

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.

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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

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## A BILL

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

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 “Federal Acknowledg-  
5 ment Process Reform Act of 2003”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress finds that—

8 (1) Indian tribes were sovereign governmental  
9 entities before the establishment of the United  
10 States;

1           (2) the United States has entered into and rati-  
2           fied treaties with many Indian tribes for the purpose  
3           of establishing government-to-government relation-  
4           ships between the United States and the Indian  
5           tribes;

6           (3) Federal court decisions have recognized the  
7           constitutional power of Congress to establish govern-  
8           ment-to-government relationships with Indian tribes;

9           (4) in 1970, President Nixon ended the termi-  
10          nation policy and inaugurated the policy of Indian  
11          self-determination;

12          (5) in 1978—

13                 (A) the Secretary of the Interior delegated  
14                 authority to the Assistant Secretary for Indian  
15                 Affairs to establish a formal process by which  
16                 the United States acknowledges an Indian tribe;  
17                 and

18                 (B) the Bureau of Indian Affairs estab-  
19                 lished the Branch of Acknowledgment and Re-  
20                 search to carry out the Federal acknowledg-  
21                 ment process; and

22          (6) the Federal acknowledgment process was in-  
23          tended to provide the Assistant Secretary with an in-  
24          formed and well-researched basis for making any de-  
25          cision to acknowledge an Indian tribe.

1 (b) PURPOSES.—The purposes of this Act are—

2 (1) to ensure that, in any case in which the  
3 United States acknowledges an Indian tribe, it does  
4 so with a consistent legal, factual, and historical  
5 basis;

6 (2) to provide clear and consistent standards to  
7 review documented petitions for acknowledgment;  
8 and

9 (3) to clarify evidentiary standards and expedite  
10 the administrative review process for petitions by—

11 (A) establishing deadlines for decisions;

12 and

13 (B) providing adequate resources to proc-  
14 ess petitions.

15 **SEC. 3. DEFINITIONS.**

16 In this Act:

17 (1) ACKNOWLEDGMENT.—The term “acknowl-  
18 edgment”, with respect to a determination by the  
19 Assistant Secretary, means acknowledgment by the  
20 United States that—

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

24 (B) the members of the Indian group are  
25 eligible for the programs and services provided

1 by the United States to members of Indian  
2 tribes because of the status of those members  
3 as Indians.

4 (2) ASSISTANT SECRETARY.—The term “Assist-  
5 ant Secretary” means the Assistant Secretary for  
6 Indian Affairs of the Department.

7 (3) AUTONOMOUS.—The term “autonomous”,  
8 with respect to an Indian group and in the context  
9 of the history, geography, culture, and social organi-  
10 zation of the Indian group, means an Indian group  
11 that exercises the political influence or authority of  
12 the Indian group independently of the control of any  
13 other Indian group.

14 (4) BOARD.—The term “Board” means the  
15 Independent Review and Advisory Board established  
16 under section 6(a).

17 (5) BUREAU.—The term “Bureau” means the  
18 Bureau of Indian Affairs.

19 (6) COMMUNITY.—The term “community”  
20 means any group of people living within a particular  
21 area that, in the context of the history, culture, and  
22 social organization of the group, and taking into ac-  
23 count the geography of the region in which the  
24 group is located, is able to demonstrate that—

1 (A) consistent interactions and significant  
2 social relationships exist within the member-  
3 ship; and

4 (B) the members of the group are differen-  
5 tiated from and identified as distinct from non-  
6 members.

7 (7) CONTINUOUS.—With respect to the history  
8 of a group, the term “continuous” means the period  
9 beginning with calendar year 1900 and continuing to  
10 the present time substantially without interruption.

11 (8) DEPARTMENT.—The term “Department”  
12 means the Department of the Interior.

13 (9) DOCUMENTED PETITION.—The term “docu-  
14 mented petition” means a petition for acknowledg-  
15 ment consisting of a detailed, factual exposition and  
16 arguments, and related documentary evidence, that  
17 specifically address requirements for acknowledg-  
18 ment established by the Assistant Secretary under  
19 section 4(b).

20 (10) HISTORICAL PERIOD.—The term “histor-  
21 ical period” means the period beginning with 1900  
22 and continuing through the date of submission of a  
23 petition for acknowledgment under this Act.

24 (11) HISTORY.—The term “history”, with re-  
25 spect to an Indian group or Indian tribe, means the

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

3 (12) INDEPENDENT RESEARCH INSTITUTION.—

4 The term “independent research institution” means  
5 an academic or museum institution that—

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

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

13 (13) INDIAN GROUP.—The term “Indian  
14 group” means any Indian band, pueblo, village, or  
15 community that is not acknowledged.

16 (14) INDIAN TRIBE.—The term “Indian tribe”  
17 has the meaning given the term in section 4 of the  
18 Indian Self-Determination and Education Assistance  
19 Act (25 U.S.C. 450b).

20 (15) INTERESTED PARTY.—

21 (A) IN GENERAL.—The term “interested  
22 party” means any person, organization, or  
23 other entity that—

1 (i) establishes a legal, factual, or  
2 property interest in a determination of ac-  
3 knowledgment; and

4 (ii) requests an opportunity to submit  
5 comments or evidence, or to be kept in-  
6 formed of general actions, regarding a spe-  
7 cific petition.

8 (B) INCLUSIONS.—The term “interested  
9 party” includes—

10 (i) the Governor of any State;

11 (ii) the Attorney General of any State;

12 (iii) any unit of local government; and

13 (iv) any Indian tribe, or Indian group,

14 that may be directly affected by a deter-  
15 mination of acknowledgment.

