105TH CONGRESS 2d Session } HOUSE OF REPRESENTATIVES { REPORT 105–737

INDIAN FEDERAL RECOGNITION ADMINISTRATIVE PROCEDURES ACT OF 1998

SEPTEMBER 23, 1998.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. YOUNG of Alaska, from the Committee on Resources, submitted the following

REPORT

[To accompany H.R. 1154]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 1154) to provide for administrative procedures to extend Federal recognition to certain Indian groups, 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 out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Indian Federal Recognition Administrative Procedures Act of 1998".

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to establish an administrative procedure to extend Federal recognition to certain Indian groups;

(2) to extend to Indian groups which are determined to be Indian tribes the protection, services, and benefits available from the Federal Government pursuant to the Federal trust responsibility;

(3) to extend to Indian groups which are determined to be Indian tribes the immunities and privileges available to other acknowledged Indian tribes by virtue of their status as Indian tribes with a government-to-government relationship with the United States;

(4) to ensure that when the Federal Government extends acknowledgment to an Indian tribe, it does so with a consistent legal, factual, and historical basis;

(5) to establish a commission which will act in a supporting role to petitioning groups applying for recognition;

(6) to provide clear and consistent standards of administrative review of documented petitions for acknowledgment;

59–006

(7) to clarify evidentiary standards and expedite the administrative review process by providing adequate resources to process petitions; and

(8) to remove the acknowledgment process from the Bureau of Indian Affairs and invest it in the Commission on Indian Recognition.

SEC. 3. DEFINITIONS.

For purposes of this Act:

(1) ACKNOWLEDGMENT; ACKNOWLEDGED.—The term "acknowledgment" or "acknowledged" means a determination by the Commission on Indian Recognition that an Indian group constitutes an Indian tribe with a government-to-government relationship with the United States, and whose members are recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(2) BUREAU.—The term "Bureau" means the Bureau of Indian Affairs.

(3) COMMISSION.—The term "Commission" means the Commission on Indian Recognition established pursuant to section 4.

(4) COMMUNITY.—The term "Community" means any group of people which, in the context of the history, geography, culture, and social organization of the group, sustains consistent interactions and significant social relationships within its membership and whose members are differentiated from and identified as distinct from nonmembers.

(5) CONTINUOUSLY; CONTINUOUS.—The term "continuously" or "continuous" means extending from the given date to the present substantially without interruption; proof of any matter required shall be deemed without substantial interruption if such proof is available at least for every fifth year.

(6) DEPARTMENT.—The term "Department" means the Department of the Interior.

(7) DOCUMENTED PETITION.—The term "documented petition" means the detailed, factual exposition and arguments, including all documentary evidence, necessary to demonstrate that arguments specifically address the mandatory criteria established in section 5.

(8) HISTORICAL; HISTORICALLY.—The term "historic" or "historically" means dating from first sustained contact with non-Indians.

(9) INDIAN GROUP; GROUP.—The term "Indian group" or "group" means any Indian or Alaska Native tribe, band, pueblo, village or community within the United States that the Secretary does not acknowledge to be an Indian tribe.

(10) INDIAN TRIBE; TRIBE.—The term "Indian tribe" or "tribe" means any Indian or Alaska Native tribe, band, pueblo, village or community within the United States included on the Secretary's annual list of acknowledged tribes.

(11) INDIGENOUS.—The term "indigenous" means native to the United States in that at least part of the petitioner's traditional territory extended into what is now within the boundaries of the United States.

(12) LETTER OF INTENT.—The term "letter of intent" means an undocumented letter or resolution which is dated and signed by the governing body of an Indian group and submitted to the Commission indicating the group's intent to submit a petition for acknowledgment as an Indian tribe.

(13) MEMBER OF AN INDIAN GROUP.—The term "member of an Indian group" means an individual who is recognized by an Indian group as meeting its membership criteria.

(14) MEMBER OF AN INDIAN TRIBE.—The term "member of an Indian tribe" means an individual who—

(A) meets the membership requirements of the tribe as set forth in its governing document;

(B) in the absence of a governing document which sets out these requirements, has been recognized as a member collectively by those persons comprising the tribal governing body and has consistently maintained tribal relations with the tribe; or

(C) is listed on the tribal membership rolls as a member, if such rolls are kept.

(15) PETITION.—The term "petition" means a petition for acknowledgment submitted or transferred to the Commission pursuant to section 5.

(16) PETITIONER.—The term "petitioner" means any group which has submitted a petition or letter of intent to the Commission requesting acknowledgment as an Indian tribe or has a petition or letter of intent transferred to the Commission under section 5(a).

(17) PREVIOUS FEDERAL ACKNOWLEDGMENT.—The term "previous Federal acknowledgment" means any action by the Federal Government the character of which is clearly premised on identification of a tribal political entity and clearly

indicates the recognition of a government-to-government relationship between that entity and the Federal Government.

(18) RESTORATION.—The term "restoration" means the reextension of acknowledgment to any previously acknowledged tribe which may have had its acknowledged status abrogated or diminished by reason of congressional legislation expressly terminating that status.

(19) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(20) TREATY.—The term "treaty" means any treaty—

(A) negotiated and ratified by the United States on or before March 3, 1871, with, or on behalf of, any Indian group or Indian tribe.

(B) made by any government with, or on behalf of, any Indian group or Indian tribe, from which Federal Government subsequently acquired territory by purchase, conquest, annexation, or cession; or

(C) negotiated by the United States with, or on behalf of, any Indian group, whether or not the treaty was subsequently ratified.

(21) TRIBAL ROLL.—The term "tribal roll" means a list exclusively of those individuals who have been determined by the tribe to meet the tribe's membership requirements as set forth in its governing document or, in the absence of a governing document setting forth those requirements, have been recognized as members by the tribe's governing body. In either case, those individuals on a tribal roll must have affirmatively demonstrated consent to being listed as members.

(22) UNITED STATES.—The term "United States" means the 48 contiguous States, Alaska, and Hawaii; and does not include territories or possessions.

SEC. 4. COMMISSION ON INDIAN RECOGNITION.

