

103^D CONGRESS
1ST SESSION

H. R. 2549

To establish administrative procedures to extend Federal recognition to certain Indian groups.

IN THE HOUSE OF REPRESENTATIVES

JUNE 29, 1993

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

A BILL

To establish administrative procedures to extend Federal recognition to certain Indian groups.

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

3 **SECTION 1. DEFINITIONS.**

4 For purposes of this Act:

5 (1) The term “Assistant Secretary” means the
6 Assistant Secretary of the Interior for Indian Af-
7 fairs.

8 (2) The term “autonomous” means having its
9 own tribal council, internal process, or other organi-
10 zational mechanism which the Indian group has used

1 as its own means of making decisions independent of
2 the control of any other Indian governing entity. Au-
3 tonomous must be understood in the context of the
4 culture and social organization of that Indian group.

5 (3) The term “Bureau” means the Bureau of
6 Indian Affairs of the Department of the Interior.

7 (4) The term “community” means any people
8 living within such a reasonable proximity as to allow
9 group interaction and a maintenance of tribal rela-
10 tions.

11 (5) The term “continuously” means extending
12 from generation to generation throughout the Indian
13 group’s history essentially without interruption.

14 (6) The term “Department” means the Depart-
15 ment of the Interior.

16 (7) The term “historical” means dating back to
17 the earliest documented contact between—

18 (A) the aboriginal Indian group from
19 which the petitioners descended; and

20 (B) citizens or officials of the United
21 States, colonial or territorial governments, or if
22 relevant, citizens and officials of foreign govern-
23 ments from which the United States acquired
24 territory.

1 (8) The term “Indian group” means any Indian
2 entity that—

3 (A) is located within any of the States of
4 the United States; and

5 (B) is not recognized by the Secretary of
6 the Interior to be an Indian tribe.

7 (9) The term “Indian tribe” means any Indian
8 entity that—

9 (A) is located within any of the States of
10 the United States; and

11 (B) is recognized by the Secretary of the
12 Interior to be an Indian tribe.

13 (10) The term “Indian tribe acknowledgment
14 regulations” means part 83 of title 25, Code of Fed-
15 eral Regulations and former part 54 of title 25,
16 Code of Federal Regulations.

17 (11) The term “indigenous” means native to
18 the area that constitutes the continental United
19 States in that at least part of the group’s aboriginal
20 range extended into what is now the area that con-
21 stitutes the continental United States.

22 (12) The term “member of an Indian group”
23 means an individual who is recognized by an Indian
24 group as meeting its membership criteria and who
25 consents to being listed as a member of that group.

1 (13) The term “member of an Indian tribe”
2 means an individual who—

3 (A) meets the membership requirements of
4 the Indian tribe, as set forth in its governing
5 document or recognized collectively by those
6 persons comprising the governing body of the
7 Indian tribe; and

8 (B) has continuously maintained tribal re-
9 lations with the Indian tribe or is listed on the
10 tribal rolls of that Indian tribe as a member, if
11 such rolls are maintained.

12 (14) The term “other party” means any af-
13 fected person or organization other than the peti-
14 tioner who submits comments or evidence in support
15 of, or in opposition to, a petition.

16 (15) The term “a petition” means a petition
17 submitted to the Secretary under section 3.

18 (16) The term “petitioner” means any entity
19 which has submitted, or submits, a petition to the
20 Secretary requesting recognition that the entity is an
21 Indian tribe.

22 (17) The term “Secretary” means the Secretary
23 of the Interior.

1 **SEC. 2. APPROVAL AND RATIFICATION OF PRIOR DECI-**
2 **SIONS.**

3 All final decisions made prior to the date of enact-
4 ment of this Act under Indian tribe acknowledgment regu-
5 lations are hereby approved and ratified. Such approval
6 and ratification shall not prejudice the rights of any peti-
7 tioner or other party in any judicial review of such final
8 decision.

9 **SEC. 3. PETITIONS FOR RECOGNITION.**

10 (a) **IN GENERAL.**—Any Indian group that is indige-
11 nous and ethnically and culturally identifiable (including
12 any Indian group whose relationship with the Federal
13 Government was terminated by statute) may submit to the
14 Secretary, during the 6-year period beginning on the date
15 of enactment of this Act, a petition requesting that the
16 Secretary recognize that the Indian group is an Indian
17 tribe. The Secretary shall not recognize as an Indian tribe
18 any Indian group that does not submit such a petition
19 during such time period.