16 (16) LETTER OF INTENT.—The term “letter of  
17 intent” means an undocumented letter or resolution  
18 that—

19 (A) indicates the intent of an Indian group  
20 to submit a documented petition for Federal ac-  
21 knowledgment;

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

24 (C) is submitted to the Department.

1           (17) PETITIONER.—The term “petitioner”  
2 means any Indian group that submits a letter of in-  
3 tent to the Assistant Secretary.

4           (18) PILOT PROJECT.—The term “pilot  
5 project” means the Federal acknowledgment re-  
6 search pilot project established under section 6(c).

7           (19) POLITICAL INFLUENCE OR AUTHORITY.—  
8 The term “political influence or authority”, with re-  
9 spect to the exercise or maintenance by an Indian  
10 group, means the use by the Indian group of a tribal  
11 council, leadership, internal process, or other mecha-  
12 nism, in the context of the history, culture, and so-  
13 cial organization of the Indian group, as a means  
14 of—

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

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

21                   (C) representing the Indian group in deal-  
22 ing with nonmembers in matters of consequence  
23 to the Indian group.

24           (20) SECRETARY.—The term “Secretary”  
25 means the Secretary of the Interior.



1           (21) TREATY.—The term “treaty” means any  
2 treaty—

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

6           (B) made by any government with, or on  
7 behalf of, any Indian group or Indian tribe, as  
8 a result of which the Federal Government or  
9 the colonial government that was the prede-  
10 cessor to the Federal Government subsequently  
11 acquired territory by purchase, conquest, annex-  
12 ation, or cession; or

13           (C) negotiated by the United States with,  
14 or on behalf of, any Indian group in California,  
15 regardless of whether the treaty was subse-  
16 quently ratified.

17           (22) TRIBAL ROLL.—The term “tribal roll”  
18 means a list exclusively of individuals who—

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

23           (ii) in the absence of a governing document  
24 that describes those requirements, have been

1 recognized as members of the Indian tribe by  
2 the governing body of the Indian tribe; and

3 (B) have affirmatively demonstrated con-  
4 sent to being listed as members of the Indian  
5 tribe.

6 **SEC. 4. ACKNOWLEDGMENT PROCESS.**

7 (a) LETTER OF INTENT.—

8 (1) IN GENERAL.—An Indian group that de-  
9 sires to initiate with the Department a petition for  
10 acknowledgment shall submit to the Assistant Sec-  
11 retary a letter of intent that provides to the Assist-  
12 ant Secretary relevant information concerning the  
13 Indian group that may be used to provide notice to  
14 interested parties.

15 (2) CONTENTS.—The Indian group shall in-  
16 clude in the letter of intent, to the maximum extent  
17 practicable—

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

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

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

1 (D) a brief narrative of the history of the  
2 Indian group describing—

3 (i) the geographic areas in which the  
4 Indian group may have been located dur-  
5 ing that history; and

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

9 (3) NOTICE.—Not later than 90 days after the  
10 date of receipt of a letter of intent from an Indian  
11 group, the Assistant Secretary shall notify the In-  
12 dian group and interested parties whether the letter  
13 of intent reasonably identifies the Indian group.

14 (b) REQUIREMENTS FOR PETITIONS.—

15 (1) EVIDENCE.—

16 (A) IN GENERAL.—Except as provided in  
17 paragraph (2), on or after filing a letter of in-  
18 tent, an Indian group that seeks acknowledg-  
19 ment shall submit to the Assistant Secretary a  
20 petition accompanied by evidence that dem-  
21 onstrates the existence of the Indian group dur-  
22 ing the historical period.

23 (B) EVIDENCE RELATING TO HISTORICAL  
24 EXISTENCE.—To establish the existence of an  
25 Indian group during the historical period, a pe-

1           tition shall include evidence that demonstrates  
2           with reasonable likelihood that each factor de-  
3           scribed in section 5 with respect to the petition  
4           has been achieved by the petitioner.

5           (C) ACCESS TO LIBRARY OF CONGRESS  
6           AND NATIONAL ARCHIVES.—On request by a  
7           petitioner, the appropriate officials of the Li-  
8           brary of Congress and the National Archives  
9           shall permit access by the petitioner to the re-  
10          sources, records, and documents relating to the  
11          petitioner for the purposes of conducting re-  
12          search and preparing evidence concerning the  
13          status of the petitioner.

14          (2) INELIGIBLE GROUPS AND ENTITIES.—The  
15          following groups and entities shall not be eligible to  
16          submit to the Assistant Secretary a petition for ac-  
17          knowledgment under this Act:

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

22                (B) Any Indian group, political faction, or  
23                community that separates from the main popu-  
24                lation of an Indian tribe, unless the Indian  
25                group, faction, or community establishes to the

1 satisfaction of the Assistant Secretary that the  
2 Indian group, political faction, or community  
3 has functioned as an autonomous Indian group  
4 throughout the historical period.

5 (C) Any Indian group, or successor in in-  
6 terest of an Indian group (other than an Indian  
7 tribe, organized band, pueblo, community, or  
8 Alaska native entity described in subparagraph  
9 (A)), that, before the date of enactment of this  
10 Act, in accordance with regulations promul-  
11 gated by the Secretary, petitioned for, and was  
12 denied or refused, acknowledgment based on  
13 the merits of the petition (except that nothing  
14 in this subparagraph excludes any group that  
15 Congress has identified as an Indian group but  
16 has not identified as an Indian tribe).

17 (D) Any Indian group the relationship of  
18 which with the Federal Government was ex-  
19 pressly terminated by an Act of Congress.

