

LUMBEE RECOGNITION ACT

MAY 12, 2009.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. RAHALL, from the Committee on Natural Resources,
submitted the following

R E P O R T

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H.R. 31]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 31) to provide for the recognition of the Lumbee Tribe of North Carolina, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Lumbee Recognition Act”.

SEC. 2. PREAMBLE.

The preamble to the Act of June 7, 1956 (70 Stat. 254), is amended as follows:

(1) By striking “and” at the end of each clause.

(2) By striking “: Now, therefore,” at the end of the last clause and inserting a semicolon.

(3) By adding at the end the following new clauses:

“Whereas the Lumbee Indians of Robeson and adjoining counties in North Carolina are descendants of coastal North Carolina Indian tribes, principally Cheraw, and have remained a distinct Indian community since the time of contact with white settlers;

“Whereas since 1885 the State of North Carolina has recognized the Lumbee Indians as an Indian tribe;

“Whereas in 1956 the Congress of the United States acknowledged the Lumbee Indians as an Indian tribe, but withheld from the Lumbee Tribe the benefits, privileges and immunities to which the Tribe and its members otherwise would have been entitled by virtue of the Tribe’s status as a federally recognized tribe; and

“Whereas the Congress finds that the Lumbee Indians should now be entitled to full Federal recognition of their status as an Indian tribe and that the benefits, privileges and immunities that accompany such status should be accorded to the Lumbee Tribe: Now, therefore,”.

SEC. 3. FEDERAL RECOGNITION.

The Act of June 7, 1956 (70 Stat. 254), is amended as follows:

(1) By striking the last sentence of the first section.

(2) By striking section 2 and inserting the following new sections:

“SEC. 2. (a) Federal recognition is hereby extended to the Lumbee Tribe of North Carolina, as designated as petitioner number 65 by the Office of Federal Acknowledgement. All laws and regulations of the United States of general application to Indians and Indian tribes shall apply to the Lumbee Tribe of North Carolina and its members.

“(b) Notwithstanding the first section, any group of Indians in Robeson and adjoining counties, North Carolina, whose members are not enrolled in the Lumbee Tribe of North Carolina as determined under section 3(c), may petition under part 83 of title 25 of the Code of Federal Regulations for acknowledgement of tribal existence.

“SEC. 3. (a) The Lumbee Tribe of North Carolina and its members shall be eligible for all services and benefits provided to Indians because of their status as members of a federally recognized tribe. For the purposes of the delivery of such services, those members of the Tribe residing in Robeson, Cumberland, Hoke, and Scotland counties in North Carolina shall be deemed to be residing on or near an Indian reservation.

“(b) Upon verification by the Secretary of the Interior of a tribal roll under subsection (c), the Secretary of the Interior and the Secretary of Health and Human Services shall develop, in consultation with the Lumbee Tribe of North Carolina, a determination of needs to provide the services to which members of the Tribe are eligible. The Secretary of the Interior and the Secretary of Health and Human Services shall each submit a written statement of such needs to Congress after the tribal roll is verified.

“(c) For purposes of the delivery of Federal services, the tribal roll in effect on the date of the enactment of this section shall, subject to verification by the Secretary of the Interior, define the service population of the Tribe. The Secretary’s verification shall be limited to confirming compliance with the membership criteria set out in the Tribe’s constitution adopted on November 16, 2001, which verification shall be completed within 2 years after the date of the enactment of this section.

“SEC. 4. (a) The Secretary may take land into trust for the Lumbee Tribe pursuant to this Act. An application to take land located within Robeson County, North Carolina, into trust under this section shall be treated by the Secretary as an ‘on reservation’ trust acquisition under part 151 of title 25, Code of Federal Regulation (or a successor regulation).

“(b) The tribe may not conduct gaming activities as a matter of claimed inherent authority or under the authority of any Federal law, including the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) or under any regulations thereunder promulgated by the Secretary or the National Indian Gaming Commission.

“SEC. 5. (a) The State of North Carolina shall exercise jurisdiction over—

“(1) all criminal offenses that are committed on; and

“(2) all civil actions that arise on, lands located within the State of North Carolina that are owned by, or held in trust by the United States for, the Lumbee Tribe of North Carolina, or any dependent Indian community of the Lumbee Tribe of North Carolina.

“(b) The Secretary of the Interior is authorized to accept on behalf of the United States, after consulting with the Attorney General of the United States, any transfer by the State of North Carolina to the United States of any portion of the jurisdiction of the State of North Carolina described in subsection (a) pursuant to an agreement between the Lumbee Tribe and the State of North Carolina. Such transfer of jurisdiction may not take effect until 2 years after the effective date of the agreement.

“(c) The provisions of this section shall not affect the application of section 109 of the Indian Child Welfare Act of 1978 (25 U.S.C. 1919).

“SEC. 6. There are authorized to be appropriated such sums as are necessary to carry out this Act.”.

