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S.297

Federal Acknowledgment Process Reform Act of 2003 (Introduced in Senate)

S 297 IS

108th CONGRESS

1st Session

S. 297

To provide reforms and resources to the Bureau of Indian Affairs to improve the Federal acknowledgment process, and for other purposes.

IN THE SENATE OF THE UNITED STATES

February 4, 2003

Mr. CAMPBELL introduced the following bill, which was read twice and referred to the Committee on Indian Affairs

A BILL

To provide reforms and resources to the Bureau of Indian Affairs to improve the Federal acknowledgment process, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Federal Acknowledgment Process Reform Act of 2003'.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS- Congress finds that--

- (1) Indian tribes were sovereign governmental entities before the establishment of the United States;
- (2) the United States has entered into and ratified treaties with many Indian tribes for the purpose of establishing government-to-government relationships between the United States and the Indian tribes;
- (3) Federal court decisions have recognized the constitutional power of Congress to establish government-to-government relationships with Indian tribes;
- (4) in 1970, President Nixon ended the termination policy and inaugurated the policy of Indian self-determination;
- (5) in 1978--
 - (A) the Secretary of the Interior delegated authority to the Assistant Secretary for Indian Affairs to establish a formal process by which the United States acknowledges an Indian tribe; and
 - (B) the Bureau of Indian Affairs established the Branch of Acknowledgment and Research to carry out the Federal acknowledgment process; and
- (6) the Federal acknowledgment process was intended to provide the Assistant Secretary with an informed and well-researched basis for making any decision to acknowledge an Indian tribe.

(b) PURPOSES- The purposes of this Act are--

- (1) to ensure that, in any case in which the United States acknowledges an Indian tribe, it does so with a consistent legal, factual, and historical basis;
- (2) to provide clear and consistent standards to review documented petitions for acknowledgment; and
- (3) to clarify evidentiary standards and expedite the administrative review process for petitions by--
 - (A) establishing deadlines for decisions; and
 - (B) providing adequate resources to process petitions.

SEC. 3. DEFINITIONS.

In this Act:

- (1) ACKNOWLEDGMENT- The term 'acknowledgment', with respect to a determination by the Assistant Secretary, means acknowledgment by the United States that--

(A) an Indian group is an Indian tribe having a government-to-government relationship with the United States; and

(B) the members of the Indian group are eligible for the programs and services provided by the United States to members of Indian tribes because of the status of those members as Indians.

(2) ASSISTANT SECRETARY- The term `Assistant Secretary' means the Assistant Secretary for Indian Affairs of the Department.

(3) AUTONOMOUS- The term `autonomous', with respect to an Indian group and in the context of the history, geography, culture, and social organization of the Indian group, means an Indian group that exercises the political influence or authority of the Indian group independently of the control of any other Indian group.

(4) BOARD- The term `Board' means the Independent Review and Advisory Board established under section 6(a).

(5) BUREAU- The term `Bureau' means the Bureau of Indian Affairs.

(6) COMMUNITY- The term `community' means any group of people living within a particular area that, in the context of the history, culture, and social organization of the group, and taking into account the geography of the region in which the group is located, is able to demonstrate that--

(A) consistent interactions and significant social relationships exist within the membership; and

(B) the members of the group are differentiated from and identified as distinct from nonmembers.

(7) CONTINUOUS- With respect to the history of a group, the term `continuous' means the period beginning with calendar year 1900 and continuing to the present time substantially without interruption.

(8) DEPARTMENT- The term `Department' means the Department of the Interior.

(9) DOCUMENTED PETITION- The term `documented petition' means a petition for acknowledgment consisting of a detailed, factual exposition and arguments, and related documentary evidence, that specifically address requirements for acknowledgment established by the Assistant Secretary under section 4(b).

(10) HISTORICAL PERIOD- The term `historical period' means the period beginning with 1900 and continuing through the date of submission of a petition for acknowledgment under this Act.

(11) HISTORY- The term `history', with respect to an Indian group or Indian tribe, means the

existence of the Indian group or Indian tribe during the historical period.

(12) INDEPENDENT RESEARCH INSTITUTION- The term 'independent research institution' means an academic or museum institution that--

(A) employs significant resources toward the study of anthropology and other human sciences that are commonly used in reviewing petitions for acknowledgment; and

(B) could readily detail those resources to assist the Assistant Secretary in reviewing those petitions.

(13) INDIAN GROUP- The term 'Indian group' means any Indian band, pueblo, village, or community that is not acknowledged.