20 (b) **APPLICABILITY.**—The provisions of this Act shall
21 not apply to—

22 (1) any Indian tribe, organized band, pueblo or
23 community which is already recognized by the Sec-
24 retary to be an Indian tribe and is receiving services
25 from the Bureau;

1 (2) any association, organization, corporation,
2 or group of any character formed in recent times,
3 except a group meeting the requirements of sub-
4 section (c) which has recently incorporated or other-
5 wise formalized its existing autonomous process;

6 (3) any splinter group, political faction, commu-
7 nity, or group of any character which separates from
8 the main body of an Indian tribe that, at the time
9 of such separation, is recognized as being an Indian
10 tribe by the Secretary, unless it can be clearly estab-
11 lished that the group, faction, or community has
12 functioned throughout history until the present as
13 an autonomous Indian tribal entity;

14 (4) any Indian group that, in any action in a
15 United States court to which the United States or
16 any recognized Indian tribe was a party, has pre-
17 viously attempted to establish its status as an Indian
18 tribe or as the successor-in-interest to an Indian
19 tribe that was a party to a treaty with the United
20 States; and—

21 (A) was determined by such court not to
22 be an Indian tribe;

23 (B) was determined by such court not to
24 be a successor-in-interest to an Indian tribe

1 that was a party to a treaty with the United
2 States;

3 (C) was the subject of a determination by
4 such court that the group has not maintained
5 an organized tribal structure in a political
6 sense; or

7 (D) was the subject of findings of fact by
8 such court which, if made in the administrative
9 recognition process, would prevent the group
10 from satisfying one or more of the criteria for
11 recognition in this Act; and

12 (5) any Indian group that, prior to the date of
13 enactment of this Act, petitioned for, and was denied
14 or refused recognition or acknowledgment as an In-
15 dian tribe in a final determination made under In-
16 dian tribe acknowledgment regulations.

17 (c) REQUIREMENTS OF PETITION.—Any petition sub-
18 mitted under subsection (a) by an Indian group shall be
19 in a readable form which clearly indicates that it is a peti-
20 tion requesting the Secretary to recognize that the Indian
21 group is an Indian tribe and shall contain each of the fol-
22 lowing:

23 (1) A statement of facts establishing that the
24 petitioner has been identified from historical times
25 until the present, on a substantially continuous

1 basis, as Indian or aboriginal. A petitioner shall not
2 fail to satisfy any requirement of this subsection
3 merely because of fluctuations of tribal activity dur-
4 ing various years. Evidence to be relied upon in de-
5 termining the substantially continuous Indian iden-
6 tity of the petitioner shall include one or more of the
7 following:

8 (A) Repeated identification of the peti-
9 tioner by Federal authorities.

10 (B) Longstanding relationships of the peti-
11 tioner with State governments based on identi-
12 fication of the petitioner as an Indian group.

13 (C) Repeated dealings of the petitioner
14 with a county, parish, or other local government
15 in a relationship based on the Indian identity of
16 the petitioner.

17 (D) Identification of the petitioner as an
18 Indian group by records in courthouses, church-
19 es, or schools.

20 (E) Identification of the petitioner as an
21 Indian group by anthropologists, historians, or
22 other scholars.

23 (F) Repeated identification of the peti-
24 tioner as an Indian group in newspapers and
25 books.

1 (G) Repeated identification of the peti-
2 tioner as an Indian group by, and dealings of
3 the petitioner as an Indian group with, Indian
4 tribes or recognized national Indian organiza-
5 tions.

6 (2) Evidence that—

7 (A) a substantial portion of the member-
8 ship of the petitioner lives in a community
9 viewed as Indian and distinct from other popu-
10 lations in the area;

11 (B) all members of the petitioner are de-
12 scendants of an Indian group which historically
13 inhabited a specific area and of which the peti-
14 tioner claims to be the successor-in-interest;
15 and

16 (C) the membership of the petitioner is
17 composed principally of persons who are not
18 members of any other Indian tribe.