(a) ESTABLISHMENT.—There is established within the Department of the Interior the Commission on Indian Recognition. The Commission shall report directly to the Assistant Secretary of Indian Affairs.

(b) MEMBERSHIP.—

(1) IN GENERAL.—(A) The Commission shall consist of 3 members appointed by the Secretary.

(B) In making appointments to the Commission, the Secretary shall give careful consideration to—

(i) recommendations received from Indian tribes;

(ii) recommendations from Indian groups and professional organizations; and

(iii) individuals who have a background in Indian law or policy, anthropology, or history.

(2) AFFILIATIONS.—

(A) No more than 2 members of the Commission may be members of the same political party.

(B) No more than 1 member of the Commission may be an employee of the Department of the Interior.

(3) TERMS.—(A) Each member of the Commission shall be appointed for a term of 4 years, except as provided in subparagraph (B).

(B) As designated by the Secretary at the time of appointment, of the members first appointed—

(i) 1 shall be appointed for a term of 2 years;

(ii) 1 shall be appointed for a term of 3 years; and

(ii) 1 shall be appointed for a term of 4 years.

(4) VACANCY.—Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made. Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of that term. A member may serve after the expiration of that member's term until a successor has taken office.

(5) COMPENSATION.—(A) Each member of the Commission not otherwise employed by the United States Government shall receive compensation at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of title, 5, United States Code, for each day, including traveltime, such member is engaged in the actual performance of duties authorized by the Commission.

(B) Except as provided in subparagraph (C), a member of the Commission who is otherwise an officer or employee of the United States Government shall serve on the Commission without additional compensation, but such service shall be without interruption or loss of civil service status or privilege.

(C) All members of the Commission shall be reimbursed for travel and per diem in lieu of subsistence expenses during the performance of duties of the Commission while away from home or their regular place of business, in accordance with subchapter I of chapter 57 of title 5, United States Code.

(6) CHAIRPERSON.—At the time appointments are made under paragraph (1), the Secretary shall designate 1 of such appointees as Chairperson of the Commission.

(c) MEETINGS AND PROCEDURES.—

(1) INITIAL MEETING.—The Commission shall hold its first meeting no later than 30 days after the date on which all initial members of the Commission have been appointed.

(2) QUORUM.—2 members of the Commission shall constitute a quorum for the transaction of business.

(3) RULES.—The Commission may adopt such rules (consistent with the provisions of this Act) as may be necessary to establish its procedures and to govern the manner of its operations, organization, and personnel.

(4) PRINCIPAL OFFICE.—The principal office of the Commission shall be in the District of Columbia.

(d) DUTIES.—The Commission shall carry out the duties assigned to the Commission by this Act, and shall meet the requirements imposed on the Commission by this Act.

(e) POWERS AND AUTHORITIES.—

(1) CHAIRMAN.—Subject to such rules and regulations as may be adopted by the Commission, the Chairman of the Commission is authorized to—

(A) appoint, terminate, and fix the compensation (without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title, or of any other provision of law, relating to the number, classification, and General Schedule rates) of an Executive Director of the Commission and of such other personnel as the Chairman deems advisable to assist in the performance of the duties of the Commission, at a rate not to exceed a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of title 5, United States Code; and

(B) procure, as authorized by section 3109(b) of title 5, United States Code, temporary and intermittent services to the same extent as is authorized by law for agencies in the executive branch, but at rates not to exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

(2) COMMISSION.—The Commission may—

(A) hold such hearings and sit and act at such times;

(B) take such testimony;

(C) have such printing and binding done;

(D) enter into such contracts and other arrangements, subject to the availability of funds;

(E) make such expenditures;

(F) secure directly from any officer, department, agency, establishment, or instrumentality of the Federal Government such information as the Commission may require for the purpose of this Act, and each such officer, department, agency establishment, or instrumentality is authorized and directed to furnish, to the extent permitted by law, such information, suggestions, estimates, and statistics directly to the Commission, upon request made by the Chairman of the Commission;

(G) use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States; and

(H) take such other actions as the Commission may deem advisable to carry out its duties.

(3) MEMBERS.—Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission.

(f) ASSISTANCE FROM OTHER FEDERAL AGENCIES.—Upon the request of the Chairman of the Commission, the head of any Federal department, agency, or instrumentality is authorized to make any of the facilities and services of such department, agency, or instrumentality available to the Commission and detail any of the personnel of such department, agency or instrumentality to the Commission, on a nonreimbursable basis, to assist the Commission in carrying out its duties under this section.

(g) TERMINATION OF COMMISSION.—The Commission shall terminate 12 years after the date of the enactment of this Act.

(h) FEDERAL ADVISORY COMMITTEE ACT.—The provisions of the Federal Advisory Committee Act shall not apply to the Commission.

SEC. 5. PETITIONS FOR RECOGNITION AND LETTERS OF INTENT.

(a) IN GENERAL.—

(1) SUBMISSION.—Any Indian group may submit to the Commission a petition requesting that the Commission recognize that the Indian group is an Indian tribe.

(2) HEARING.—Indian groups that have been denied or refused recognition as an Indian tribe under regulations prescribed by the Secretary shall be entitled to an adjudicatory hearing, under section 9 of this Act, before the Commission. For purposes of the adjudicatory hearing, the Assistant Secretary's final determination shall be considered a preliminary determination under section 8(b)(1)(B) of this Act.

(3) GROUPS AND ENTITIES EXCLUDED.—The provisions of this Act do not apply to the following groups or entities, which shall not be eligible for recognition under this Act—

(A) Indian tribes, organized bands, pueblos, communities, and Alaska Native entities which are recognized by the Secretary as of the date of enactment of this Act as eligible to receive services from the Bureau;

(B) splinter groups, political factions, communities, or groups of any character which separate from the main body of an Indian tribe that, at the time of such separation, was recognized as being an Indian tribe by the Secretary, unless it can be clearly established that the group, faction, or community has functioned throughout history until the date of such petition as an autonomous Indian group; and

(C) any Indian group whose relationship with the Federal Government was expressly terminated by an Act of Congress.