PURPOSE OF THE BILL

The purpose of H.R. 31 is to provide for the recognition of the Lumbee Tribe of North Carolina, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

The ancestors of the Lumbee were mainly Cheraw and related Siouan-speaking Indians who have, since the 1700s, lived in the area of what is now Robeson County, North Carolina. While they have been referred to under many different names, the Lumbee take their name from the river known as Lumbee River to the tribe and Lumber River to others. This river flows through Robeson County.

The issue of the status of the Lumbee Tribe of North Carolina comes to the Committee with a voluminous congressional and administrative record. The beginning of the Lumbee Tribe's struggle for federal recognition dates back over 100 years to 1888, when 44 tribal leaders signed a petition seeking federal assistance for their people and more specifically for funding the tribe's schools. After Congress referred the petition to the Department of the Interior, the Commissioner of Indian Affairs ultimately denied the tribe's request, claiming the agency had insufficient resources. The Commissioner of Indian Affairs responded in 1890 as follows: "While I regret exceedingly that the provisions made by the State of North Carolina are entirely inadequate, I find it quite impractical to render any assistance at this time. So long as the immediate wards of the Government are so insufficiently provided for, I do not see how I can consistently render any assistance to the Croatans, or any other civilized tribes."

Beginning in 1899, numerous bills have been introduced in Congress to recognize the tribe.¹ Hearings were held and reports filed on several of these bills.² In addition, Congress requested and obtained several reports from the Department of the Interior on the tribe's history and status.³ These hearings and studies consistently concluded that the Lumbees were a distinct, self-governing Indian community, descended from Siouan speaking tribes, principally the Cheraw. The various bills to recognize the tribe failed generally due to the opposition of the Department of the Interior. The Department's opposition was typically based on either the cost of providing services to the Lumbee, or the fact that recognition ran counter to the prevailing federal Indian policy, but not on questions related to the tribe's Indian ancestry or tribal governmental status. For example, the 1956 Lumbee Act was passed during a period of

¹See H.R. 4009, 56th Cong., 1st Sess.; H.R. 19036, 61st Cong., 2d Sess.; S. 3258, 62d Cong., 1st Sess.; [House companion H.R. 20728]; H.R. 8083, 68th Cong., 1st Sess.; S. 4595, 72d Cong., 2d Sess.; H.R. 5365, 73d Cong., 1st Sess. [Senate companion S. 1632]; H.R. 4656, 84th Cong., 1st Sess.; H.R. 5042, 100th Cong., 1st Sess. [Senate companion S. 2672]; H.R. 2335, 101st Cong., 1st Sess. [Senate companion S. 901]; H.R. 1426, 102d Cong., 1st Sess. [Senate companion S. 1036]; H.R. 334, 103d Cong., 1st Sess.; S. 420, 108th Cong., 1st Sess. [House companion H.R. 898]; S. 660, 109th Cong., 1st Sess.

²See Hearing before the Senate Committee on Indian Affairs on S. 3258, 62d Cong., 2d Sess., April 4, 1912; Hearing before the Committee on Indian Affairs, House of Representatives, on S. 3258, Feb. 14, 1913; H. Rep. No. 1752, 73d Cong., 2d Sess.; S. Rep. No. 204, 73d Cong., 2d Sess.; H. Rep. No. 1654, 84th Cong., 2d Sess.; S. Rep. No. 84-2012, 84th Cong., 2d Sess.; S. Rep. No. 100-579, 100th Cong., 2d Sess.; H. Rep. No. 102-215, 102d Cong., 1st Sess.; H. Rep. No. 103-290, 103d Cong., 1st Sess.; S. Rep. No. 108-213, 108th Cong., 1st Sess.; S. Rep. No. 109-334, 109th Cong., 2d Sess.; and H. Rep. No. 110-164, 110th Cong., 1st Sess.

³See Indian School Supervisor Pierce Report, filed with the Senate on April 4, 1912; Special Indian Agent McPherson report, Doc. No. 677, 53d Cong., 2d Sess., prepared in 1914; Report of J.R. Swanton, Smithsonian Institution, at request of Bureau of Indian Affairs and submitted to Congress at the 1933 hearing; and Fred A. Baker Report on the Siouan Tribe of Indians of Robeson County, July 9, 1935.

federal Indian policy known as the Termination Era, during which Congress terminated its relationship with 109 Indian nations.

Lumbee ancestry

The evidence establishes that the tribe descends from the historic Cheraw and related Siouan-speaking tribes. Historically, the Cheraw were located on Drowning Creek in North Carolina. Drowning Creek was renamed the Lumber River by the State of North Carolina in 1809. The ancestors of the modern day Lumbee Tribe have been located on and around Drowning Creek/Lumber River ever since the first contact with Europeans in the early 1700s. Modern day Lumbee Indians share the same distinctive surnames as families linked historically to the known Cheraw territory, e.g. Locklear, Chavis, Grooms and others.

