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EXTENDING 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

DECEMBER 23, 2009.—Ordered to be printed

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

### R E P O R T

[To accompany S. 1178]

The Committee on Indian Affairs, to which was referred the bill (S. 1178) 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 amendments and recommends that the bill, as amended, do pass.

#### PURPOSE

The purpose of S. 1178 is to provide federal recognition to six tribes in the State of Virginia—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, and make applicable to the tribal groups and their members all laws that are generally applicable to American Indians and federally-recognized Indian tribes.

There are currently no federally recognized Indian tribes in Virginia.

#### *Need for legislation*

Although there is a federal regulatory process by which an Indian group may obtain federal recognition (described below), the ability of a tribal group to meet the regulatory requirements is highly dependent upon the availability of documentary evidence and records. The six Virginia tribal groups proposed for recognition in S. 1178 have suggested that the unique history of the State of Virginia and its relations with these groups prevents them from

being able to meet the level of documentary evidence required by the Department of the Interior.

The Department of the Interior's recent decision against the federal acknowledgment of the Little Shell Tribe of Chippewa Indians of Montana suggests that the Department may view a gap in evidentiary documentation of more than ten years for a group's continuous existence since 1900 as being insufficient to meet the mandatory criteria set forth in the regulations. This interpretation by the Department makes it difficult, perhaps impossible, for the six Virginia tribal groups to obtain documentary evidence sufficient to meet the Department's requirements.

Many of the courthouses that housed records and documents related to these tribal groups burned during the Civil War.<sup>1</sup> Thus, records up to the late 1800's are difficult to find for these groups.

Additionally, in 1924, the State of Virginia passed the Racial Integrity Law, thereby requiring all segments of the population to be registered at birth in one of two categories: "white" or "colored." The "colored" category was mandated for all non-white persons regardless of race or ethnicity. Officials from the State's Bureau of Vital Statistics interpreted the law as allowing them to go back and change a person's birth certificate if they believed that there was evidence that the person was not fully white.

The primary target of the Racial Integrity Law was the African American community.<sup>2</sup> However, proponents of the agenda heralded by the Eugenics Movement saw the Virginia Indian community as a threat. This was because the Racial Integrity Law allowed persons of white and Virginia Indian ancestry, as long as it was not more than  $\frac{1}{16}$  of Indian blood quantum, to be classified as "white."<sup>3</sup> Supporters of the law (including Dr. Walter Plecker, the Registrar for Virginia's Bureau of Vital Statistics), saw the exception in the law for Indians as an opportunity for persons of mixed heritage of African American and Native American ancestry to move eventually out of the category of "colored" and into the category of "white." Thus, officials from the State's Bureau of Vital Statistics actively sought to denigrate and deny persons of Virginia Indian descent the right to identify themselves as "Indians" or "white" and forced them to be declared "colored."<sup>4</sup>

The Racial Integrity Law remained in effect until it was declared unconstitutional by the United States Supreme Court in 1967 in the *Loving v. Virginia* case (388 U.S. 1). In 1997, Virginia Governor George Allen signed into law a bill allowing Virginia Indians to correct their birth records. However, the six tribes contend that the existence of the law for several decades makes it unlikely that adequate documentation exists to meet the Department's current interpretation of the federal regulations governing acknowledgment of Indian groups.

Granting Federal recognition to the six Virginia groups has strong support from the State of Virginia. On August 4, 2009, the Committee received a letter in support of S. 1178 signed by the

<sup>1</sup>Rountree, Helen C., Ph.D., *A Brief History of the Six Indian Tribes Requesting Federal Acknowledgment*.

<sup>2</sup>Testimony of Danielle Moretti-Langholtz, Ph.D., American Indian Resource Center, Coordinator, before the United States Committee on Indian Affairs, October 9, 2002.

<sup>3</sup>Section 5 of 1924 Racial Integrity Act.

<sup>4</sup>Testimony of Danielle Moretti-Langholtz, Ph.D., American Indian Resource Center, Coordinator, before the United States Committee on Indian Affairs, October 9, 2002.

current Governor, Timothy M. Kaine, and six of the previous State Governors.<sup>5</sup> In 1999, both chambers of Virginia's General Assembly agreed to H.J. 754 urging Congress to grant Federal recognition to the Virginia tribes. In February 2007, both chambers of Virginia's General Assembly agreed to S.J. 332, a resolution acknowledging the involuntary servitude of Africans and the exploitation of Native Americans and calling for reconciliation among all Virginians. During the 109th Congress, former Governor George Allen, who was a Senator, introduced S. 480, which would have granted federal recognition to the six groups in S. 1178.

#### BACKGROUND AND HISTORY

##### *History of recognizing Indian tribes*

The recognition of an Indian group as a federally recognized Indian tribe is an important action. It is an affirmation by the United States of a tribe's right to self-government and the existence of a formal government-to-government relationship between the United States and the tribe. Once a tribe is federally recognized, it and its members have access to federal benefits and programs, and the tribal government incurs a responsibility to its members as the primary governing body of the community.

Before Congress ended the practice of treaty-making with Indian tribes in 1871, treaties were the usual manner of establishing a government-to-government relationship between the United States and an Indian tribe. Since the abolishment of treaty-making, the United States has recognized Indian tribes by executive order, legislation, and administrative decisions by the Executive Branch.

Additionally, federal courts may clarify the status of an Indian group, though in many cases the courts defer to the Bureau of Indian Affairs at the Department of the Interior.

In order to provide a uniform and consistent process in which to recognize an Indian group, the Department of the Interior developed an administrative process in 1978 through which Indian groups could petition for acknowledgment of a government-to-government relationship with the United States. The standards for this process are set forth in Title 25 of the Code of Federal Regulations, Part 83, "Procedures for Establishing That An American Indian Group Exists As An Indian Tribe."

The regulations establish seven mandatory criteria; each of which must be met before a group can achieve status as a federally recognized Indian tribe. The criteria are as follows:

- (1) The petitioner has been identified as an American Indian entity on a substantially continuous basis since 1900;
- (2) A predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present;
- (3) The petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present;
- (4) The group must provide a copy of its present governing documents and membership criteria;

<sup>5</sup> Governor Timothy M. Kaine also sent the Committee a letter on August 4, 2009 indicating that the State tax policy experts concluded that passage of S. 1178 would have a negligible, if any, impact on the Commonwealth.