(4) TRANSFER OF PETITIONS.—(A) No later than 30 days after the date on which all of the initial members of the Commission have been appointed, the Secretary shall transfer to the Commission all petitions pending before the Department. The Secretary shall also transfer all letters of intent previously received by the Department that request the Secretary, or the Federal Government, to recognize or acknowledge an Indian group as an Indian tribe.

(B) On the date of such transfer, the Secretary and the Department shall cease to have any authority to recognize or acknowledge, on behalf of the Federal Government, any Indian group as an Indian tribe.

(C) Petitions and letters of intent transferred to the Commission under subparagraph (A) of this paragraph shall, for purposes of this Act, be considered as having been submitted to the Commission in the same order as they were submitted to the Department.

(b) PETITION FORM AND CONTENT.—Except as otherwise provided in this section, any petition submitted under subsection (a) by an Indian group shall be in any readable form that clearly indicates that the petition is requesting the Commission to recognize the petitioning Indian group as an Indian tribe. Each petition shall contain specific evidence establishing the following mandatory criteria:

(1) The petitioner has been identified as an American Indian entity on a substantially continuous basis since 1934.

(A) Evidence to be relied upon in determining a group's Indian identity may include 1 or a combination of the following, as well as other evidence of identification by other than the petitioner itself or its members. Proof of any 1 of the following for a given time is conclusive evidence of Indian identity for that time.

(i) Identification as an Indian entity by Federal authorities.

(ii) Relationships with State governments based on identification of the group as Indian.

(iii) Dealings with a county, parish, or other local government in a relationship based on the group's Indian identity.

(iv) Identification as an Indian entity by anthropologists, historians, or other scholars.

(v) Identification as an Indian entity in newspapers and books.

(vi) Identification as an Indian entity in relationships with Indian tribes or with national, regional, or State Indian organizations.

(B) A petitioner may establish that, for any given period of time for which evidence of identification as Indian is lacking, such absence of evidence corresponds in time with official acts of the Federal or relevant State government which prohibited or penalized the expression of Indian identity. For such periods of time, the absence of evidence identifying the petitioner as

an Indian entity shall not be the basis for declining to acknowledge the petitioner.

(2) A predominant portion of the petitioning groups comprises a distinct community and has existed as a community on a substantially continuous basis since 1934.

(A) The criterion that the petitioner meets the definition of community set forth in section 3 may be demonstrated by 1 or more of the following:

(i) Significant rates of marriage within the group or, as may be culturally required, patterned out-marriages with other Indian populations.

(ii) Significant social relationships connecting individual members.

(iii) Significant rates of informal social interaction which exist broadly among the members of a group.

(iv) A significant degree of shared or cooperative labor or other economic activity among the membership.

(v) Evidence of strong patterns of discrimination or other social distinctions by nonmembers.

(vi) Shared sacred or secular ritual activity encompassing most of the group.

(vii) Cultural patterns shared among a significant portion of the group that are different from those of the non-Indian populations with whom it interacts. These patterns must function as more than a symbolic identification of the group as Indian. They may include, but are not limited to, language, kinship organization, or religious beliefs and practices.

(viii) The persistence of a named, collective Indian identity continuously over a period of more than 50 years, notwithstanding changes in name.

(ix) A demonstration of political influence under the criterion in paragraph (3)(B) shall be conclusive evidence for demonstrating community for that period of time.

(x) Other evidence as considered appropriate by the Secretary.

(B) A petitioner shall be considered to have provided sufficient evidence of community at a given point in time if evidence is provided to demonstrate any 1 of the following:

(i) More than 50 percent of the members reside in a geographical area or areas no more than 50 miles from a historic land base(s) or site(s) of the petitioner.

(ii) At least 50 percent of the marriages in the group are between members of the group.

(iii) At least 50 percent of the group members maintain distinct cultural patterns such as, but not limited to, language, kinship organization, or religious beliefs and practices.

(iv) There are distinct social institutions encompassing more than 50 percent of the members, such as kinship organizations, formal or informal economic cooperation, or religious organizations.

(v) The group has met the criterion in paragraph (3) using evidence described in paragraph (3)(B).

(3) The petitioner has maintained political influence or authority over its members as an autonomous entity from 1934 until the present.

(A) This criterion may be demonstrated by 1 or more of the evidence listed below or by other evidence of political influence or authority:

(i) The group is able to mobilize significant numbers of members and significant resources from its members for group purposes.

(ii) Most of the membership considers issues acted upon or actions taken by group leaders or governing bodies to be of importance.

(iii) There is widespread knowledge, communication, and involvement in political processes by most of the group's members.

(iv) There are internal conflicts which show controversy over valued group goals, properties, policies, processes, or decisions.

(B) A petitioning group shall be considered to have provided sufficient evidence to demonstrate the exercise of political influence or authority at a given point in time by demonstrating any 1 of the following:

(i) A continuous line of group leaders, acknowledged and accepted as such by State or local governments or nonmembers in general, with a description of the means of selection.

(ii) Group leaders or other mechanisms exist or existed which allocate group resources such as land, residence rights, and the like on a consistent basis.

(iii) Group leaders or other mechanisms exist or existed which settle disputes between members or subgroups by some means.

(iv) Group leaders or other mechanisms exist or existed which exert strong influence on the behavior of individual members, such as the establishment or maintenance of norms and the enforcement of sanctions to influence behavior.

(v) Group leaders or other mechanisms exist or existed which organize or influence economic subsistence activities among the members, including shared or cooperative labor.

(C) A group that has met the requirements in paragraph (3) at a given point in time shall be considered to have provided sufficient evidence to meet this criterion at that point in time.

(4) A copy of the group's present governing document, including its membership criteria. In the absence of a written document, the petitioner must provide a statement describing in full its membership criteria.

(5) The petitioner's membership consists of individuals who descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity.

(A) A petitioner shall be presumed to descend from a historical Indian tribe or combined tribes upon proof by the petitioner that its member descend from an Indian entity in existence in 1934. This presumption may be rebutted by affirmative evidence offered by any interested party that the Indian entity in existence in 1934 does not descend from a historical Indian tribe or combined tribes.