19 (3) A statement of facts which establishes that
20 the petitioner has maintained tribal political influ-
21 ence or other authority over its members as an au-
22 tonomous entity throughout its history until the
23 present.

24 (4) A statement of facts establishing the spe-
25 cific territory over which the petitioner, throughout

1 its history until the present, has maintained tribal
2 political influence.

3 (5) A copy of the present governing document
4 of the petitioner or, in the absence of a written doc-
5 ument, a statement describing in full the member-
6 ship criteria of the petitioner and the procedures
7 through which the petitioner currently governs its
8 affairs and members.

9 (6) A list of all known current members of the
10 petitioner and a copy of each available former list of
11 members based on the petitioner's own defined cri-
12 teria. The membership must consist of individuals
13 who have established, using evidence acceptable to
14 the Secretary, descendance from an Indian group
15 which existed historically or from historical Indian
16 groups which combined and functioned as a single
17 autonomous entity. Evidence acceptable to the Sec-
18 retary of tribal membership for this purpose includes
19 (but is not limited to)—

20 (A) descendance rolls prepared by the Sec-
21 retary for the petitioner for purposes of distrib-
22 uting claims money, providing allotments, or
23 other purposes;

24 (B) State, Federal, or other official records
25 or evidence identifying present members of the

1 petitioner, or ancestors of present members of
2 the petitioner, as being an Indian descendant
3 and a member of the petitioner;

4 (C) church, school, and other similar en-
5 rollment records indicating membership in the
6 petitioner;

7 (D) affidavits of recognition by tribal el-
8 ders, leaders, or the tribal governing body as
9 being an Indian descendant of the Indian group
10 and a member of the petitioner; and

11 (E) other records or evidence identifying
12 the person as a member of the petitioner.

13 **SEC. 4. NOTICE OF RECEIPT OF PETITION.**

14 (a) NOTICE AND PUBLICATION.—Within 30 days
15 after a petition is submitted to the Secretary under section
16 3(a), the Assistant Secretary shall—

17 (1) send an acknowledgment of receipt in writ-
18 ing to the petitioner; and

19 (2) have published in the Federal Register a no-
20 tice of such receipt including—

21 (A) the name, location, and mailing ad-
22 dress of the petitioner and other information
23 that identifies the petitioner;

24 (B) the date the petition was received by
25 the Secretary; and

1 (C) the location where a copy of the peti-
2 tion may be examined.

3 (b) NOTICE TO STATE.—The Assistant Secretary
4 shall notify, in writing, the Governor and attorney general
5 of any State in which a petitioner resides.

6 (c) NOTICE TO TRIBES.—The Assistant Secretary
7 shall notify, in writing, all federally recognized tribes lo-
8 cated within the State in which a petitioner resides.

9 (d) PUBLICATION IN NEWSPAPER.—The Assistant
10 Secretary shall publish notice of receipt of the petition in
11 a major newspaper of general circulation in the town or
12 city nearest the location of the petitioner.

13 (e) OPPORTUNITY FOR COMMENT.—(1) The notice
14 described in subsection (d) shall include, in addition to the
15 information described in subsection (a), notice of oppor-
16 tunity for other parties to submit evidence and factual or
17 legal arguments in support of, or in opposition to, the peti-
18 tion.

19 (2) Any submissions received by the Assistant Sec-
20 retary under paragraph (1) shall be made available to the
21 petitioner and the petitioner shall be provided an oppor-
22 tunity to respond prior to a determination on the petition
23 by the Assistant Secretary.

1 **SEC. 5. PROCESSING.**

2 (a) APPLICABILITY OF ACT.—(1) Upon receipt of a
3 petition, the Assistant Secretary shall conduct a review to
4 determine whether, under the criteria set forth in section
5 3(b), the provisions of this Act are applicable to the peti-
6 tioner.