(5) The petitioner's membership consists of individuals who descend from a historical Indian tribe or from historical Indian tribes, which combined and functioned as a single autonomous political entity;

(6) The membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe; and

(7) Neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the federal relationship.

The regulations have remained essentially unchanged since 1978, with the exception of revisions clarifying the evidence needed to support a recognition petition (1994), updated guidelines on the process (1997), and a notice regarding BIA's internal processing of federal acknowledgment petitions (2000 and 2008).

There have been numerous complaints about the process since 1978, but the primary complaints have been about the high cost of gathering documentary evidence to meet the seven criteria and the length of time it takes the Department to review a petition. Out of hundreds of petitioners that have filed petitions under the process, as of November 4, 2009, the Department has 45 petitions. Of that number, 16 petitioners were acknowledged as Indian tribes, and 29 petitioners were denied acknowledgment.

Due to the problems associated with the Federal acknowledgment process, an increasing number of tribal groups have asked Congress to recognize or restore their status as federally-recognized Indian tribes. Congress retains the authority to recognize tribal groups, as Congress did with the Loyal Shawnee Tribe of Oklahoma and the Graton Rancheria of California in 2000 as a part of the Omnibus Indian Advancement Act.<sup>6</sup> According to a report issued by the Congressional Research Service in September 2003, Congress has recognized, restored or otherwise changed the status of 28 tribal groups since the Federal Acknowledgment Process was created in 1978. Extending back to 1960, a total of 47 groups have had their tribal status clarified by congressional action.

#### *History of Virginia Indian groups*

When English settlers established the Jamestown Colony in 1607, there were approximately 40 Indian tribes existing in what is now the Commonwealth of Virginia. The last treaty that governed the relations between the tribes in Virginia and the State (then the Colony of Virginia) was the 1677 Middle Plantation Treaty. S. 1178 will recognize six tribal groups. A brief history of each tribal group is described below.

#### THE MONACAN INDIAN NATION

The Monacan Indians are a part of forty Siouan groups in the Virginia piedmont region extending into the Carolinas.<sup>7</sup> Recent ethnohistorical work has shown that the Monacan Indians reached from the James and Rappahannock River fall lines in the east to the Shenandoah Valley in the west, and as far south as the Roa-

<sup>6</sup>See Pub. L. 106-568 (2000).

<sup>7</sup>L. Daniel Mouer, "Powhatan and Monacan Regional Settlement Hierarchies: A Model of Relationship between Social and Environmental Structures," *Quarterly Bulletin of the Archeological Society of Virginia* 36, no. 1 (1981): 1-21.

noke River.<sup>8</sup> The Monacans moved westward from 1607–1720s in two groups, with one staying in Ft. Christanna before moving on to Pennsylvania and later Canada, while the other group stayed in Amherst County, Virginia.<sup>9</sup>

Up until the mid-1700s the Monacans had fairly sparse contact with English settlers. That changed as traders traveled further along the James River in the 1750s. The Monacan Indians had purposely lived in the Tobacco Row Mountains in order to avoid contact with Europeans.<sup>10</sup> However, encroaching agriculture made this nearly impossible. By the end of the Civil War, local farmers had begun to plant orchards in the Tobacco Row Mountains, taking away the Monacans' home area. Without land and without jobs, many Monacans worked the orchards and tobacco fields as tenant farmers in a "rigid, semi-feudal system [that] exploited Indian labor disproportionately" due to their lack of status.<sup>11</sup>

Some Monacans escaped this fate by "passing" as white in order to obtain land deeds, such as the case of the Johns Settlement at Bear Mountain. Under the Virginia Race Law of 1823, any child of an Indian, and any descendants of a Negro, up to the great-grandchild would be counted as mulatto.<sup>12</sup> Since free people of color (which is how Virginia labeled its Natives until the Racial Integrity Act of 1924) could not own land or vote, they had to legally renounce their ethnicity and register as "white" to participate in Virginian society.<sup>13</sup>

In 1831, William Johns purchased 52 acres on Bear Mountain, and another 400 acres in 1833. By 1850, 29 families related to this Monacan community<sup>14</sup> according to census records. When the land was divided in 1856, the Amherst County clerk's office recorded Monacan surnames of Beverly, Branham, Johns, Pinn and Terry as receiving parcels of the Johns Settlement.

In 1868, one of the Settlement parcels was donated to the community to be used for a meeting place. Two years later in 1870 a wooden structure was built which the community used for its church services with itinerant ministers, serving about 350 Indians. In 1896 a local newspaper article featured the Monacan community, describing "the older [members of the tribe] as typical Indians, of a rich copper color, high cheek-bones, long, straight black hair, tall and erect in form." Locals commented that it had been called 'the Indian community' as long as anyone could remember.

<sup>8</sup> Jeffrey Hantman, "Between Powhatan and Quirank"; Jeffrey Hantman, "Ancestral Monacan Society": Cultural and Temporal Boundaries in Indian History in Virginia," paper presented at the Society for American Archeology, 63rd annual meeting, March 1998; L. Daniel Mouer, "A Review of the Archaeology and Ethnohistory of the Monacans," in *Piedmont Archeology*, Publication no. 10, ed. J. Mark Witkofski and Lyle E. Browning (Richmond: Archaeological Society of Virginia, 1983), 21–39.

<sup>9</sup> "Monacan Indian Nation," 2006. Monacan Indian Nation, Inc. Nov. 11, 2009. <http://www.monacannation.com/aboutus.shtml>.

<sup>10</sup> Samuel R. Cook, *Monacans and Miners: Native American and Coal Mining Communities in Appalachia* (Lincoln: University of Nebraska Press, 2000), 49–56.

<sup>11</sup> Samuel R. Cook, "The Monacan Indian Nation: Asserting Tribal Sovereignty in the Absence of Federal Recognition." *Wicazo SA Review*. Fall, 2002. P 91–116.