20 (e) NOTICE OF RECEIPT OF A PETITION; SCHED-  
21 ULE.—

22 (1) PUBLICATION.—

23 (A) IN GENERAL.—Not later than 30 days  
24 after the date on which the Assistant Secretary  
25 receives a documented petition under subsection

1 (b), the Assistant Secretary shall publish in the  
2 Federal Register a notice of receipt of the peti-  
3 tion.

4 (B) INCLUSIONS.—The notice shall in-  
5 clude—

6 (i) the name and location of the peti-  
7 tioner;

8 (ii) such other information as the As-  
9 sistant Secretary determines will identify  
10 the petitioner;

11 (iii) the date of receipt of the petition;

12 (iv) information describing 1 or more  
13 locations at which a copy of the petition  
14 and related submissions may be examined  
15 by the public; and

16 (v) a description of the procedure by  
17 which an interested party may submit—

18 (I) evidence in support of or in  
19 opposition to the request of the peti-  
20 tioner for acknowledgment; or

21 (II) a request to be kept in-  
22 formed of all actions affecting the pe-  
23 tition.

24 (2) SCHEDULE.—Not later than 60 days after  
25 the date of publication of a notice under paragraph

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

3 (A) the submission of evidence and argu-  
4 ments relating to the petition; and

5 (B) the publication of proposed findings of  
6 the Assistant Secretary with respect to the peti-  
7 tion.

8 (d) REVIEW OF PETITIONS.—

9 (1) IN GENERAL.—On receipt of a documented  
10 petition, the Assistant Secretary, in accordance with  
11 the schedule established under subsection (c)(2),  
12 shall—

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

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

19 (2) CONTENT OF REVIEW.—The review con-  
20 ducted under paragraph (1) shall include consider-  
21 ation of—

22 (A) the petition;

23 (B) any supporting evidence; and

24 (C) any factual statements contained in  
25 the petition relating to other submissions, in-

1 including oral accounts of the history of the peti-  
2 tioner submitted by the petitioner.

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

6 (A) considered by the Assistant Secretary;  
7 and

8 (B) noted in any final determination re-  
9 garding a petition.

10 (4) OTHER RESEARCH.—In conducting a review  
11 under this subsection, the Assistant Secretary  
12 may—

13 (A) initiate other research for any purpose  
14 relating to—

15 (i) analysis of the petition; or

16 (ii) the acquisition of additional infor-  
17 mation concerning the status of the peti-  
18 tioner;

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

21 (C) consider evidence submitted by inter-  
22 ested parties, including oral accounts of the his-  
23 tory of the petitioner submitted by other Indian  
24 tribes.



1           (5) EXCEPTION FOR LACK OF CERTAIN EVIDENCE.—If the Assistant Secretary determines that,  
2           for any period of time, evidence necessary to carry  
3           out this subsection is lacking, the lack of evidence  
4           shall not be the basis for a determination of the Assistant Secretary not to acknowledge a petitioner if  
5           the Assistant Secretary determines that the lack of  
6           evidence may be attributed to—  
7

9                   (A) any applicable official act of the Federal Government or a State government; or  
10

11                   (B) any applicable unofficial act of an officer or agent of the Federal Government or a  
12                   State government.  
13

14           (e) FINAL DETERMINATION.—

15                   (1) IN GENERAL.—On review of all evidence  
16                   submitted under section 5 and this section and the  
17                   results of research conducted under section 5 and  
18                   this section by the Assistant Secretary (including  
19                   through the pilot project or the Board), and after  
20                   providing a petitioner an opportunity to respond to  
21                   proposed findings of the Assistant Secretary against  
22                   acknowledgment, the Assistant Secretary shall make  
23                   a final determination in writing whether the petitioner is entitled to acknowledgment.  
24

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

5           (3) **NOTIFICATION OF ACKNOWLEDGMENT.**—If  
6           the Assistant Secretary determines under paragraph  
7           (1) that a petitioner is entitled to acknowledgment,  
8           the Assistant Secretary shall—

9                   (A) acknowledge the petitioner;

10                   (B) notify the petitioner and any interested  
11           parties of the final determination to acknowl-  
12           edge the petitioner;

13                   (C) provide to the petitioner and any inter-  
14           ested parties a copy of the final determination;  
15           and

16                   (D) not later than 7 days after notifying  
17           the petitioner and any interested parties under  
18           subparagraph (B), publish in the Federal Reg-  
19           ister a notice of the final determination of ac-  
20           knowledgment.

21           (f) **JUDICIAL REVIEW.**—

22           (1) **IN GENERAL.**—Not later than 60 days after  
23           the date of publication of the notice of a final deter-  
24           mination described in subsection (e)(3)(D), a peti-  
25           tioner may seek judicial review of the final deter-

1 mination by the United States District Court for the  
2 District of Columbia.

3 (2) STATEMENT OF INTENT.—It is the intent of  
4 Congress that, in accordance with Federal law relat-  
5 ing to interpretations of treaties and Acts of Con-  
6 gress affecting the rights, powers, privileges, and im-  
7 munities of Indian tribes, any ambiguity in this Act  
8 be liberally construed in favor of an Indian group or  
9 Indian tribe.

10 (g) AUTHORIZATION OF APPROPRIATIONS.—There is  
11 authorized to be appropriated to carry out this section  
12 \$5,000,000 for each of fiscal years 2004 through 2013.