7 (2) If the Assistant Secretary determines that the
8 provisions of this Act are not applicable to the petitioner,
9 the Assistant Secretary shall, not later than 30 days after
10 the receipt of a petition—

11 (A) publish a summary of such determination
12 in the Federal Register;

13 (B) deliver a copy of such determination and
14 summary to the petitioner; and (c) (see next page)

15 (b) REVIEW.—(1) If the Assistant Secretary deter-
16 mines under subsection (a) that the provisions of this Act
17 are applicable to the petitioner, the Assistant Secretary
18 shall conduct a review to determine whether the petitioner
19 is entitled to be recognized as an Indian tribe.

20 (2) The review conducted under paragraph (1) shall
21 include consideration of the petition, supporting evidence,
22 and the factual statements contained in the petition.

23 (3) The Assistant Secretary may also initiate other
24 research for any purpose relative to analyzing the petition
25 and obtaining additional information about the petition-

1 er's status and may consider any evidence which may be
2 submitted by other parties.

3 (c) NOTIFICATION OF OBVIOUS DEFICIENCIES OR
4 OMISSIONS.—Prior to actual consideration of the petition
5 and by no later than the date that is three months after
6 the date on which the petition is submitted to the Sec-
7 retary, the Assistant Secretary shall notify the petitioner
8 of any obvious deficiencies, or significant omissions, that
9 are apparent upon an initial review of the petition and
10 provide the petitioner with an opportunity to withdraw the
11 petition for further work or to submit additional informa-
12 tion or clarification.

13 (d) PRIORITY OF PROCESSING.—(1) Except as other-
14 wise provided in this subsection, petitions shall be consid-
15 ered on a first come, first served basis, determined by the
16 date of the original filing of the petition with the Sec-
17 retary. The Assistant Secretary shall establish a priority
18 register including those petitions pending before the De-
19 partment.

20 (2) Petitions that are submitted to the Secretary by
21 Indian groups whose relationship with the Federal Gov-
22 ernment was terminated by a statute—

23 (A) shall receive priority consideration over pe-
24 titions submitted by any other Indian groups; and

25 (B) shall be considered on an expedited basis.

1 (C) send to petitioner

2 (i) the date on which the petition was re-
3 ceived; and

4 (ii) the name, office address, and office
5 telephone number of the primary Bureau staff
6 member reviewing the petition, the backup to
7 this staff member, and the supervisor of this
8 staff member.

9 **SEC. 6. PROPOSED FINDINGS AND DETERMINATION.**

10 (a) PROPOSED FINDINGS.—(1) Not later than 1 year
11 after the petition is filed the Assistant Secretary shall
12 issue proposed findings on the petition and shall publish
13 such proposed findings in the Federal Register.

14 (2) The Assistant Secretary may delay making pro-
15 posed findings on a petition for 90 days upon a showing
16 of due cause to the petitioner.

17 (3) In addition to the proposed findings, the Assist-
18 ant Secretary shall prepare a report on each petition which
19 summarizes the evidence supporting the proposed find-
20 ings. Copies of such report and supporting evidence shall
21 be available to the petitioner and to other parties upon
22 written request.

23 (4) Upon publication of the proposed findings under
24 paragraph (1), any individual or organization wishing to
25 challenge the proposed findings shall have a response pe-

1 riod of 120 days to present factual or legal arguments and
2 evidence to rebut the evidence upon which the proposed
3 findings are based. Upon a showing of good cause, the
4 Assistant Secretary may extend such response period for
5 not more than 30 additional days.

6 (b) DETERMINATION.—(1) After consideration of any
7 written arguments and evidence submitted to rebut the
8 proposed findings made under subsection (a)(1), the As-
9 sistant Secretary shall make a determination, on behalf
10 of the Secretary, of whether the petitioner is recognized
11 by the Secretary to be an Indian tribe.

12 (2) The determination required under paragraph (1)
13 shall be made, a summary of the determination published
14 in the Federal Register, and a copy of the determination
15 and summary delivered to the petitioner and other in-
16 volved parties, by no later than the date that is 60 days
17 after the close of the response period described in sub-
18 section (a)(4).

19 (3) A determination made under paragraph (1) shall
20 become final on the date that is 60 days after the date
21 on which the summary of the determination is published
22 under paragraph (2) unless the determination is appealed
23 under section 8.

