

115TH CONGRESS
1ST SESSION

H. R. 3744

To provide that an Indian group may receive Federal acknowledgment as an Indian tribe only by an Act of Congress.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 12, 2017

Mr. BISHOP of Utah introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To provide that an Indian group may receive Federal acknowledgment as an Indian tribe only by an Act of Congress.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Tribal Recognition Act
5 of 2017”.

6 **SEC. 2. FINDINGS.**

7 Congress finds as follows:

8 (1) Article I, section 8, clause 3 of the Con-
9 stitution (commonly known as the “Indian Com-

1 merce Clause”) gives Congress authority over Indian
2 affairs.

3 (2) Such authority is plenary and exclusive.

4 (3) Such authority may not be exercised by the
5 executive branch, except as expressly delegated by
6 an Act of Congress (or by a treaty ratified by the
7 Senate before March 1871).

8 **SEC. 3. DEFINITIONS.**

9 As used in this Act:

10 (1) ASSISTANT SECRETARY.—The term “Assist-
11 ant Secretary” means the Assistant Secretary of In-
12 dian Affairs, or that officer’s authorized representa-
13 tive.

14 (2) AUTONOMOUS.—The term “autonomous”
15 means the exercise of political influence or authority
16 independent of the control of any other Indian gov-
17 erning entity. Autonomous must be understood in
18 the context of the history, geography, culture and
19 social organization of the petitioning group.

20 (3) COMMUNITY.—The term “Community”
21 means any group of people which can demonstrate
22 that consistent interactions and significant social re-
23 lationships exist within its membership and that its
24 members are differentiated from and identified as
25 distinct from nonmembers. Community must be un-

1 derstood in the context of the history, geography,
2 culture and social organization of the group.

3 (4) CONTINENTAL UNITED STATES.—The term
4 “continental United States” means the contiguous
5 48 States and Alaska.

6 (5) CONTINUOUSLY OR CONTINUOUS.—The
7 term “continuously or continuous” means extending
8 from first sustained contact with non-Indians
9 throughout the group’s history to the present sub-
10 stantially without interruption.

11 (6) DOCUMENTED PETITION.—The term “docu-
12 mented petition” means the detailed arguments
13 made by a petitioner to substantiate its claim to con-
14 tinuous existence as an Indian tribe, together with
15 the factual exposition and all documentary evidence
16 necessary to demonstrate that these arguments ad-
17 dress the mandatory criteria.

18 (7) HISTORICALLY, HISTORICAL OR HISTORY.—
19 The term “historically, historical or history” means
20 dating from first sustained contact with non-Indians.

21 (8) INDIAN GROUP OR GROUP.—The term “In-
22 dian group or group” means any Indian or Alaska
23 Native aggregation within the continental United
24 States that the Secretary of the Interior does not ac-
25 knowledge to be an Indian tribe. Indian tribe, also

1 referred to herein as tribe, means any Indian or
2 Alaska Native tribe, band, pueblo, village, or com-
3 munity within the continental United States that the
4 Secretary of the Interior has lawfully acknowledged
5 as an Indian tribe.

6 (9) INDIGENOUS.—The term “indigenous”
7 means native to the continental United States in
8 that at least part of the petitioner’s territory at the
9 time of sustained contact extended into what is now
10 the continental United States.

11 (10) INFORMED PARTY.—The term “informed
12 party” means any person or organization, other than
13 an interested party, who requests an opportunity to
14 submit comments or evidence or to be kept informed
15 of general actions regarding a specific petitioner.

16 (11) INTERESTED PARTY.—The term “inter-
17 ested party” means any person, organization or
18 other entity who can establish a legal, factual or
19 property interest in an acknowledgment determina-
20 tion and who requests an opportunity to submit
21 comments or evidence or to be kept informed of gen-
22 eral actions regarding a specific petitioner. “Inter-
23 ested party” includes the governor and attorney gen-
24 eral of the State in which a petitioner is located, and
25 may include, but is not limited to, local govern-

1 mental units, and any recognized Indian tribes and
2 unrecognized Indian groups that might be affected
3 by an acknowledgment determination.

