

Legislative Bulletin.....June 3, 2009

Contents:

H.R. 31 — Lumbee Recognition Act

Key Conservative Concerns

Take-Away Points

- Subverts the standard federal tribal recognition process
- Authorizes \$807 million over five years, and could grow larger if Lumbee tribe expands its membership
- Could lead to longstanding litigation

For more details on these concerns, see below.

H.R. 31—Lumbee Recognition Act (McIntyre, D-NC)

Order of Business: The bill is scheduled to be considered on Wednesday, June 3, 2009, under an expected structured rule providing for one hour of general debate and making in order several amendments. The RSC will summarize each amendment made in order in a separate document.

Major Changes Since the Last Time This Legislation Was Before the House: There are no significant changes since the legislation was considered in the 110th Congress (H.R. 65) and agreed to by a vote of [256 – 128](#).

Summary: H.R. 31 would provide for federal recognition of the Lumbee tribe, located around [Robeson County](#) North Carolina. The bill would also allow other groups of Indians in Robeson and the adjoining counties in North Carolina, whose members are not enrolled in the Lumbee tribe, to petition the Department of Interior for federal recognition.

The Lumbee are currently recognized as a tribe by the state of North Carolina, and according to the Committee on Natural Resources, its membership is approximately 54,000 individuals. Federally acknowledged members of the tribe would be eligible for

the same programs and services as federally recognized Indian tribes, such as those overseen by the Bureau of Indian Affairs and the Indian Health Service. According to CBO, approximately 31,000 individuals would be eligible to receive federal benefits upon recognition. In addition, H.R. 31 would designate service areas for each tribe for the delivery of federal services to tribal members.

The legislation also prohibits the Lumbee from conducting gambling activities under the Indian Gaming Rights Act. As such, if the tribe were going to establish gambling facilities, they would be required to apply for a license under the same state-established requirements as any other non-Indian entity.

H.R. 65 lists the following findings about the Lumbee group:

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

Additional Background: Granting federal recognition to the Lumbee tribe is a long-standing debate in the state of North Carolina and at the federal level. Since the Lumbee first petitioned and failed to receive federal recognition from Congress in 1888, the group has consistently attempted to achieve recognition through Congress or the Secretary of Interior. The standard recognition process (established by Congress), in which the Secretary of the Interior determines if a petitioner has met the seven criteria necessary to become a tribe, is the usual route the vast majority of tribes have followed to achieve recognition.

However, in 1956, Congress terminated its official relationship with the Lumbee tribe and other Indian groups located in surrounding North Carolina counties. In light of this, the Lumbee are currently ineligible to pursue recognition through the Bureau of Indian Affairs (BIA) for federal acknowledgement as an Indian tribe. Proponents of the legislation argue that as a matter of “fairness,” Congress should recognize the Lumbee because Congressional recognition is not unprecedented (Tiwas of Texas and Pascua Yaqui of Arizona).

It is important to note that many experts and other groups of Native Americans are not even sure the Lumbee is a tribe at all. The Eastern Band of the Cherokee Indians (located in North Carolina), have testified before the Natural Resources Committee several times in opposition to legislation granting federal recognition to the Lumbee tribe. The Cherokee have questioned the validity of the group's Indian ancestry, contending that the group did not originate entirely in North Carolina, and have sought recognition as descending from four different tribes over the years. In a recent testimony, the Eastern Cherokee's Principal Chief cited the works of Dr. Virginia DeMarce (formerly the Chair of the National Genealogical Association), who argues that numerous Lumbee families migrated to North Carolina from other places prior to 1800. However, proponents of H.R. 31 argue that in many cases the Lumbee hid their identity in order to avoid forceful removal and poor treatment in the early 1800s.

H.R. 31 would allow the Lumbee tribe to avoid the federal acknowledgement process and obtain federal recognition directly through Congress. Opponents of the legislation have argued that the Tribe should be required to obtain federal recognition through the established process. Representatives Shuler (D-NC) and McHenry (R-NC) have introduced a bill (H.R. 839), which would allow the Lumbee to submit their petition to the Department of Interior in order to be considered for federal recognition through the standard review process—thus usurping the 1956 act that terminated their relationship with the U.S. government. This legislation has been submitted to the Rules Committee as a potential substitute for H.R. 31.

To learn more about the federal recognition process, please check out [this](#) CRS report.

Committee Action: On January 6, 2009, the bill was introduced and referred to the Committee on Natural Resources. On April 22, 2009, the committee held a mark-up and ordered the bill to reported by voice vote.

Possible Conservative Concerns: Some conservatives may be concerned that this legislation would subvert the standard federal recognition process through which groups apply to be recognized as an Indian tribe, and allow the Lumbee group to be federally recognized without going through the established review process. In addition, CBO bases its cost estimate of \$807 million over five years on an assumed enrollment of 54,000 members. Some conservatives have expressed concern that if the Lumbee does change its enrollment criteria to expand membership after recognition is extended, the costs could cost more than a billion dollars over the same five-year period.

Finally, some conservatives believe Congress should clarify the exact Lumbee group that would be granted recognition under this bill. Under the Bush Administration, the Office of Federal Acknowledgement (OFA) received letters of intent to petition from eight additional groups in the region that may overlap with each other. Some conservatives feel that not clarifying these potentially overlapping tribes would expose the federal government to unwarranted lawsuits and possibly delay the federal acknowledgment process.

Administration Position: While no official Statement of Administration Policy is available, members of the administration testified in favor of the bill during committee hearings on H.R. 31.

Cost to Taxpayers: According to CBO, implementing H.R. 31 would cost \$807 million over the 2010-2014 period, assuming appropriation of the necessary funds.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: According to Committee Report 111-103, “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(t) of rule XXI.”

Constitutional Authority: The Natural Resources Committee cites Article I, Section 8 of the Constitution, but fails to cite a specific clause. House Rule XIII, Section 3(d)(1), requires that all committee reports contain “a statement citing the *specific* powers granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution”

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