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TO EXTEND FEDERAL RECOGNITION TO THE CHICKAHOMINY INDIAN TRIBE, THE CHICKAHOMINY INDIAN TRIBE—EASTERN DIVISION, THE UPPER MATTAPONI TRIBE, THE RAPPAHANNOCK TRIBE, INC., THE MONACAN INDIAN NATION, AND THE NANSEMOND INDIAN TRIBE

MAY 6, 2004.—Ordered to be printed

Mr. CAMPBELL, from the Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 1423]

The Committee on Indian Affairs, to which was referred the bill (S. 1423) to extend Federal recognition to the Chickahominy Indian Tribe, the Chickahominy Indian Tribe—Eastern Division, the Upper Mattaponi Tribe, the Rappahannock Tribe, Inc., the Monacan Indian Nation, and the Nansemond Indian Tribe, having considered the same, reports favorably thereon with amendment(s) and recommends that the bill (as amended) do pass.

PURPOSE

The purpose of the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2003 (S. 1423) is to extend Federal recognition and the rights and benefits associated with such recognition to the Chickahominy Indian Tribe, the Chickahominy Indian Tribe—Eastern Division, the Upper Mattaponi Tribe, the Rappahannock Tribe, Inc., the Monacan Indian Nation, and the Nansemond Indian Tribe—all Indian tribes recognized by the Commonwealth of Virginia.

BACKGROUND

Brief history of the Virginia Indian tribes

When English settlers established the Jamestown Colony in 1607, there were approximately 40 Indian tribes extant in what is now the Commonwealth of Virginia (the "Commonwealth").

Three groups—the Cherokees in the far southwest corner of the state and the Nottoways and Meherrins in south-central Virginia—spoke Iroquoian languages. There were two major alliances of

Siouan-speakers, the Monacans and the Mannahoacs, in the Virginia Piedmont, and approximately 30 tribes in the Tidewater area which spoke Algonquian dialects.

To sustain their communities the Virginia tribes relied on farming (corn, beans, and squash) and gathering wild plants, fishing, and hunting. All had fairly formalized political organizations, though they lacked writing skills. The Powhatans had a hereditary paramount chief, a position held by Powhatan himself. Given their distance from the record-making English of Jamestown, less is known about the Monacans in 1607. However, the Monacans or their not-so-distant ancestors were mound-builders which may indicate they had chiefs as well.

The Indian chiefs of Virginia led their people in alternately resisting and accommodating the flood of English settlers that poured into Virginia's Tidewater area in the 17th century. Thus in 1677, the Powhatans, Monacans and others signed a treaty with the English crown that guaranteed to the tribes land to live on and civil rights equal to those of English citizens.[1] The 1677 treaty is still in force and two reservations continue to survive in Virginia. Unfortunately, most of the tribes were forced to move from their lands due to in-migration from English settlers.

The Monacans lived far enough west that no reservation land was ever surveyed for them before the influx of English settlers in the 1720 to 1760 period. Instead of engaging the settlers the Monacans quietly withdrew westward to the foot of the Blue Ridge mountains. By this time the Powhatans' territory had been reduced to three small reservations, the smallest occupied by ancestors of the Chickahominies and Upper Mattaponis, among others.

In 1705, the Rappahannocks were relocated a few miles away from their original reservation. The Nansemonds, assigned a poor, sandy tract in 1664 far from their Nansemond River home, declined to inhabit the land and by 1685 had sold their land. In the late 17th or early 18th century they migrated to the northern rim of the Great Dismal Swamp. Sometime in the late 18th or early 19th century, the ancestors of the Chickahominies and Upper Mattaponis left the Mattaponi Reservation and established separate enclaves for reasons that remain unknown.

The Virginia Indian populations were small enough that after 1722 their concerns were not addressed in peace negotiations between Virginia and the Iroquois.

After the American Revolution, the Commonwealth of Virginia assumed the responsibility of the English Crown under the 1677[2] treaty that guaranteed the rights of the "reservation Indians". Unfortunately, having been pushed off their lands prior to the American Revolution, the landless Indian communities generally did not show up in either the colonial or Commonwealth records in 18th and early 19th century Virginia.