(14) INDIAN TRIBE- The term 'Indian tribe' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(15) INTERESTED PARTY-

(A) IN GENERAL- The term 'interested party' means any person, organization, or other entity that--

(i) establishes a legal, factual, or property interest in a determination of acknowledgment; and

(ii) requests an opportunity to submit comments or evidence, or to be kept informed of general actions, regarding a specific petition.

(B) INCLUSIONS- The term 'interested party' includes--

(i) the Governor of any State;

(ii) the Attorney General of any State;

(iii) any unit of local government; and

(iv) any Indian tribe, or Indian group, that may be directly affected by a determination of acknowledgment.

(16) LETTER OF INTENT- The term 'letter of intent' means an undocumented letter or resolution that--

(A) indicates the intent of an Indian group to submit a documented petition for Federal acknowledgment;

(B) is dated and signed by the governing body of the Indian group; and

(C) is submitted to the Department.

(17) PETITIONER- The term `petitioner' means any Indian group that submits a letter of intent to the Assistant Secretary.

(18) PILOT PROJECT- The term `pilot project' means the Federal acknowledgment research pilot project established under section 6(c).

(19) POLITICAL INFLUENCE OR AUTHORITY- The term `political influence or authority', with respect to the exercise or maintenance by an Indian group, means the use by the Indian group of a tribal council, leadership, internal process, or other mechanism, in the context of the history, culture, and social organization of the Indian group, as a means of--

(A) influencing or controlling the behavior of members of the Indian group in a significant manner;

(B) making decisions for the Indian group that substantially affect members of the Indian group; or

(C) representing the Indian group in dealing with nonmembers in matters of consequence to the Indian group.

(20) SECRETARY- The term `Secretary' means the Secretary of the Interior.

(21) 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, as a result of which the Federal Government or the colonial government that was the predecessor to the 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 in California, regardless of whether the treaty was subsequently ratified.

(22) TRIBAL ROLL- The term `tribal roll' means a list exclusively of individuals who--

(A)(i) have been determined by an Indian tribe to meet the membership requirements of the Indian tribe, as described in the governing document of the Indian tribe; or

(ii) in the absence of a governing document that describes those requirements, have been recognized as members of the Indian tribe by the governing body of the Indian tribe; and

(B) have affirmatively demonstrated consent to being listed as members of the Indian tribe.

SEC. 4. ACKNOWLEDGMENT PROCESS.

(a) LETTER OF INTENT-

(1) **IN GENERAL-** An Indian group that desires to initiate with the Department a petition for acknowledgment shall submit to the Assistant Secretary a letter of intent that provides to the Assistant Secretary relevant information concerning the Indian group that may be used to provide notice to interested parties.

(2) **CONTENTS-** The Indian group shall include in the letter of intent, to the maximum extent practicable--

(A) the current name of the Indian group and any name by which the Indian group may have been identified throughout the history of the Indian group;

(B) the 1 or more names of the governing body of the Indian group;

(C) the current address of the governing body of the Indian group; and

(D) a brief narrative of the history of the Indian group describing--

(i) the geographic areas in which the Indian group may have been located during that history; and

(ii) any relationships of the Indian group with other Indian tribes or Indian groups.

(3) **NOTICE-** Not later than 90 days after the date of receipt of a letter of intent from an Indian group, the Assistant Secretary shall notify the Indian group and interested parties whether the letter of intent reasonably identifies the Indian group.

(b) REQUIREMENTS FOR PETITIONS-

(1) EVIDENCE-

(A) **IN GENERAL-** Except as provided in paragraph (2), on or after filing a letter of intent, an Indian group that seeks acknowledgment shall submit to the Assistant Secretary a petition accompanied by evidence that demonstrates the existence of the Indian group during the historical period.

(B) **EVIDENCE RELATING TO HISTORICAL EXISTENCE-** To establish the existence of an Indian group during the historical period, a petition shall include evidence that demonstrates with reasonable likelihood that each factor described in section 5 with respect to the petition has been achieved by the petitioner.

(C) ACCESS TO LIBRARY OF CONGRESS AND NATIONAL ARCHIVES-

On request by a petitioner, the appropriate officials of the Library of Congress and the National Archives shall permit access by the petitioner to the resources, records, and documents relating to the petitioner for the purposes of conducting research and preparing evidence concerning the status of the petitioner.