24 (c) RECOGNITION AS INDIAN TRIBE.—(1) In making
25 the proposed findings and determination under this sec-

1 tion with respect to any petition, the Assistant Secretary
2 shall decide to recognize the petitioner on behalf of the
3 Secretary as an Indian tribe only if the petition meets all
4 the requirements of section 3.

5 (2) A determination made under this Act to recognize
6 an Indian group as an Indian tribe shall not—

7 (A) have the effect of depriving or diminishing
8 the right of any other Indian tribe to govern and
9 enjoy the benefits of its treaty reserved resources or
10 its reservation and reservation resources as such re-
11 sources or reservation existed prior to such deter-
12 mination; or

13 (B) have the effect of depriving or diminishing
14 any property right held in trust or recognized by the
15 United States for such other Indian tribe prior to
16 such determination.

17 (d) DETERMINATION OF NONRECOGNITION.—If the
18 Assistant Secretary determines under subsection (b)(1)
19 that the petitioner should not be recognized to be an In-
20 dian tribe, the Assistant Secretary shall analyze and for-
21 ward to the petitioner other options, if any, under which
22 application for services and other benefits of the Bureau
23 may be made.

1 **SEC. 7. TIME LIMIT FOR DEPARTMENTAL ACTION.**

2 If the Assistant Secretary has not published a sum-
3 mary of a determination made under section 6(b) with re-
4 spect to a petition before the date that is 90 days after
5 the date on which the petition was submitted to the Sec-
6 retary, the petitioner shall be entitled to mandamus relief
7 requiring the Assistant Secretary to complete the review
8 and determination required by this Act with due diligence.

9 **SEC. 8. APPEALS.**

10 (a) RECONSIDERATION AND FINAL DETERMINA-
11 TION.—(1) The determination made by the Assistant Sec-
12 retary under section 5(a) and section 6(b) shall be final
13 for the Department unless the Secretary requests the As-
14 sistant Secretary to reconsider such determination within
15 60 days of publication of the decision.

16 (2) If the Secretary recommends reconsideration, the
17 Assistant Secretary shall promptly notify the petitioner
18 and all other involved parties of such reconsideration and
19 the reasons for such reconsideration.

20 (3) In reconsidering a determination, the Assistant
21 Secretary shall consult with the Secretary, review the ini-
22 tial determination, and, not later than 30 days after the
23 request for reconsideration, make a final determination,
24 a summary of which shall be published in the Federal Reg-
25 ister and a copy of which shall be delivered to the peti-

1 tioner. Such determination shall be final and effective
2 upon publication.

3 (b) INFORMATION CONSIDERED.—The Secretary
4 may, when considering the Assistant Secretary’s deter-
5 mination, review any information available, whether for-
6 mally part of the record or not. In any case in which reli-
7 ance is placed by the Secretary on information not of
8 record, such information shall be identified as to source
9 and nature and inserted in the record.

10 (c) RECONSIDERATION REQUIRED.—The Secretary
11 may request reconsideration of any decision by the Assist-
12 ant Secretary but shall request reconsideration of any de-
13 cision for which significant new evidence has been received
14 subsequent to the publication of the decision.

15 **SEC. 9. JUDICIAL REVIEW.**

16 (a) IN GENERAL.—By no later than 180 days after
17 the date of a final determination by the Department on
18 the merits of a petition for recognition, and not otherwise,
19 the petitioner or any other party may petition for judicial
20 review under chapter 7 of title 5, United States Code.

21 (b) FEES AND COSTS.—If the petitioner prevails in
22 the judicial review of the final Department action on the
23 petition, petitioner shall be eligible for an award of attor-
24 ney fees and costs under the provisions of section 2412
25 of title 28, United States Code.

1 **SEC. 10. IMPLEMENTATION OF DECISIONS.**

2 (a) ELIGIBILITY AND OBLIGATIONS.—Upon recogni-
3 tion by the Secretary that the petitioner is an Indian tribe,
4 the Indian tribe shall be eligible for services and benefits
5 from the Federal Government that are available to other
6 federally recognized tribes and entitled to the privileges
7 and immunities available to other federally recognized In-
8 dian tribes by virtue of their status as Indian tribes with
9 a government-to-government relationship to the United
10 States, as well as having the responsibilities and obliga-
11 tions of such Indian tribes. Such recognition shall subject
12 the Indian tribes to the same authority of Congress and
13 the United States to which other federally recognized
14 tribes are subject.