Essentially, the Commonwealth government assumed that the 1677 treaty no longer applied to the tribes that are the subject of S. 1423, and they were not accorded the rights specified in that treaty. No enabling legislation to that effect was passed, and the Commonwealth's position was not challenged—a fact that would

[1] The last treaty that governed the relations of the Virginia tribes and the Colony of Virginia was the 1677 Middle Plantation Treaty.
[2] Supra Note 1.

have serious, negative repercussions for the Virginia tribes in the 20th century.

It is probable that landless Indian communities, such as the tribes that are the subject of S. 1423 and the individual Indians within those communities, did have a presence in their local communities and would have shown up in the local records in Virginia. Unfortunately, most of those local records were destroyed during the Civil War period from 1861–1865.

There are also other problems associated with finding references to Indian people in the records of local governments within the Commonwealth. In the 18th and early 19th centuries, Indian people began adopting Anglo-American names, language, and customs in order to survive which made them less outwardly "Indian" to their neighbors. Indeed, by 1727 official interpreters to Indian communities were no longer necessary as most Indian people who interacted with the Commonwealth government spoke English.

Another hindrance to appearing in local records was the socioeconomic status of most Virginia Indians. Until late in the 19th century they lived in a social stratum of people who tended to rent land, contract common-law marriages, and die intestate, i.e. without a will.

People in such circumstances got into the records mainly if they ran afoul of the law, something the Virginia Indians did not do; they were law-abiding citizens and thus were nearly, but not completely, "invisible".

When more detailed records began to be compiled, especially beginning with the 1850 U.S. Census, geographical clusters of Indian families appear, living largely where the six tribes reside today. Local records show them choosing spouses from within their own communities to a very large degree.

In 1833, the Nansemond Indian community became "visible" for another reason: a state law was passed—at the behest of their local member of the Virginia House of Delegates—creating a special racial category in which they could be certified by the local county court. See Acts of the Virginia Assembly 1832–33, p. 51. The category was officially called "Persons of Mixed Blood, Not Being Free Negroes or Mulattoes" and the county clerk responsible for completing and filing the required certificates simply classified the Nansemonds as "Indians".

Community institutions such as churches and schools changed after the Civil War. Whereas before the war, churches in Indian-inhabited areas had been tri-racial and included segregated seating, after the war they became segregated altogether, with non-white congregations separated entirely.

Indians who attended African-American churches were labeled "colored" (i.e. African-American) themselves. The Commonwealth's public schools were poorly funded before the war and admitted only whites. Indeed, between 1831 and 1865, it was illegal to teach non-whites to read.

During Reconstruction, the administration of public schools became a serious matter for each county and segregated schools were established in many areas of Virginia. While "white" schools did not admit Indians, "colored" schools did, but any Indian children attending them, and their families, lost any credibility they had as "Indians". Counties were reluctant to fund Indian schools if the In-

dian population was small or if the local white population was skeptical about the Indians' lineage.

After the Civil War, it became increasingly difficult for Virginia's Indians to live quietly among their own people and preserve their traditions and they were obliged to begin responding actively and publicly to new pressures from outside. For Virginia's Indians, therefore, the post-Civil War era was a time when they struggled against great obstacles to establish separate Indian churches and schools.

The Chickahominy Tribe, being relatively large as well as closely clustered, founded a church, a county-funded school, and incorporated as a tribe in the early 20th century. For others of the six tribes, the church came first. For instance the Nansemond and Monacan churches were established in the mid-19th and early 20th centuries, respectively, by sympathetic whites. The other groups formed their own Baptist congregations and joined the predominantly white Dover Baptist Association.

For still other tribes, the creation of formal organization came first, as in the case of the Rappahannocks and Upper Mattaponis who were encouraged in the 1920s to formalize their tribal government by Dr. Frank Speck, an anthropologist from the University of Pennsylvania.

The Rappahannocks were the last to achieve a county-funded school, because they were spread thinly over no fewer than three counties. Very few of the tribal schools offered high school-level courses and, as a result, many Indian students could not earn a high school diploma or had to travel to out-of-state Indian high schools to earn a diploma.