13 **SEC. 5. DOCUMENTED PETITIONS.**

14 (a) FACTORS FOR CONSIDERATION.—A petition for  
15 acknowledgment submitted by an Indian group shall be  
16 in any readable form that—

17 (1) clearly indicates that the petition is a docu-  
18 mented petition requesting acknowledgment of the  
19 Indian group; and

20 (2) contains detailed, specific evidence as de-  
21 scribed in subsections (b) through (g).

22 (b) STATEMENT OF FACTS RELATING TO IDEN-  
23 TITY.—

24 (1) IN GENERAL.—A petition described in sub-  
25 section (a) shall contain a statement of facts and an

1 analysis of those facts establishing that the peti-  
2 tioner has been identified as an Indian group in the  
3 United States on a substantially continuous basis.

4 (2) PREVIOUS DENIALS OF STATUS.—The As-  
5 sistant Secretary shall not consider any evidence  
6 that the status of the petitioner as an Indian group  
7 has previously been denied to be conclusive evidence  
8 that the factor described in paragraph (1) has not  
9 been met.

10 (3) EVIDENCE RELATING TO IDENTITY.—In de-  
11 termining the Indian identity of a group, the Assist-  
12 ant Secretary may use as evidence 1 or more of the  
13 following:

14 (A) An identification of the petitioner as  
15 an Indian entity by any department, agency, or  
16 instrumentality of the Federal Government.

17 (B) A relationship between the petitioner  
18 and any State government, based on an identi-  
19 fication of the petitioner by the State as an In-  
20 dian entity.

21 (C) Any dealings of the petitioner with a  
22 county or political subdivision of a State in a  
23 relationship based on an identification of the  
24 petitioner as an Indian group.

1 (D) An identification of the petitioner as  
2 an Indian group by records in a private or pub-  
3 lic archive, courthouse, church, or school.

4 (E) An identification of the petitioner as  
5 an Indian group by an anthropologist, histo-  
6 rian, or other scholar.

7 (F) An identification of the petitioner as  
8 an Indian group in a newspaper, book, or simi-  
9 lar medium.

10 (G) An identification of the petitioner as  
11 an Indian group by an Indian tribe or by a na-  
12 tional, regional, or State Indian organization.

13 (H) An identification of the petitioner as  
14 an Indian group by a foreign government or an  
15 international organization.

16 (I) Such other evidence of identification as  
17 may be provided by a person or entity other  
18 than the petitioner or a member of the member-  
19 ship of the petitioner.

20 (c) STATEMENT OF FACTS RELATING TO EVIDENCE  
21 OF COMMUNITY.—

22 (1) IN GENERAL.—A petition described in sub-  
23 section (a) shall include a statement of facts and an  
24 analysis of those facts establishing that a predomi-  
25 nant portion of the membership of the petitioner—

1 (A) comprises a community distinct from  
2 the communities surrounding that community;  
3 and

4 (B) has existed as a community through-  
5 out the historical period.

6 (2) EVIDENCE RELATING TO COMMUNITY.—In  
7 determining whether the membership of the peti-  
8 tioner meets the requirements of paragraph (1), the  
9 Assistant Secretary may use as evidence 1 or more  
10 of the following:

11 (A) Significant rates of marriage within  
12 the membership of the petitioner, or, as may be  
13 culturally required, patterned out-marriages  
14 with other Indian populations.

15 (B) Significant social relationships con-  
16 necting individual members of the petitioner.

17 (C) Significant rates of informal social  
18 interaction that exist broadly among the mem-  
19 bers of the petitioner.

20 (D) A significant degree of shared or coop-  
21 erative labor or other economic activity among  
22 the membership of the petitioner.

23 (E) Evidence of strong patterns of dis-  
24 crimination or other social distinctions against  
25 members of the petitioner by nonmembers.

1 (F) Shared sacred or secular ritual activity  
2 encompassing a majority of members of the pe-  
3 titioner.

4 (G) Cultural patterns that—

5 (i) are shared among a significant  
6 portion of the members of the petitioner;

7 (ii) are different from the cultural  
8 patterns of the non-Indian populations  
9 with whom the membership of the peti-  
10 tioner interacts;

11 (iii) function as more than a symbolic  
12 identification of the petitioner as Indian;  
13 and

14 (iv) may include language, kinship, or  
15 religious organizations, or religious beliefs  
16 and practices.

17 (H) The persistence of a named, collective  
18 Indian identity during a continuous period of at  
19 least 50 years, notwithstanding any change in  
20 name.

21 (I) A demonstration of historical political  
22 influence or authority of the petitioner.

23 (J) A demonstration that not less than 50  
24 percent of the members of the petitioner exhibit

1 collateral kinship ties through generations to  
2 the third degree.

3 (3) CRITERIA FOR SUFFICIENT EVIDENCE.—

4 The Assistant Secretary shall consider a petitioner  
5 to have provided sufficient evidence of community  
6 under this subparagraph if the petitioner has pro-  
7 vided to the Assistant Secretary evidence dem-  
8 onstrating that, throughout the historical period—

9 (A)(i) more than 50 percent of the mem-  
10 bers of the petitioner reside in a particular geo-  
11 graphical area exclusively, or almost exclusively,  
12 composed of members of the group; and

13 (ii) the balance of the membership main-  
14 tains consistent social interaction with other  
15 members of the petitioner;

16 (B) not less than  $\frac{1}{3}$  of the marriages of  
17 the petitioner are between members of the peti-  
18 tioner;

19 (C) not less than 50 percent of the mem-  
20 bers of the petitioner maintain distinct cultural  
21 patterns, including language, kinship, and reli-  
22 gious organizations, or religious beliefs or prac-  
23 tices;

24 (D) distinct community social institutions  
25 (such as kinship organizations, formal or infor-



1 mal economic cooperation, and religious organi-  
2 zations) encompass at least 50 percent of the  
3 members of the petitioner; or

4 (E) the petitioner has met the requirement  
5 under subsection (d)(1) using evidence de-  
6 scribed in subsection (d)(2).