(B) The following evidence shall be deemed by the Commission to provide descent from a historical Indian entity for the time for which such evidence is available:

(i) Rolls prepared by the Secretary on a descendancy basis for purposes of distributing claims money, providing allotments, or other purposes.

(ii) State, Federal, or other official records or evidence identifying present members or ancestors of present members as being descendants of a historical tribe or combined tribes.

(iii) Church, school, and other similar enrollment records identifying present members or ancestors of present members as being descendants of a historical tribe or combined tribes.

(iv) Affidavits of recognition by tribal elders, leaders, or the tribal governing body identifying present members or ancestors of present members as being descendants of a historical tribe or combined tribes.

(v) Reports, research, or other like statements based upon first-hand experience of historians, anthropologists, and genealogists with established expertise on the petitioner or Indian entities in general identifying present members or ancestors of present members as being descendants of a historical tribe or combined tribes.

(C) A petitioner may also demonstrate this criterion by other record of evidence identifying present members or ancestors of present members as being descendants of a historical tribe or combined tribes.

(D) The petitioner must provide an official membership list, separately certified by the group's governing body of all known current members of the group. This list must include each member's full name (including maiden name), date of birth, and current residential address. The petitioner must also provide a copy of each available former list of members based on the group's own defined criteria, as well as a statement describing the circumstances surrounding the preparation of the current list and, insofar as possible, the circumstances surrounding the preparation of former lists.

(6) The membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe. However, under certain conditions a petitioning group may be acknowledged even if its membership is composed principally of persons whose names have appeared on rolls of, or who have been otherwise associated with, an acknowledged Indian tribe. The conditions are that the group must establish that it has functioned since 1934 until the present as a separate and autonomous Indian tribal entity, that its members do not maintain a bilateral political relationship with the acknowledged tribe, and that its members have provided written confirmation of their membership in the petitioning group.

(c) PREVIOUS ACKNOWLEDGMENT.—

(1) IN GENERAL.—Evidence which demonstrates previous Federal acknowledgment includes, but is not limited to—

(A) evidence that the group has had or is the successor in interest to a tribe that has had treaty relations with the United States;

(B) evidence that the group has been or is the successor in interest to a tribe that has been denominated a tribe by Act of Congress or Executive order;

(C) evidence that the group has been or is the successor in interest to a tribe that has been treated by the Federal Government as having collective rights in tribal lands or funds.

(2) PRESUMPTION OF CONTINUOUSNESS.—A petitioner that can demonstrate previous Federal acknowledgment by a preponderance of the evidence shall be required to demonstrate the existence of current political authority as defined by subsection (b)(3), with a time depth limited to 10 years preceding the date of the petition. Upon such demonstration, a presumption of continuous existence since previous Federal acknowledgment shall arise. Unless such presumption is rebutted by evidence offered by an interested party proving by a preponderance of the evidence that the previously recognized group has abandoned tribal relations, such group shall be recognized.

(d) RECOGNITION OF GROUPS MEETING CRITERIA.—The Commission shall recognize as an Indian tribe a petitioning group that demonstrates the criteria set out in this section by a preponderance of the evidence. Such recognized tribes shall be entitled to the same privileges, immunities, rights, and benefits of other federally recognized tribes. Neither shall the Department of the Interior nor any other Federal agency purport to diminish, condition, or revoke the privileges, immunities, rights, and benefits of Indian tribes recognized by any means before the effective date of this Act or under the provisions of this Act.

SEC. 6. NOTICE OF RECEIPT OF PETITION AND LETTERS OF INTENT.

(a) PETITIONER.—Not later than 30 days after a petition is submitted or transferred to the Commission under section 5(a), the Commission shall send an acknowledgment of receipt in writing to the petitioner and shall have published in the Federal Register a notice of such receipt, including the name, location, and mailing address of the petitioner and such other information that will identify the entity who submitted the petition and the date the petition was received by the Commission. The notice shall also indicate where a copy of the petition may be examined.

(b) LETTERS OF INTENT.—As to letters of intent, publish in the Federal Register a notice of such receipt, including the name, location, and mailing address of petitioner. A petitioner who has submitted a letter of intent or had a letter of intent transferred to the Commission under section 5(a) shall not be required to submit a documented petition within any time period.

(c) OTHERS.—The Commission shall also notify, in writing, the Governor and attorney general of, and each recognized Indian tribe within, any State in which a petitioner resides.

(d) PUBLICATION; OPPORTUNITY FOR SUPPORTING OF OPPOSING SUBMISSIONS.—The Commission shall publish the notice of receipt of the petition in a major newspaper of general circulation in the town or city nearest the location of the petitioner. The notice shall include, in addition to the information described in subsection (a), notice of opportunity for other parties to submit factual or legal arguments in support of or in opposition to, the petition. Such submissions shall be provided to the petitioner upon receipt by the Commission. The petitioner shall be provided an opportunity to respond to such submissions prior to a determination on the petition by the Commission.

SEC. 7. PROCESSING THE PETITION.

(a) REVIEW.—

(1) IN GENERAL.—Upon receipt of a documented petition, the Commission shall conduct a review to determine whether the petitioner is entitled to be recognized as an Indian tribe.

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

(3) RESEARCH.—The Commission may also initiate other research for any purpose relative to analyzing the petition and obtaining additional information about the petitioner's status and my consider any evidence which may be submitted by other parties.

(4) ACCESS TO OTHER FEDERAL RESOURCES.—Upon request by the petitioner, the Library of Congress and the National Archives shall each allow access to

the petitioner to its resources, records, and documents, for the purpose of conducting research and preparing evidence concerning the status of the petitioner.

(b) CONSIDERATION.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, petitions shall be considered on a first come, first served basis, determined by the date of the original filing of the petition with the Commission, or the Department if the petition is transferred to the Commission pursuant to section 5(a). The Commission shall establish a priority register including those petitions pending before the Department on the date of enactment of this Act.

(2) PRIORITY.—Petitions that are submitted to the Commission by Indian groups that meet 1 or more of the requirements set forth in section 5(c) shall receive priority consideration over petitions submitted by any other Indian group.

SEC. 8 PRELIMINARY HEARING.

