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SENATE

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PROVIDING FOR THE RECOGNITION OF THE LUMBEE TRIBE OF NORTH CAROLINA, AND FOR OTHER PURPOSES

—————
AUGUST 2, 2012.—Ordered to be printed
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Mr. AKAKA, from the Committee on Indian Affairs,
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany S. 1218]

The Committee on Indian Affairs, to which was referred the bill (S. 1218) to provide for the recognition of the Lumbee Tribe of North Carolina, and for other purposes, having considered the same, reports favorably thereon and recommends that the bill do pass.

PURPOSE

The purpose of S. 1218 is to provide Federal recognition to the Lumbee Tribe of North Carolina (as designated as petitioner number 65 by the Office of Federal Acknowledgment at the Department of the Interior), make applicable to the group and its members all laws that are generally applicable to American Indians and Federally-recognized Indian tribes, and make available to the Lumbee tribe all services for which Federally-recognized tribes are eligible. Further, the bill authorizes any group of Indians in Robeson and adjoining counties in North Carolina, whose members are not enrolled in the Lumbee Tribe of North Carolina, to submit a petition to the Department of the Interior for acknowledgment as an Indian Tribe.

BACKGROUND AND HISTORY

The question of whether to provide Federal recognition to the Lumbee Indians is a longstanding one. Attempts to obtain Federal recognition for the group began in 1888. Since that time, there have been numerous bills introduced in Congress to recognize the group, but none have been enacted into law. There have also been numerous reports and studies conducted on the history of the Lumbee Indians. A history of these bills and some of the studies are better described in previous reports of the House of Representatives and Senate.¹ The information in this report is primarily derived from previous congressional reports, Committee hearing records, and letters submitted by interested parties.

Although the Lumbee Indians have so far failed to gain Federal recognition, the State of North Carolina has recognized the group as an Indian tribe, under various names and for varying purposes, since 1885.²

Given the history of the Lumbee Indians and the inability of the group to utilize the Federal Acknowledgment Process, the Committee supports congressional action to extend Federal recognition to the Lumbee Indians (as designated as petitioner number 65 by the Office of Federal Acknowledgment at the Department of the Interior).

HISTORY OF RECOGNIZING INDIAN TRIBES

The recognition of an Indian group as a Federally-recognized Indian tribe is an important action. It is an affirmation by the United States of a tribe's right to self-government and the existence of a formal government-to-government relationship between the United States and the tribe. Once a tribe is Federally recognized, the tribe and its members have access to Federal benefits and programs, and the tribal government incurs a formal responsibility to its members as the primary governing body of the community.

Before Congress ended the practice of treaty-making with Indian tribes in 1871, treaties were the usual manner of recognizing a government-to-government relationship between the United States and an Indian tribe. Since the abolishment of treaty-making, the United States has recognized Indian tribes by executive order, legislation, and administrative decisions by the Executive Branch. Additionally, Federal courts may clarify the status of an Indian group, though in many cases, the courts defer to the Bureau of Indian Affairs at the Department of the Interior.

In order to provide a uniform and consistent process for recognizing an Indian group, the Department of the Interior developed an administrative process in 1978 through which Indian groups could petition for acknowledgment of a government-to-government relationship with the United States. The standards for this process

¹See 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.; H. Rep. No. 110-164, 110th Cong., 1st Sess.; and H. Rep. No. 111-103, 111th Cong., 1st Sess.

²The Lumbee Indians have been recognized by the State of North Carolina as Croatans, Indians of Robeson County, Cherokee Indians of Robeson County, and Lumbee Indians. One of the primary purposes of the initial State recognition was to fund a segregated school system, operated for and attended exclusively by Lumbee Indian children.

are set forth in Title 25 of the Code of Federal Regulations, Part 83: “Procedures for Establishing that an American Indian Group Exists as an Indian Tribe.”