7 (d) STATEMENT OF FACTS RELATING TO AUTONO-  
8 MOUS NATURE OF PETITIONER.—

9 (1) IN GENERAL.—A petition described in sub-  
10 section (a) shall include a statement of facts and an  
11 analysis of those facts establishing that the peti-  
12 tioner has maintained political influence or authority  
13 over members of the petitioner throughout the his-  
14 torical period.

15 (2) EVIDENCE RELATING TO AUTONOMOUS NA-  
16 TURE.—In determining whether a petitioner is an  
17 autonomous entity under paragraph (1), the Assist-  
18 ant Secretary may use as evidence 1 or more of the  
19 following:

20 (A) A demonstration that the petitioner is  
21 capable of mobilizing significant numbers of  
22 members and significant member resource for  
23 purposes relating to the petitioner.

24 (B) Evidence that most of the members of  
25 the petitioner consider actions taken by leaders

1 or governing bodies of the petitioner to be of  
2 personal importance.

3 (C) Evidence that there is widespread  
4 knowledge, communication, and involvement in  
5 political processes of the petitioner by a major-  
6 ity of the members of the petitioner.

7 (D) Evidence that the petitioner meets the  
8 requirement of subsection (c)(1) at more than  
9 a minimal level.

10 (E) A demonstration by the petitioner that  
11 there are conflicts within the membership that  
12 demonstrate controversy over valued goals,  
13 properties, policies, processes, or decisions of  
14 the petitioner.

15 (F) A demonstration or description by the  
16 petitioner of—

17 (i) a continuous line of leaders of the  
18 petitioner; and

19 (ii) the means by which a majority of  
20 the members of the petitioner selected, or  
21 approved the selection of, those leaders.

22 (3) EVIDENCE OF EXERCISE OF POLITICAL IN-  
23 FLUENCE OR AUTHORITY.—The Assistant Secretary  
24 shall consider a petitioner to have provided sufficient  
25 evidence to demonstrate the exercise of political in-

1 fluence or authority if the petitioner demonstrates  
2 that decisions by leaders of the petitioner (or deci-  
3 sions made through another decisionmaking process)  
4 have been made throughout the historical period  
5 with respect to—

6 (A) the allocation of group resources such  
7 as land, residence rights, or similar resources  
8 on a consistent basis;

9 (B) the settlement on a regular basis, by  
10 mediation or other means, of disputes between  
11 members or subgroups of members of the peti-  
12 tioner (such as clans or lineages);

13 (C) the exertion of strong influence on the  
14 behavior of individual members of the peti-  
15 tioner, such as the establishment or mainte-  
16 nance of norms and the enforcement of sanc-  
17 tions to direct or control behavior; or

18 (D) the organization or influencing of eco-  
19 nomic subsistence activities among the members  
20 of the petitioner, including shared or coopera-  
21 tive labor.

22 (e) GOVERNING DOCUMENT.—

23 (1) IN GENERAL.—A petition described in sub-  
24 section (a) shall include a copy of the governing doc-  
25 ument of the petitioner in effect as of the date of

1 submission of the petition that includes a description  
2 of the membership criteria of the petitioner.

3 (2) ALTERNATIVE STATEMENT.—If no written  
4 governing document described in paragraph (1) ex-  
5 ists, a petitioner shall include with a petition de-  
6 scribed in subsection (a) a detailed statement that  
7 describes—

8 (A) the membership criteria of the peti-  
9 tioner; and

10 (B) the governing procedures of the peti-  
11 tioner in effect as of the date of submission of  
12 the petition.

13 (f) LIST OF MEMBERS.—

14 (1) IN GENERAL.—A petition described in sub-  
15 section (a) shall include—

16 (A) a list of all members of the petitioner  
17 as of the date of submission of the petition that  
18 includes for each member—

19 (i) a full name (and maiden name, if  
20 any);

21 (ii) a date and place of birth; and

22 (iii) a current residential address;

23 (B) a copy of each available former list of  
24 members of the petitioner; and

1 (C) a statement describing the methods  
2 used in preparing those lists.

3 (2) REQUIREMENTS FOR MEMBERSHIP.—In de-  
4 termining whether to consider the members of a pe-  
5 titioner to be members of an Indian group for the  
6 purpose of a petition described in subparagraph (A),  
7 the Assistant Secretary shall require that the mem-  
8 bership consist of descendants of—

9 (A) an Indian group that existed during  
10 the historical period; or

11 (B) 1 or more Indian groups that, at any  
12 time during the historical period, combined and  
13 functioned as a single autonomous entity.

14 (3) EVIDENCE OF TRIBAL MEMBERSHIP.—In  
15 making the determination under paragraph (2), the  
16 Assistant Secretary may use as evidence 1 or more  
17 of the following:

18 (A) Tribal rolls prepared by the Secretary  
19 for the petitioner for the purpose of distributing  
20 claims money or providing allotments, or for  
21 other any other purpose.

22 (B) Any Federal, State, or other official  
23 record or evidence identifying members of the  
24 petitioner as of the date of submission of the  
25 petition, or ancestors of those members, as

1 being descendants of an Indian group described  
2 in subparagraph (A) or (B) of paragraph (2).