(a) IN GENERAL.—Not later than 60 days after the receipt of a petition by the Commission, the Commission shall set a date for a preliminary hearing. At the preliminary hearing, the petitioner and any other concerned party may provide evidence concerning the status of the petitioner.

(b) DETERMINATION.—

(1) IN GENERAL.—Within 30 days after the conclusion of the preliminary hearing under subsection (a), the Commission shall make a determination either—

(A) to extend acknowledgement to the petitioner; or

(B) that the petitioner proceed to an adjudicatory hearing.

(2) PUBLISHED IN FEDERAL REGISTER.—The Commission shall publish the determination in the Federal Register.

(c) INFORMATION TO BE PROVIDED PREPARATORY TO AN ADJUDICATORY HEARING.—

(1) IN GENERAL.—If the Commission determines under subsection (b) that the petitioner proceed to an adjudicatory hearing, the Commission shall—

(A) immediately make available to the petitioner all records relied upon by the Commission and its staff in making the preliminary determination to assist the petitioner in preparing for the adjudicatory hearing, and shall also include such guidance as the Commission considers necessary or appropriate to assist the petitioner in preparing for the hearing including references to prior decisions of the Commission or to recognition decisions made under regulations prescribed by the Secretary that will provide direction in preparing for the adjudicatory hearing; and if prior recognition decisions are referred to, the Commission will make all records relating to such decisions available to the petitioner in a timely manner; and

(B) within 30 days after the conclusion of the preliminary hearing under subsection (a), notify the petitioner in writing, which notice shall include a list of any deficiencies or omissions on which the Commission relied in making its determination.

(2) LIST OF DEFICIENCIES.—The list of deficiencies and omissions provided under paragraph (1)(B) shall be the subject of the adjudicatory hearing. The Commission may not add to this list once it is issued.

SEC. 9. ADJUDICATORY HEARING.

(a) IN GENERAL.—Not later than 180 days after the conclusion of the preliminary hearing, the Commission shall afford the petitioner described in section 8(b)(1)(B) an adjudicatory hearing. The hearing shall be on the list of deficiencies and omissions provided under section 8(c)(1)(B) and shall be conducted on the record pursuant to sections 554, 556, and 557 of title 5, United States Code.

(b) TESTIMONY FROM STAFF OF COMMISSION.—The Commission shall require testimony from its acknowledgment and research staff that worked on the preliminary determination and that are assisting the Commission in the final determination under subsection (d) and may require the testimony of other witnesses. Any such testimony shall be subject to cross-examination by the petitioner.

(c) EVIDENCE BY PETITIONER.—The petitioner may provide such evidence as the petitioner deems appropriate.

(d) DECISION BY COMMISSION.—Within 60 days after the end of the hearing held under subsection (a), the Commission shall—

(1) make a determination as to the extension or denial of acknowledgement to the petitioner;

(2) publish its determination under paragraph (1) in the Federal Register; and

(3) deliver a copy of the determination to the petitioner, and to every other interested party.

SEC. 10. APPEALS.

(a) IN GENERAL.—Within 60 days after the date the Commission's decision is published under section 9(d), the petitioner may appeal the determination to the United States District Court for the District of Columbia.

(b) ATTORNEY FEES.—If the petitioner prevails in the appeal described in subsection (a), it shall be eligible for an award of reasonable attorney fees and costs under the provisions of section 504 of title 5, United States Code, or section 2412 of title 28 of such Code, as the case may be.

SEC. 11. IMPLEMENTATION OF DECISIONS.

(a) ELIGIBILITY FOR SERVICES AND BENEFITS.—

(1) IN GENERAL.—Subject to paragraph (2), upon recognition by the Commission that the petitioner is an Indian tribe, the Indian tribe shall be eligible for the services and benefits from the Federal Government that are available to other federally recognized Indian tribes by virtue of their status as Indian tribes with a government-to-government relationship with the United States, as well as having the responsibilities and obligations of such Indian tribes. Such recognition shall subject the Indian tribes to the same authority of Congress and the United States to which other federally recognized tribes are subject.

(2) AVAILABILITY.—Recognition of the Indian tribe under this Act does not create an immediate entitlement to existing programs of the Bureau. Such programs shall become available upon appropriation of funds by law. Requests for appropriations shall follow a determination under subsection (b) of the needs of the newly-recognized Indian tribe.

(b) NEEDS DETERMINATION.—Within 6 months after an Indian tribe is recognized under this Act, the appropriate area offices of the Bureau and the Indian Health Service shall consult and develop in cooperation with the Indian tribe, and forward to the respective Secretary, a determination of the needs of the Indian tribe and a recommended budget required to serve the newly recognized Indian tribe. The recommended budget shall be considered along with recommendations by the appropriate Secretary in the budget-request process.

SEC. 12. ANNUAL REPORT CONCERNING COMMISSION'S ACTIVITIES.

(a) LIST OF RECOGNIZED TRIBES.—Not later than 90 days after the date of the enactment of this Act, and annually on or before every January 30 thereafter, the Commission shall publish in the Federal Register a list of all Indian tribes which are recognized by the Federal Government and receiving services from the Bureau of Indian Affairs.

(b) ANNUAL REPORT.—Beginning 1 year after the date of the enactment of this Act, and annually thereafter, the Commission shall submit a report to the Committee on Resources of the House of Representatives and to the Committee on Indian Affairs of the Senate a report on its activities, which shall include at a minimum the following:

(1) The number of petitions pending at the beginning of the year and the names of the petitioners.

(2) The number of petitions received during the year and the names of the petitioners.

(3) The number of petitions the Commission approved for acknowledgement and the names of the acknowledged petitioners.

(4) The number of petitions the Commission denied for acknowledge and the names of the petitioners.

(5) The status of all pending petitions and the names of the petitioners.

SEC. 13. ACTIONS BY PETITIONERS FOR ENFORCEMENT.

Any petitioner may bring an action in the district court of the United States for the district in which the petitioner resides, or the United States District Court for the District of Columbia, to enforce the provisions of this Act, including any time limitations within which actions are required to be taken, or decisions made, under this Act and the district court shall issue such orders (including writs of mandamus) as may be necessary to enforce the provisions of this Act.