15 (b) NO ENTITLEMENT CREATED.—While the Indian
16 tribes that are newly recognized under this Act shall be
17 eligible for benefits and services, recognition of the Indian
18 tribe under this Act shall not create an immediate entitle-
19 ment to existing programs of the Bureau. Such programs
20 shall become available upon appropriation of funds by law.
21 Requests for appropriations shall follow a determination
22 of the needs of the newly recognized Indian tribe.

23 (c) BUDGET RECOMMENDATIONS.—Within 180 days
24 after an Indian tribe is recognized under this Act, the ap-
25 propriate area office of the Bureau shall consult and de-
26 velop in cooperation with the Indian tribe, and forward

1 to the Assistant Secretary, a determination of the needs
2 of the Indian tribe and a recommended budget required
3 to serve the newly recognized Indian tribe. The rec-
4 ommended budget shall be considered along with other
5 recommendations by the Assistant Secretary in the usual
6 budget-request process.

7 **SEC. 11. LIST OF RECOGNIZED INDIAN TRIBES.**

8 By no later than the date that is 90 days after the
9 date of the enactment of this Act, and annually thereafter,
10 the Secretary shall publish in the Federal Register a cur-
11 rent list of all Indian tribes which are recognized by the
12 Federal Government and receiving services from the Bu-
13 reau.

14 **SEC. 12. NOTICE.**

15 Any notice which by the terms of this Act must be
16 published in the Federal Register, shall also be mailed to
17 the petitioner, the governors and attorney generals of the
18 States involved, and to other parties which have com-
19 mented on the proposed findings.

20 **SEC. 13. GUIDELINES AND ADVISEMENT.**

21 (a) GUIDELINES.—By no later than the date that is
22 90 days after the date of enactment of this Act, the Sec-
23 retary shall make available suggested guidelines for the
24 format of petitions, including general suggestions and
25 guidelines regarding the mechanics of researching the in-

1 formation required to substantiate petitions. Such guide-
2 lines shall not preclude the use of any other format.

3 (b) ADVISEMENT.—The Assistant Secretary shall,
4 upon request by the petitioner, provide advisement regard-
5 ing research into such petitioner’s historical background
6 and Indian identity. The Assistant Secretary shall not be
7 responsible for actual research on behalf of the petitioner.

8 **SEC. 14. ASSISTANCE IN PREPARING PETITIONS.**

9 (a) IN GENERAL.—(1) The Commissioner of the Ad-
10 ministration for Native Americans of the Department of
11 Health and Human Services may award grants to Indian
12 groups seeking Federal recognition to enable the Indian
13 groups to—

14 (A) conduct the research necessary to substan-
15 tiate petitions under this Act; and

16 (B) prepare documentation necessary for the
17 submission of a petition under this Act.

18 (2) The grants made under this subsection shall be
19 in addition to any other grants the Commissioner of the
20 Administration for Native Americans is authorized to pro-
21 vide under any other provision of law.

22 (b) CRITERIA FOR ASSISTANCE.—Grants provided
23 under subsection (a) shall be awarded competitively based
24 on objective criteria prescribed by regulation by the Com-
25 missioner of the Administration for Native Americans.

1 **SEC. 15. REGULATIONS.**

2 The Secretary is authorized to prescribe such regula-
3 tions as may be necessary to carry out the provisions and
4 purposes of this Act.

5 **SEC. 16. AUTHORIZATION OF APPROPRIATIONS.**

6 (a) DEPARTMENT OF THE INTERIOR.—There is au-
7 thorized to be appropriated to the Secretary \$1,500,000
8 for the fiscal year in which this Act is enacted and for
9 each of the 12 succeeding fiscal years to carry out this
10 Act.

11 (b) DEPARTMENT OF HEALTH AND HUMAN SERV-
12 ICES.—There is authorized to be appropriated to the Sec-
13 retary of Health and Human Services for the Administra-
14 tion for Native Americans \$500,000 for the fiscal year in
15 which this Act is enacted and for each of the 12 succeed-
16 ing fiscal years to carry out section 14.

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