



Legislative Bulletin.....June 7, 2007

Contents:

H.R. 65 — Lumbee Recognition Act

Summary of the Bill Under Consideration Today:

Total Number of New Government Programs: 0

Total Cost of Discretionary Authorizations: \$497 million over five years

Effect on Revenue: \$0

Total Change in Mandatory Spending: \$0

Total New State & Local Government Mandates: 0

Total New Private Sector Mandates: 0

Number of Bills Without Committee Reports: 0

Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority: 1

H.R. 65 — Lumbee Recognition Act (*McIntyre, D-NC*)

Order of Business: The bill is scheduled for consideration on Thursday, June 7, 2007, likely subject to a closed rule.

Summary: H.R. 65 would provide for federal recognition of the Lumbee tribe, located in 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 53,000 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, roughly 39,700 individuals would be eligible to receive federal benefits

upon recognition. In addition, H.R. 65 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 Information: Granting federal recognition to the Lumbee Tribe is a long-standing debate in the state of North Carolina and at the federal level. According to the Committee Report ([110-164](#)), the Lumbee tribe first petitioned Congress for federal recognition as an Indian tribe in 1888. This attempt was unsuccessful, and since that time, the group has consistently petitioned Congress, and the Department of Interior, for such recognition. Through the standard federal recognition process (established by Congress), the Secretary of the Interior determines if a petitioner has met the seven criteria necessary to become a tribe. 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. According to the Committee Report, various efforts by the Lumbee have failed to garner support in Congress (largely due of opposition from Senator Helms), and the Department of Interior has consistently opposed the group’s efforts. However, proponents of the legislation argue that as a matter of “fairness,” Congress should recognize the Lumbee—explaining that in the past, Congress terminated its relationship with two other tribes (Tiwas of Texas and Pascua Yaqui of Arizona), and since that time, has passed legislation reversing this termination and granting federal recognition to both tribes.

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. In addition, the testimony discussed the works of genealogist Paul Heinegg, who argues that the Lumbee are an “invented tribe,” and that the group is “African American

as shown by their genealogies” and not of Indian descent. However, proponents of H.R. 65 argue that in many cases the Lumbee hid their identity in order to avoid forceful removal and poor treatment in the early 1800s. In addition, the Committee Report outlines several investigations into the tribe’s history by agents of the Department of Interior that have concluded they are descendants of the Cheraw Tribe.

H.R. 65 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. Rep. Shuler (D-NC) has introduced a bill (H.R. 2022), 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. Rep. Shuler offered an amendment during committee consideration of H.R. 65 that would have made the tribe eligible for the federal recognition process; however, the amendment failed by a voice vote.

The Administration testified before the Committee on the Lumbee Act, stating the following regarding the provision of the legislation allowing other groups of Indians to apply for federal recognition. According to the Administration, “The Department’s Office of Federal Acknowledgement (OFA) has received letters of intent to petition from eight groups that may overlap with each other... In addition, OFA has identified over 90 names of groups that derive from these counties and are affected by the 1956 Lumbee Act. Some of these groups claim to be the ‘Lumbee’ Tribe. Therefore, we recommend Congress clarify the Lumbee group that would be granted recognition under this bill. Not doing so could potential expose the Federal government to unwarranted lawsuits and possibly delay the Federal acknowledgment process.”

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

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, some conservatives may be concerned that the legislation would add over 39,000 individuals to be eligible for federal services through the Indian Health Service and the BIA, at a cost of almost \$500 million in the first five years.

Committee Action: H.R. 65 was introduced on January 4, 2007, and referred to the Committee on Natural Resources, which considered it, held a mark up, and passed the bill by a vote of 24-7, on April 25, 2007. The bill was reported to the full House, as amended, on May 22, 2007.

Cost to Taxpayers: According to CBO, implementing H.R. 65 would authorize \$93 million in FY 2008, and \$497 million over five years. CBO outlines that these costs are derived from providing additional federal services to the 39,700 individuals that would now be eligible for federal programs and services provided to federally recognized Indians.

Does the Bill Create New Federal Programs or Rules?: No.

Earmark Compliance: According to the Committee Report, the “H.R. 65 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 3 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” (*emphasis added*).

Staff Contact: Joelle Cannon, joelle.cannon@mail.house.gov, X69717

###