<sup>12</sup> "Monacan Indian Nation." 2006. Monacan Indian Nation, Inc. Nov. 11, 2009. <http://www.monacannation.com/aboutus.shtml>. This is apparent in the 1790 national census in which Benjamin Evans and Robert Johns (both Monacans) were recorded as "white" with mulatto children instead of "Indian." The families had been previously recorded through tax records beginning in 1782.

<sup>13</sup> "Monacan Indian Nation." 2006. Monacan Indian Nation, Inc. Nov. 11, 2009. <http://www.monacannation.com/aboutus.shtml>.

<sup>14</sup> "Monacan Indian Nation." 2006. Monacan Indian Nation, Inc. Nov. 11, 2009. <http://www.monacannation.com/aboutus.shtml>.

The Episcopal Church established St. Paul's Mission at the base of Bear Mountain in 1908. The mission became a unifying factor of the Monacan community, providing a place of worship, social gathering place and the only source of education for many Monacan Indians from 1908 until its close in 1963 due to integration.

In 1920, the United States Census listed 304 Indians in Amherst County.

Throughout the 20th century, the Monacans became more active as a tribe politically and culturally. Some of these actions are exemplified by the Monacans' application for and receipt of job training assistance in the 1970s under the Comprehensive Employment and Training Act (CETA),<sup>15</sup> giving their tribal members a better chance at obtaining jobs. In 1979, the Monacan Co-operative Pottery was established at the Amherst Mission, eventually producing pieces sold to the Smithsonian Institution. The tribe helped found the Mattaponi-Pamunkey-Monacan Consortium in 1981 in order to obtain funds from Department of Labor programs for Native Americans.

The Monacan Indian Nation obtained State recognition in 1989. They established a non-profit corporation in 1993 to formalize their community and create rules for its governance in lieu of federal recognition as a sovereign nation.<sup>16</sup>

### **The Nansemond Indian Tribe**

When the English first arrived in Virginia in 1607, the Nansemond people numbered around 1,200 people<sup>17</sup> and made up part of the Powhatan Confederacy. Their original land was located 30 miles from Jamestown, making a large amount of interaction with English settlers inevitable. In 1608, a group of Englishmen led by John Smith raided a Nansemond town, and threatened more destruction unless the Nansemond paid 400 bushels of corn to his men.<sup>18</sup>

The tribe split into two groups by 1646, with one group remaining on their homeland and adopting the English farming lifestyle. These became the Christianized Nansemonds. In 1669, the Virginia census records show two distinct Nansemond groups of Indians.<sup>19</sup>

The non-Christianized, "traditionalist" group attacked the English in 1644 and then fled westward to the Nottaway River where Virginia had assigned the Nottaway Indians a reservation. By 1664, the Nansemond Indians were given a poor tract of land as their reservation, which they later sold off.<sup>20</sup> The reservation was sold in 1792 since this group of Nansemond had abandoned it in 1744 to live with the Nottaway tribe on their reservation. Unfortunately this group eventually dispersed or died out, with the last Nansemond living on the Nottoway reservation dying in 1806.<sup>21</sup>

<sup>15</sup> Cook, Monacans and Miners, 116–118.

<sup>16</sup> "Monacan Indian Nation." 2006. Monacan Indian Nation, Inc. Nov. 11, 2009. <http://www.monacannation.com/aboutus.shtml>.

<sup>17</sup> "The Official Nansemond Tribal Association Website." *Nansemond and Powhatan History*. 2009. Nansemond Tribal Association. Nov 13, 2009. [http://www.nansemond.org/joomla/index.php?option=com\\_content&task=category&sectionid=5&id=14&Itemid=30](http://www.nansemond.org/joomla/index.php?option=com_content&task=category&sectionid=5&id=14&Itemid=30).

<sup>18</sup> Waugaman, Sandra F. and Danielle-Moretti-Langholtz, Ph.D. *We're Still Here: Contemporary Virginia Indians Tell Their Stories*, Richmond, VA: Palari Publishing, 2006 (revised edition).

<sup>19</sup> S. 1178, 111th Cong. § 601(2) (2009).

<sup>20</sup> S. Report No. 108–259 (2004).

<sup>21</sup> "The Official Nansemond Tribal Association Website."

Meanwhile, the Christianized Nansemonds had moved near Dismal Swamp to avoid contact with the English and to find more productive lands. During the 1830s when Virginia passed more rigid racial laws, the Nansemond lobbied their delegate to pass a law exempting them, which they achieved in 1833. They were able to register as “of mixed blood, not being negro or mulatto.”<sup>22</sup>

The Methodist Church established a mission for the Nansemond in 1850, eventually adding a schoolhouse in the 1890s to better educate their children.<sup>23</sup> The Nansemond had historically promoted education within their ranks, even sending one of their boys to Bafferton Indian School at the College of William and Mary in 1711. In 1922 the Nansemond received funding for an Indian school from the County, which served their community for a few years. Although short-lived, the school was a great victory in a time when only two races were recognized in the State of Virginia and few supported funding a third segregated school system.<sup>24</sup>

According to James Mooney’s 1901 census, the Nansemond tribe had 180 members. The Nansemond first attempted to obtain recognition in the 1920s with the encouragement of anthropologist Frank Speck. The tribe obtained State recognition in 1985.

### **The Chickahominy Indian Tribe**

When Jamestown was established, the Chickahominy lived nearby in present-day New Kent County. This proximity allowed for much interaction between the two groups. The Chickahominy were an Algonquian speaking people numbering between 600–900 people.<sup>25</sup> Although allies with the Powhatan Confederacy, the Chickahominy were fairly independent and had their own form of government.

Surviving members of the Paspahog tribe found refuge with the Chickahominy during August 1610 after the family of Chief Wowinchopunk was murdered by settlers.<sup>26</sup> In the Treaty of 1614 with Jamestown’s governor Sir Thomas Dale, the tribe promised 300 warriors to fight against the Spanish.<sup>27</sup> The Chickahominy received the right to self-governance in return. In 1623, and again in 1627, the Chickahominy were victims of raids.<sup>28</sup> In 1646 the Chickahominy signed a treaty granting them a reservation in Pamunkey Neck near the present-day Mattaponi Reservation and in present-day King William County.

