TESTIMONY OF AURENE M. MARTIN
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U.S. DEPARTMENT OF THE INTERIOR
AT THE HEARING
BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
U.S. SENATE
ON
S. 1392 AND S. 1393

September 17, 2002

Good morning, Mr. Chairman and Members of the Committee. My name is Aurene Martin and I am the Deputy Assistant Secretary for Indian Affairs. I appreciate the opportunity to appear before you today on behalf of the Administration regarding S. 1392, a bill to establish procedures for the Bureau of Indian Affairs of the Department of the Interior with respect to tribal acknowledgment, and S. 1393, a bill to provide grants to ensure full and fair participation in certain decision-making processes at the Bureau of Indian Affairs. The Administration opposes these bills.

The Federal acknowledgment of an Indian tribe is a serious decision for the Federal Government. It is important that a thorough and deliberate evaluation occur before we decide whether to acknowledge a group as a tribe; a status which carries with it certain immunities and privileges. These decisions must be defensible, fact-based and equitable.

We agree with Senator Dodd that the Federal acknowledgment process "ought to be guided by several firm principles: fairness, openness, respect, and a common interest in bettering the quality of life of all Americans."

During Assistant Secretary Neal McCaleb's nomination hearing he stated that he would take a look

at the Federal acknowledgment process and make changes following this assessment. Not long into his tenure, the General Accounting Office (GAO) was asked to review the process and their final report, entitled *Indians: Improvements Needed in Tribal Recognition Process,* was issued in November 2001. GAO reviewed BIA's regulatory process, criteria and supporting evidence described in 25 CFR Part 83.

At the hearing in June of this year, we stated that we would provide a strategic plan in response to the GAO recommendations. I am happy to report that our draft Strategic Plan was completed this past week and is currently under Departmental review. We anticipate that a final response will be available to the Congress within the next few weeks.

The thrust of our response to the GAO Report is to make the regulatory process more predictable, timely and consistent with the recommendations in that report. In our draft Strategic Plan, we are not recommending changes to the mandatory criteria, because they are founded in existing law and have been upheld by the courts. Further, these criteria have been used since 1978. All groups who have petitioned for Federal acknowledgment since 1978 have utilized these criteria in documenting their petitions and have been evaluated by them. We are committed to ensuring that groups have fair and equitable treatment under the regulatory process. To be fair, any change in the criteria must be brought about deliberately, ensuring that previous petitioners are considered in the process.

The BIA's Strategic Plan provides for more use of the World Wide Web and an increase in the Branch of Acknowledgment and Research (BAR) staff to address the backlog of petitions waiting for final decisions, which is an issue that is currently under litigation in several courts. The plan also provides a framework to increase BAR administrative staff and contracting for support services.

Contracting data entry and certain administrative tasks, particularly those imposed by public inquiries under the Freedom of Information Act, will further ease the burden on the BIA researchers, thereby permitting them to address the current backlog of petitions waiting for consideration.

Specific comments on the legislation follow:

S. 1392

We believe that S. 1392 is unnecessary since the procedures for Federal acknowledgment are already provided within 25 CFR Part 83.

Specifically, the Department questions two provisions of S. 1392. In addition to the formal meeting on the record where petitioners and interested parties question BIA researchers, the bill provides for an additional formal hearing with witnesses and cross examination. The timing, scope, purposes, and advantages of this additional hearing are unclear.

Second, the required notice of receipt of a letter of intent to petition or documented petition to all municipalities located in the geographical areas historically occupied by a petitioning group is not workable as it is unclear where these territories would be. Compliance with this provision would require a detailed evaluation of a petition, when the Department may have only received a letter of intent to petition.

We recommend that the terms "recognition" and "recognized" be replaced with "acknowledgment" and "acknowledged" throughout the bill to clarify that the process will acknowledge the existence of tribes which have continued to exist and will not recognize or create new entities.

If the purpose of the bill is to codify the existing regulations, some of those sections have been omitted. Some of these omissions could have a significant impact on the evaluation of a petition.

S. 1393

S. 1393 provides the Secretary of the Interior authority to award grants, on the basis of need, to municipalities, recognized tribes, or petitioners for acknowledgment. We oppose S. 1393 because the language may create a conflict of interest by authorizing the Secretary to decide which groups receive grants and may influence her ability to make future decisions on petitioners. In addition, S. 1393 does not preclude the use of grants to litigate in court, to lobby Congress, or to participate in actions against the Department.

CONCLUSION

This concludes my prepared statement. Thank you for the opportunity to testify on this issue. I will be happy to answer any questions the Committee may have.