4 (12) LETTER OF INTENT.—The term “letter of
5 intent” means an undocumented letter or resolution
6 by which an Indian group requests Federal acknowl-
7 edgment as an Indian tribe and expresses its intent
8 to submit a documented petition.

9 (13) PETITIONER.—The term “petitioner”
10 means any entity that has submitted a letter of in-
11 tent to the Secretary requesting acknowledgment
12 that it is an Indian tribe.

13 (14) POLITICAL INFLUENCE OR AUTHORITY.—
14 The term “political influence or authority” means a
15 tribal council, leadership, internal process or other
16 mechanism which the group has used as a means of
17 influencing or controlling the behavior of its mem-
18 bers in significant respects, and/or making decisions
19 for the group which substantially affect its members,
20 and/or representing the group in dealing with out-
21 siders in matters of consequence. This process is to
22 be understood in the context of the history, culture
23 and social organization of the group.

24 (15) PREVIOUS FEDERAL ACKNOWLEDG-
25 MENT.—The term “previous Federal acknowledg-

1 ment” means action by the Federal Government
2 clearly premised on identification of a tribal political
3 entity and indicating clearly the recognition of a re-
4 lationship between that entity and the United
5 States.

6 (16) SECRETARY.—The term “Secretary”
7 means the Secretary of the Interior or that officer’s
8 authorized representative.

9 (17) SUSTAINED CONTACT.—The term “sus-
10 tained contact” means the period of earliest sus-
11 tained non-Indian settlement and/or governmental
12 presence in the local area in which the historical
13 tribe or tribes from which the petitioner descends
14 was located historically.

15 **SEC. 4. GROUPS ELIGIBLE TO SUBMIT PETITIONS.**

16 (a) ELIGIBLE GROUPS.—Indian groups indigenous to
17 the continental United States that are not federally recog-
18 nized Indian tribes on the date of the enactment of this
19 Act may submit a petition under this Act.

20 (b) INELIGIBLE GROUPS.—The following may not
21 submit a petition under this Act:

22 (1) Splinter groups, political factions, commu-
23 nities or groups of any character that separate from
24 the main body of a federally recognized Indian tribe,
25 unless they can establish clearly that they have func-

1 tioned throughout history until the present as an au-
2 tonomous tribal entity, even if they have been re-
3 garded by some as part of or have been associated
4 in some manner with a federally recognized Indian
5 tribe.

6 (2) Indian tribes, organized bands, pueblos,
7 Alaska native villages, or communities that have
8 been lawfully acknowledged to be federally recog-
9 nized Indian tribes and are receiving services from
10 the Bureau of Indian Affairs.

11 (3) Groups that petitioned and were denied
12 Federal acknowledgment under part 83 of title 25,
13 Code of Federal Regulations, including reorganized
14 or reconstituted petitioners previously denied, or
15 splinter groups, spin-offs, or component groups of
16 any type that were once part of petitioners pre-
17 viously denied.

18 (4) Groups for which a documented petition has
19 not been filed pursuant to section 9 by the date that
20 is five years after the date of the enactment of this
21 Act.

22 (c) GROUPS WITH PETITIONS IN PROGRESS.—This
23 Act, including the criteria in section 7, shall apply to any
24 Indian group whose documented petition was submitted
25 and not denied on the date of the enactment of this Act.

1 **SEC. 5. FILING A LETTER OF INTENT.**

2 Any Indian group in the continental United States
3 that believes it should be acknowledged as an Indian tribe
4 and that it can satisfy the criteria in this Act may submit
5 a letter of intent requesting acknowledgment that an In-
6 dian group exists as an Indian tribe. The letter of intent
7 submitted under this section—

8 (1) shall be filed with the Assistant Secretary—
9 Indian Affairs, Department of the Interior;

10 (2) may be filed in advance of, or at the same
11 time as, a group's documented petition; and

12 (3) shall be produced, dated and signed by the
13 governing body of an Indian group.