The regulations establish seven mandatory criteria, each of which must be met before a group can achieve status as a Federally recognized Indian tribe. The criteria are as follows:

(1) The petitioning group has been identified as an American Indian entity on a substantially continuous basis since 1900;

(2) A predominant portion of the group comprises a distinct community and has existed as a community from historical times until the present;

(3) The group has maintained political influence or authority over its members as an autonomous entity from historical times until the present;

(4) The group must provide a copy of its present governing documents (constitution and bylaws) and membership criteria;

(5) The group’s membership consists of individuals who descend from a historical Indian tribe or tribes, which combined and functioned as a single autonomous political entity;

(6) The membership of the group is composed principally of persons who are not members of any other acknowledged North American Indian tribe; and

(7) Neither the group nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship.

The regulations have remained essentially unchanged since 1978, with the exception of revisions clarifying the evidence needed to support a recognition petition (1994), updated guidelines on the process (1997), a notice regarding BIA’s internal processing of federal acknowledgment petitions (2000), and a notice to provide guidance and direction to make the process more streamlined and efficient (2008).³

There have been numerous complaints about the process since 1978, but the primary complaints have been about the high cost of gathering documentary evidence to meet the seven criteria and the length of time it takes the Department to review a petition. Since the Federal Acknowledgment Process regulations were established in 1978, the Department has issued 49 decisions under the process. Of that number, 17 petitioners were acknowledged as Indian tribes, and 32 petitioners were denied acknowledgment.

Due to the problems associated with the Federal Acknowledgment Process, an increasing number of tribal groups have asked Congress to recognize or restore their status as Federally-recognized Indian tribes. Congress retains the authority to recognize tribal groups, as Congress did with the Loyal Shawnee Tribe of Oklahoma and the Graton Rancheria of California in 2000 in the Omnibus Indian Advancement Act.⁴ Since 1982, Congress has restored or recognized 9 Indian tribes.⁵

³ 73 Fed. Reg. 30146–48 (May 23, 2008).

⁴ See Pub. L. 106–568 (2000).

⁵ <http://www.bia.gov/idc/groups/xofa/documents/text/idc013624.pdf>.

HISTORY OF THE LUMBEE INDIANS

Congress has deliberated on the status of the Lumbee Indians for more than a century. Since 1899, numerous bills have been introduced in Congress to recognize the Lumbee Indians, though none have been enacted into law.⁶

The Lumbees have been unable to trace their lineage back to any tribal group that had a treaty relationship with the United States. The name "Lumbee" comes from the Indians themselves and is a designation from the 1950's based upon the name of the Lumber River, on which the Lumbee Indians reside.

Several reports were issued by the Department of the Interior between 1900 and 1935 regarding the origins of the Lumbee Indians and their status.⁷ The reports indicate that the Lumbee Indians, at various times, have been considered to be Croatan Indians, Siouan Indians, Cherokee Indians, and Cheraw Indians.

In 1885, the Lumbees were believed to be descendants of the lost Raleigh colony and were designated as Croatan Indians.⁸ In a 1934 report to the Senate Committee on Indian Affairs, the Department of the Interior described the Lumbee as follows:

The evidence available thus seems to indicate that the Indians of Robeson County who have been called Croatan and Cherokee are descended mainly from certain Siouan Tribes of which the most prominent were the Cheraw and Keyauwee, but they probably included as well remnants of the Eno and Shakori, and very likely some of the coast groups such as the Waccamaw and Cape Fear.⁹

In 1955, the leader of the Lumbee Indians testified before the House of Representatives that the Indians of Robeson County were an "admixture of seven different tribes of Indians, including the Cherokee, Tuscarora, Hatteras, Pamli and Croatan."¹⁰

A report conducted in 1934 by J.R. Swanton, a specialist on southeastern Indians with the Smithsonian Institution, is considered to be the most reliable report on the origins of the Lumbee Indians. Mr. Swanton's report, entitled the "Probable Identity of the Croatan Indians," concludes that the Croatan Indians [now called the Lumbee] are likely descendants from the Cheraw and other related tribes. Mr. Swanton also concluded that the Cheraw Indians were "very probably of Siouan stock." At that time, the Secretary of the Interior adopted the view of Mr. Swanton, but op-

⁶See 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.; H.R. 65, 110th Cong., 1st Sess.; S. 333, 110th Cong., 1st Sess.; H.R. 31, 111th Cong., 1st Sess.; S. 1735, 111th Cong., 1st Sess.