SEC. 14. REGULATIONS.

The Commission is authorized to prescribe such regulations as may be necessary to carry out the provisions and purposes of this Act. All such regulations must be published in accordance with the provisions of title 5, United States Code.

SEC. 15. GUIDELINES AND ADVICE.

(a) GUIDELINES.—Not later than 180 days after petitions and letters of intent have been transferred to the Commission by the Secretary under section 5(a)(4)(A), the Commission shall make available suggested guidelines for the format of petitions,

including general suggestions and guidelines on where and how to research required information, but such examples shall not preclude the use of any other format.

(b) RESEARCH ADVICE.—The Commission, upon request, is authorized to provide suggestions and advice to any petitioner for his research into the petitioner's historical background and Indian identity. The Commission shall not be responsible for the actual research on behalf of the petitioner.

SEC. 16. ASSISTANCE TO PETITIONERS.

(a) GRANTS.—

(1) IN GENERAL.—The Secretary of Health and Human Services may award grants to Indian groups seeking Federal recognition to enable the Indian groups to—

(a) conduct the research necessary to substantiate petitions under this Act; and

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

(2) OTHER GRANTS.—The grants made under this subsection shall be in addition to any other grants the Secretary of Health and Human Services is authorized to provide under any other provision of law.

(b) COMPETITIVE AWARD.—Grants provided under subsection (a) shall be awarded competitively based on objective criteria prescribed in regulations promulgated by the Secretary of Health and Human Services.

SEC. 17 SEVERABILITY.

If any provision of this Act or the application thereof to any petitioner is held invalid, the invalidity shall not affect other provisions or applications of the Act which can be given effect without regard to the invalid provision or application, and to this end the provisions of this Act shall be severable.

SEC. 18. AUTHORIZATION OF APPROPRIATIONS.

(a) COMMISSION.—There are authorized to be appropriated for the Commission for the purpose of carrying out the provisions of this Act (other than section 16), $1,500,000 for fiscal year 1998 and $1,500,000 for each of the 12 succeeding fiscal years.

(b) SECRETARY OF HHS.—There are authorized to be appropriated for the Administration for Native Americans of the Department of Health and Human Services for the purpose of carrying out the provisions of section 16, $3,000,000 for each fiscal year.

PURPOSE OF THE BILL

The purpose of H.R. 1154 is to provide for administrative procedures to extend federal recognition to certain Indian Groups.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 1154, the Indian Federal Recognition Administrative Procedures Act of 1997, would simplify and update the existing procedures for extending federal recognition to Indian tribes. H.R. 1154 is identical to legislation introduced in the 104th Congress (H.R. 2591) and is similar to legislation which the House passed in the 103rd Congress.

H.R. 1154 would revamp the federal recognition process for Indian groups that is now handled by the Branch of Acknowledgment and Review of the Bureau of Indian Affairs (BIA), Department of the Interior. A broad coalition of unrecognized Indian tribes has proposed reforming the recognition process. This coalition points out that: (a) the BIA is inherently biased against adding new tribes to its existing budget; (b) the recognition process is too expensive (costs per tribe range from $300,000 to $500,000); (c) the recognition process is too lengthy (the BIA completes an average of 1.3 petitions a year, meaning it will take more than a century to finish pending applications); (d) the recognition process does not provide petitioners with due process (i.e. cross examination, and an on-the-

record hearing); and (e) the same experts who conduct research on a petitioner's case are also the judge and jury in the process. In a recent case, a federal court found that the BIA's procedures were "marred by both lengthy delays and a pattern of serious procedural due process violations."

H.R. 1154 is intended to eliminate bias and conflict of interest by establishing an independent three member Commission outside of the Interior Department to review tribal recognition petitions. It also provides tribes with the opportunity for formal, on-the-record hearings. Records relied upon by the Commission would be made available in a timely manner to petitioners. In addition, H.R. 1154 affirms the precedential value of prior BIA recognition decisions and makes the records of those decisions readily available to petitioners. The bill also sets strict time lines for action by the new Commission on pending petitions.

H.R. 1154 would also streamline federal recognition criteria by aligning them with the legal standards in place prior to 1978 when current criteria were implemented by the BIA. Among other things, H.R. 1154 would require a petitioning tribe to prove: (1) that it and its members have been identified as Indians since 1934; (2) that it has exercised political leadership over its members since 1934; (3) that it has a membership roll; and (4) that it now exists as a community.

Historical background

It was not until 1979, 157 years after the establishment of the BIA, that there was a comprehensive list of exactly which Indian tribes are federally acknowledged and by exclusion from that list—which Indian groups are not.[1] There had been some earlier lists created by the BIA to determine which tribes were under the "wardship" of the United States.[2] Another list was codified by Indian Commissioner John Collier in 1934.[3] The concept, however, of federal "recognition" of Indian tribes did not become a significant legal issue until the 1970s.

Several factors brought the recognition issue to the legal forefront. First, the final recommendations of the American Indian Policy Review Commission included a specific recommendation to establish "definitional factors" for determining the tribal status of unacknowledged Indian groups. Second, in *United States* v. *Washington,* 520 F.2d 676 (9th Cir. 1975), cert. denied, 423 U.S. 1086 (1976), the Ninth Circuit Court of Appeals decided that Indian tribes exercising treaty fishing rights were entitled to half the commercial catch in the State of Washington, but eligibility was limited to treaty signatories and federally recognized Indian tribes. Third, the First Circuit Court of Appeals decided *Joint Tribal Council of Passamaquoddy Tribe* v. *Morton,* 528 F.2d 370 (1st Cir. 1975), where a federally unacknowledged tribe successfully claimed hundreds of thousands of acres of land in Maine which had been illegally transferred or ceded to the State. In the wake of these two decisions, the BIA began to receive more and more requests for fed-

[1] 44 Fed. Reg. 7235 (1979).

[2] The Department of the Interior, Census Office, Report on Indians Taxed and Indians Not Taxed in the United States at the Eleventh Census: 1890, at 34–43 (1894).

[3] 25 U.S.C. 461–497.

eral acknowledgment from unacknowledged tribes. It was clear that an internal system for recognizing Indian tribes was needed. Hence, in 1978 the "Procedures for Establishing that an American Indian Group Exists as an Indian Tribe" were established.