In 1677, representatives of the Tribe signed the Treaty of Middle Plantation between several tribes and the King of England.<sup>29</sup>

<sup>22</sup> Rountree, Helen C. *Pocahontas’s People*. OK: Oklahoma University Press, 1990.

<sup>23</sup> S. 1178, 111th Cong. § 601(17).

<sup>24</sup> Rountree, Helen C., Testimony before the United States Senate Committee on Indian Affairs, September 25, 2008.

<sup>25</sup> Virginia Department of Education. “Virginia’s First People: Past and Present.” *History*. 2005. Prince William County Network, Virginia Department of Education. Nov. 13, 2009. <http://virginiaindians.pwnet.org/history/index.php>.

<sup>26</sup> *The Thomasina Jordan Indian Tribes of Virginia Federal Recognition Act and the Grand River Band of Ottawa Indians of Michigan Referral Act*, 109 Cong. 576 (2006).

<sup>27</sup> S. 1178, 111th Cong. § 101(2) (2009).

<sup>28</sup> Virginia Department of Education. “Virginia’s First People: Past and Present.” *History*. 2005. Prince William County Network, Virginia Department of Education. Nov. 13, 2009. <http://virginiaindians.pwnet.org/history/index.php>.

<sup>29</sup> Rountree, Helen C., Testimony before the United States Senate Committee on Indian Affairs, September 25, 2008.

In 1702, the tribe was forced from its reservation and lost the lands in 1718.<sup>30</sup>

Around 1750 the Chickahominy began moving back to their land in New Kent and Charles City Counties.<sup>31</sup> Charles City County census records show modern-day Chickahominy surnames in the area beginning in 1831.<sup>32</sup> New Kent County records began documenting Chickahominy people in an 1840 Census.

In 1901, the tribe established the Samaria Baptist Church and bought nearby land for tribal use.<sup>33</sup> In the early 1900s they also established the Samaria School for their children's education up until 8th grade, paying teacher salaries out of donated funds.<sup>34</sup> The tribe also created a tax on Chickahominy men from 1901 until 1935 to fund the building of the school, buy supplies and pay the teacher's salary. The tribe's school was integrated in 1968 as a primary school for the county.<sup>35</sup>

In order to be married as Chickahominy Indians instead of as "colored" under Virginia's Racial Integrity Act of 1924, some tribal members were able to travel out of State. The parents of tribal member Stephen Adkins, for example, were fortunate in being able to do this, and were married on February 20, 1935 in Washington, D.C., thereby avoiding the loss of their Native identity.<sup>36</sup>

In the 1920s, the governors of Virginia wrote letters of introduction for the Chickahominy chiefs, who had official business in Washington, D.C. In 1934, Chickahominy Chief O.O. Adkins wrote to Commissioner of Indian Affairs John Collier, requesting funding for construction of a school, medical facilities, a library and agricultural tools. Collier responded that Congress had passed the Indian Reorganization Act on June 18th of that year, but hadn't appropriated the funding. Chief O.O. Adkins again sought Collier's help in 1942 when Chickahominy men demanded proper racial designations before entering the Selective Service. Although Collier's office could not officially intervene "as a matter largely of historical accident," Collier did ask Richmond News-Leader editor Douglas S. Freeman to help the Virginia Indians obtain proper racial designations on their birth records.<sup>37</sup>

The interactions between the Chickahominy Indians and the Federal government continued through later years. In 1961, Senator Sam Ervin, Chairman of the Subcommittee on Constitutional Rights of the Judiciary Committee in the Senate, requested information from Chickahominy Chief O.O. Adkins about Indians' constitutional rights "in [his] area" in Virginia.<sup>38</sup>

The Chickahominy Indians built a tribal center in 1974 funded by tribal members through monthly pledges.<sup>39</sup> Their assertion of

<sup>30</sup>Virginia Department of Education. "Virginia's First People: Past and Present." *History*. 2005. Prince William County Network, Virginia Department of Education. Nov. 13, 2009. <http://virginiaindians.pwnet.org/history/index.php>.

<sup>31</sup>S. 1178, 111th Cong. § 101(8) (2009).

<sup>32</sup>S. 1178, 111th Cong. § 101(10) (2009).

<sup>33</sup>S. 1178, 111th Cong. § 101(11) (2009).

<sup>34</sup>"William & Mary Arts and Sciences." *Virginia Indians: Chickahominy Tribe*. 2009. College of William & Mary. Nov. 12, 2009. <http://web.wm.edu/airc/vaindians/chickahominy.php>.

<sup>35</sup>S. 1178, 111th Cong. § 101(12) (2009).

<sup>36</sup>*The Thomasina Jordan Indian Tribes of Virginia Federal Recognition Act and the Grand River Band of Ottawa Indians of Michigan Referral Act*, 109 Cong. § 576 (2006).

<sup>37</sup>S. 1178, 111th Cong. §§ 101(15)-(20) (2009) and Rountree, Helen C., Testimony before the United States Senate Committee on Indian Affairs, September 25, 2008.

<sup>38</sup>S. 1178, 111th Cong. § 101(25) (2009).

<sup>39</sup>S. 1178, 111th Cong. § 101(28) (2009).



tribal government came to a head in 1983 when they received State recognition by the Commonwealth of Virginia.

Currently there are about 750 Chickahominy living within 5 miles of the tribal center and hundreds more in other parts of the country.<sup>40</sup>

### **The Chickahominy Indian Tribe—Eastern Division**

The early history of the Chickahominy Indian Tribe—Eastern Division is the same as that of the Chickahominy Indian Tribe, as the two tribes acted as one until the early 1900s.

Two fires consumed all New Kent County records prior to 1870, but an enclave of Indians in New Kent County are shown in the Virginia Census of 1870. These are the ancestors of the Chickahominy Indian Tribe—Eastern Division.<sup>41</sup>

In 1901, the Chickahominy Indian Tribe established the Samaria Indian Baptist Church. However, two factions formed within the tribe soon, splitting over whether to press the state for a reservation and whether to establish a new church. The Tsena Comocko Indian Baptist Church in 1922 was built in 1922 in spite of the dissenting members.<sup>42</sup> Unable to resolve their differences, the group forming the new church organized themselves as the Chickahominy Eastern Division Indians. The Eastern Division began forming its government in 1920, eventually incorporating under State law in 1925.