(2) INELIGIBLE GROUPS AND ENTITIES- The following groups and entities shall not be eligible to submit to the Assistant Secretary a petition for acknowledgment under this Act:

(A) Any Indian tribe, organized band, pueblo, community, or Alaska Native entity that, as of the date of enactment of this Act, is acknowledged.

(B) Any Indian group, political faction, or community that separates from the main population of an Indian tribe, unless the Indian group, faction, or community establishes to the satisfaction of the Assistant Secretary that the Indian group, political faction, or community has functioned as an autonomous Indian group throughout the historical period.

(C) Any Indian group, or successor in interest of an Indian group (other than an Indian tribe, organized band, pueblo, community, or Alaska native entity described in subparagraph (A)), that, before the date of enactment of this Act, in accordance with regulations promulgated by the Secretary, petitioned for, and was denied or refused, acknowledgment based on the merits of the petition (except that nothing in this subparagraph excludes any group that Congress has identified as an Indian group but has not identified as an Indian tribe).

(D) Any Indian group the relationship of which with the Federal Government was expressly terminated by an Act of Congress.

(c) NOTICE OF RECEIPT OF A PETITION; SCHEDULE-**(1) PUBLICATION-**

(A) **IN GENERAL-** Not later than 30 days after the date on which the Assistant Secretary receives a documented petition under subsection (b), the Assistant Secretary shall publish in the Federal Register a notice of receipt of the petition.

(B) **INCLUSIONS-** The notice shall include--

(i) the name and location of the petitioner;

(ii) such other information as the Assistant Secretary determines will identify the petitioner;

(iii) the date of receipt of the petition;

(iv) information describing 1 or more locations at which a copy of the

petition and related submissions may be examined by the public; and

(v) a description of the procedure by which an interested party may submit--

(I) evidence in support of or in opposition to the request of the petitioner for acknowledgment; or

(II) a request to be kept informed of all actions affecting the petition.

(2) SCHEDULE- Not later than 60 days after the date of publication of a notice under paragraph

(1)(A), the Assistant Secretary shall establish a schedule for--

(A) the submission of evidence and arguments relating to the petition; and

(B) the publication of proposed findings of the Assistant Secretary with respect to the petition.

(d) REVIEW OF PETITIONS-

(1) IN GENERAL- On receipt of a documented petition, the Assistant Secretary, in accordance with the schedule established under subsection (c)(2), shall--

(A) conduct a review to determine whether the petitioner is entitled to acknowledgment; and

(B) publish in the Federal Register the proposed findings of the Assistant Secretary with respect to that determination.

(2) CONTENT OF REVIEW- The review conducted under paragraph (1) shall include consideration of--

(A) the petition;

(B) any supporting evidence; and

(C) any factual statements contained in the petition relating to other submissions, including oral accounts of the history of the petitioner submitted by the petitioner.

(3) CONSIDERATION OF EVIDENCE- Evidence received from interested parties under subsection (c)(1)(B)(v)(I) shall be--

(A) considered by the Assistant Secretary; and

(B) noted in any final determination regarding a petition.

(4) OTHER RESEARCH- In conducting a review under this subsection, the Assistant Secretary may--

(A) initiate other research for any purpose relating to--

(i) analysis of the petition; or

(ii) the acquisition of additional information concerning the status of the petitioner;

(B) initiate research through the pilot project or the Board; and

(C) consider evidence submitted by interested parties, including oral accounts of the history of the petitioner submitted by other Indian tribes.

(5) EXCEPTION FOR LACK OF CERTAIN EVIDENCE- If the Assistant Secretary determines that, for any period of time, evidence necessary to carry out this subsection is lacking, the lack of evidence shall not be the basis for a determination of the Assistant Secretary not to acknowledge a petitioner if the Assistant Secretary determines that the lack of evidence may be attributed to--

(A) any applicable official act of the Federal Government or a State government; or

(B) any applicable unofficial act of an officer or agent of the Federal Government or a State government.

(e) FINAL DETERMINATION-

(1) IN GENERAL- On review of all evidence submitted under section 5 and this section and the results of research conducted under section 5 and this section by the Assistant Secretary (including through the pilot project or the Board), and after providing a petitioner an opportunity to respond to proposed findings of the Assistant Secretary against acknowledgment, the Assistant Secretary shall make a final determination in writing whether the petitioner is entitled to acknowledgment.

(2) FACTS AND CONCLUSIONS- A final determination under paragraph (1) shall include all facts and conclusions of law in accordance with which the final determination was made.

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