⁷See Indian School Supervisor Pierce Report, filed with 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 in 1933; and Fred A. Baker Report on the Siouan Tribe of Indians of Robeson County, July 9, 1935.

⁸Report of J.R. Swanton, Smithsonian Institution, at request of Bureau of Indian Affairs and submitted to Congress in 1933 and included within S. Rep. No. 204, 73d Cong., 2d Sess.

⁹See S. Rep. No. 204, 73d Cong., 2d Sess.

¹⁰See Statement of Reverend D.F. Lowery of Pembroke, North Carolina before the Subcommittee on Indian Affairs, Committee on Interior and Insular Affairs, United States House of Representatives, Hearing on H.R. 4656 Relating to the Lumbee Indians of North Carolina, July 22, 1955.

posed providing the Lumbee with any Federal wardship or any other governmental rights or benefits.¹¹

The complex origins of the Lumbee have led past Administrations to oppose Federal recognition of the Lumbee Indians as a tribe. However, the current Administration recognizes the unique circumstances surrounding the Lumbee, and supports congressional action to recognize the Lumbee Indians as a tribe.¹²

When Congress previously considered bills to recognize the Lumbee, the Department of the Interior consistently requested that any recognition of the group not be construed as conferring a Federal wardship or any other governmental rights or benefits upon the Lumbee Indians. Such was the case in 1956, when Congress finally passed legislation designating the Indians of Robeson and adjoining counties in North Carolina as Lumbee Indians.

Between 1913 and 1953, the State of North Carolina recognized the Indians of Robeson County as Cherokee Indians. In 1951, the County Commissioners held a referendum at which the choice of a name for the Indians of Robeson and adjoining counties was determined. The result of this referendum was 2,169 votes for “Lumbee Indians of North Carolina” and 35 votes to remain “Cherokee Indians of Robeson County.”¹³ As a result of the referendum, the State of North Carolina modified its recognition of the Indians in 1953 and recognized them as Lumbee Indians.¹⁴

Thereafter, the Lumbee Indians went to Congress seeking passage of a bill similar to that passed by the State of North Carolina. A bill was introduced and passed by the House of Representatives, which designated the Indians of Robeson County as Lumbee Indians.¹⁵

During consideration of the bill in the House, the purpose of the bill was thoroughly discussed between Members of Congress and representatives of the Lumbee during a hearing:

Mr. Aspinall. The next question would be: What benefit would they [the Lumbee Indians] expect to get from this? Just purely the name “Lumbee Indian Tribe” does not appear to me to give too much importance to it, unless they expect to get some recognition later on as members of some authorized tribe, and then come before Congress asking for the benefits that naturally go to recognized tribes.

Mr. Carlyle. No one has ever mentioned to me any interest in that, that they had any interest in becoming a part of a reservation or asking the Federal Government for anything. Their purpose in this legislation is to have a name that they think is appropriate to their group. I do not know that they refer to themselves as a tribe. They are citizens who belong to the Indian race and they were inter-

¹¹ See S. Rep. No. 204, 73d Cong., 2d Session.

¹² See Legislative Hearing on H.R. 31 and H.R. 1385: Hearing before the House Comm. on Natural Resources, 111th Cong. (Mar. 18, 2009) (statement of George Skibine, Deputy Assistant Secretary for Policy and Economic Development for Indian Affairs, U.S. Department of the Interior).

