

Subcommittee on Indian, Insular, and Alaska Native Affairs

Don Young, Chairman

Hearing Memorandum

September 25, 2015

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

From: Majority Staff, Subcommittee on Indian, Insular and Alaska Native Affairs
x6-9725

Hearing: Legislative hearing on H.R. 286 (Rep. Ryan Zinke-MT), *the “Little Shell Tribe of Chippewa Indians Restoration Act of 2015.”*

The Subcommittee will hold a Legislative Hearing on H.R. 286 (Rep. Ryan Zinke-MT), *the “Little Shell Tribe of Chippewa Indians Restoration Act of 2015”* on **Tuesday, September 29, 2015, at 2:00 p.m. in 1324 Longworth HOB.**

Summary of the Bill:

H.R. 286, *Little Shell Tribe of Chippewa Indians Restoration Act of 2015*, was introduced by Rep. Ryan Zinke on January 12, 2015, and was referred to the Subcommittee on Indian, Insular, and Alaska Native Affairs.

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.

For the purpose of the Act, the federal service area of the tribe would be the area comprised of Blaine, Cascade, Glacier, and Hill Counties, Montana. 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 also 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 land within the Tribe’s service area to be used for a tribal land base.

Similar bills have been introduced in the House by current and past Congressmen from Montana dating from the 109th Congress to the current session.

Witnesses:

Mr. Kevin Washburn
Assistant Secretary
Bureau of Indian Affairs
U.S. Department of the Interior
Washington, D.C.

The Honorable Gerald Gray
Chairman
Little Shell Chippewa Tribe
Great Falls, MT

Background:

The process of Federal tribal recognition in this country is administered by the Department of the Interior in accordance with Article I, Section 8, Clause 3 of the Constitution, which grants Congress power to regulate trade with Indian tribe. (Note: A more detailed overview of how tribes have been federally recognized and what federal recognition entails is contained in the hearing memo for H.R. 872 (Rep. Robert Wittman), the other bill on the agenda of this legislative hearing.)

H.R. 286 would extend federal recognition to the Little Shell Tribe. The tribe has long pursued federal recognition through the Department of Interior's administrative process (codified in 25 CFR Part 83), 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.¹ 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 this past July by the BIA, the Little Shell Tribe has been pursuing legislative recognition in order to avoid additional increased costs and a continued lengthy consideration process in the Interior Department.

The Little Shell Tribe originally petitioned the Federal Government for reorganization in the 1930s and 1940s under the Act of June 18, 1934 (25 U.S.C. 461 et seq.; commonly referred to as the 'Indian Reorganization Act'). 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.

¹ <http://www.bia.gov/cs/groups/public/documents/text/idc002663.pdf>

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 two suits under the Indian Claims Commission Act of 1946 to petition 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.

Major Provisions/Analysis of H.R. 286

Section 1. Short Title. “Little Shell Tribe of Chippewa Indians Restoration Act of 2015.”

Sec. 4. Federal Recognition. Federal recognition is extended to the Tribe with 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 considered the area comprised of Blaine, Cascade, Glacier, and Hill Countries in the State of Montana.

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

Sec. 8 (b). Additional Land. The Secretary may acquire additional land for the benefit of the Tribe pursuant to sec. 5 of the Indian Reorganization Act.

Support for the Legislation:

The bill is supported by the Montana Congressional Delegation (Senators Daines [R] and Tester [D]). A similar version of this bill, S. 35 (Tester/Daines), was reported by the Senate Indian Affairs Committee on September 10, 2015. *See Sen. Rept. 114-139.*

On October 30, 2013, Assistant Secretary for Indian Affairs, Kevin Washburn delivered testimony on similar legislation recognizing the Little Shell Tribe at a hearing held in the Senate Committee on Indian Affairs. In his prepared statement the Assistant Secretary acknowledged Congressional authority to recognize American Indian groups as Indian tribes with a government-to-government relationship with the United States and for this reason stated that the Administration did not oppose the legislation.

CBO Score:

CBO does not currently have an official score for H.R. 286, however they have scored S. 35 the Senate companion bill. CBO estimates that implementing the legislation would cost \$40 million over the 2016-2020 period, assuming appropriation of all necessary funding. Enacting S. 35 would not affect direct spending or revenues: therefore, pay-as-you-go procedures do not apply. S. 35 would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) by exempting some lands from taxation by state and local governments, but CBO expects the cost of the mandate would be small and well below the threshold established in that act (\$77 million in 2015, adjusted annually for inflation).

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