Passage of Virginia's "Racial Integrity Law" in 1924 brought the most difficult challenges to Virginia Indian efforts to maintain their native cultures and preserve their tribal integrity. Enactment of the law, which forced all segments of Virginia's population to register as either white or colored at birth was the creation of Dr. Walter Plecker, at the time the head of the Commonwealth's Bureau of Vital Statistics. Through the Racial Integrity Law, Dr. Plecker made it illegal for individuals to classify themselves or their newborn children as "Indian".

Dr. Plecker took further steps in his effort to implement his policies by changing the birth records of many Virginia Indians, altering the records so that the Indian individuals would be identified as colored. These policies and activities did irreparable harm to the historical documentation of Virginia's Indians and worse, left many individuals of Indian heritage unaware of their ancestors and culture. The Racial Integrity Law remained on the statute books for 46 years and resulted in the destruction of thousands of records that traced and recorded the ancestry of Virginia's tribes.

In the years leading up to and including the years of World War II—when the racial classification of draftees into the segregated U.S. Armed Forces created an especially awkward situation—the Chickahominy chief and several friends of the Virginia tribes wrote to John Collier, Commissioner of Indian Affairs in Washington, seeking the intervention of the Bureau of Indian Affairs on behalf of the Virginia Indians.

Collier replied that because the Federal government had no legal responsibility for the Virginia tribes due to the lack of a treaty or

other legal instrument with the U.S. government, he had no power to intervene though he did write a series of strong letters to the Vital Statistics Registrar as a private citizen.

Pressure on Virginia Indians to blend into the colored category continued well into the Civil Rights Era. It is proof of the genuineness of their feelings of being Indian that once "whiteness" could be legally claimed by anyone, Virginia Indians persisted in claiming Indian lineage.

One consequence of the Civil Rights Era was an end to all racially-segregated schools, and the Virginia tribes lost their Indian-only schools. Though they could now get high school diplomas from the integrated schools, they had lost a major symbol of their ethnic separateness and institution they could claim as their own.

They compensated by securing Federal grants to improve homes and school programs, as well as becoming active in several pan-Indian organizations. However, the new major symbol of the Indian communities became buildings used as tribal centers, whether these were newly built or former Indian schoolhouses that were reclaimed and renovated. The centers have become not only places for tribal meetings and school activities, but also focal points for events that are open to the public, such as powwows, fish fries, and country music festivals.

Thanks to the educational and job opportunities opened up in the Civil Rights Era, the six Virginia tribes seeking Federal acknowledgment in S. 1423 have nearly full employment today. The majority of them are working-class people, with an increasing number of white-collar employees. Like other Americans in similar economic circumstances, they often find themselves falling between two categories—not being poor enough for government assistance, nor prosperous enough to pay for privately-secured educational and medical expenses.

The six Virginia Indian tribes seeking Federal acknowledgment through this legislation have encountered several periods of serious adversity since the Jamestown Colony was founded. The most striking thing about the history of the Virginia tribes is that their responses to adversity have been overwhelmingly constructive ones: they lost all but the smallest remnant of their aboriginal territory, and yet they have abided by treaties and in the 20th century they have shown themselves, by the number of their men in military service both in and out of war-time, to be very patriotic citizens indeed.

The Virginia tribes were put under tremendous pressure to be something other than Indian in the last two centuries, yet rather than accommodating these pressures, their leaders became adept at networking and using the mass media to try to preserve their Indian status. The Indian communities lost the tribal schools they had struggled so long and hard to attain, so they replaced them with tribal centers where they could sponsor outreach events for the general public.

The early Jamestown Colony wanted Virginia's native people to become good, functioning citizens of an English-speaking community. This is precisely what the Virginia tribes have done, while remaining Indian throughout history.

Federal acknowledgment process criteria

On October 9, 2002, the Committee on Indian Affairs held a hearing on S. 2694, the predecessor bill to S. 1423. The testimony indicated that the tribes would likely meet all of the mandatory criteria set forth in the Bureau of Indian Affairs' Federal Acknowledgment Process (FAP).[3] See 25 C.F.R. § 83.1 et seq.