¹³ See Statement of Reverend D.F. Lowery of Pembroke, North Carolina before the Subcommittee on Indian Affairs, Committee on Interior and Insular Affairs, United States House of Representatives, Hearing on H.R. 4656 Relating to the Lumbee Indians of North Carolina, July 22, 1955.

¹⁴ See North Carolina General Assembly 1953, chap. 874.

¹⁵ See H.R. 4656, 84th Cong., 2d Sess.

ested in having a name that would have, they think, some significance.¹⁶

The Department of the Interior objected to the bill based on the lack of a treaty or other statutory obligation on the part of the United States to provide services to the Lumbee Indians. The Secretary of the Interior stated:

We are therefore unable to recommend that the Congress take any action which might ultimately result in the imposition of additional obligations on the Federal Government or in placing additional persons of Indian blood under the jurisdiction of this Department.

The persons who constitute this group of Indians have been recognized and designated as Indians by the State legislature. If they are not completely satisfied with such recognition, they, as citizens of the State, may petition the legislature to amend or otherwise to change that recognition. Except for the possibility of becoming entitled to Federal services as Indians, the position of this group of Indians would not be enhanced by enactment of this bill.¹⁷

Ultimately, Congress amended the bill as requested by the Department of the Interior by including the following language: "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."¹⁸ Thus, the Indians of Robeson and adjoining counties were designated as Lumbee Indians, but not granted any eligibility for services or benefits under the Act of 1956.

As noted above, one of the Interior Department's seven requirements under the existing administrative process for Federal acknowledgment as an Indian tribe is that neither the group nor its members be the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship. The Department of the Interior has interpreted the Act of 1956 as preventing the Lumbee Indians from utilizing the Federal Acknowledgment Process to become a Federally-recognized Indian tribe. In 1989, the Solicitor for the Department of the Interior concluded that the Act of 1956 forbids a government-to-government relationship with the Lumbee Indians.¹⁹ Thus, the Lumbee Indians, unlike most Indian groups, cannot pursue the normal administrative process to obtain Federal recognition.

The Committee notes that Congress has placed one other Indian tribe in a position similar to the Lumbee. This occurred in 1968 when Congress enacted a law for the Tiwa Indians of Texas.²⁰ The 1968 Act proclaimed that nothing in the Act made the Tiwa Indi-

¹⁶Hearing on H.R. 4656 Relating to the Lumbee Indians of North Carolina, Subcommittee on Indian Affairs, Committee on Natural Resources, House of Representatives, July 22, 1955.

¹⁷S. Rep. No. 2012, 84th Cong., 2d Sess.

¹⁸See Pub. L. 570, Act of June 7, 1956, 70 Stat. 254.

¹⁹See Memorandum to Assistant Secretary—Indian Affairs, U.S. Department of the Interior, Office of the Solicitor [BIA-IA-0929] (1989), document included in H.R. Rep. No. 102-215 (1991).

²⁰See Public Law 90-287, 82 Stat. 93 (1968). The Committee notes that the two Acts are not identical, and that the Act of 1968 refers to a delegation of "[r]esponsibility, if any, for the Tiwa Indians."

ans eligible for any services performed by the United States. As a result, Congress enacted the Ysleta del Sur Pueblo Restoration Act of 1987, extending Federal recognition as an Indian tribe to the Indians formerly known as the Tiwa of Texas.²¹

Acknowledging these “rare circumstances,” the Department of Interior testified in support of the Lumbee Recognition Act (H.R. 31) during the 111th Congress.²² Subsequently, the House of Representatives passed H.R. 31 on June 3, 2009.

The various reports submitted to Congress and testimony provided to the Committee during the last one hundred years all recognize the Lumbees as Indians. The 1956 law passed by Congress also recognizes the Lumbees as Indians. S. 1218 would extend Federal recognition to the Lumbee Indians as an Indian tribe.