3 (C) Any church, school, or other similar  
4 enrollment record identifying members of the  
5 petitioner as of the date of submission of the  
6 petition, or ancestors of those members, as  
7 being descendants of an Indian group described  
8 in subparagraph (A) or (B) of paragraph (2).

9 (D) An affidavit of recognition by tribal el-  
10 ders, tribal leaders, or a tribal governing body  
11 identifying members of the petitioner as of the  
12 date of submission of the petition, or ancestors  
13 of those members, as being descendants of an  
14 Indian group described in subparagraph (A) or  
15 (B) of paragraph (2).

16 (E) Any other record or evidence based on  
17 firsthand experience of a historian, anthropolo-  
18 gist, or genealogist with established expertise on  
19 the petitioner or Indian entities in general,  
20 identifying members of the petitioner as of the  
21 date of submission of the petition, or ancestors  
22 of those members, as being descendants of an  
23 Indian group described in subparagraph (A) or  
24 (B) of paragraph (2).

25 (g) EXCEPTIONS.—

1           (1) IN GENERAL.—An Indian group described  
2 in paragraph (2) shall be required to provide evi-  
3 dence for a petition for acknowledgment submitted  
4 under this section only with respect to the period—

5           (A) beginning on the date on which the  
6 Department first notifies the Indian group that  
7 the Indian group is not eligible for Federal  
8 services or programs because of a lack of status  
9 as an Indian tribe; and

10           (B) ending on the date of submission of  
11 the petition.

12           (2) INDIAN GROUP.—An Indian group referred  
13 to in this paragraph is an Indian group that dem-  
14 onstrates by a reasonable likelihood of the validity of  
15 the evidence that the Indian group was, or is a suc-  
16 cessor in interest to—

17           (A) a party to 1 or more treaties;

18           (B) a group acknowledged by any agency  
19 of the Federal Government as eligible to partici-  
20 pate in a project or activity under the Act of  
21 June 18, 1934 (commonly known as the “In-  
22 dian Reorganization Act”) (25 U.S.C. 461 et  
23 seq.);

24           (C) a group—

1 (i) for the benefit of which the United  
2 States took land into trust; or

3 (ii) that has been treated by the Fed-  
4 eral Government as having collective rights  
5 in tribal land or funds; or

6 (D) a group that has been designated as  
7 an Indian tribe by an Act of Congress or Exec-  
8 utive order.

9 **SEC. 6. ADDITIONAL RESOURCES.**

10 (a) INDEPENDENT REVIEW AND ADVISORY  
11 BOARD.—

12 (1) IN GENERAL.—The Assistant Secretary  
13 shall establish the Independent Review and Advisory  
14 Board—

15 (A) to assist the Assistant Secretary in ad-  
16 dressing unique evidentiary questions relating  
17 to the acknowledgment process;

18 (B) to provide secondary peer review of ac-  
19 knowledgment determinations by the Assistant  
20 Secretary; and

21 (C) to enhance the credibility of the ac-  
22 knowledgment process as perceived by Con-  
23 gress, petitioners, interested parties, and the  
24 public.

25 (2) NUMBER AND QUALIFICATIONS.—



1 (A) IN GENERAL.—The Board shall be  
2 composed of 9 individuals appointed by the As-  
3 sistant Secretary, of whom—

4 (i) at least 3 individuals shall have a  
5 doctoral degree in anthropology;

6 (ii) at least 3 individuals shall have a  
7 doctoral degree in genealogy;

8 (iii) at least 2 individuals shall have a  
9 doctor of jurisprudence degree; and

10 (iv) at least 1 individual shall be  
11 qualified as a historian, as determined by  
12 the Assistant Secretary.

13 (B) PREFERENCE.—In making appoint-  
14 ments under subparagraph (A), the Assistant  
15 Secretary shall give preference to individuals  
16 having an academic background or professional  
17 experience in Federal Indian policy or American  
18 Indian history.

19 (C) CONFLICTS OF INTEREST.—No mem-  
20 ber of the Board shall, at the time of appoint-  
21 ment or during the 1-year period preceding the  
22 date of appointment, have represented, or con-  
23 ducted research for, any Indian group or inter-  
24 ested party with respect to a petition for ac-

1           knowledge filed, or intended to be filed,  
2           with the Assistant Secretary.

3           (D) STATUS AS EMPLOYEES.—A member  
4           of the Board shall not be considered to be an  
5           employee of the Department.

6           (3) TENURE; REIMBURSEMENT.—

7           (A) TENURE.—A member of the Board—

8                   (i) shall be appointed for an initial  
9                   term of 2 years; and

10                   (ii) may be reappointed for such addi-  
11                   tional terms as the Assistant Secretary de-  
12                   termines to be appropriate.

13           (B) REIMBURSEMENT.—A member of the  
14           Board shall be reimbursed for reasonable ex-  
15           penses incurred in assisting the Assistant Sec-  
16           retary under this section, in accordance with  
17           Department policy regarding reimbursement of  
18           expenses for individuals serving as advisory  
19           board or committee members.

20           (4) REVIEW AND ADVICE.—

21           (A) BEFORE ISSUANCE OF PROPOSED  
22           FINDINGS.—At any time before the date of  
23           issuance of proposed findings under section  
24           4(d)(1)(B) with respect to a petition for ac-  
25           knowledge under review by the Assistant

1 Secretary, the Assistant Secretary may request  
2 an opinion from the Board with respect to the  
3 petition if the Assistant Secretary determines  
4 that—

5 (i) the petition contains 1 or more evi-  
6 dentiary submissions that raise unique  
7 issues or matters of first impression relat-  
8 ing to 1 or more requirements described in  
9 section 5; or

10 (ii) the Assistant Secretary is unable  
11 to determine the sufficiency of evidence for  
12 1 or more of those requirements.