Need for legislation

The need for legislation is reflected in various complaints which have come to the attention of the Committee over a period of several years. It is the collective opinion of many Indian bands which have been frustrated in their attempts to participate effectively in the existing recognition process that the process is unworkable. Numerous reasons are cited.

The current recognition process is too expensive for Indian tribes. Experts estimate that the cost of producing an average petition ranges from $300,000 to $500,000. Over the past 16 years, the BIA has spent more than $6 million to evaluate petitions.

The current recognition process takes too long. Since 1978, when the BIA recognition regulations were put into place, only 12 tribes have been acknowledged, and 14 have been denied. During the same period, the BIA has received over 160 petitions or letters of intent to petition. In 1978, there were already 40 petitions pending. Bud Shapard, the former head of the Bureau of Acknowledgment and Research and primary author of the regulations testified before the Committee that "the current process is impossibly slow. [The BIA's acknowledgment rate] works out statistically to be 1.3 cases a year. At that rate, it will take 110 years to complete the process."

The current recognition process is subjective, flawed, and has been applied in an uneven manner. The BIA's handling of the Samish case demonstrates the lack of fairness in the process. In the only appeal of a negative recognition decision to date, the Ninth Circuit Court of Appeals and the Interior Department's own board of appeals found that the BIA's recognition process "did not give [the tribe] due process" and rejected the BIA's position "as not being supported by the evidence." A federal judge recently rebuked the BIA and the Department of the Interior's Solicitor's office for attempting to alter an Interior Department judge's findings. To protect the recognition process from criticism, the BIA and the Solicitor's office attempted to hide from the public the judge's findings that the BIA's tribal purity test was flawed, that the BIA's research and methods were "sloppy and unprofessional" and that the BIA had "prejudged" the Samish case in violation of due process.

The primary author of the BIA recognition regulations testified before Congress that, "[b]ecause there is no clear definition of what the petitioners are attempting to prove and what the BIA is attempting to verify, the regulations require nonsensical levels of research and documentation. This results in regulations full of vague phrases requiring subjective interpretations. By my count the 1978 original regulations contained 35 phrases that required a subjective determination. The 1994 revised and streamlined regulations not only doubled the length of the regulations, they more than doubled the areas that required a subjective determination."

The current recognition process is a closed or hidden process. The current process does not allow a petitioning tribe to cross-examine evidence or the researchers, and does not allow the tribe to even

review the evidence on which the determination was made until the end of the process.

The current recognition process is inherently biased. The same Department responsible for deciding whether to recognize a tribe is also required to provide services to that tribe. An earlier House of Representatives report recognized that the BIA has an "internal disincentive to recognize new tribes when it has difficulty serving existing tribes and more new tribes would increase the BIA workload."

Important provisions

H.R. 1154 sets time lines for decision making. It requires a Commission on Indian Recognition to publish petitions for recognition in the Federal Register within 30 days of receipt. It requires the Commission, within 60 days of receipt of a recognition petition, to set a date for a preliminary hearing. It requires the Commission, within 30 days of the preliminary hearing, to decide whether to extend recognition or to hold an adjudicatory hearing. It requires the Commission to hold the adjudicatory hearing within 180 days of the preliminary hearing and make a decision within 60 days after the adjudicatory hearing.

H.R. 1154 includes mandatory recognition criteria and aligns that criteria with the pre-1978 criteria. The bill requires a petitioning tribe to prove:

that it and its members have been identified as Indians since 1934;

that it has exercised political leadership over its members since 1934;

that it has a membership roll; and

that it exists as a community by showing at least one of the following four items: (1) distinct social boundaries; (2) the exercise of communal rights with respect to resources or subsistence activities; (3) the retention of a native language or other customs; or (4) that it is state-recognized.

The criteria in H.R. 1154 were originally drafted without regard to the structure and requirements of the Department of the Interior's existing acknowledgment regulations. The intent was to return to the more flexible and predictable pre-1978 criteria because that criteria provided alternative ways for tribes to demonstrate tribal existence. The pre-1978 criteria was more predictable in outcome because it avoided subjective, judgmental factors in examining tribal existence. As a consequence, the criteria in H.R. 1154 as introduced contained three mandatory criteria, allowed petitioning tribes to demonstrate one of four additional criteria, and eliminated subjective determinations of community and other indicia of tribal existence.

H.R. 1154 opens up the recognition process by allowing petitioning tribes to cross-examine the reviewers of their petitions in an adjudicatory proceeding. It is intended to remove bias by moving the decision process to an independent commission. This legislation also provides financial as well as information gathering assistance to petitioning tribes.

COMMITTEE ACTION

H.R. 1154 was introduced on March 20, 1997, by Delegate Eni Faleomavaega (D–AS). The bill was referred to the Committee on Resources. On May 20, 1998, the Full Resources Committee met to consider H.R. 1154. An amendment in the nature of a substitute was offered by Delegate Faleomavaega. After the introduction of H.R. 1154, the Administration informally indicated that it objected to the criteria included in the bill because it would amount to a dramatic departure from the criteria in existing acknowledgment regulations and that it would undermine the goal of consistency in policy in the acknowledgment area. As a result of extensive discussions with Administration officials, two sets of changes were made to the H.R. 1154 criteria which are reflected in the Faleomavaega amendment and which reflect an attempt to achieve reform without a complete break from existing regulations.

The first set of changes relate to the structure of the criteria. Existing acknowledgment regulations contain seven mandatory criteria, while H.R. 1154, as introduced, contained fewer mandatory criteria and allowed petitioners options for proof as to some criteria. The amendment adopts the structure of existing regulations and thereby requires that tribes prove the same mandatory criteria that the present acknowledgment regulations require. The amendment uses the year 1934 as the starting point in time for the mandatory criteria.

The second set of changes relate to the terms of the mandatory criteria. Since the goals of reform are to shorten the review process, make the process more open, and make the outcome of the process more predictable, it was necessary to tighten the criteria themselves and eliminate the need for subjective determinations. To that end, the criteria are redefined as follows in the amendment:

1. Indian identity is defined substantially the same as in the acknowledgment regulations, with the exception that absence of evidence of Indian identity resulting from official acts or policy of the federal or relevant state government shall not be the basis for declining acknowledgment.