The State of North Carolina has expressed longstanding recognition of the Lumbee Indians as an Indian tribe. In 1885, the State of North Carolina recognized the Lumbee Indians (then designated as Croatan Indians) as an Indian tribe and established a separate school system for their children, one that the Lumbee tribe itself ran. Enrollment in the school was restricted to Lumbee children who could demonstrate Lumbee descent four generations back, or into the 1770s. The State of North Carolina established the Indian Normal School in 1888 to train Lumbee teachers for the Tribe’s school system. The Indian Normal School has been in continuous operation since that time and is today the University of North Carolina at Pembroke.

In addition to the school system, reports and documents show that the Lumbee Indians have had a strong community for more than the past one hundred years. There are two criteria for membership as a Lumbee. First, a person must prove descent from an ancestor on the base roll, which was developed using school and church records and the 1900 and 1910 Federal census. Second, a person must maintain contact with the Lumbee community.²³ If a person cannot identify an ancestor, the person’s ancestry is considered by an Elder’s Review Committee.²⁴

The Lumbees continue to maintain a strong tribal community and live in communities that are nearly exclusively Lumbee. In 2006, the Committee heard expert testimony revealing that sixty-four percent of the Lumbee members live within fifteen miles of Pembroke, North Carolina, where the original Lumbee school system was established.²⁵ Additionally, the Committee was informed that seventy percent of Lumbee marriages are between tribal members.

The Lumbees have a longstanding history of functioning like an Indian tribe and being recognized as such by State and local au-

²¹ See 25 U.S.C. 1300g et seq., Public Law 100–89, 101 Stat. 667 (1987).

²² See Legislative Hearing on H.R. 31 and H.R. 1385: Hearing before the House Comm. on Natural Resources, 111th Cong. (Mar. 18, 2009) (statement of George Skibine, Deputy Assistant Secretary for Policy and Economic Development for Indian Affairs, U.S. Department of the Interior).

²³ Legislative Hearing on S. 660: Hearing before the Senate Comm. on Indian Affairs, 109th Cong. (July 12, 2006) (testimony of James Ernest Goins, Chairman, Lumbee Tribe of North Carolina).

²⁴ Legislative Hearing on H.R. 1294 and H.R. 65: Hearing before the House Comm. on Natural Resources, 110th Cong. (April 18, 2007) (testimony of Dr. Jack Campisi, Anthropologist and Consultant for the Lumbee Tribe of North Carolina).

²⁵ Legislative Hearing on S. 660: Hearing before the Senate Comm. on Indian Affairs, 109th Cong. (July 12, 2006) (testimony of Dr. Jack Campisi, Anthropologist and Consultant for the Lumbee Tribe of North Carolina).

thorities. Since 1885, the Lumbee have maintained an active political relationship with the State of North Carolina. For nearly 100 years, the Lumbee operated their own school system, established by the State. In defense of their schools, the Lumbee tribal leaders lobbied the State of North Carolina to set aside a 1913 Attorney General's opinion that held that the Robeson County Board of Education could overrule the tribal leader's decisions about enrollment in the Lumbee schools. In 1921, the State legislature confirmed the Lumbees' authority to decide enrollment in its schools.

Religion and culture have also remained strong in the Lumbee community, and often churches operate in a semi-government fashion. There are more than 130 all-Indian churches among the Lumbees in Robeson County. Historically, leadership of the Lumbee arose out of the Lumbee churches. Most recently, the church leaders directed the effort to adopt formal tribal consultation. Following a church-organized constitutional assembly, the Lumbees adopted its constitution in a special referendum in 2001.