14 **SEC. 6. DUTIES OF THE ASSISTANT SECRETARY.**

15 (a) GUIDELINES.—The Assistant Secretary shall
16 make available guidelines for the preparation of docu-
17 mented petitions. These guidelines shall—

18 (1) include an explanation of the criteria, a dis-
19 cussion of the types of evidence which may be used
20 to demonstrate particular criteria, and general sug-
21 gestions and guidelines on how and where to conduct
22 research;

23 (2) include an example of a documented peti-
24 tion format which shall provide guidance, but not
25 preclude the use of any other format; and

1 (3) may be supplemented or updated as nec-
2 essary.

3 (b) RESEARCH AND PREPARATION OF PETITION.—

4 The Assistant Secretary—

5 (1) shall provide petitioners with suggestions
6 and advice regarding preparation of the documented
7 petition; and

8 (2) shall not be responsible for the actual re-
9 search on behalf of the petitioner.

10 **SEC. 7. CRITERIA FOR FEDERAL ACKNOWLEDGMENT.**

11 The criteria for consideration for Federal acknowl-
12 edgment is, at a minimum, the following:

13 (1) The petitioner has been identified as an
14 American Indian entity on a substantially contin-
15 uous basis since 1900. Evidence that the group's
16 character as an Indian entity has from time to time
17 been denied shall not be considered to be conclusive
18 evidence that this criterion has not been met. Evi-
19 dence to be relied upon in determining a group's In-
20 dian identity may include one or a combination of
21 the following, as well as other evidence of identifica-
22 tion by other than the petitioner itself or its mem-
23 bers:

24 (A) Identification as an Indian entity by
25 Federal authorities.

1 (B) Relationships with State governments
2 based on identification of the group as Indian.

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

6 (D) Identification as an Indian entity by
7 anthropologists, historians, and/or other schol-
8 ars.

9 (E) Identification as an Indian entity in
10 newspapers and books.

11 (F) Identification as an Indian entity in
12 relationships with Indian tribes or with na-
13 tional, regional, or State Indian organizations.

14 (2) A predominant portion of the petitioning
15 group comprises a distinct community and has ex-
16 isted as a community from historical times until the
17 present.

18 (A) This criterion may be demonstrated by
19 some combination of the following evidence and/
20 or other evidence that the petitioner meets the
21 definition of community:

22 (i) Significant rates of marriage with-
23 in the group, and/or, as may be culturally
24 required, patterned out-marriages with
25 other Indian populations.

1 (ii) Significant social relationships
2 connecting individual members.

3 (iii) Significant rates of informal so-
4 cial interaction which exist broadly among
5 the members of a group.

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

9 (v) Evidence of strong patterns of dis-
10 crimination or other social distinctions by
11 nonmembers.

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

14 (vii) Cultural patterns shared among
15 a significant portion of the group that are
16 different from those of the non-Indian pop-
17 ulations with whom it interacts. These pat-
18 terns must function as more than a sym-
19 bolic identification of the group as Indian.
20 They may include, but are not limited to,
21 language, kinship organization, or religious
22 beliefs and practices.

23 (viii) The persistence of a named, col-
24 lective Indian identity continuously over a

1 period of more than 50 years, notwith-
2 standing changes in name.

3 (ix) A demonstration of historical po-
4 litical influence under the criterion in para-
5 graph (3) shall be evidence for dem-
6 onstrating historical community.

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

11 (i) More than 50 percent of the mem-
12 bers reside in a geographical area exclu-
13 sively or almost exclusively composed of
14 members of the group, and the balance of
15 the group maintains consistent interaction
16 with some members of the community.

17 (ii) At least 50 percent of the mar-
18 riages in the group are between members
19 of the group.

20 (iii) At least 50 percent of the group
21 members maintain distinct cultural pat-
22 terns such as, but not limited to, language,
23 kinship organization, or religious beliefs
24 and practices.

1 (iv) There are distinct community so-
2 cial institutions encompassing most of the
3 members, such as kinship organizations,
4 formal or informal economic cooperation,
5 or religious organizations.

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

9 (3) The petitioner has maintained political in-
10 fluence or authority over its members as an autono-
11 mous entity from historical times until the present.