Because of the precarious position of Indians in the early 1800s due to the removal of many tribes to Oklahoma, the Indians of Robeson County hid their Indian identity. However, incidents during and after the Civil War showed much activity in the Indian community, including recognition by local governmental authorities of this community as an Indian community.

Congress' deliberations on the tribe's history produced authoritative reports by the Department of the Interior. Eleven studies done on the Lumbee Tribe by personnel from the Bureau of Indian Affairs express no doubt that the ancestors of the modern day Lumbee Tribe were Indian. For example, in 1914, Special Indian Agent O.M. McPherson, sent to investigate the history and condition of the tribe, concluded that the tribe was descended from the Cheraw Tribe. Further, in 1934 the Department expressed to Congress, based upon a report by the eminent John R. Swanton of the Bureau of Ethnology, that the Lumbees descend from the Cheraw and related Siouan speaking tribes of coastal North Carolina. This conclusion has since been corroborated by leading historians in the field, including Dr. William Sturtevant, editor in chief of the Smithsonian Institution's Handbook of North American Indians and Dr. James Merrell, professor of colonial history at Vassar College. Dr. Jack Campisi, the tribe's ethnohistorian who testified before the Committee, also confirmed the Cheraw origins of the Lumbee.

Lumbee school

In 1885, the State of North Carolina recognized the tribe and established a separate school system for Lumbee children, run by the tribe itself. Enrollment in the school was restricted to Lumbee children who could demonstrate Lumbee descent four generations back, or into the 1770s. Lumbee tribal leaders were authorized to determine eligibility to enroll in the school. These enrollment records, along with federal census records, form the base roll from which all present day tribal members must demonstrate descent. On March 26, 1913, State Attorney General Bickett issued an opinion that the county board of education could overrule tribal decisions in the Lumbee schools. Lumbee tribal leaders objected to this infringement on their independence. Under pressure from the Lumbee leadership, the State of North Carolina enacted legislation subsequently setting aside the Attorney General's opinion. The Indian Normal School established by the State in 1888 to train

Lumbee teachers for the Tribe's school system has been in continuous operation and is today the University of North Carolina at Pembroke.

State recognition and name changes

In its recognition acts, the State of North Carolina imposed various names on the Tribe, based on the representations of local historians and members of the legislature regarding the tribe's history. These included Croatan [1885 to 1911], Indians of Robeson County [1911 to 1913], Cherokee Indians of Robeson County [1913–1953], and finally Lumbee Indians [1953 to present]. In the early 1950s, the tribe became dissatisfied with its name under state law. Under pressure from the tribe, the state authorized the tribe to conduct a referendum on its name. In 1951, by a margin of 2,169 to 35, the Robeson County Indians voted to adopt the name "Lumbee Indians of North Carolina." The General Assembly of North Carolina passed a bill in 1953 designating them as "Lumbee Indians of North Carolina" and the State continues to recognize the Tribe by this name. This was the only opportunity the tribe had to name itself rather than have a name foisted upon them by the state.

Senate Resolution 344 (1914)

This resolution called for an investigation into the status and conditions of the Indians of Robeson County and adjoining counties. As a result, Special Indian Agent O.M. McPherson visited Robeson County and afterwards issued a 252-page report which covered all aspects of the tribe's history and condition and confirmed the tribal characteristics of the Lumbee Indians. Furthermore, he declared that they were eligible to attend the federal Indian schools. Congress, however, failed to take action on the McPherson report.

Lumbee Act 1956

As it had in the past, the tribe in 1955 sought federal recognition based on the recently amended state law. Again, the Department of the Interior opposed the bill and recommended that Congress amend the bill by denying eligibility for the benefits and services available to Indians because of their status as Indians, consistent with the then-prevailing federal Indian policy of termination. This amended bill was enacted by Congress in 1956 (Pub. L. 84-570, Act of June 7, 1956, 70 Stat. 254). Thus, Congress simultaneously acknowledged the Lumbee Indians but effectively terminated the tribe by denying them federal Indian services and benefits.

1968 Tiwa Act (82 Stat. 93)

The 1956 Lumbee Act was a model for the Tiwa Act of 1968 and served nearly the same purpose in that it recognized the Tiwa as Indians but terminated any federal trust relationship with the tribe. Yet in 1987, Congress enacted the Ysleta del Sur Pueblo Restoration Act that restored the federal trust relationship and extended full federal recognition to the Ysleta del Sur Pueblo of Texas, previously known as the Texas Tiwa. This restoration Act acknowledged that the 1968 Tiwa Act had recognized the Tiwa (S. Rep. 100-90, 100th Cong., 1st sess.) and therefore many argue, its model—the 1956 Lumbee Act—must have recognized the Lumbee

and that it is in the hands of Congress to restore the federal relationship with the Lumbee.