13 (B) AFTER ISSUANCE OF PROPOSED FIND-  
14 INGS.—After issuance by the Assistant Sec-  
15 retary of proposed findings under section  
16 4(d)(1)(B), but before issuance of the final de-  
17 termination, with respect to a petition, the As-  
18 sistant Secretary shall request a review by the  
19 Board of the proposed findings.

20 (C) LEVEL OF REVIEW.—

21 (i) IN GENERAL.—The Board shall  
22 conduct a review requested under subpara-  
23 graph (B) to determine whether an evi-  
24 dentiary question or deficiency exists with

1 respect to 1 or more requirements relating  
2 to a petition.

3 (ii) LIMITATION BY ASSISTANT SEC-  
4 RETARY OF SCOPE OF REVIEW.—In re-  
5 questing a review under subparagraph (B),  
6 the Assistant Secretary may restrict the  
7 scope of the review to address fewer than  
8 all matters with respect to a petition.

9 (iii) LIMITATION BY BOARD OF SCOPE  
10 OF REVIEW.—In carrying out a review  
11 under subparagraph (B), the Board, in ac-  
12 cordance with all applicable professional  
13 standards of the members of the Board,  
14 may—

15 (I) confine the review to—

16 (aa) the evidence submitted;

17 or

18 (bb) the proposed findings  
19 issued under section 4(d)(1)(B);

20 (II) extend the review to the evi-  
21 dence submitted by petitioners and in-  
22 terested parties;

23 (III) request that the Assistant  
24 Secretary request additional submis-

1                   sions by petitioners or interested par-  
2                   ties; and

3                   (IV) recommend that the Assist-  
4                   ant Secretary hold a formal or infor-  
5                   mal administrative proceeding at  
6                   which the Board may present ques-  
7                   tions to, and seek additional informa-  
8                   tion from, petitioners and interested  
9                   parties.

10           (b) ASSISTANCE TO PETITIONERS AND INTERESTED  
11 PARTIES.—

12           (1) GRANTS.—

13           (A) IN GENERAL.—Subject to paragraph  
14           (2), the Assistant Secretary may provide to a  
15           petitioner or interested party a grant to offset  
16           costs incurred in submitting—

17                   (i) a petition (including related evi-  
18                   dence or documents); or

19                   (ii) a legal argument in support of or  
20                   in opposition to a petition.

21           (B) LIMITATION.—In making grants under  
22           subparagraph (A), the Assistant Secretary shall  
23           ensure that not less than 50 percent of the  
24           amounts made available for the grants are re-  
25           served for petitioners.

1           (2) ELIGIBILITY.—The Assistant Secretary  
2 shall provide a grant under paragraph (1) based on  
3 a demonstration of need of a petitioner or an inter-  
4 ested party that is evaluated using such objective  
5 criteria as the Secretary may promulgate by regula-  
6 tion.

7           (3) OTHER ASSISTANCE.—A grant made to an  
8 Indian group under paragraph (1) shall be in addi-  
9 tion to any other assistance received by the Indian  
10 group under any other provision of law.

11           (4) AUTHORIZATION OF APPROPRIATIONS.—  
12 There are authorized to be appropriated to carry out  
13 this subsection such sums as are necessary for each  
14 of fiscal years 2004 through 2014.

15           (c) FEDERAL ACKNOWLEDGMENT RESEARCH PILOT  
16 PROJECT.—

17           (1) ESTABLISHMENT.—The Assistant Secretary  
18 shall establish a Federal acknowledgment research  
19 pilot project to make available additional research  
20 resources for researching, reviewing, and analyzing  
21 petitions for acknowledgment received by the Assist-  
22 ant Secretary.

23           (2) COMPOSITION.—

24           (A) IN GENERAL.—The Assistant Sec-  
25 retary, in consultation with the Secretary of the

1           Smithsonian Institution, shall identify a variety  
2           of independent research institutions that have  
3           the academic and research facilities capable of  
4           assisting in the review of petitions described in  
5           paragraph (1).

6                   (B) PROPOSALS.—The Assistant Secretary  
7           shall—

8                           (i) invite each institution identified  
9                           under subparagraph (A) to submit to the  
10                          Assistant Secretary a proposal for partici-  
11                          pation in the pilot project; and

12                           (ii) approve not more than 3 pro-  
13                          posals submitted under clause (i).

14                   (C) GRANTS.—The Assistant Secretary  
15           may provide a grant to each institution the pro-  
16           posal of which is approved under subparagraph  
17           (B)(ii) to assist the institution in participating  
18           in the pilot project.

19                   (3) DUTIES.—Each institution approved to par-  
20           ticipate in the pilot project shall assemble and pro-  
21           vide a research team that, under the direction of the  
22           Assistant Secretary, shall—

23                           (A) review submissions described in para-  
24                          graph (1); and

1           (B) submit to the Assistant Secretary con-  
2           clusions and recommendations of the research  
3           team that are based on the submissions re-  
4           viewed.

5           (4) USE OF CONCLUSIONS.—The Assistant Sec-  
6           retary may take into consideration any conclusions  
7           and recommendations of a research team in making  
8           a determination of acknowledgment under this Act.

9           (5) REPORT.—Not later than 3 years after the  
10          date of enactment of this Act, the Assistant Sec-  
11          retary shall submit to Congress a report that de-  
12          scribes the effectiveness of the pilot project.