12 (A) This criterion may be demonstrated by
13 some combination of the evidence listed below
14 and/or by other evidence that the petitioner
15 meets the definition of political influence or au-
16 thority:

17 (i) The group is able to mobilize sig-
18 nificant numbers of members and signifi-
19 cant resources from its members for group
20 purposes.

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

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

4 (iv) The group meets the criterion in
5 paragraph (2) at more than a minimal
6 level.

7 (v) There are internal conflicts which
8 show controversy over valued group goals,
9 properties, policies, processes and/or deci-
10 sions.

11 (B) A petitioning group shall be considered
12 to have provided sufficient evidence to dem-
13 onstrate the exercise of political influence or au-
14 thority at a given point in time by dem-
15 onstrating that group leaders and/or other
16 mechanisms exist or existed which—

17 (i) allocate group resources such as
18 land, residence rights and the like on a
19 consistent basis;

20 (ii) settle disputes between members
21 or subgroups by mediation or other means
22 on a regular basis;

23 (iii) exert strong influence on the be-
24 havior of individual members, such as the
25 establishment or maintenance of norms

1 and the enforcement of sanctions to direct
2 or control behavior; and

3 (iv) organize or influence economic
4 subsistence activities among the members,
5 including shared or cooperative labor.

6 (C) A group that has met the requirements
7 in paragraph (2)(B) at a given point in time
8 shall be considered to have provided sufficient
9 evidence to meet this criterion at that point in
10 time.

11 (4) A copy of the group's present governing
12 document including its membership criteria. In the
13 absence of a written document, the petitioner must
14 provide a statement describing in full its member-
15 ship criteria and current governing procedures.

16 (5) The petitioner's membership consists of in-
17 dividuals who descend from a historical Indian tribe
18 or from historical Indian tribes which combined and
19 functioned as a single autonomous political entity.

20 (A) Some types of evidence that can be
21 used for this purpose include the following:

22 (i) Rolls prepared by the Secretary on
23 a descendancy basis for purposes of dis-
24 tributing claims money, providing allot-
25 ments, or other purposes.

1 (ii) State, Federal, or other official
2 records or evidence identifying present
3 members or ancestors of present members
4 as being descendants of a historical tribe
5 or tribes that combined and functioned as
6 a single autonomous political entity.

7 (iii) Church, school, and other similar
8 enrollment records identifying present
9 members or ancestors of present members
10 as being descendants of a historical tribe
11 or tribes that combined and functioned as
12 a single autonomous political entity.

13 (iv) Affidavits of recognition by tribal
14 elders, leaders, or the tribal governing body
15 identifying present members or ancestors
16 of present members as being descendants
17 of a historical tribe or tribes that combined
18 and functioned as a single autonomous po-
19 litical entity.

20 (v) Other records or evidence identi-
21 fying present members or ancestors of
22 present members as being descendants of a
23 historical tribe or tribes that combined and
24 functioned as a single autonomous political
25 entity.

1 (B) The petitioner must provide an official
2 membership list, separately certified by the
3 group's governing body, of all known current
4 members of the group. This list must include
5 each member's full name (including maiden
6 name), date of birth, and current residential ad-
7 dress. The petitioner must also provide a copy
8 of each available former list of members based
9 on the group's own defined criteria, as well as
10 a statement describing the circumstances sur-
11 rounding the preparation of the current list
12 and, insofar as possible, the circumstances sur-
13 rounding the preparation of former lists.

14 (6) The membership of the petitioning group is
15 composed principally of persons who are not mem-
16 bers of any acknowledged North American Indian
17 tribe. However, under certain conditions a peti-
18 tioning group may be acknowledged even if its mem-
19 bership is composed principally of persons whose
20 names have appeared on rolls of, or who have been
21 otherwise associated with, an acknowledged Indian
22 tribe. The conditions are that the group must estab-
23 lish that it has functioned throughout history until
24 the present as a separate and autonomous Indian
25 tribal entity, that its members do not maintain a bi-

1 lateral political relationship with the acknowledged
2 tribe, and that its members have provided written
3 confirmation of their membership in the petitioning
4 group.

