

**TESTIMONY OF
CHERYL ANDREWS-MALTAIS
SENIOR POLICY ADVISOR TO ASST. SEC. INDIAN AFFAIRS
UNITED STATES DEPARTMENT OF THE INTERIOR
TO THE
SENATE COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
ON
S. 2285**

SEPTEMBER 7, 2016

Chairman Barrasso, Vice-Chairman Tester and members of the Committee, my name is Cheryl Andrews-Maltais, Senior Policy Advisor to the Assistant Secretary – Indian Affairs at the Department of the Interior (Department). Thank you for the opportunity to provide the Administration’s testimony on S. 2285, the “Lumbee Recognition Act.”

The acknowledgment of the continued existence of another sovereign is one of the most important responsibilities of the United States. Under the Constitution, Congress has the authority to recognize a “distinctly Indian community” as an Indian tribe. Federal acknowledgment enables Indian tribes to participate in Federal programs and establishes a government-to-government relationship between the United States and the Indian tribe, and recognizes certain legal rights under Federal law. We note that the authority to acknowledge an Indian tribe has been delegated to the Secretary of the Interior to act in appropriate cases. In this instance, we are barred by statute from recognizing the Lumbee Tribe. We support S.2285, with amendments as discussed below.

S.2285, the “Lumbee Recognition Act”

In 1956, Congress designated Indians then “residing in Robeson and adjoining counties of North Carolina” as the “Lumbee Indians of North Carolina” in the Act of June 7, 1956 (70 Stat. 254). Congress went on to note the following:

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.

In 1989, the Department’s Office of the Solicitor advised that the 1956 Act forbade the Federal relationship within the meaning of the acknowledgment regulations, and that the Lumbee Indians were therefore precluded from consideration for Federal acknowledgment under the administrative process. Because of the 1956 Act, the Lumbee Indians have been unable to seek Federal acknowledgment through the Department’s administrative process.

Given that Congress specifically addressed the Lumbee Indians in the 1956 Act, which Interior interpreted as barring the Department from undertaking an acknowledgment review, only Congress may take up the matter of Federal recognition for the Lumbee Indians.

S. 2285

S.2285 extends Federal recognition to the “Lumbee Tribe of North Carolina” and permits any other group of Indians in Robeson and adjoining counties whose members are not enrolled in the Lumbee Tribe to petition under the Department’s acknowledgment regulations. Before 2015, the Department’s Office of Federal Acknowledgment received letters of intent to petition from multiple groups including the Lumbee Tribe named in this bill whose claims and memberships may overlap. Therefore, we recommend Congress clarify the Lumbee group that would be granted recognition under this bill based on the group’s current governing document which includes clear enrollment requirements and procedures and its current membership list. Not doing so could potentially expose the Federal Government to unwarranted lawsuits and possibly delay the Department’s acknowledgment process for the other groups not enrolled in the Lumbee Tribe.

Under S.2285, the State of North Carolina has jurisdiction over criminal and civil offenses and actions on lands within North Carolina owned by or held in trust for the Lumbee Tribe or “any dependent Indian community of the Tribe.” Additionally, the Secretary of the Interior is authorized to accept a transfer of jurisdiction over the Lumbee Tribe from the State of North Carolina, after consulting with the Attorney General of the United States and pursuant to an agreement between the Lumbee Tribe and the State of North Carolina. Such transfer may not take effect until two years after the effective date of such agreement.

We are concerned with the provision requiring the Secretary, within two years, to verify the tribal membership and then to develop a determination of needs and budget to provide Federal services to the Lumbee group’s eligible members. In our experience, verifying a tribal roll is an extremely involved and complex undertaking that can take several years to resolve. Moreover, S.2285 is silent as to the meaning of verification for inclusion on the Lumbee group’s membership list. The Act should define who bears the burden of proof, the standards and procedures for evaluating acceptable generation-by-generation descent evidence, and appeals processes.

In addition, section 5(c) of S. 2285 may raise a problem by purporting to require the Secretary of the Interior and the Secretary of Health and Human Services to submit to the Congress a written statement of a determination of needs for the Lumbee Tribe for programs, services and benefits to the Lumbee Tribe. The appropriate means for communicating to Congress a determination of needs for programs administered by the Department of the Interior and the Department of Health and Human Services is the President’s Budget.

Conclusion

Thank you for providing the Department the opportunity to provide input into S. 2285. The Department supports S. 2285 with amendments. I am available to answer any questions the Committee may have.