Federal acknowledgment process

Pursuant to the Department of the Interior's regulations, the Lumbee Tribe prepared an extensive petition for federal acknowledgment. The petition was submitted by the tribe on December 17, 1987. It consists of a two volume narrative report, one and one-half file boxes of documentary evidence and a 16 volume membership roll. There is a consistent historical record of the presence of the Lumbees and of tribal activity, but during certain periods the documentation is sporadic. Dr. Jack Campisi, who is the principal author of the Lumbee petition, explained that non-Indian settlement around the Lumbee community occurred relatively late, circa 1830, so that no literate individuals or organized governments were present continuously before that time to record tribal activity. The Committee has been advised that the tribe has exhausted all research avenues and that the documentation before the Committee and the Department of the Interior is all that exists. In the end, the Department of the Interior informed the tribe that it was ineligible to participate in the Federal Acknowledgment Process because Congress has terminated its relationship with the tribe, therefore, only Congress could restore the relationship.

Problems with the Federal acknowledgment process

It is also noteworthy that the administrative acknowledgment process has been criticized by the Congress and tribes. This Committee has conducted many oversight hearings on the administrative process and found it to be expensive, inordinately lengthy and too heavily dependent upon formal documents on Indian tribes even though such documents do not exist or were not generated due to a variety of historic circumstances. Given the nature of the process, it is conceivable that a legitimate Indian tribe could be denied recognition administratively for reasons beyond its control if it could not produce the degree and detail of documentation required by the Department. The Committee believes that the Lumbee Tribe is such a tribe.

Congressional authority

It is clear that in some cases, recognition of an Indian tribe is a matter that should be left for the Congress to address. Congress plainly has the constitutional authority to recognize Indian tribes. In fact, the overwhelming majority of federally recognized Indian tribes were recognized by Congress either through treaty or statute. The present administrative process was established under general authority delegated by the Congress to the Department of the Interior, but there is no specific statutory authority for the process. In other words, the process is wholly administrative in origin. Obviously, Congress is not bound by those regulations in determining whether to recognize a particular Indian tribe. Especially where the Department has so often analyzed a tribe in the past, Congress can take those past departmental determinations and the general view of anthropologists into account. The record here is adequate for a congressional determination and the circumstances support the appropriateness of recognition legislation.

In *United States v. Sandoval*, 231 U.S. 28 (1913), the Supreme Court has held that Congress' authority to recognize an Indian tribe is limited to "distinctly Indian communities." The eleven reports done on the Lumbee Tribe by the Bureau of Indian Affairs and the congressional record of H.R. 31 all establish that the Lumbee Tribe constitutes a distinct Indian community.

Membership and governing structure

Native nations have the inherent authority to determine their membership. In *Santa Clara v. Martinez*,⁴ the Supreme Court stated, "A tribe's right to define its own membership for tribal purposes has long been recognized as central to its existence as an independent political community."

Approximately 55,000 Lumbee Indians are enrolled in the Lumbee Tribe. Eligibility for tribal enrollment is limited to persons who were identified as Indian on source documents from the early 1900s, including the 1900 and 1910 federal census, the list of 44 individuals recognized by the State of North Carolina as Croatan Indians, and those who signed an 1888 petition to Congress by which the Lumbee ancestors first sought federal recognition. The Lumbee service population is identified as those members residing in Robeson, Cumberland, Hoke, and Scotland Counties, North Carolina. CBO estimated the Lumbee service population at 39,700 members. The Lumbee tribal membership rolls are now closed as their status is being considered by Congress. This is common practice for tribes seeking federal recognition, whether from Congress or from the Department of the Interior under 25 CFR Part 83. Tribes typically re-open their rolls after recognition to allow for enrollment of newly born tribal citizens.

The Lumbee Indians have never had a reservation or received services from the Bureau of Indian Affairs or the Indian Health Service though they are eligible for and do receive funds from other federal Indian programs because of their recognition by the State of North Carolina. On November 21, 2001, the Lumbee Tribe voted overwhelmingly to organize under a tribal constitution. The constitution sets out the requirements for tribal membership, including descent from an individual on a base roll consisting of tribal members identified in federal censuses, Indian school records, and other documents dated around 1900. The constitution creates the Office of Tribal Chairman, elected by all voting tribal members, and twenty-one tribal council members, elected from districts within the Lumbee communities.

In summary, the historical record is persuasive and compelling that for the last 200 years the Lumbees have functioned as an Indian tribe and have been recognized as such by state and local authorities.

Gaming

The Lumbee Tribe agreed to a prohibition on gaming and has repeatedly stated that they have no intention of pursuing gaming at this time. Accordingly, the tribe is prohibited by H.R. 31 from conducting, licensing, or regulating gaming pursuant to any inherent

⁴ 436 U.S. 49, 72 n. 32 (1978)

authority they may possess, the Indian Gaming Regulatory Act, or any other federal law.