The hearing also pointed out the severe difficulties encountered by tribes that have been in nearly continuous contact with non-Indians for almost 400 years. Many circumstances beyond the control of these tribes led to the destruction of much physical evidence important to their petitions for acknowledgment under the FAP.

First, information presented at the hearing provided significant evidence of the historical and continuing existence of the Indian tribes in Virginia. Colonial documents provide a compelling story of the survival of these tribes as they were pushed off their reservations and had their treaty rights ignored.[4] Many records, it was shown, were destroyed during the Civil War.

After the Civil War and into the early 20th Century, available records indicate continuing recognition of the tribal communities as Indian. Birth records and marriage registers note Indian identity and also indicate significant rates of marriage within the tribes. United States Census records from 1850, 1910 and 1930 also report these communities as Indian.

The sum of this evidence indicates strongly that the six tribes meet the criteria contained in 25 C.F.R. § 83.7(a) and § 83.7(b), which require proof of identity as Indian entities and as distinct communities.

Second, at the hearing the tribes presented substantial evidence of their historical and current political influence. The retention of their close-knit communities is significant, especially in light of the increasing hostility toward non-white communities in Virginia after the Civil War. After the Civil War, and culminating in the Racial Integrity Law, as described above, the Commonwealth passed a series of laws designed to restrict the civil rights of nonwhites. The consequence of these laws is that many vital records of the members of the tribes were destroyed or altered by state officials.

The response of the tribes to these challenges was to reorganize their communities more formally. They adopted corporate charters, and began electing leaders by ballot. They also built and funded separate, Indian-only churches and schools. Significantly, while the tribal schools were not able to provide a high school degree, a number of the Indian students were accepted into Indian high schools in Cherokee, North Carolina, and Bacone College, in Muscogee, Oklahoma.

Following desegregation, when the tribes could no longer operate separate schools, the tribes built community centers where they could once again celebrate their cultures and traditions. They began holding pow-wows and other traditional seasonal celebrations. They also became involved with other Indian tribes and organizations. Very importantly, they also began reviving their relationships with the Commonwealth. These efforts led to reacknowl-

[3] Much of this evidence has been compiled by Helen C. Rountree, Ph.D. She first began researching the history of Virginia Indian tribes in the 1960s. She is considered one of the foremost modern scholars on the Virginia Indian Tribes, and began publishing her research in 1972.

[4] See supra Note 1.

edgment of these relationships by Virginia in 1983, and passage of a legislative resolution in 1999 by the Virginia Senate and House of Delegates in support of the tribes' Federal recognition efforts.

These efforts provide powerful evidence of the tribes' political cohesion and organization, meeting the criteria in 25 C.F.R. § 83.7(c) and § 83.7(d). This evidence also bolsters the evidence needed by the tribes to prove their identity as Indian entities and distinct communities.

Finally, the Virginia tribes have to the greatest degree possible maintained accurate records of their membership. Fortunately, studies by James Mooney in the late 19th Century and James Coates in the early 20th provided bases for membership rolls. These rolls provide the tribes with an accurate base roll from which to maintain lists of members, and provide evidence that the tribes meet the criteria of 25 C.F.R § 83.7(f). The efforts of the Virginia tribes to accurately document their personal records was greatly aided by then Virginia Governor George Allen, who obtained legislation in 1997 that acknowledged the role of the Commonwealth in altering vital records and allowing individual Indians to correct their vital records where possible. Since the Virginia tribes have never sought to be identified as members of any other Indian tribes, nor has any Federal legislation expressly denied them Federal recognition, § 83.7(8) and § 83.7(h) are also satisfied.

In light of this substantial evidence, and the unique history and circumstances they have borne over the past 400 years, it is the considered view of the Committee that the six Virginia tribes affected by this legislation are, and have always been, Indian tribes warranting acknowledgment by the Federal government.

SUMMARY OF MAJOR PROVISIONS

The Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2003 would extend Federal acknowledgment to the Chickahominy Indian Tribe, the Chickahominy Indian Tribe Eastern Division, the Upper Mattaponi Tribe, the Rappahannock Tribe, Inc., the Monocan Indian Nation, and the Nansemond Indian Tribe.

The legislation contains a Findings section for each of the six tribes, outlining the unique history of each tribe and an account of the challenges they overcame to maintain their Indian heritage.