Once the tribe was split, the Chickahominy Indian Tribe—Eastern Division started a one-room schoolhouse in New Kent County called the Boulevard Indian School. In 1950, the tribal school was closed and the children started attending the Samaria Indian School again, but that school was closed in 1967 when Virginia integrated its public school system.

Although they had split from the Chickahominy tribe, the Chickahominy Eastern Division stayed linked to the Chickahominy. Both groups used the same school facilities, with Eastern Division children attending Samaria Indian School after the 1-room Indian school in New Kent County closed in 1950. They also had to find new schools when the Samaria Indian School was desegregated in 1967.

In the late 1970's, the tribe was awarded a grant from the U.S. Department of Housing and Urban Development to buy 2 mobile homes to be used as office and classroom space. Another grant from the Administration of Native Americans was used for the purchase and improvement of office equipment and supplies.

The tribe received State recognition in 1983.

Today the tribe numbers 130 people in New Kent County.

### **The Upper Mattaponi Tribe**

Captain John Smith first visited the Passaunkack village in 1608, which is in the location of the modern-day Upper Mattaponi. On one of John Smith's maps from 1612, he locates the village in

<sup>40</sup> "William & Mary Arts and Sciences." *Virginia Indians: Chickahominy Tribe*. 2009. College of William & Mary. Nov. 12, 2009. <http://web.wm.edu/airc/vaindians/chickahominy.php>.

<sup>41</sup> S. 1178, 111th Cong. §201(11) (2009).

<sup>42</sup> Rountree, Helen C. *Pocahontas's People*. OK: Oklahoma University Press, 1990. p. 218.

the tribe's present-day location.<sup>43</sup> August Hermann mapped the area in 1676, labeling several "Indian houses" in the same location.

The Upper Mattaponi Tribe shares its earlier history with the Chickahominy Indian Tribe as they were forced together through treaties with the English. The Upper Mattaponi sought refuge with the Chickahominy after being attacked by Seneca Indians in 1683, beginning many years of shared history. The Virginia Colony assigned both tribes to a reservation in 1695, which they later traded for "the cliffs" (an area currently encompassed by the Mattaponi Indian Reservation).<sup>44</sup>

In 1726 the Virginia Colony stopped funding interpreters in their dealings with the Upper Mattaponi—apparently enough Indians knew English so the interpreters were no longer necessary. However, not all the interpreters left. James Adams stayed with the Upper Mattaponi, giving his surname to many of today's tribal members.<sup>45</sup>

Thomas Jefferson mentioned the Upper Mattaponi on their King William County reservation in 1787, and referred to the Chickahominy as "blended" with the Upper Mattaponi and Pamunkey Indians.<sup>46</sup>

A federal census in 1850 showed 10 Upper Mattaponi families living in King William County, Virginia. King William County records also indicate Upper Mattaponis residing in the county. An 1863 Civil War map designated the area "Indian land." King William County court records list "Indians" marrying and residing on the King William County reservation, undoubtedly referring to the Upper Mattaponi.<sup>47</sup>

Refusing to enlist in the Confederate Army during the Civil War, the Upper Mattaponis stayed neutral. Although not directly involved in the war, gunboats typically sailed past the reservation, and a slave ship was sunk nearby as well according to Mattaponi oral tradition.<sup>48</sup>

Anthropologist James Mooney mentions the Upper Mattaponi in 1901 after hearing about them during a visit to the Pamunkey Tribe but didn't visit them himself. In 1928, University of Pennsylvania anthropologist Frank Speck published a book on modern Virginia Indians with a section on the Upper Mattaponis.<sup>49</sup>

The Upper Mattaponi fought alongside other Virginia tribes for an Indian designation instead of a "colored" designation in the 1930 United States Census. The Upper Mattaponis achieved a compromise in which their ancestry was recorded. However, the census also contained an asterisk indicating that Indians did not exist in Virginia. These arguments over race continued into the 1940s, when the Armed Forces attempted to induct Upper Mattaponis into the services as "colored." In 1945, the tribe also fought for its youth to be allowed to study at Federally-funded Indian schools since the tribe could not provide for their high school education.<sup>50</sup>

<sup>43</sup> Virginia Department of Education. "Virginia's First People: Past and Present." *History*. 2005. Prince William County Network, Virginia Department of Education. Nov. 13, 2009. (<http://virginiaindians.pwnet.org/history/index.php>).

<sup>44</sup> H.R. Rep. No. 110-124, at 6 (2007).

<sup>45</sup> S. 1178, 111th Cong. §§ 301(10)-(12) (2009).

<sup>46</sup> S. 1178, 111th Cong. § 301(13) (2009).

<sup>47</sup> S. 1178, 111th Cong. §§ 301(14)-(16) (2009).

<sup>48</sup> Rountree, Helen C. *Pocahontas's People*. OK: Oklahoma University Press, 1990, p. 198.

<sup>49</sup> S. 1178, 111th Cong. §§ 301(17)-(18) (2009).

<sup>50</sup> S. 1178, 111th Cong. §§ 301(19)-(21) (2009).

The Upper Mattaponi won state recognition in 1983, confirming their Indian ancestry and identity in the eyes of Virginian government.

