to assist or insure. But most private investors have avoided Gaza, so OPIC funds committed to date have been modest.

Mr. Arafat would be wise to stress the solving of such economic problems as a prime way to reduce tensions, improve the quality of life, and enhance opportunities for peace. He should build on momentum from the hotel project and stress the need for private sector involvement in the Palestinian economy.

WOMEN BUSINESS OWNERS

HON. DONALD M. PAYNE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 20, 1997

Mr. PAYNE. Mr. Speaker, on Friday, March 14, 1997, the New Jersey Association of Women Business owners held A Salute to Women Leaders luncheon.

This chapter's membership has successfully encompassed the entire State of New Jersey. The statewide group of women business owners is 1,000 members strong, making it the largest chapter of the National Association of Women Business Owners in the United States. The New Jersey chapter has become a strong economic and political force at both the State and national levels.

National statistics state that woman-owned businesses are the fastest growing segment of the U.S. economy. Currently, women own more than 6 million businesses, which is one-third of all U.S. companies.

Mr. Speaker, I am sure my colleagues will join me in saluting women leaders as well as the New Jersey Association of Women Business Owners. I want to congratulate the chapter on a successful event and wish the members many more years of growth and prosperity.

OHSA: THE TIME IS NOW

HON. JOEL HEFLEY

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 20, 1997

Mr. HEFLEY. Mr. Speaker, today I am introducing legislation to reform the Occupational Safety and Health Administration [OSHA]. This legislation is exactly the same as H.R. 707, which I introduced during the 104th Congress. H.R. 707 had 19 cosponsors, including 2 full committee chairman and several subcommittee chairman.

Since 1970 OSHA has been tasked with the duty of maintaining safe and healthy workplaces. I intensely support them in this effort and I think you would be hard pressed to find a Member of Congress who didn't. However, OSHA's directive to carry out this task through mandatory standards enforced by surprise inspections and fines need to be rethought. My bill will move OSHA from a heavyhanded enforcement bureaucracy to a compliance based cooperative agency. By relieving OSHA from its ''gotcha'' mentality, I believe we can create even safer workplaces.

Every Member of Congress has heard about some of the OSHA's ridiculous regulations and tactics from their constituents. It's time to send