The Definitions portion of the bill provides the meaning of three terms used throughout the bill to clarify the intent of the measure and to whom it pertains. These terms are (1) "Secretary"; (2) "tribal member"; and (3) "tribe".

For each tribe, the legislation includes a Federal Recognition section, extending Federal recognition to the respective tribes and making them eligible for all services and benefits provided by the Federal government to Federally recognized tribes. Additionally, the bill defines a service area for each of the six tribes.

The bill provides that, upon enactment, each tribe must submit its most recent membership roll and governing documents to the Secretary of the Interior.

The governing body of each tribe will be the governing body in place at the date of enactment of the bill and any subsequent governing body will be elected in accordance with the election procedures specified in the governing documents of that tribe.

For five of the six tribes, the legislation provides a twenty-five year period of time for land to be taken into trust by the Secretary of the Interior. A geographic description of the land is included for the five tribes based on existing parcels of land owned by the tribes. The bill directs the Secretary to take this land into trust.

Because the Nansemond Indian tribe does not currently own any land, the legislation does not direct the Secretary to take any land into trust for the tribe, but authorizes the Secretary to consider future requests from the tribe.

The legislation includes provisions which prohibit gaming by any of the six tribes under section 209(b)(1)(B) of the Indian Gaming Regulatory Act, Pub. L. 100–497 (25 U.S.C. § 2701 et seq.). The intent and effect of these provisions are to prohibit gaming beyond those games already permitted by the Commonwealth of Virginia. It would also condition any such gaming on the satisfaction of a number of requirements including the consent of the Governor of Virginia.

Last, the legislation includes a "hold harmless" clause providing that the bill does not expand, reduce or affect any hunting, fishing, trapping, gathering or water rights of the tribes or their members.

LEGISLATIVE HISTORY

The Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act was introduced as S. 2694 on June 27, 2002, by Senator Allen for himself and Senator Warner. The bill was referred to the Committee on Indian Affairs.

On Wednesday, October 9, 2002, a hearing on S. 2694 was conducted by the Committee on Indian Affairs. Appearing before the Committee in support of the legislation were Congressman James Moran and Senator Warner of Virginia. Both voiced strong support for the measure and provided strong testimony endorsing passage of S. 2694.

Also testifying was Michael Smith, Director of Tribal Services at the Bureau of Indian Affairs. In voicing concerns with the legislation providing Federal recognition of the Virginia tribes and the application submitted by them, Mr. Smith acknowledged that the administrative process for Federal recognition is flawed and cannot meet the needs of petitioning tribes in a timely manner.

Additionally, Director Smith conceded that there may be circumstances beyond the control of the Virginia tribes that would make the administrative process virtually impossible to complete.

Finally, Reverend Jonathan Barton of the Virginia Council of Churches and Dr. Danielle Moretti-Langholtz of the Department of Anthropology at the College of William and Mary testified to the strong support of the local communities for extending Federal recognition and to the historical accuracy of both the legislation and the pending petition to the Bureau Acknowledgment and Research.

On July 17, 2003 the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act was introduced as S. 1423 by Senator Allen for himself and Senator Warner. On October 29, 2003 the measure was ordered to be reported favorably out of the Indian Affairs Committee by a voice vote.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Short title

This Act may be cited as the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2003.

TITLE I—CHICKAHOMINY INDIAN TRIBE

Sec. 101. Findings

This section provides Congressional Findings on the history of the Chickahominy Indian Tribe.

Sec. 102. Definitions

This section provides definitions for terms used throughout the remainder of the Title. The terms defined in this section are: Secretary, Tribal Member, and Tribe.

Sec. 103. Federal recognition

This section extends Federal acknowledgment to the Chickahominy Indian Tribe. This section also includes applicable laws, an explanation of services and benefits and the establishment of a service area.

Sec. 104. Membership; governing documents

This section provides that the Tribe must provide the most recent membership roll and governing documents to the Secretary before the date of enactment of the legislation.

Sec. 105. Governing body

This section establishes requirements for the tribe's governing body and any future governing bodies of the tribe.

