

# Committee on Natural Resources

Rob Bishop Chairman  
Markup Memorandum

July 9, 2018

To: All Natural Resources Committee Members

From: Majority Staff – Ken Degenfelder (x6-9725)  
Subcommittee on Indian, Insular and Alaska Native Affairs

Mark-Up: **H.R. 3764 (Rep. Greg Gianforte)**, To extend the Federal recognition to the Little Shell Tribe of Chippewa Indians of Montana, and for other purposes.  
**July 11, 2018, at 10:15 AM; 1324 Longworth HOB**

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## ***H.R. 3764, Little Shell Tribe of Chippewa Indians Restoration Act of 2017***

### **Summary of the Bill**

H.R. 3764 was introduced by Rep. Greg Gianforte (R-MT) on September 13, 2017. This bill would extend federal recognition to the Little Shell Tribe of Chippewa Indians of Montana. With federal recognition, the tribe and its members would become eligible for all services and benefits provided by the federal government to federally recognized tribes, regardless of the existence of a reservation for the Tribe or the residence of any Tribal member on or near an Indian reservation. The Tribe, as a condition of receiving federal recognition, services and benefits, must submit to the Secretary of the Interior a membership roll consisting of the name of each individual member of the Tribe and must maintain such membership roll. The Act directs the Secretary of the Interior to acquire, for the benefit of the Tribe, trust title of 200 acres of unidentified land within the Tribe's service area<sup>1</sup> to be used for a tribal land base.

### **Cosponsors**

None.

### **Background**

Under Article I, Section 3, Clause 3 of the Constitution, Congress has what the Supreme Court characterizes as plenary and exclusive authority over federal Indian affairs. Nonetheless, the Department of the Interior, without authorization from Congress, implemented its own rules for the recognition of tribes not previously recognized by Congress. These rules are codified in 25 C.F.R. Part 83, and administered by the Office of Federal Acknowledgment within the

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<sup>1</sup> Service Area of the tribe is defined in section 5 of H.R. 3764 as Blaine, Cascade, Glacier, and Hill Counties in the State of Montana.

Department of the Interior for the consideration of petitions submitted by groups seeking recognition as tribes within the meaning of federal law.

To establish a statutory framework for the recognition of tribes in accordance with Congress's plenary power over Indian affairs, Chairman Rob Bishop introduced H.R. 3744, the Tribal Recognition Act. H.R. 3744 was ordered favorably reported by the Natural Resources Committee on June 13, 2018. Under H.R. 3744, groups seeking federal recognition as tribes would submit their petitions and all supporting documentary evidence to the Department of the Interior. The Department would then process and review the petitions under specific standards and criteria largely the same as those which the Office of Acknowledgment used before the standards and criteria were relaxed by the Obama Administration. The Department would submit its completed review to the Committees on Natural Resources of the House and Indian Affairs of the Senate, with Congress making any final decision.

### *Little Shell Recognition*

H.R. 3764 would extend recognition to the Little Shell Tribe of Montana. The petitioner has long pursued federal recognition through the Department of the Interior's administrative process, sending an initial letter of intent to petition in 1978, the same year the Department established its process. In 2009, the Department declined to recognize the Little Shell as a tribe.<sup>2</sup> The Department explained that the petitioner failed to satisfy three of seven mandatory criteria necessary to be recognized under the Part 83 rules; the three criteria the group failed to satisfy are that the group:

- has been identified as an Indian entity on a substantially continuous basis at least since 1900;
- comprise a distinct community since historical times and maintain significant social relationships and interaction as part of a distinct community; and
- maintain political influence over a community of its members or over communities that combined into the petitioner.<sup>3</sup>

Prior to this final determination, in March of 2000, the Department issued a proposed finding that the Little Tribe did not meet four of the mandatory criteria. This proposed finding, made by career officials, was subsequently rejected by the Assistant Secretary—Indian Affairs, a politically appointed position. A subsequent investigation into this matter, along with allegations that career officials were pressured into revising their findings on several other petitions submitted by various other tribes, were the subject of a formal investigation by the Inspector General of the Department of the Interior. The Inspector General's final report uncovered

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<sup>2</sup> [https://www.bia.gov/sites/bia.gov/files/assets/as-ia/ofa/petition/031\\_litshl\\_MT/031\\_fd\\_fr.pdf](https://www.bia.gov/sites/bia.gov/files/assets/as-ia/ofa/petition/031_litshl_MT/031_fd_fr.pdf)

<sup>3</sup> [https://www.bia.gov/sites/bia.gov/files/assets/as-ia/ofa/petition/031\\_litshl\\_MT/031\\_fd\\_pr.pdf](https://www.bia.gov/sites/bia.gov/files/assets/as-ia/ofa/petition/031_litshl_MT/031_fd_pr.pdf)

significant misconduct by political appointees in the Clinton Administration, and the Secretary of the Interior appointed by the next President, George W. Bush, restored order to the process, resulting in a reconsideration of the Little Shell case. In 2009, as has been described, the Department issued its final determination.