LEGISLATIVE HISTORY

S. 1218, the Lumbee Recognition Act, was introduced on June 16, 2011, by Senators Burr and Hagan of North Carolina. The bill was referred to the Senate Committee on Indian Affairs. Since a legislative hearing and mark-up was held on an identical bill, S. 1735, in the last Congress, the Senate Committee on Indian Affairs proceeded directly to mark-up of S. 1218. On July 28, 2011, S. 1218 was ordered favorably reported to the full Senate (en bloc with S. 379 and S. 546) by voice vote. A companion bill, H.R. 27, was introduced in the House of Representatives on January 5, 2011 by Representative McIntyre.

SECTION-BY-SECTION ANALYSIS OF S. 1218

Section 1. Short title

This section provides that the short title of the bill is the "Lumbee Recognition Act."

Section 2. Preamble

This section provides the findings which include that the Lumbee are descendants of coastal North Carolina tribes, the State of North Carolina recognized the Lumbee as a tribe since 1885, and that Congress acknowledged the Lumbee as a tribe in the Act of 1956 (70 Stat. 254).

Section 3. Federal recognition

This section of the bill extends Federal recognition to the Lumbee, making the tribe and its members eligible for all services and benefits provided to other Federally-recognized tribes. In addition, it does the following: (1) defines the service area for the Lumbee as Robeson, Cumberland, Hoke, and Scotland Counties in North Carolina; (2) provides that the Lumbee service population be determined by the tribe's roll in effect on date of enactment of this legislation; (3) directs the Secretary of Health and Human Services and the Secretary of the Interior to determine their respective agencies' needs to provide services to Lumbee tribal members, and to submit a written statement of these needs to Congress; (4) pro-

vides that any other tribal groups in Robeson and adjoining counties in North Carolina whose members are not enrolled in the Lumbee tribe may petition the Bureau of Indian Affairs Office of Federal Acknowledgement for recognition as an Indian tribe; (5) authorizes the Secretary of the Interior to take land into trust for the Lumbee tribe, but prohibits gaming activities on such land; (6) directs the Secretary of the Interior to treat any application to take land located in Robeson County into trust as an on-reservation trust acquisition under the Code of Federal Regulations; (7) declares that the State of North Carolina will have jurisdiction over all criminal and civil matters arising on the tribe's lands but allows the United States to accept a retrocession of such jurisdiction at the election of the State of North Carolina, pursuant to an agreement between the State and the tribe; (8) provides that nothing in this section will affect Section 109 of the Indian Child Welfare Act; and (9) authorizes appropriations of such sums as are necessary to carry out this Act.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

The Senate Committee on Indian Affairs addressed S. 1218 in a business meeting on July 28, 2011. The bill was ordered reported favorably without amendment to the full Senate (en bloc with S. 379 and S. 546) by voice vote.

COST AND BUDGETARY CONSIDERATIONS

The following cost estimate, as provided by the Congressional Budget Office, dated October 12, 2011 was prepared for S. 1218:

S. 1218—Lumbee Recognition Act

Summary: S. 1218 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 \$846 million over the 2012–2016 period, assuming appropriation of the necessary funds. Enacting S. 1218 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

S. 1218 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 S. 1218 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—					
	2012	2013	2014	2015	2016	2012–2016
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Bureau of Indian Affairs:						
Estimated Authorization Level	33	33	34	35	35	170
Estimated Outlays	25	32	34	34	35	160
Indian Health Service:						
Estimated Authorization Level	132	135	139	145	151	702
Estimated Outlays	118	135	139	144	150	686
Total Changes:						
Estimated Authorization Level	165	168	173	180	186	872

	By fiscal year, in millions of dollars—					
	2012	2013	2014	2015	2016	2012–2016
Estimated Outlays	143	167	173	178	185	846

Notes: Components may not sum to totals because of rounding.

Basis of estimate: For this estimate, CBO assumes that S. 1218 will be enacted early in fiscal year 2012. 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 S. 1218 would cost \$846 million over the 2012–2016 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. In total, CBO estimates that providing BIA services would cost \$160 million over the 2012–2016 period, assuming appropriation of the necessary funds. This estimate is based on recent per capita expenditures for other federally recognized tribes located in the eastern United States.