Sec. 106. Reservation of the tribe

Within twenty-five years of enactment, this section directs the Secretary to take into trust any land within the counties of Charles City, James City, or Henrico that the tribe seeks to transfer to the Secretary.

Section 106 also establishes limitations on gaming by the tribe, by providing that no reservation of tribal land shall be deemed eligible to satisfy terms for an exception under section 20(b)(1)(B) of the Indian Gaming Regulatory Act.

Sec. 107. Hunting, fishing, trapping, gathering, and water rights

This section states that nothing in the bill expands, reduces or affects existing hunting, fishing, trapping, gathering, or water rights of the tribe and its members.

TITLE II—CHICKAHOMINY INDIAN TRIBE EASTERN DIVISION

Sec. 201. Findings

This section provides Congressional Findings on the history of the Chickahominy Indian Tribe Eastern Division.

Sec. 202. Definitions

This section provides definitions for terms used throughout the remainder of the Title. The terms defined in this section are: Secretary, Tribal Member, and Tribe.

Sec. 203. Federal recognition

This section would extend Federal acknowledgment to the Chickahominy Indian Tribe Eastern Division. This section also includes applicable laws, an explanation of services and benefits and the establishment of a service area.

Sec. 204. Membership; governing documents

This section provides that the Tribe must provide the most recent membership roll and governing documents to the Secretary before the date of enactment of the legislation.

Sec. 205. Governing body

This section establishes requirements for the tribe's governing body and any future governing bodies of the tribe.

Sec. 206. Reservation of the tribe

Within twenty-five years of enactment, this section directs the Secretary to take into trust any land within the counties of New Kent, James City, or Henrico that the tribe seeks to transfer to the Secretary.

Section 206 also establishes limitations on gaming by the tribe, by providing that no reservation of tribal land shall be deemed eligible to satisfy terms for an exception under section 20(b)(1)(B) of the Indian Gaming Regulatory Act.

Sec. 207. Hunting, fishing, trapping, gathering, and water rights

This section states that nothing in the bill expands, reduces or affects existing hunting, fishing, trapping, gathering, or water rights of the tribe and its members.

TITLE III—UPPER MATTAPONI TRIBE

Sec. 301. Findings

This section provides Congressional Findings on the history of the Upper Mattaponi Tribe.

Sec. 302. Definitions

This section provides definitions for terms used throughout the remainder of the Title. The terms defined in this section are: Secretary, Tribal Member, and Tribe.

Sec. 303. Federal recognition

This section would extend Federal acknowledgment to the Upper Mattaponi Tribe. This section also includes applicable laws, an explanation of services and benefits and the establishment of a service area.

Sec. 304. Membership; governing documents

This section provides that the tribe must provide the most recent membership roll and governing documents to the Secretary before the date of enactment of the legislation.

Sec. 305. Governing body

This section establishes requirements for the tribe's governing body and any future governing bodies of the tribe.

Sec. 306. Reservation of the tribe

Within twenty-five years of enactment, this section directs the Secretary to take into trust any land within King William County that the tribe seeks to transfer to the Secretary.

Section 306 also establishes limitations on gaming by the tribe, by providing that no reservation of tribal land shall be deemed eligible to satisfy terms for an exception under section 20(b)(1)(B) of the Indian Gaming Regulatory Act.

Sec. 307. Hunting, fishing, trapping, gathering, and water rights

This section states that nothing in the bill expands, reduces or affects existing hunting, fishing, trapping, gathering, or water rights of the tribe and its members.

TITLE IV—RAPPAHANNOCK TRIBE, INC.

Sec. 401. Findings

This section provides Congressional Findings on the history of the Rappahannock Tribe, Inc.

Sec. 402. Definitions

This section provides definitions for terms used throughout the remainder of the Title. The terms defined in this section are: Secretary, Tribal Member, and Tribe.

Sec. 403. Federal recognition

This section would extend Federal acknowledgment to the Rappahannock Tribe, Inc. The section also includes applicable laws, an explanation of services and benefits and the establishment of a service area.

Sec. 404. Membership; governing documents

This section provides that the tribe must provide the most recent membership roll and governing documents to the Secretary before the date of enactment of the legislation.