2. A distinct community is defined substantially the same as in the acknowledgment regulations. This criterion did not appear in H.R. 1154 as introduced, but was added in the amendment so that the criteria track those of the acknowledgment regulations. Experience with this criterion under the regulations shows that it requires subjective determinations by staff, with results that appear inconsistent from one petitioner to the next. The amendment deals with this problem by adding quantifiable indicia that shall be deemed conclusive proof of community, such as measurable geographic proximity and in-marriage rates. In addition, community can be demonstrated in the substitute amendment by certain forms of proof of political influence, just as under the acknowledgment regulations. As a result, in some cases criteria 2 and 3 will merge into one.

3. Political influence is defined substantially the same as in the acknowledgment regulations. As with community this criterion requires subjective determinations by staff. Again, the amendment deals with this problem by adding objective indicia that shall be

deemed conclusive proof of community, such as a continuous line of leaders recognized by a state government.

4. A copy of the group's governing document is defined substantially the same as in the acknowledgment regulations.

5. Descent from historic tribe(s) is defined substantially the same as in the acknowledgment regulations. This criterion has been troublesome in application since it essentially requires a petitioner to demonstrate tribal existence from the time of first sustained European contact, even though the other criteria expressly require proof of each only since 1900. The substitute amendment deals with this problem by establishing a presumption of continuous existence that arises from proof of descent from an Indian entity since 1934. In addition, the substitute amendment lists types of evidence that are acceptable for proof of descent, evidence that includes first-hand professional research or reports about the group in addition to genealogical records.

6. Petitioner's members are not members of other tribes is defined substantially the same as in the acknowledgment regulations.

7. Proof that the tribe has not been terminated by Congress appears as the seventh mandatory criterion in the acknowledgment regulations. This requirement does not appear as a mandatory criterion in the amendment. However, the amendment expressly excludes terminated tribes from the Act.

The net effect of changes made to the criteria in the amendment are twofold. First, it utilizes the basic framework of the acknowledgment regulations by requiring that petitioners demonstrate the same mandatory criteria. This provides for some consistency in policy with the last 20 years administration under the acknowledgment regulations. Second, it limits the time period for which petitioners must demonstrate the criteria and minimizes the need for subjective evaluation of data by staff. This provides for a speedier process and one that produces consistent results from one petitioner to the other. Finally, the substitute amendment includes new provisions that more accurately reflect the historic experience of non-federally recognized tribes and insure that tribes will not pay the cost for federal and state efforts to suppress or outlaw tribalism at various times in history.

The Faleomavaega amendment was adopted by voice vote. The bill as amended was then ordered favorably reported to the House of Representatives by voice vote.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to the requirements of clause 2(l)(3) of rule XI of the Rules of the House of Representatives, and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

FEDERAL ADVISORY COMMITTEE STATEMENT

The functions of the proposed advisory committee authorized in this bill are not currently being nor could they be performed by one or more agencies, an advisory committee already in existence or by enlarging the mandate of an existing advisory committee.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact H.R. 1154.

COST OF THE LEGISLATION

Clause 7(a) 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 carrying out H.R. 1154. However, clause 7(d) 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 403 of the Congressional Budget Act of 1974.

COMPLIANCE WITH HOUSE RULE XI

1. With respect to the requirement of clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, H.R. 1154 does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

2. With respect to the requirement of clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.R. 1154.

3. With respect to the requirement of clause 2(l)(3)(C) of rule XI 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 H.R. 1154 from the Director of the Congressional Budget Office.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 18, 1998.

Hon. DON YOUNG,
Chairman, Committee on Resources,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1154, the Indian Federal Recognition Administrative Procedures Act of 1998.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Kristen Layman.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

H.R. 1154—Indian Federal Recognition Administrative Procedures Act of 1998

H.R. 1154 would establish the Commission on Indian Recognition and would authorize annual appropriations of $1.5 million for 1998 and the 12 succeeding fiscal years for the commission's activities.

The commission would be authorized to accept petitions for recognition by Indian groups and communities and to determine the status of the petitioners. In addition, the bill would authorize annual appropriations of $3 million for 1998 and the 12 succeeding fiscal years for the Administration for Native Americans of the Department of Health and Human Services to provide grant assistance to petitioners.

Assuming appropriation of the authorized amounts, CBO estimates that implementing H.R. 1154 would result in additional discretionary spending of approximately $4.5 million in each of the next 12 fiscal years (beginning with 1999). For the purposes of this estimate, we assume that the bill would be enacted late in fiscal year 1998, and as a result we expect that there would be no budgetary impact this year. Enacting H.R. 1154 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. H.R. 1154 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would have no significant impact on the budgets of state, local, or tribal governments.

In addition to the authorized spending of $4.5 million a year, implementing H.R. 1154 could have other effects on discretionary spending. The proposed commission would replace the Branch of Acknowledgment and Research within the Bureau of Indian Affairs (BIA). The branch is currently responsible for the review of petitions for tribal recognition, so enacting the bill may result in discretionary savings of up to $1 million each year—the amount that the branch spends under current law.

H.R. 1154 may lead to an increase in the number of tribes that are recognized, which in turn may result in an increase in discretionary spending. The recognition of Indian tribes under H.R. 1154 would not create an entitlement to existing BIA programs; any assistance provided to newly recognized tribes would be subject to future appropriation action. In addition, H.R. 1154 would make tribes eligible to receive compensation for attorney fees and costs if a tribe is denied recognition by the commission and subsequently granted recognition after a court appeal. This compensation would be paid by the Commission on Indian Recognition from funds made available in annual appropriations. CBO has no basis for predicting the extent to which additional tribes would be recognized or the amount of any court costs that might have to be paid.

The CBO staff contact is Kristen Layman. This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104–4

H.R. 1154 contains no unfunded mandates.

CHANGES IN EXISTING LAW

If enacted, H.R. 1154 would make no changes in existing law.

○