### **The Rappahannock Tribe**

The Rappahannock people were probably the unfortunate tribe that met the Englishman Captain Samuel Mace as he sailed up what is now the Rappahannock River in 1603. The captain killed a Rappahannock chief and brought a group of men back to England. These men gave demonstrations of dugout canoes on the Thames River back in England in December of 1603.<sup>51</sup>

The Rappahannocks were a late acquisition into Powhatan's Confederacy, differing culturally from the Mattaponi and Pamunkey mainstay of the confederacy. They were first recorded in Western society in 1605.<sup>52</sup> Captain John Smith encountered several Rappahannock villages during his 1607 capture in Chickahominy territory.<sup>53</sup> On Smith's map, he represents the Rappahannock people with 34 wigwams just north of the river as opposed to 1 wigwam (representing 5 villages and 2 chief towns) in their traditional homeland on the southern shore. However, this placement makes practical sense in terms of defense against the Powhatan.<sup>54</sup>

Capt. William Clairborne attempted to establish treaty relations with the Rappahannocks in 1645 since the tribe didn't participate in the 1644 uprising led by the Pamunkey. In their peaceful manner, the tribe continued to encounter English settlers and even doing business with them. In 1651, the Rappahannocks sold land to English settler Colonel Morre Fauntleroy and signed a treaty with Lancaster County in September of 1653. The tribe signed another treaty in 1656 with the Rappahannock county (present-day Richmond and Essex counties), setting out rewards for returning fugitives and encouraging the Rappahannocks to make their children servants in English houses.<sup>55</sup>

A 1669 Virginia census records 30 Rappahannock and 50 Nantaughtacund (which both Speck and Mooney believe is reference to the Rappahannock).<sup>56</sup> The town referred to in this census was actually a hunting village used by the Rappahannock had lived in the 1670s. The Rappahannocks were removed from their homeland in 1684 to a reservation established for them in 1682 in modern day Caroline and King & Queen counties. After Iroquois raids in 1683, the Virginia Colonial Council moved the Rappahannock to the Nanzatico Indian Town about 30 miles away from King George County. From 1687 to 1699 the Rappahannock migrated away from Nanzatico to Portobacco Indian Town on the southern side of the Rappahannock River. In 1705 the tribe was moved a few miles off their original reservation.<sup>57</sup> They were moved once again in 1706 along with the Portobaccos and Nanzaticos by Essex County back to King and Queen County where they resettled on one of their ancient hunting village sites (the 1682 reservation).

<sup>51</sup> "Virginia Indian Council: Virginia Indian Tribes." *Rappahannock Tribe*. 12/10/2007. VCI. Nov. 5, 2009. <http://indians.vipnet.org>.

<sup>52</sup> Speck, Frank G. *The Rappahannock Indians of Virginia*. 1925, p. 25.

<sup>53</sup> Speck, Frank G. *The Rappahannock Indians of Virginia*. 1925, p. 28.

<sup>54</sup> Speck, Frank G. *The Rappahannock Indians of Virginia*. 1925, p. 36.

<sup>55</sup> S. 1178, 111th Cong. §§ 401(8)-(14) (2009).

<sup>56</sup> Speck, Frank G. *The Rappahannock Indians of Virginia*. 1925.

<sup>57</sup> S. Rep. No. 108-259 at 2 (2004).

Upper Essex Baptist Church had a solid Rappahannock presence in their congregation from 1819 until the 1880s. This was a tribute to their presence in the region as well as their Christianization and the beginning of their assimilation into American culture. In 1870 Joseph Mastin established another church, St. Stephens Baptist, to serve the Rappahannock in Caroline County, taking members away from Upper Essex.<sup>58</sup> This remained the case until Rappahannock Indian Baptist Church was established in 1964.<sup>59</sup>

Although unable to attend white public schools, the Rappahannock created other educational opportunities for their members. Rappahannock children were taught by a tribal member in Caroline County until the tribe built their own formal school in 1922 at Lloyds in Essex County. Chief George Nelson testified in Congress asking for \$50,000 to establish an Indian school in Virginia.<sup>60</sup> During the late 1940s and early 1950s, the tribe set up a school at Indian Neck, with the state paying a tribal member to teach 10 students in King and Queen County to Sharon Indian School.<sup>61</sup> The Rappahannock created a private school in 1962 in a donated building in Essex County. Unfortunately it was closed in 1964, and the children were then bused to Sharon School until that school closed 3 years later.<sup>62</sup> At this point in 1965, the Rappahannock students were moved to the white Marriott High School by order of the Governor of Virginia.<sup>63</sup>

#### LEGISLATIVE HISTORY

Senator Webb introduced S. 1178 on June 3, 2009 with Senator Warner cosponsoring the bill. The Committee on Indian Affairs ordered the bill to be reported favorably, with an amendment, on October 22, 2009.

The Committee did not hold a hearing on S. 1178 in the 111th Congress, but the Committee has held hearings on similar legislation in previous Congresses. In the 110th Congress, the Committee held a hearing on H.R. 1294 on September 25, 2008. This legislation was similar to S. 1178. H.R. 1294 passed the House of Representatives on May 8, 2007. In the 109th Congress, the Committee held a hearing on S. 480 on June 21, 2006. S. 480 was similar to S. 1178.

A similar bill, H.R. 1385, was introduced in the House of Representatives by Representative James Moran on March 9, 2009. That bill passed the House of Representatives by voice vote on June 3, 2009. The Committee on Natural Resources in the House of Representatives held a hearing on H.R. 1385 on March 18, 2009.

#### SUMMARY OF AMENDMENT

During a business meeting of the Committee on October 22, 2009, Chairman Dorgan offered an amendment to S. 1178 on behalf of the bill's sponsor, Senator Webb. The amendment was approved by the Committee by voice vote.

<sup>58</sup> S. 1178, 111th Cong. §§ 401(30)–(36) (2009).

<sup>59</sup> S. 1178, 111th Cong. § 401(38) (2009).

<sup>60</sup> S. 1178, 111th Cong. §§ 401(46)–(48) (2009).

<sup>61</sup> S. 1178, 111th Cong. § 401(66) (2009).

<sup>62</sup> Rountree, Helen C. *Pocahontas's People*. OK: Oklahoma University Press, 1990, p. 241.

<sup>63</sup> S. 1178, 111th Cong. § 401(68) (2009).

The amendment ensures that although the State of Virginia will have civil and criminal jurisdiction over the lands of the six groups recognized in S. 1178, the groups will retain jurisdiction over Indian child proceedings under the Indian Child Welfare Act of 1978.

SECTION-BY-SECTION ANALYSIS OF S. 1178 (AS AMENDED)

*Section 1. Short title*

This Act may be cited as the “Indian Tribes of Virginia Federal Recognition Act of 2009.”

TITLE I—CHICKAHOMINY INDIAN TRIBE

*Section 101. Findings*

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

*Section 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.”