Lumbee recognition legislation (100th–110th Congresses)

During the 100th Congress, companion bills to recognize the Lumbee Tribe (H.R. 5042 and S. 2672) were introduced and hearings were held on the bills. The Senate bill was reported favorably out of the Senate Committee on Indian Affairs, but no further action was taken on it. In the 102nd Congress, H.R. 1426 passed in the House with 240 yeas, 167 nays, but the Senate failed to invoke cloture on debate and the bill died. In the 103rd Congress, H.R. 334 passed the House but was never acted on in the Senate. Rep. McIntyre introduced H.R. 898 during the 108th Congress and hearings were held on the bill but no further actions were taken. Rep. McIntyre introduced Lumbee recognition legislation (H.R. 21) once again during the 109th Congress but no major actions were taken. Rep. McIntyre yet again introduced H.R. 65 in the 110th Congress with a companion bill, S. 333 introduced in the Senate. H.R. 65 passed the house on June 6, 2007 with 256 yeas and 128 nays but the Senate failed to act on either H.R. 65 or S. 333.

COMMITTEE ACTION

H.R. 31 was introduced by Rep. Mike McIntyre (D–NC) on January 6, 2009. The bill was referred to the Committee on Natural Resources and has 185 cosponsors. On March 18, 2009, the Committee on Natural Resources held a hearing on H.R. 31. The Committee received testimony from the Hon. Mike McIntyre (D–NC); the Hon. Heath Shuler (D–NC); the Hon. Patrick McHenry (R–NC); the Hon. Walter B. Jones (R–NC); Chairman James Ernest Goins, Lumbee Tribe of North Carolina; Mr. Gerald Danforth; Ms. Arlinda Locklear; and Mr. Michael Cook. Mr. George Skibine, Acting Deputy Associate Secretary for Policy & Economic Development, Department of the Interior, Bureau of Indian Affairs, also testified on behalf of the Administration in support of the bill.

On April 22, 2009, the Committee met to consider the bill. Chairman Rahall (D–WV) offered an en bloc amendment to clarify the right of the Secretary of the Interior to take land into trust for the Lumbee Tribe and delete the requirement that the Secretaries of the Interior and Health and Human Services provide a budget to Congress to meet the needs of the Lumbee Tribe. It was adopted by voice vote. The bill, as amended, was then ordered favorably reported to the House of Representatives by voice vote.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

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

Section 2. Preamble

Section 2 contains findings that the Lumbee Indians are descendants of coastal North Carolina Indians; that the State of North Carolina has recognized the Lumbees since 1885; that Congress acknowledged the Lumbee Indians as an Indian tribe in 1956 but withheld the benefits, privileges and immunities that normally ex-

tend to Indians because of their status as Indians; and that Congress now finds that the full benefits, privileges, and immunities should be extended to the Lumbee Tribe.

Section 3. Federal recognition

Section 3 deletes the prohibition in the 1956 Act of eligibility for federal services and benefits and instead extends federal recognition to the Lumbee Tribe of North Carolina, as designated Petitioner Number 65 by the Office of Federal Acknowledgment. All federal law and regulations of general applicability to Indians and Indian tribes apply to the Lumbee Tribe and its members. Section 3 also clarifies that any Indians who are not enrolled in the Lumbee Tribe but reside in Robeson and adjoining counties may continue through the Federal Acknowledgment Process as a separate Indian petitioner.

All services and benefits provided to Indians because of their status as Indians are extended to the Lumbee Tribe. The Tribe's service area is specified as four counties in North Carolina. The Secretary of the Interior and the Secretary of Health and Human Services are required to consult with the Lumbee Tribe to develop a statement of needs and budget. The statement shall be submitted to Congress.

Further, this section provides that the Lumbee Tribe is prohibited from conducting, licensing, or regulating gaming pursuant to any inherent authority they may possess, the Indian Gaming Regulatory Act, or any other federal law.

This section also provides that the tribal roll in effect on the date of enactment shall define the tribe's service population. The Secretary of the Interior shall verify the tribe's roll within two years after the date of the enactment of this section. Lands in Robeson County to be held in trust for the Secretary shall be considered as "on-reservation" trust acquisitions under part 151 of the Code of Federal Regulations. The State of North Carolina shall exercise civil and criminal jurisdiction over all actions arising on lands held in trust for the tribe. The State of North Carolina may transfer its civil or criminal jurisdiction to the United States. The application of the Indian Child Welfare Act of 1978 is not affected by this subsection. Finally, this subsection authorizes appropriations in the amount of such sums as are needed.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in car-

rying out this bill. However, clause 3(d)(3)(B) of that Rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to provide for the recognition of the Lumbee Tribe of North Carolina, and for other purposes.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 31—Lumbee Recognition Act

Summary: H.R. 31 would provide federal recognition to the Lumbee Tribe of North Carolina, thereby making the tribe eligible to receive funding from various federal programs. CBO estimates that implementing this legislation would cost \$786 million over the 2010–2014 period, assuming appropriation of the necessary funds. Enacting H.R. 31 would not affect direct spending or revenues.