5 (7) Neither the petitioner nor its members are
6 the subject of congressional legislation that has ex-
7 pressly terminated or forbidden the Federal relation-
8 ship.

9 **SEC. 8. PREVIOUS FEDERAL ACKNOWLEDGMENT.**

10 (a) IN GENERAL.—Unambiguous previous Federal
11 acknowledgment shall be acceptable evidence of the tribal
12 character of a petitioner to the date of the last such pre-
13 vious acknowledgment. If a petitioner provides substantial
14 evidence of unambiguous Federal acknowledgment, the pe-
15 titioner shall only be required to demonstrate that it meets
16 the requirements of section 7 to the extent required by
17 this section. A determination of the adequacy of the evi-
18 dence of previous Federal action acknowledging tribal sta-
19 tus shall be made during the technical assistance review
20 of the documented petition conducted pursuant to section
21 10(b).

22 (b) EVIDENCE.—Evidence to demonstrate previous
23 Federal acknowledgment includes evidence that the
24 group—

1 (1) has had treaty relations with the United
2 States;

3 (2) has been denominated a tribe by an Act of
4 Congress or Executive order; and

5 (3) has been treated by the Federal Govern-
6 ment as having collective rights in tribal lands or
7 funds.

8 **SEC. 9. NOTICE OF RECEIPT OF A PETITION.**

9 (a) IN GENERAL.—Not later than 30 days after re-
10 ceiving a letter of intent, or a documented petition if a
11 letter of intent has not previously been received and no-
12 ticed, the Assistant Secretary shall acknowledge to the
13 sender such receipt in writing. Notice under this sub-
14 section shall—

15 (1) include the name, location, and mailing ad-
16 dress of the petitioner and such other information to
17 identify the entity submitting the letter of intent or
18 documented petition and the date it was received;

19 (2) serve to announce the opportunity for inter-
20 ested parties and informed parties to submit factual
21 or legal arguments in support of or in opposition to
22 the petitioner's request for acknowledgment or to re-
23 quest to be kept informed of all general actions af-
24 fecting the petition; and

1 (3) indicate where a copy of the letter of intent
2 and the documented petition may be examined.

3 (b) NOTICE TO STATE GOVERNMENTS.—The Assist-
4 ant Secretary shall notify, in writing—

5 (1) the Governor and Attorney General of the
6 State or States in which a petitioner is located; and

7 (2) any recognized tribe and any other peti-
8 tioner that—

9 (A) appears to have a historical or present
10 relationship with the petitioner; or

11 (B) may otherwise be considered to have a
12 potential interest in the acknowledgment deter-
13 mination.

14 (c) PUBLICATION.—Not later than 60 days after re-
15 ceiving a letter of intent, or a documented petition if a
16 letter of intent has not previously been received and no-
17 ticed, the Assistant Secretary shall have the notice re-
18 quired under this section published—

19 (1) in the Federal Register; and

20 (2) in a major newspaper or newspapers of gen-
21 eral circulation in the town or city nearest to the pe-
22 titioner.

23 **SEC. 10. PROCESSING OF THE DOCUMENTED PETITION.**

24 (a) REVIEW.—Upon receipt of a documented petition,
25 the Assistant Secretary—

1 (1) shall cause a review to be conducted to de-
2 termine the extent to which the petitioner has met
3 the criteria set forth in section 7;

4 (2) shall include consideration of the docu-
5 mented petition and the factual statements con-
6 tained therein;

7 (3) may initiate other research for any purpose
8 relative to analyzing the documented petition and
9 obtaining additional information about the peti-
10 tioner's status; and

11 (4) may consider any evidence which may be
12 submitted by interested parties or informed parties.

13 (b) TECHNICAL ASSISTANCE.—

14 (1) Prior to review of the documented petition
15 under subsection (a), the Assistant Secretary shall
16 conduct a preliminary review of the petition in order
17 to provide technical assistance to the petitioner.

18 (2) The review under paragraph (1) shall be a
19 preliminary review for the purpose of providing the
20 petitioner an opportunity to supplement or revise the
21 documented petition prior to the review under para-
22 graph (1). Insofar as possible, technical assistance
23 reviews under this paragraph will be conducted in
24 the order of receipt of documented petitions. How-
25 ever, technical assistance reviews will not have pri-

1 ority over active consideration of documented peti-
2 tions.