Indian Health Service

S. 1218 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 55 percent of tribal members—or about 30,000 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 \$3,500 per individual in 2011. Assuming appropriation of the necessary funds and adjusting for anticipated inflation, CBO estimates that IHS benefits for the Lumbee Tribe would cost \$686 million over the 2012–2016 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 S. 1218 would not increase spending from those programs.

Intergovernmental and private-sector impact: S. 1218 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: Martin von Gnechten—Bureau of Indian Affairs, Robert Stewart—Indian Health Service; Impact on State, Local, and Tribal Governments: Melissa Merrell; Impact on the Private Sector: Amy Petz.

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

REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee has concluded that the regulatory and paperwork impacts of S. 1218 should be de minimis.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 1218.

ADDITIONAL VIEWS OF VICE CHAIRMAN BARRASSO

I understand how important Federal recognition is for tribal groups and how difficult and challenging the administrative recognition process is for them. Nevertheless, it is my view that legislative recognition—legislation that deems a group or tribe to be federally recognized—is not the right way to decide which groups should be recognized and which groups should not be recognized. That is a function that can be best performed by the Executive Branch of the Government following the regulations that have been adopted for that purpose. Federal recognition of a group as an Indian tribe may have profound consequences for the group, its members, other Indian tribes, the general public, and the Federal Government.

Just in terms of impact on the Federal Treasury alone, the Congressional Budget Office estimates that implementing S. 1218 will cost \$846 million dollars over a 5-year period, assuming appropriation of the necessary funds. Since most of that cost would be in the form of programs and services available through the BIA and IHS for which the Tribe and its members will become eligible, even if that additional money is never appropriated, recognition of the tribe will in and of itself place significant additional stress on the limited resources of both of these agencies, since they will not turn tribal members away from programs and services for which they are eligible. So tribal recognition is indeed a weighty decision, with real consequences.

Testifying about several recognition bills at a hearing before this Committee during the 110th Congress, the Director of the Office of Federal Acknowledgement at the Department of the Interior stated—

Legislation such as S. 514, S. 724, S. 1058, and H.R. 1294 would allow these groups to bypass this [the Federal acknowledgement] process—allowing them to avoid the scrutiny to which other groups have been subjected. The Administration supports all groups going through the Federal acknowledgment process under 25 CFR Part 83.¹

The Department's witness went on to point out that, in light of the importance and implications of recognition decisions, the Department adopted its Federal acknowledgment regulations at 25 CFR Part 83 in 1978 in recognition of "the need to end ad hoc decision making and adopt uniform regulations for Federal acknowledgment."²

This bill represents a step away from a process that applies uniform, established acknowledgment criteria to the history of the

¹ Testimony of R. Lee Fleming, Director, Office of Federal Acknowledgment, U.S. Department of the Interior, before the Committee on Indian Affairs, September 25, 2008.

² Id.

group and in the direction of "ad hoc" recognition decisions. I do not think that Congress is in a good position to undertake the detailed historical, cultural, political and ethnographic analysis that should go into a recognition decision.

In the case of the Lumbee Tribe, as the Chairman's report points out, we have heard that the Act of June 7, 1956 (70 Stat. 254), has been interpreted to mean that the Lumbee Tribe cannot currently avail itself of the Federal recognition process. It is my position that, if a particular group has some unique historical or other barriers so that it cannot fairly access the administrative process, then perhaps it would be appropriate for Congress to consider whether those barriers should be removed or modified so that the group can have fair access to that process. However, I do not feel it is appropriate for Congress to simply deem a group to be a recognized Indian tribe.

JOHN BARRASSO.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 1218, 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). Enactment of S. 1218 would effect no changes in existing law except the following amendments to the Act of June 7, 1956:

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,

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 Acknowledgment. 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 acknowledgment 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.