*Section 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.

*Section 104. Membership; governing documents*

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

*Section 105. Governing body*

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

*Section 106. Reservation of the tribe*

This section directs the Secretary to take into trust any land held in fee by the Tribe that was acquired on or before January 1, 2007. It also authorizes the Secretary to take into trust lands owned by the Tribe in fee that are located within the counties of New Kent, Charles City, James City, or Henrico that the tribe seeks to transfer to the Secretary. This section also includes a prohibition on gaming.

*Section 107. Hunting, fishing, trapping, gathering, and water rights*

This section states that enactment of S. 1178 does not expand, reduce or affect hunting, fishing, trapping, gathering, and water rights of the tribe or its members.

*Section 108. Jurisdiction of the State of Virginia*

This Section states that the State of Virginia shall have jurisdiction over all criminal and civil actions arising on lands owned by the tribe or held in trust by the Secretary. The Secretary is authorized to accept all or any portion of the jurisdiction of Virginia after

consultation with the Attorney General and certification by the tribe. The section expressly states that this section shall not affect the application of section 109 of the Indian Child Welfare Act of 1978.

## TITLE II—CHICKAHOMINY INDIAN TRIBE—EASTERN DIVISION

### *Section 201. Findings*

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

### *Section 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.”

### *Section 203. Federal recognition*

This section extends 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.

### *Section 204. Membership; governing documents*

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

### *Section 205. Governing body*

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

### *Section 206. Reservation of the tribe*

This section directs the Secretary to take into trust any land held in fee by the Tribe that was acquired on or before January 1, 2007. It also authorizes the Secretary to take into trust lands owned by the Tribe in fee that are within the counties of New Kent, Charles City, James City, or Henrico that the tribe seeks to transfer to the Secretary. This section also includes a prohibition on gaming.

### *Section 207. Hunting, fishing, trapping, gathering, and water rights*

This section states that enactment of S. 1178 does not expand, reduce or affect hunting, fishing, trapping, gathering, and water rights of the tribe or its members.

### *Section 208. Jurisdiction of the State of Virginia*

This Section states that the State of Virginia shall have jurisdiction over all criminal and civil actions arising on lands owned by the tribe or held in trust by the Secretary. The Secretary is authorized to accept all or any portion of the jurisdiction of Virginia after consultation with the Attorney General and certification by the tribe. The section expressly states that this section shall not affect the application of section 109 of the Indian Child Welfare Act of 1978.

## TITLE III—UPPER MATTAPONI TRIBE

*Section 301. Findings*

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

*Section 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.”

*Section 303. Federal recognition*

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

*Section 304. Membership; governing documents*

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

*Section 305. Governing body*

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

*Section 306. Reservation of the tribe*

This section directs the Secretary to take into trust any land held in fee by the Tribe that was acquired on or before January 1, 2007. It also authorizes the Secretary to take into trust lands owned by the Tribe in fee that are located within the counties of King William, Caroline, Hanover, King and Queen, and New Kent. This section also includes a prohibition on gaming.

*Section 307. Hunting, fishing, trapping, gathering, and water rights*

This section states that enactment of S. 1178 does not expand, reduce or affect hunting, fishing, trapping, gathering, and water rights of the tribe or its members.

*Section 308. Jurisdiction of the State of Virginia*

This Section states that the State of Virginia shall have jurisdiction over all criminal and civil actions arising on lands owned by the tribe or held in trust by the Secretary. The Secretary is authorized to accept all or any portion of the jurisdiction of Virginia after consultation with the Attorney General and certification by the tribe. The section expressly states that this section shall not affect the application of section 109 of the Indian Child Welfare Act of 1978.

## TITLE IV—RAPPAHANNOCK TRIBE, INC.

*Section 401. Findings*

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

*Section 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.”

*Section 403. Federal recognition*

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

*Section 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 this legislation.

*Section 405. Governing body*

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

*Section 406. Reservation of the tribe*

This section directs the Secretary to take into trust any land held in fee by the Tribe that was acquired on or before January 1, 2007. It also authorizes the Secretary to take into trust lands owned by the Tribe in fee that are located within the counties of King and Queen, Spotsylvania, Richmond, Lancaster, King George, Essex, Caroline, New Kent, King William, James City, and Surry. This section also includes a prohibition on gaming.

*Section 407. Hunting, fishing, trapping, gathering, and water rights*

This section states that enactment of S. 1178 does not expand, reduce or affect hunting, fishing, trapping, gathering, and water rights of the tribe or its members.

*Section 408. Jurisdiction of the State of Virginia*

This Section states that the State of Virginia shall have jurisdiction over all criminal and civil actions arising on lands owned by the tribe or held in trust by the Secretary. The Secretary is authorized to accept all or any portion of the jurisdiction of Virginia after consultation with the Attorney General and certification by the tribe. The section expressly states that this section shall not affect the application of section 109 of the Indian Child Welfare Act of 1978.

## TITLE V—MONACAN INDIAN NATION

*Section 501. Findings*

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

*Section 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.”



*Section 503. Federal recognition*

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

*Section 504. Membership; governing documents*

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

*Section 505. Governing body*

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

*Section 506. Reservation of the tribe*

This section directs the Secretary to take into trust any land held in fee by the Tribe that was acquired on or before January 1, 2007. It also authorizes the Secretary to take into trust lands owned by the Tribe in fee that are located within the counties of Albemarle, Alleghany, Amherst, Augusta, Campbell, Nelson, and Rockbridge. This section also includes a prohibition on gaming.

*Section 507. Hunting, fishing, trapping, gathering, and water rights*

This section states that enactment of S. 1178 does not expand, reduce or affect hunting, fishing, trapping, gathering, and water rights of the tribe or its members.

*Section 508. Jurisdiction of the State of Virginia*

This Section states that the State of Virginia shall have jurisdiction over all criminal and civil actions arising on lands owned by the tribe or held in trust by the Secretary. The Secretary is authorized to accept all or any portion of the jurisdiction of Virginia after consultation with the Attorney General and certification by the tribe. The section expressly states that this section shall not affect the application of section 109 of the Indian Child Welfare Act of 1978.