Sec. 405. Governing body

This section establishes requirements for the tribe's governing body and any future governing bodies of the tribe.

Sec. 406. Reservation of the tribe

This section directs the Secretary to take into trust any land within King and Queen County, Essex County, and Caroline County, Virginia, that the tribe transfers to the Secretary.

Section 406 also establishes limitations on gaming by the tribe, by providing that no reservation of tribal land shall be deemed eli-

gible to satisfy terms for an exception under section 20(b)(1)(B) of the Indian Gaming Regulatory Act.

Sec. 407. Hunting, fishing, trapping, gathering, and water rights

This section states that nothing in the bill expands, reduces or affects existing hunting, fishing, trapping, gathering, or water rights of the tribe and its members.

TITLE V—MONACAN INDIAN NATION

Sec. 501. Findings

This section provides Congressional Findings on the history of the Monacan Indian Nation.

Sec. 502. Definitions

This section provides definitions for terms used throughout the remainder of the Title. The terms defined in this section are: Secretary, Tribal Member, and Tribe.

Sec. 503. Federal recognition

This section would extend Federal acknowledgment to the Monacan Indian Nation. The section also includes applicable laws, an explanation of services and benefits and the establishment of a service area.

Sec. 504. Membership; governing documents

This section provides that the tribe must provide the most recent membership roll and governing documents to the Secretary before the date of enactment of the legislation.

Sec. 505. Governing body

This section establishes requirements for the tribe's governing body and any future governing bodies of the tribe.

Sec. 506. Reservation of the tribe

Within twenty-five years of enactment, this section directs the Secretary to take into trust a parcel of land consisting of approximately ten acres located on Kenmore Road in Amherst County, Virginia and a parcel of land consisting of approximately one hundred sixty-five acres located at the foot of Bear Mountain, in Amherst County, Virginia that the tribe seeks to transfer to the Secretary.

Section 506 also establishes limitations on gaming by the tribe, by providing that no reservation of tribal land shall be deemed eligible to satisfy terms for an exception under section 20(b)(1)(B) of the Indian Gaming Regulatory Act.

Sec. 507. Hunting, fishing, trapping, gathering, and water rights

This section states that nothing in the bill expands, reduces or affects existing hunting, fishing, trapping, gathering, or water rights of the tribe and its members.

TITLE VI—NANSEMOND INDIAN TRIBE

Sec. 601. Findings

This section provides Congressional Findings on the history of the Nansemond Indian Tribe.

Sec. 602. Definitions

This section provides definitions for terms used throughout the remainder of the Title. The terms defined in this section are: Secretary, Tribal Member, and Tribe.

Sec. 603. Federal recognition

This section would extend Federal acknowledgment to the Nansemond Indian Tribe. This section also includes applicable laws, an explanation of services and benefits and the establishment of a service area.

Sec. 604. Membership; governing documents

This section provides that the tribe must provide the most recent membership roll and governing documents to the Secretary before the date of enactment of the legislation.

Sec. 605. Governing body

This section establishes requirements for the tribe's governing body and any future governing bodies of the tribe.

Sec. 606. Reservation of the tribe

Authorizes the Secretary to take into trust for the benefit of the tribe any land the tribe may acquire and transfers to the Secretary.

Section 606 also establishes limitations on gaming by the tribe, by providing that no reservation of tribal land shall be deemed eligible to satisfy terms for an exception under section 20(b)(1)(B) of the Indian Gaming Regulatory Act.

Sec. 607. Hunting, fishing, trapping, gathering, and water rights

This section states that nothing in the bill expands, reduces or affects existing hunting, fishing, trapping, gathering, or water rights of the tribe and its members.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

On October 29, 2003, the Committee on Indian Affairs, in an open business session, considered an amendment to S. 1423 to make a technical correction and the Committee, by a voice vote, favorably reported the bill as amended and recommended that the Senate pass the bill. Senator Craig Thomas requested that he be recorded as opposing the legislation.

COST AND BUDGETARY CONSIDERATIONS

The cost estimate for S. 1423 as calculated by the Congressional Budget office is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, January 22, 2004.

Hon. BEN NIGHTHORSE CAMPBELL,
Chairman, Committee on Indian Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1423, the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Lanette J. Walker.