H.R. 31 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the federal government: The estimated budgetary impact of H.R. 31 is shown in the following table. The costs of this legislation fall within budget functions 450 (community and regional development) and 550 (health).

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

Basis of estimate: For this estimate, CBO assumes that H.R. 31 will be enacted near the end of fiscal year 2009. The bill would provide federal recognition to the Lumbee Tribe of North Carolina. Such recognition would allow the Lumbee, with membership of about 54,000 people, to receive benefits from various programs administered by the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS). Based on the average expenditures from

those agencies for other Indian tribes, CBO estimates that implementing H.R. 31 would cost \$786 million over the 2010–2014 period, assuming appropriation of the necessary funds.

Bureau of Indian Affairs: BIA provides funding to federally recognized tribes for various purposes, including child welfare services, adult care, community development, and general assistance. A portion of this funding (classified in the BIA budget as tribal priority allocations) is awarded solely on the basis of population in the tribe's service area. (A service area is where BIA services are generally provided.) Based on information from BIA, CBO expects that the Lumbee Tribe would receive approximately \$6 million per year in such funding, assuming that about 75 percent of the total membership lives within the tribe's designated service area. In addition to the tribal priority allocation, the Lumbee Tribe would likely receive BIA funding based on other needs and characteristics of the tribe's members.

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

Indian Health Service: H.R. 31 also would make members of the Lumbee Tribe eligible to receive health benefits from the IHS. Based on information from the IHS, CBO estimates that about 56 percent of tribal members—or about 31,000 people—would receive benefits each year. CBO assumes that the cost to serve those individuals would be similar to funding for current IHS beneficiaries—about \$4,000 per individual in 2009. Assuming appropriation of the necessary funds and adjusting for anticipated inflation, CBO estimates that IHS benefits for the Lumbee Tribe would cost \$648 million over the 2010–2014 period.

Other Federal agencies: In addition to BIA and IHS funding, certain Indian tribes also receive support from other federal programs within the Departments of Education, Housing and Urban Development, Labor, and Agriculture. Based on their status as a tribe recognized by North Carolina, the Lumbee are already eligible to receive funding from those departments. Thus, CBO estimates that implementing H.R. 31 would not add to the cost of those programs.

Intergovernmental and private-sector impact: H.R. 31 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

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

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

EARMARK STATEMENT

H.R. 31 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e) or 9(f) of rule XXI.

PREEMPTION OF STATE, LOCAL, OR TRIBAL LAW

This bill is not intended to preempt any State, local, or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ACT OF JUNE 7, 1956

(Chapter 375)

AN ACT Relating to the Lumbee Indians of North Carolina.

Whereas many Indians now living in Robeson and adjoining counties are descendants of that once large and prosperous tribe which occupied the lands along the Lumbee River at the time of the earliest white settlements in that section; **[and]**

Whereas at the time of their first contacts with the colonists, these Indians were a well-established and distinctive people living in European-type houses in settled towns and communities, owning slaves and livestock, tilling the soil, and practicing many of the arts and crafts of European civilization; **[and]**

Whereas by reason of tribal legend, coupled with a distinctive appearance and manner of speech and the frequent recurrence among them of family names such as Oxendine, Locklear, Chavis, Drinkwater, Bullard, Lowery, Sampson, and others, also found on the roster of the earliest English settlements, these Indians may, with considerable show of reason, trace their origin to an admixture of colonial blood with certain coastal tribes of Indians; **[and]**

Whereas these people are naturally and understandably proud of their heritage, and desirous of establishing their social status and preserving their racial history**[: Now, therefore,]**;

Whereas the Lumbee Indians of Robeson and adjoining counties in North Carolina are descendants of coastal North Carolina Indian tribes, principally Cheraw, and have remained a distinct Indian community since the time of contact with white settlers;

Whereas since 1885 the State of North Carolina has recognized the Lumbee Indians as an Indian tribe;

Whereas in 1956 the Congress of the United States acknowledged the Lumbee Indians as an Indian tribe, but withheld from the Lumbee Tribe the benefits, privileges and immunities to which the Tribe and its members otherwise would have been entitled by virtue of the Tribe's status as a federally recognized tribe;

and

Whereas the Congress finds that the Lumbee Indians should now be entitled to full Federal recognition of their status as an Indian tribe and that the benefits, privileges and immunities that accompany such status should be accorded to the Lumbee Tribe: Now, therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Indians now residing in Robeson and adjoining counties of North Carolina, originally found by the first white settlers on the Lumbee River in Robeson County, and claiming joint descent from remnants of early American colonists and certain tribes of Indians originally inhabiting the coastal regions of North Carolina, shall, from and after the ratification of this Act, be known and designated as Lumbee Indians of North Carolina and shall continue to enjoy all rights, privileges, and immunities enjoyed by them as citizens of the State of North Carolina and of the United States as they enjoyed before the enactment of this Act, and shall continue to be subject to all the obligations and duties of such citizens under the laws of the State of North Carolina and the United States. [Nothing in this Act shall make such Indians eligible for any services performed by the United States for Indians because of their status as Indians, and none of the statutes of the United States which affect Indians because of their status as Indians shall be applicable to the Lumbee Indians.]