3 (3) After the technical assistance review, the
4 Assistant Secretary shall notify the petitioner by let-
5 ter of any obvious deficiencies or significant omis-
6 sions apparent in the documented petition and pro-
7 vide the petitioner with an opportunity to withdraw
8 the documented petition for further work or to sub-
9 mit additional information.

10 (4) If a petitioner's documented petition claims
11 previous Federal acknowledgment or includes evi-
12 dence of previous Federal acknowledgment, the tech-
13 nical assistance review shall also include a review to
14 determine whether that evidence is sufficient to meet
15 the requirements of previous Federal acknowledg-
16 ment.

17 (c) RESPONSE TO TECHNICAL ASSISTANCE RE-
18 VIEW.—

19 (1) Petitioners may respond in part or in full
20 to the technical assistance review letter or request,
21 in writing, that the Assistant Secretary proceed with
22 the active consideration of the documented petition
23 using the materials already submitted.

24 (2) If the petitioner requests that the materials
25 submitted in response to the technical assistance re-

1 view letter be again reviewed for adequacy, the As-
2 sistant Secretary shall provide the additional review.

3 (3) If the assertion of previous Federal ac-
4 knowledgment under section 8 cannot be substan-
5 tiated during the technical assistance review, the pe-
6 titioner may respond by providing additional evi-
7 dence. A petitioner that claims previous Federal ac-
8 knowledgment and fails to respond to a technical as-
9 sistance review letter under this subsection, or whose
10 response fails to establish the claim, shall have its
11 documented petition considered on the same basis as
12 documented petitions submitted by groups not claim-
13 ing previous Federal acknowledgment. Petitioners
14 that fail to demonstrate previous Federal acknowl-
15 edgment after a review of materials submitted in re-
16 sponse to the technical assistance review shall be so
17 notified. Such petitioners may submit additional ma-
18 terials concerning previous acknowledgment during
19 the course of active consideration.

20 (d) CONSIDERATION OF DOCUMENTED PETITIONS.—
21 The Assistant Secretary shall—

22 (1) review documented petitions in the order
23 that they are determined ready for review;

1 (2) establish and maintain a numbered register
2 of documented petitions which have been determined
3 ready for active consideration;

4 (3) maintain a numbered register of letters of
5 intent or incomplete petitions based on the original
6 date received by the Department of the Interior; and

7 (4) use the register of letters of intent or in-
8 complete petitions to determine the order of review
9 by the Assistant Secretary if two or more docu-
10 mented petitions are determined ready for review on
11 the same date.

12 (e) REPORT.—Not later than 1 year after notifying
13 the petitioner that review of the documented petition has
14 begun, the Assistant Secretary shall—

15 (1) submit a report including a summary of the
16 evidence, findings, petition, and supporting docu-
17 mentation, to the Committee on Natural Resources
18 of the House of Representatives and the Committee
19 on Indian Affairs of the Senate;

20 (2) notify the petitioner and interested parties
21 that the review is complete and the report required
22 under paragraph (1) has been submitted;

23 (3) provide copies of the report to the petitioner
24 and interested parties; and

1 (4) provide copies of the report to informed
2 parties and others upon written request.

3 **SEC. 11. CLARIFICATION OF FEDERAL RECOGNITION AU-**
4 **THORITY.**

5 (a) ACT OF CONGRESS REQUIRED.—An Indian group
6 may receive Federal acknowledgment (or reacknowledg-
7 ment) as an Indian tribe only by an Act of Congress. The
8 Secretary may not grant Federal acknowledgment (or re-
9 acknowledgment) to any Indian group.

10 (b) PREVIOUS ACKNOWLEDGMENT.—This Act shall
11 not affect the status of any Indian tribe that was federally
12 acknowledged before the date of the enactment of this Act.

13 **SEC. 12. FORCE AND EFFECT OF REGULATIONS.**

14 Part 83 of title 25, Code of Federal Regulations,
15 shall have no force or effect.

○