

Subcommittee on Indian, Insular and Alaska Native Affairs
Doug LaMalfa, Chairman
Hearing Memorandum

September 22, 2017

To: All Subcommittee on Indian, Insular and Alaska Native Affairs Members

From: Majority Committee Staff,
Subcommittee Indian, Insular and Alaska Native Affairs (x6-9725)

Hearing: Legislative hearing on **H.R. 3650 (Rep. Robert Pittenger)**, To provide for the recognition of the Lumbee Tribe of North Carolina, and for other purposes.
September 26, 2017, 2:00pm 1334 Longworth HOB

H.R. 3650 (Rep. Robert Pittenger), the “*Lumbee Recognition Act*”

Summary of the bill

H.R. 3650 would amend the Act of June 7, 1956¹, the *Lumbee Act*, to provide Federal recognition to the Lumbee tribe of North Carolina (the “Lumbees”) and extend the benefits, privileges and immunities generally accorded to Federally-recognized Indian tribes. The State of North Carolina has recognized Lumbees under various names and for varying purposes since approximately 1885. Unlike many other Indian tribes, the Lumbees cannot trace their lineage back to any specific tribal group that had a treaty relationship with the United States.²

Witnesses

The Honorable Rep. Robert Pittenger (NC-9)

Mr. John Tahsuda III

Principal Deputy Assistant Secretary—Indian Affairs
U.S. Department of the Interior
Washington, D.C.

Honorable Harvey Godwin

Chairman
Lumbee Tribe of North Carolina
Pembroke, North Carolina

¹ 70 Stat. 254.

² The Lumbee Indians have been recognized by the State of North Carolina as Croatans, Indians of Robeson County, Cherokee Indians of Robeson County, and Lumbee Indians. State recognition of a tribe, however, is a largely symbolic gesture because Article I, Section 8, Clause 3 of the Constitution provides Congress power to regulate Indian affairs, a power the Supreme Court has characterized as plenary and exclusive.

Background

H.R. 3650 extends federal recognition to the Lumbee Tribe of North Carolina, and removes a statutory bar in effect since 1956 that has prevented the tribe being federally recognized through any administrative procedure. Under the legislation, the Lumbees would be eligible for services, benefits, and immunities available to other federally recognized Indian tribes, except that the tribe would not be permitted to conduct gaming regulated under the Indian Gaming Regulatory Act of 1988.³

The group, claiming about 55,000 members, is located in Robeson County and adjoining counties in North Carolina. Its peculiar legal history dates to the late 19th century when the group was first identified by the state as the Croatan Indians of Robeson County. From that time until present, there have been numerous bills introduced and considered in Congress to extend federal recognition to the Lumbees, (including in the last seven Congresses in a row). The most recent House action on a bill to extend recognition to the Lumbee Tribe was in the 111th Congress, when H.R. 31 passed 240-179. The bill did not advance in the Senate.

There has been much debate over merits of recognizing the Lumbees, with questions focusing on whether or not they possess the same history and characteristics as other groups that met the (sometimes inconsistent) standards for recognizing tribes. Much of the debate stems from an ambiguous law known as the Act of June 7, 1956 (70 Stat. 254). The 1956 Act designates certain Indians as “Lumbee Indians of North Carolina” and declares that they shall enjoy all rights as citizens of the State of North Carolina and the United States. At the same time, the Act makes them ineligible for services available to recognized tribes and makes Indian statutes inapplicable to them. According to a 1989 legal opinion by the Solicitor of the Interior Department, the 1956 Act effectively denies the Lumbee from eligibility to petition for recognition under the Federal Acknowledgment Process.⁴

In 1987, the Lumbee tribal group queried the DOI whether the tribe would be eligible to go through the administrative process. After the Lumbees filed a “Letter of Intent to Petition” in 1980 with the Department of the Interior (DOI), the DOI Solicitor’s office informed them that the legislative language of the 1956 *Lumbee Act* precluded administrative action on the petition. Since that time the Lumbees have sought recognition through Federal legislation, arguing that going through the administrative process would delay their Federal recognition by at least another ten years.⁵

If H.R. 3650 is enacted, the Lumbee Tribe would be recognized as possessing the same powers, privileges, immunities, and eligibility for federal services as other federally recognized tribes. The bill, however, would prohibit the tribe from conducting gaming. The bill designates the service area of the tribe and declares that its reservation shall be lands the Secretary acquires

³ 25 U.S.C. §2701 et seq.