Sincerely,

ELIZABETH M. ROBINSON
(For Douglas Holtz-Eakin, Director).

Enclosure.

S. 1423—Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2003

Summary: S. 1423 would provide Federal recognition to six Indian tribes in the State of Virginia—the Chickahominy Indian Tribe, the Eastern Division of the Chickahominy Tribe, the Upper Mattaponi Tribe, the Rappahonnock Tribe, the Monacan Indian Nation, and the Nansemond Indian Tribe. CBO estimates that implementing S. 1423 would cost the Federal Government about $100 million over the 2004–2009 period, assuming that the tribes receive services and benefits at a level similar to other currently recognized tribes and that the necessary funds are appropriated. Enacting S. 1423 would have no effect on direct spending or revenues.

S. 1423 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no significant direct costs on State, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1423 is shown in the following table. The costs of this legislation fall within several budget functions including 450 (community and regional development) and 550 (health).

	By fiscal year, in millions of dollars—					
	2004	2005	2006	2007	2008	2009
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Bureau of Indian Affairs:						
Estimated authorization level	0	4	4	4	4	4
Estimated outlays	0	3	4	4	4	4
Indian Health Service:						
Estimated authorization level	0	5	5	5	6	6
Estimated outlays	0	5	5	5	6	6
Other Federal Agencies:						
Estimated authorization level	0	11	11	11	12	12
Estimated outlays	0	8	11	11	12	12
Total:						
Estimated authorization level	0	20	20	21	22	22
Estimated outlays	0	14	19	21	21	22

Basis of estimate: S. 1423 would provide Federal recognition to six Indian tribes in the State of Virginia. Although the bill does not specifically authorize the appropriation of funds, it would make members of such tribes eligible to receive services through the Bu-

reau of Indian Affairs (BIA), the Indian Health Service (IHS), and other agencies that offer services to tribes. Thus, those Federal agencies would be required to include members of the tribes among those eligible for benefits and would need additional appropriated funds to provide such benefits. For this estimate, CBO assumes that the bill will be enacted in 2004 and that the necessary amounts will be provided each year, beginning in 2005.

Bureau of Indian Affairs

As Federally recognized tribes, the Virginia tribes would be eligible for various programs administered by BIA, including child welfare services, adult care, child and family services, and general assistance. Based on information from the State of Virginia, CBO estimates that there are about 2,800 members of the affected tribes. Based on current per capita expenditures of about $1,500 for tribal members eligible to receive BIA services, CBO estimates that implementing S. 1423 would cost about $4 million each year over the next 5 years, subject to the availability of appropriated funds.

Indian Health Service

S. 1423 also would make members of the tribes affected by the bill eligible to receive health benefits from the IHS. Based on information from the IHS, CBO estimates that average spending per eligible individual would be about $1,850 in 2005. As noted above, the bill would make about 2,800 individuals eligible for benefits. Thus, CBO estimates that S. 1423 would cost about $5 million in 2005 and about $27 million over the 2004–2009 period, assuming appropriation of the necessary funds.

Other agencies

Several other agencies, including those of the Departments of Education, Housing and Urban Development, and Agriculture, provide services to federally recognized tribes. Based on information from the Office of Management and Budget, CBO estimates that the current per capita cost for other agencies that provide services to federally recognized tribes is about $3,800 per member. Therefore, CBO estimates that implementing S. 1423 would cost about $8 million in 2005 and $53 million over the 2004–2009 period for other agencies to provide services to the Virginia tribes, assuming the appropriation of the necessary amounts.

Intergovernmental and private-sector impact: S. 1423 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no significant direct costs on state, local, or tribal governments.

Estimate prepared by: Federal Costs: Lanette J. Walker—Bureau of Indian Affairs and Other Agencies; Eric Rollins—Indian Health Service. Impact on State, Local, and Tribal Governments: Marjorie Miller. Impact on the Private Sector: Cecil McPherson.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying

out the bill. The Committee believes that S. 1423, as amended, will have a minimal impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

There have been no executive communications received on this legislation.

CHANGES TO EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is show in roman). There are no changes to existing law made by the bill.

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