[SEC. 2. All laws and parts of laws in conflict with this Act are hereby repealed.]

SEC. 2. (a) Federal recognition is hereby extended to the Lumbee Tribe of North Carolina, as designated as petitioner number 65 by the Office of Federal Acknowledgement. All laws and regulations of the United States of general application to Indians and Indian tribes shall apply to the Lumbee Tribe of North Carolina and its members.

(b) Notwithstanding the first section, any group of Indians in Robeson and adjoining counties, North Carolina, whose members are not enrolled in the Lumbee Tribe of North Carolina as determined under section 3(c), may petition under part 83 of title 25 of the Code of Federal Regulations for acknowledgement of tribal existence.

SEC. 3. (a) The Lumbee Tribe of North Carolina and its members shall be eligible for all services and benefits provided to Indians because of their status as members of a federally recognized tribe. For the purposes of the delivery of such services, those members of the Tribe residing in Robeson, Cumberland, Hoke, and Scotland counties in North Carolina shall be deemed to be residing on or near an Indian reservation.

(b) Upon verification by the Secretary of the Interior of a tribal roll under subsection (c), the Secretary of the Interior and the Secretary of Health and Human Services shall develop, in consultation with the Lumbee Tribe of North Carolina, a determination of needs to provide the services to which members of the Tribe are eligible. The Secretary of the Interior and the Secretary of Health and Human Services shall each submit a written statement of such needs to Congress after the tribal roll is verified.

(c) For purposes of the delivery of Federal services, the tribal roll in effect on the date of the enactment of this section shall, subject

to verification by the Secretary of the Interior, define the service population of the Tribe. The Secretary's verification shall be limited to confirming compliance with the membership criteria set out in the Tribe's constitution adopted on November 16, 2001, which verification shall be completed within 2 years after the date of the enactment of this section.

SEC. 4. (a) The Secretary may take land into trust for the Lumbee Tribe pursuant to this Act. An application to take land located within Robeson County, North Carolina, into trust under this section shall be treated by the Secretary as an "on reservation" trust acquisition under part 151 of title 25, Code of Federal Regulation (or a successor regulation).

(b) The tribe may not conduct gaming activities as a matter of claimed inherent authority or under the authority of any Federal law, including the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) or under any regulations thereunder promulgated by the Secretary or the National Indian Gaming Commission.

SEC. 5. (a) The State of North Carolina shall exercise jurisdiction over—

(1) all criminal offenses that are committed on; and

(2) all civil actions that arise on, lands located within the State of North Carolina that are owned by, or held in trust by the United States for, the Lumbee Tribe of North Carolina, or any dependent Indian community of the Lumbee Tribe of North Carolina.

(b) The Secretary of the Interior is authorized to accept on behalf of the United States, after consulting with the Attorney General of the United States, any transfer by the State of North Carolina to the United States of any portion of the jurisdiction of the State of North Carolina described in subsection (a) pursuant to an agreement between the Lumbee Tribe and the State of North Carolina. Such transfer of jurisdiction may not take effect until 2 years after the effective date of the agreement.

(c) The provisions of this section shall not affect the application of section 109 of the Indian Child Welfare Act of 1978 (25 U.S.C. 1919).

SEC. 6. There are authorized to be appropriated such sums as are necessary to carry out this Act.

ADDITIONAL AND DISSENTING VIEWS

H.R. 31 extends recognition to the Lumbee Indians of North Carolina. If recognized, the Lumbees would be one of the largest tribes in the U.S. in terms of their membership. According to the Congressional Budget Office, this would cost \$786 million over the FY 2010–14 period, assuming appropriation of the necessary funds. Perhaps the Democratic Leadership no longer suffers from sticker shock in light of the trillions of taxpayer dollars it has spent, borrowed, and taxed in just a few months, but three-quarters of the billion dollars is nevertheless a significant sum of money and recognizing an enormous new tribe may stretch budgets thin for services provided to tribes everywhere else. Legislative proposals to recognize the Lumbee have surfaced numerous times over the last century, yet none were enacted. No new information has come to light to justify passing it today; thus, further action on H.R. 31 seems premature. Simply put, more justification is needed to recognize the Lumbee Tribe.