13          (6) AUTHORIZATION OF APPROPRIATIONS.—  
14          There is authorized to be appropriated to carry out  
15          this subsection \$3,000,000 for each of fiscal years  
16          2004 through 2006.

17 **SEC. 7. INAPPLICABILITY OF FOIA.**

18          (a) IN GENERAL.—Section 552 of title 5, United  
19          States Code (commonly known as the “Freedom of Infor-  
20          mation Act”), shall not apply to any action of the Assist-  
21          ant Secretary with respect to a petition for acknowledg-  
22          ment under this Act, and the Assistant Secretary shall  
23          have no obligation to provide all or any portion of a peti-  
24          tion, or to provide information regarding the contents of  
25          a petition, to any person or entity, until such time as—



1 (1) the petition has been fully documented; and

2 (2) the Assistant Secretary has published a no-  
3 tice in accordance with section 4(c)(1)(A).

4 (b) EXCEPTION.—The restriction under subsection  
5 (a) on the provision of information contained in or relating  
6 to a petition shall not apply to any formal or informal  
7 request made or subpoena issued by a law enforcement  
8 agency of the United States.

9 (c) ASSISTANCE FROM ATTORNEY GENERAL.—

10 (1) IN GENERAL.—The Secretary may request  
11 assistance from the Attorney General in responding  
12 to requests for information relating to a petition  
13 made in accordance with section 552 of title 5,  
14 United States Code.

15 (2) AUTHORIZATION OF APPROPRIATIONS.—  
16 There is authorized to be appropriated to the Attor-  
17 ney General to provide assistance requested under  
18 this subsection \$1,000,000 for each of fiscal years  
19 2004 through 2008.

20 **SEC. 8. EFFECT AND IMPLEMENTATION OF DECISIONS.**

21 (a) IN GENERAL.—The acknowledgment of any peti-  
22 tioner under this Act shall not reduce or eliminate—

23 (1) the right of any other Indian tribe to govern  
24 the reservation of that other tribe (as the reservation

1 exists before, on, or after the date of acknowledg-  
2 ment of the petitioner);

3 (2) any property right held in trust or recog-  
4 nized by the United States for the other Indian tribe  
5 (as that property right existed before the date of ac-  
6 knowledgment of the petitioner); or

7 (3) any previously or independently existing  
8 claim by a petitioner to any property right described  
9 in paragraph (2) held in trust by the United States  
10 for the other Indian tribe before the date of ac-  
11 knowledgment of the petitioner.

12 (b) ELIGIBILITY FOR SERVICES AND BENEFITS.—

13 (1) IN GENERAL.—Subject to paragraph (2), on  
14 acknowledgment by the Assistant Secretary of a pe-  
15 titioner under this Act, the newly-acknowledged In-  
16 dian tribe shall—

17 (A) have a government-to-government rela-  
18 tionship with the United States;

19 (B) be eligible for the programs and serv-  
20 ices provided by the United States to members  
21 of other Indian tribes because of the status of  
22 those members as Indians; and

23 (C) have the responsibilities, obligations,  
24 privileges, and immunities of those other Indian  
25 tribes.

1 (2) PROGRAMS OF THE BUREAU.—

2 (A) IN GENERAL.—The acknowledgment  
3 by the Assistant Secretary of an Indian group  
4 under this Act shall not establish any imme-  
5 diate entitlement to participation in any pro-  
6 gram of the Bureau in existence as of the date  
7 of acknowledgment.

8 (B) AVAILABILITY OF PROGRAMS.—

9 (i) IN GENERAL.—Participation in a  
10 program described in subparagraph (A)  
11 shall be available to an Indian tribe de-  
12 scribed in paragraph (1) at such time as  
13 funds are made available for that purpose.

14 (ii) REQUESTS FOR APPROPRIA-  
15 TIONS.—The Secretary and the Secretary  
16 of Health and Human Services shall sub-  
17 mit budget requests for funding for in-  
18 creased participation in a program de-  
19 scribed in subparagraph (A) in accordance  
20 with subsection (c).

21 (c) NEEDS DETERMINATION AND BUDGET RE-  
22 QUEST.—

23 (1) IN GENERAL.—Not later than 180 days  
24 after a petitioner is acknowledged under this Act,  
25 the appropriate officials of the Bureau and the In-

1       dian Health Service of the Department of Health  
2       and Human Services shall consult with the newly-ac-  
3       knowledged Indian tribe concerning, develop in co-  
4       operation with the newly-acknowledged Indian tribe,  
5       and forward to the Secretary or the Secretary of  
6       Health and Human Services, as appropriate—

7               (A) a determination of the needs of the In-  
8       dian tribe; and

9               (B) a recommended budget required to  
10      serve the Indian tribe.

11           (2) SUBMISSION OF BUDGET REQUEST.—For  
12      each fiscal year, the Secretary or the Secretary of  
13      Health and Human Services, as appropriate, shall  
14      submit to the President a recommended budget for  
15      programs and services provided by the United States  
16      to members of Indian tribes because of the status of  
17      those members as Indians (including funding rec-  
18      ommendations for newly-acknowledged Indian tribes  
19      based on the information received under paragraph  
20      (1)) for inclusion in the annual budget submitted by  
21      the President to Congress in accordance with section  
22      1108 of title 31, United States Code.

23 **SEC. 9. REGULATIONS.**

24       The Secretary may—

1           (1) promulgate such regulations as are nec-  
2           essary to carry out this Act; and

3           (2) maintain in effect all regulations contained  
4           in part 83 of title 25, Code of Federal Regulations  
5           (or any successor regulations), that are not incon-  
6           sistent with this Act.

○