⁴ The 1989 legal opinion has been withdrawn and replaced by a December 22, 2016 Solicitor’s Opinion (M-37040) written by President Obama’s Interior Solicitor, in which the Solicitor effectively nullifies the 1956 act of Congress. The Solicitor does not cite a source of authority for her to nullify an act of Congress.

⁵ In her Opinion of December 22, 2016 (M-37040), the Solicitor declared the Lumbees may pursue recognition under the BIA’s procedures for recognizing tribes, notwithstanding the 1956 act of Congress prohibiting the application of Indian statutes to the Lumbees.

in trust for the tribe in Robeson County. Criminal offenses and civil actions on lands owned by or held in trust for the Lumbee within North Carolina shall be under the jurisdiction of the State of North Carolina. However, the State may transfer some or all jurisdiction to the Secretary of the Interior pursuant to an agreement between the State and the tribe. Such transfer does not become effective until two years after the date of the agreement.

Major Provisions of the Bill

If H.R. 3650 is enacted, the Lumbee Tribe would be given many of the same powers and benefits as other federally recognized tribes. The bill designates the service area of the tribe and declares that its reservation shall be lands the Secretary acquires in trust for the tribe in Robeson County. Criminal offenses and civil actions on lands owned by or held in trust for the Lumbee within North Carolina shall be under the jurisdiction of the State of North Carolina. However, the State may transfer some or all of such jurisdiction to the Secretary of the Interior pursuant to an agreement between the State and the tribe. Such transfer does not become effective until two years after the date of the agreement.

Cost

The Congressional Budget Office estimated in 2009 that a substantially similar bill to that of H.R. 3650 would cost approximately \$786 million over a four-year period⁶, assuming a tribal enrollment of 54,000 and further assuming the tribe would receive services and benefits at a level similar to other currently federally recognized tribes, and that necessary funds would be appropriated. Of the \$786 million, approximately \$648 million would be for services through the Indian Health Service.

Ramseyer (effect on current law):

Showing Current Law as Amended by H.R. 3650

[text to be added highlighted in yellow; text to be deleted bracketed and highlighted in blue]

The Act of June 7, 1956 (70 Stat. 254, chapter 375)

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

SECTION 1. FINDINGS.

Congress finds that--

(1) [Whereas] many Indians now living in Robeson and adjoining counties are descendants of that once large and prosperous tribe which occupied the lands along the Lumbee River at the time of the earliest white settlements in that section; [and]

⁶ <https://www.cbo.gov/sites/default/files/111th-congress-2009-2010/costestimate/hr3130.pdf>.

(2) [Whereas] at the time of their first contacts with the colonists, these Indians were a well-established and distinctive people living in European-type houses in settled towns and communities, owning slaves and livestock, tilling the soil, and practicing many of the arts and crafts of European civilization; [and]

(3) [Whereas] by reason of tribal legend, coupled with a distinctive appearance and manner of speech and the frequent recurrence among them of family names such as Oxendine, Locklear, Chavis, Drinkwater, Bullard, Lowery, Sampson, and others, also found on the roster of the earliest English settlements, these Indians may, with considerable show of reason, trace their origin to an admixture of colonial blood with certain coastal tribes of Indians; and

(4) [Whereas] these people are naturally and understandably proud of their heritage, and desirous of establishing their social status and preserving their racial history. [Now, therefore, Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,]

SEC. 2. DEFINITIONS.

In this Act:

(1) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(2) TRIBE.—The term “Tribe” means the Lumbee Tribe of North Carolina or the Lumbee Indians of North Carolina.

SEC. 3. DESIGNATION OF LUMBEE INDIANS.