First, the Obama Administration testified in support of H.R. 31, reversing the stance of the Bush Administration. In the Committee hearing on the bill held on March 18, 2009, the witness from the Department of the Interior was unable to explain why the Obama Administration supports legislative recognition of the Lumbees. The witness testified:

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

What are these “rare circumstances”? The witness did not describe them. What if any standard did the Obama Administration use to decide the Lumbees warrant federal recognition in light of the opposition of previous Administration’s? None were provided. The witness could not even identify who in the Administration made the recommendation for the President to endorse Lumbee recognition, or whether there were any objective criteria and standards on which the endorsement was based. Perhaps the President used “empathy” rather than rule of law to make his decision. Perhaps the decision was a political one. Maybe it is purely arbitrary. In any case, it would help the Congress to be informed as to why the Executive Branch shifted its historic stance.

In spite of a number of hearings in the House and Senate over the years, there are nevertheless some unanswered questions. To date, the Committee does not seem to have reliable information as to how many members are in the tribe. In the Committee hearing on H.R. 31, the Interior witness estimated the Lumbee tribe includes “over 40,000” members. The Lumbee Chairman subsequently testified there are about 55,000 members. Why is there a

difference of 15,000 between what is recognized by Interior and the Tribe? This disparity alone is larger than the enrollment of many whole tribes.

According to a recent news article that was submitted for the hearing record, some Lumbees want to open the rolls and increase the membership of the tribe even more, but the tribe is holding off doing so until Congress passes H.R. 31.

The House should obtain a certain membership number on which to estimate the cost of the bill and its impact on resources available to all recognized tribes. The CBO bases its dramatic cost estimate of \$786 million over five years on an assumed enrollment of 54,000 members. If the Lumbee does change its enrollment criteria to expand membership after recognition is extended, the costs could swell to more than a billion dollars over the same five-year period.

This leads to a related concern. As written, the bill does not require members of the Lumbee tribe to be individuals possessing Indian ancestry. There is no reason to question the intentions of the tribe, which wants to enroll only Indian people. But as the Constitution reserves only to Congress the power to recognize a tribe, then it is the duty of the Congress to ensure that a tribal recognition bill provides a means to verify that it is recognizing a tribe of Indian people. To do otherwise undermines the whole notion of tribal recognition and thereby dishonors all validly recognized tribes.

On this point, H.R. 31 limits the Secretary only to “confirming compliance with the membership criteria set out in the Tribe’s constitution adopted on November 16, 2001, which verification shall be completed within 2 years after the date of the enactment of this section.” This language actually prohibits the Secretary from confirming whether all Lumbee members descend from historic Indian tribes of North Carolina as described in the findings section of the bill. This is inappropriate and unreasonable.

The membership criteria of the tribe, according to the Lumbee chairman, consist of two things: proof of descent from an ancestor on the tribe’s base roll, and maintaining contact with the tribe.

There is no mechanism in H.R. 31 providing that anyone—other than the Lumbee Tribe itself—to verify that individuals listed on the tribe’s base roll are, in fact, Indian people. The tribe has testified that its members are descendants of coastal North Carolina tribes. At a minimum, the Secretary should verify that every member of the tribe descends from such historic tribes. Such verification has not been done and it is not required under H.R. 31.

Verification of Indian ancestry is justified for the simple reason that it is a tenet of Indian law. A number of laws enacted over many years provide clear requirements that Indian people must be members of Indian tribes. H.R. 31 should be no different.

A final and broader concern with H.R. 31 is that what Congress does with this bill could well affect the Committee’s ongoing work to address the Supreme Court decision in *Carcieri v. Salazar*. Members of the Committee who were present for the April 1 hearing on this matter learned that the Supreme Court held that the Secretary of the Interior has no authority to acquire lands into trust for tribes not under federal jurisdiction in 1934, except when authorized by a specific Act of Congress. As a result, the Secretary

can no longer acquire lands in trust without a specific Act of Congress for tribes recognized after 1934, and the trust status of the lands of such tribes might be open to challenge.

The Lumbee Tribe was not under federal jurisdiction in 1934. Thus, anything done with H.R. 31, could set a precedent for resolving Carcieri. Under H.R. 31, lands placed in trust for the Lumbee Tribe will be secure; meanwhile, lands held in trust or proposed for trust by other tribes recognized many years ago, are not secure. This kind of inconsistency in federal Indian policy is the kind that led to the Carcieri controversies in the first place.

If the solution to Carcieri is to deal with each and every post-1934 tribe's trust land application separately in Congress, then H.R. 31 is appropriate. If the solution is to provide the Secretary of Interior with appropriate authority to acquire lands in trust, then H.R. 31 is not appropriate.

While the Committee has held a hearing on Carcieri, there seems to be no consensus on how to resolve it. We have received no testimony from the Department, and none of the tribes, states, counties, cities, private land owners and other concerned interests have had an opportunity to testify in the Committee as of the time the report for H.R. 31 is filed.

It would be wise to postpone Floor action of any recognition bills until the Committee acquires a better understanding of the impacts of Carcieri and what to do about it.

DOC HASTINGS.