## TITLE VI—NANSEMOND INDIAN TRIBE

*Section 601. Findings*

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

*Section 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."

*Section 603. Federal recognition*

This section extends 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.

*Section 604. Membership; governing documents*

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

*Section 605. Governing body*

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

*Section 606. Reservation of the tribe*

This section directs the Secretary to take into trust any land held in fee by the Tribe that was acquired on or before January 1, 2007. It also authorizes the Secretary to take into trust lands owned by the Tribe in fee that are located within the boundaries of the city of Suffolk, the City of Chesapeake, or Isle of Wight County, Virginia. This section also includes a prohibition on gaming.

*Section 607. Hunting, fishing, trapping, gathering, and water rights*

This section states that enactment of S. 1178 does not expand, reduce or affect hunting, fishing, trapping, gathering, and water rights of the tribe or its members.

*Section 608. Jurisdiction of the State of Virginia*

This Section states that the State of Virginia shall have jurisdiction over all criminal and civil actions arising on lands owned by the tribe or held in trust by the Secretary. The Secretary is authorized to accept all or any portion of the jurisdiction of Virginia after consultation with the Attorney General and certification by the tribe. The section expressly states that this section shall not affect the application of section 109 of the Indian Child Welfare Act of 1978.

## COMMITTEE RECOMMENDATION

On October 22, 2009, the Committee on Indian Affairs convened a business meeting to consider S. 1178 and other measures. During the business meeting, the Committee voted, by a voice vote, to report S. 1178, with an amendment, favorably to the full Senate with a recommendation that it do pass. Vice Chairman John Barrasso and Senators Tom Coburn and Mike Crapo requested to be recorded as opposing the legislation.

## COST AND BUDGETARY CONSIDERATIONS

The cost estimate for S. 1178 as calculated by the Congressional Budget Office is set forth below:

*S. 1178—Indian Tribes of Virginia Federal Recognition Act of 2009*

Summary: S. 1178 would provide federal recognition to six Indian tribes in Virginia—the Chickahominy Indian Tribe, the Eastern Division of the Chickahominy Indian Tribe, the Upper Mattaponi Tribe, the Rappahannock Tribe, Inc., the Monacan Indian Nation, and the Nansemond Indian Tribe. Federal recognition would make the tribes eligible to receive benefits from various federal programs. CBO estimates that implementing this legislation would cost \$52 million over the 2010–2014 period, assuming appro-

priation of the necessary funds. Enacting S. 1178 would not affect direct spending or revenues.

S. 1178 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1178 is shown in the following table. The costs of this legislation fall within budget functions 450 (community and regional development) and 550 (health).

	By fiscal year, in millions of dollars 2010—					
	2010	2011	2012	2013	2014	2010–2014
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Bureau of Indian Affairs:						
Estimated Authorization Level .....	2	2	2	2	2	10
Estimated Outlays .....	1	2	2	2	2	9
Indian Health Service:						
Estimated Authorization Level .....	8	8	9	9	10	44
Estimated Outlays .....	7	8	9	9	10	43
Total Changes:						
Estimated Authorization Level .....	10	10	11	11	12	54
Estimated Outlays .....	8	10	11	11	12	52

Basis of estimate: For this estimate, CBO assumes that S. 1178 will be enacted early in fiscal year 2010. S. 1178 would provide federal recognition to six Indian tribes in Virginia. Such recognition would allow the tribes, with membership totaling about 3,400 people, to receive benefits from various programs administered by the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS). Based on the average per capita expenditures by those agencies for other Indian tribes, CBO estimates that implementing S. 1178 would cost \$52 million over the 2010–2014 period, assuming appropriation of the necessary funds.

*Bureau of Indian Affairs*

BIA provides funding to federally recognized tribes for various purposes, including child welfare services, adult care, community development, and general assistance. In total, CBO estimates that providing BIA services would cost \$9 million over the 2010–2014 period, assuming appropriation of the necessary funds. This estimate is based on per capita expenditures for other federally recognized tribes located in the eastern United States.

*Indian Health Service*

S. 1178 also would make members of the tribes eligible to receive health benefits from the IHS. Based on information from the IHS, CBO estimates that about 56 percent of tribal members—or about 1,900 people—would receive benefits each year. CBO assumes that the cost to serve those individuals would be similar to funding for current IHS beneficiaries—about \$4,000 per individual in 2009. Assuming appropriation of the necessary funds and adjusting for anticipated inflation, CBO estimates that IHS benefits for the tribes would cost \$43 million over the 2010–2014 period.

*Other Federal agencies*

In addition to BIA and IHS funding, certain Indian tribes also receive support from other Federal programs within the Departments of Education, Housing and Urban Development, Labor, and Agriculture. Based on their status as tribes recognized by Virginia, the tribes specified in the bill are already eligible to receive funding from those departments. Thus, CBO estimates that implementing S. 1178 would not add to the cost of those programs.

Intergovernmental and private-sector impact: S. 1178 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Previous CBO estimate: On April 29, 2009, CBO transmitted a cost estimate for H.R. 1385, the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2009, as ordered reported by the House Committee on Natural Resources on April 22, 2009. At that time, CBO estimated that implementing H.R. 1385 would cost \$65 million over the 2010–2014 period.

The two bills are very similar. Based on new information from the tribes, CBO now estimates that membership of the tribes that would be affected by H.R. 1385 or S. 1178 totals about 3,400 (about 800 less than estimated for H.R. 1385). As a result, CBO expects that fewer tribal members would be eligible to receive benefits from certain federal programs under both bills. Thus, CBO currently estimates that implementing either bill would cost \$52 million over the 2010–2014 period.

Estimate prepared by: Federal costs: Jeff LaFave—Bureau of Indian Affairs; Robert Stewart—Indian Health Service; Impact on state, local, and tribal governments: Melissa Merrell; Impact on the private sector: Marin Randall.

Estimate approved by: Theresa Gullo, 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. 1178 will have a minimal impact on regulatory or paperwork requirements.

## EXECUTIVE COMMUNICATIONS

There have been no executive communications received by the Committee with regard to S. 1178.

## CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, enactment of S. 1178 would affect no changes in existing law.