[That the Indians] The Indians now residing in Robeson and adjoining counties of North Carolina, originally found by the first white settlers on the Lumbee River in Robeson County, and claiming joint descent from remnants of early American colonists and certain tribes of Indians originally inhabiting the coastal regions of North Carolina, shall, from and after the ratification of this Act, be known and designated as Lumbee Indians of North Carolina and shall continue to enjoy all rights, privileges, and immunities enjoyed by them as citizens of the State of North Carolina and of the United States as they enjoyed before the enactment of this Act, and shall continue to be subject to all the obligations and duties of such citizens under the laws of the State of North Carolina and the United States. [Nothing in this Act shall make such Indians eligible for any services performed by the United States for Indians because of their status as Indians, and none of the statutes of the United States which affect Indians because of their status as Indians shall be applicable to the Lumbee Indians.]

SEC. 4. FEDERAL RECOGNITION.

(a) In General- Federal recognition is extended to the Tribe (as designated as petitioner number 65 by the Office of Federal Acknowledgment).

(b) Applicability of Laws- All laws and regulations of the United States of general application to Indians and Indian tribes shall apply to the Tribe and its members.

(c) Petition for Acknowledgment- Notwithstanding section 3, any group of Indians in Robeson and adjoining counties, North Carolina, whose members are not enrolled in the Tribe (as determined under section 5(d)) may petition under

part 83 of title 25 of the Code of Federal Regulations for acknowledgment of tribal existence.

SEC. 5. ELIGIBILITY FOR FEDERAL SERVICES.

(a) In General- The Tribe and its members shall be eligible for all services and benefits provided by the Federal Government to federally recognized Indian tribes.

(b) Service Area- For the purpose of the delivery of Federal services and benefits described in subsection (a), those members of the Tribe residing in Robeson, Cumberland, Hoke, and Scotland counties in North Carolina, shall be deemed to be residing on or near an Indian reservation.

(c) Determination of Needs- On verification by the Secretary of a tribal roll under subsection (d), the Secretary and the Secretary of Health and Human Services shall--

- (1) develop, in consultation with the Tribe, a determination of needs to provide the services for which members of the Tribe are eligible; and
- (2) after the tribal roll is verified, each submit to Congress a written statement of those needs.

(d) Tribal Roll-

(1) IN GENERAL- For purpose of the delivery of Federal services and benefits described in subsection (a), the tribal roll in effect on the date of enactment of this section shall, subject to verification by the Secretary, define the service population of the Tribe.

(2) VERIFICATION LIMITATION AND DEADLINE- The verification by the Secretary under paragraph (1) shall--

(A) be limited to confirming compliance with the membership criteria set out in the constitution of the Tribe adopted on November 16, 2001; and

(B) be completed not later than 2 years after the date of enactment of this section.

SEC. 6. AUTHORIZATION TO TAKE LAND INTO TRUST.

(a) In General- The Secretary may take into trust, for the benefit of the Tribe, land of the Tribe.

(b) Treatment of Certain Land- An application to take into trust land located within Robeson County, North Carolina, under this section shall be treated by the Secretary as an 'on reservation' trust acquisition under part 151 of title 25, Code of Federal Regulations (or a successor regulation).

(c) Gaming Prohibition- The Tribe may not conduct gaming activities as a matter of claimed inherent authority or under the authority of any Federal law,

including the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) or under any regulations thereunder promulgated by the Secretary or the National Indian Gaming Commission.

SEC. 7. JURISDICTION OF STATE OF NORTH CAROLINA.

(a) In General- With respect to land located within the State of North Carolina that is owned by, or held in trust by the United States for the benefit of, the Tribe, or any dependent Indian community of the Tribe, the State of North Carolina shall exercise jurisdiction over--

- (1) all criminal offenses that are committed; and
- (2) all civil actions that arise.

(b) Transfer of Jurisdiction-

(1) IN GENERAL- Subject to paragraph (2), the Secretary may accept on behalf of the United States, after consulting with the Attorney General of the United States, any transfer by the State of North Carolina to the United States of any portion of the jurisdiction of the State of North Carolina described in subsection (a) pursuant to an agreement between the Tribe and the State of North Carolina.

(2) RESTRICTION- A transfer of jurisdiction described in paragraph (1) may not take effect until 2 years after the effective date of the agreement described in that paragraph.

(c) Effect- Nothing in this section affects the application of section 109 of the Indian Child Welfare Act of 1978 (25 U.S.C. 1919).

[SEC. 2. All laws and parts of laws in conflict with this Act are hereby repealed.]