A final, enforceable determination regarding the Little Shell's petition is pending the resolution of an appeal in the Interior Board of Indian Appeals. Despite the newly revised and relaxed recognition criteria issued in July 2015 by the Department of the Interior, the Little Shell Tribe has been pursuing legislative recognition to avoid additional increased costs and a continued lengthy consideration process in the Interior Department.

According to the Little Shell, the Tribe originally petitioned the federal Government for reorganization in the 1930s and 1940s under the Act of June 18, 1934.<sup>4</sup> At the time, the federal government concluded that Little Shell tribal members were eligible for and should be provided with trust land, thereby making the Tribe eligible for reorganization under the Indian Reorganization Act. However, due to a lack of federal appropriations during the Depression, the Bureau lacked adequate financial resources to purchase land for the Tribe, and the Little Shell people were thereby denied the opportunity to reorganize.

The Tribe, together with the Turtle Mountain Band of Chippewa of North Dakota, and the Chippewa-Cree Tribe of the Rocky Boy's Reservation of Montana, filed claims under the Indian Claims Commission Act of 1946<sup>5</sup> for additional compensation for lands ceded to the United States by the 1863 Treaty and 1892 McCumber Agreement. These tribes received Indian Claims Commission awards, which were distributed under 1971 and 1982 Acts of Congress.<sup>6</sup> However, it should be noted that the Indian Claims Commission Act does not provide a basis for the recognition of tribes. The Act only required the Commission to hear certain categories of claims from tribes and other identifiable groups of American Indians.<sup>7</sup>

It is Chairman Bishop's view that Members of the Committee have a reasonable basis for rendering a decision on extending federal recognition to the Little Shell Tribe pursuant to H.R. 3764, as it is consistent with the principles and framework set forth in H.R. 3744, Chairman Bishop's Tribal Recognition Act. The Little Shell Tribe's petition for recognition has undergone a substantially complete review by the Department, notwithstanding a negative final determination (under appeal), and the results of this review (published in the *Federal Register*) largely mirror one the group would have to undertake if H.R. 3744 were enacted into law.

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<sup>4</sup> 25 U.S.C. §461 et seq.; commonly referred to as the "Indian Reorganization Act".

<sup>5</sup> 60 Stat. 1050

<sup>6</sup> See Pub. L. No. 92-59, 85 Stat. 158 (1971) and Pub. L. No. 97-403, 96 Stat. 2022 (1982).

<sup>7</sup> Act of Aug. 13, 1946, ch. 959, sec. 2, 60 Stat. 1050

### *Previous Congressional Action*

In the 114<sup>th</sup> Congress, the Committee held a hearing on an identical bill, H.R. 286 on September 29, 2015. On September 8, 2016, the committee included the text of H.R. 286 in the amendment in the nature of a substitute to H.R. 3764, the Tribal Recognition Act of 2016. H.R. 3764 as amended was favorably reported by a roll call vote of 23 yeas and 13 nays.

### **Major Provisions/Analysis of H.R. 3764**

#### *Section 1. Short Title.*

#### *Sec. 2. Findings.*

#### *Sec. 3. Definitions.*

*Sec. 4. Federal Recognition.* Federal recognition is extended to the Tribe and all Federal laws (including regulations) of general application to Indians and Indian tribes, including the Indian Reorganization Act, shall apply to the Tribe and members.

*Sec. 5 (a). Federal Services and Benefits.* Beginning on the date of enactment of this Act, full eligibility for all services and benefits provided by the Federal Government shall be extended to the Tribe and members, without regard to (1) the existence of a reservation for the Tribe; or (2) the location of the residence of a member on or near an Indian reservation.

*Sec. 5 (b). Service Area.* The service area of the Tribe shall be the area comprised of Blaine, Cascade, Glacier, and Hill Countries in the State of Montana.

*Sec. 6. Reaffirmation of Rights.* This Act shall not diminish any right or privilege of the tribe that existed before the date of enactment.

*Sec. 7. Membership Roll.* The tribe shall submit a membership roll to the Secretary within 18 months of enactment. Determination of the roll shall be in accordance with the tribal constitution dated September 10, 1977 (including amendment).

#### *Sec. 8 (a). Transfer of Land.*

*(a) Homeland.* The Secretary shall acquire trust title to 200 acres of land within the service area of the Tribe to be used for tribal land base.

*(b). Additional Land.* The Secretary may acquire additional land for the benefit of the Tribe pursuant to sec. 5 of the Indian Reorganization Act.

## **Cost**

Unknown; however, the CBO has estimated that the senate companion bill, S. 39 would cost \$35 million over the 2018-2022 period.<sup>8</sup>

## **Administration Position**

Unknown.

## **Anticipated Amendments**

The committee anticipates an amendment to be filed which would make technical changes and strike section 2 of the bill.

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<sup>8</sup> <https://www.cbo.gov/sites/default/files/115th-congress-2017-2018/costestimate/s39.pdf>