

## Calendar No. 348

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2d Session }

SENATE

{ REPORT  
{ 113-209

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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

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JULY 14, 2014.—Ordered to be printed

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

### R E P O R T

together with

### ADDITIONAL VIEWS

[To accompany S. 1074]

The Committee on Indian Affairs, to which was referred the bill (S. 1074) 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, without amendment, and recommends that the bill do pass.

#### PURPOSE

The purpose of S. 1074 is to provide federal recognition to six tribes in the Commonwealth 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.

#### 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. 1074 have suggested that the unique history of the Commonwealth 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.

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 Commonwealth 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 to the "colored" category 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 1967, when the United States Supreme Court's ruling in *Loving v. Virginia* (388 U.S. 1) declared it unconstitutional. 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.

The Virginia Tribes never waged war on the United States of America. The hostilities between the Virginia Tribes and the Europeans who came here in 1607 effectively ended with the Treaty of Middle Plantation in 1677. This Treaty was signed between England and the Virginia Tribes. Predating the creation of the United States of America by just short of 100 years, this Treaty was never recognized by the founding fathers of the United States because it

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

<sup>2</sup>*To Extend Federal Recognition to the Chickahominy Tribe, The Chickahominy Indian Tribe—Eastern Division, the Upper Mattaponi Tribe, The Rappahannock Tribe, Inc., the Monacan Tribe, and the Nansemond Tribe Before the Senate Committee on Indian Affairs*, 107th Congress 2, 74–76 and 111–116 (2002) (statement of Danielle Moretti-Langholtz, Ph.D., American Indian Resource Center, coordinator).

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

<sup>4</sup>Moretti-Langholtz,, *supra* note 4.

was not negotiated with them. Had the Treaty been negotiated with the United States of America, these Tribes would have historically been recognized from the beginning of the United States as federal recognition has historically been conferred by treaty in the vast majority of cases (until Congress ended the practice in 1871). Although the Treaty of Middle Plantation is still commemorated annually in Virginia, and still governs the relationship between the Tribes in Virginia and the Commonwealth, the Treaty has never been recognized by the United States.

Granting Federal recognition to the six Virginia groups has had strong support from the Commonwealth of Virginia. During the 111th Congress, the Committee received a letter in support of S. 1178, an identical bill to S. 1074, signed by then Virginia 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, then-Senator, introduced S. 480, which would have granted federal recognition to the six groups in S. 1074.

#### BACKGROUND

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

The recognition of a Native American 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, although 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 by 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 Regula-

<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.

tions, 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;

(5) The petitioner's membership consists of individuals who descend from an 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). The regulations are currently under review, and in June 2013, the Assistant Secretary of Indian Affairs released a Discussion Draft with proposed changes to the regulations that were developed by the Department of Interior Workgroup. The comment period on the Discussion Draft closed in August 2013, and the Assistant Secretary of Indian Affairs released the proposed rule in the Federal Register on May 22, 2014.

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. Since the Federal Acknowledgment Process regulations were established in 1978, the Department has issued 49 decisions under the process. Of that number, 17 petitioners were acknowledged as Indian tribes, and 32 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> Since 1982, Congress has restored or recognized 9 Indian tribes.<sup>7</sup>

### *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), and which still governs that relationship, was the 1677 Middle Plantation Treaty. S. 1074 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>8</sup> Recent ethnohistorical work has shown that the Monacan Indians reached from the James and Rappahanock River fall lines in the east to the Shenandoah Valley in the west, and as far south as the Roanoke River.<sup>9</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>10</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>11</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>12</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>13</sup> Since free people of color

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

<sup>7</sup> <http://www.bia.gov/idc/groups/xofa/documents/text/idc013624.pdf>.

<sup>8</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.

<sup>9</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 Witkowski and Lyle E. Browning (Richmond: Archaeological Society of Virginia, 1983), 21–39.

<sup>10</sup> "Monacan Indian Nation." 2006. Monacan Indian Nation, Inc. Nov 11, 2009. <http://www.monacannation.com/aboutus.shtml>.

<sup>11</sup> Samuel R. Cook, *Monacans and Miners: Native American and Coal Mining Communities in Appalachia* (Lincoln: University of Nebraska Press, 2000), 49–56.

<sup>12</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>13</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 chil-

(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>14</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>15</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.

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>16</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>17</sup>

### *The Nansemond Indian Tribe*

When the English first arrived in Virginia in 1607, the Nansemond people numbered around 1,200 people<sup>18</sup> and made up part of the Powhatan Confederacy. Their original land was located

dren instead of “Indian.” The families had been previously recorded through tax records beginning in 1782.

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

<sup>15</sup>“Monacan Indian Nation.” 2006. Monacan Indian Nation, Inc. Nov 11, 2009. <http://www.monacannation.com/aboutus.shtml>.

<sup>16</sup>Cook, *Monacans and Miners*, 116–118.

<sup>17</sup>“Monacan Indian Nation.” 2006. Monacan Indian Nation, Inc. Nov 11, 2009. <http://www.monacannation.com/aboutus.shtml>.

<sup>18</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).

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>19</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>20</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>21</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 Nottaway reservation dying in 1806.<sup>22</sup>

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>23</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>24</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 Commonwealth of Virginia and few supported funding a third segregated school system.<sup>25</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

<sup>19</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>20</sup>S. 379, *Indian Tribes of Virginia Federal Recognition Act of 2011*, 112th Cong. §601(2) (2011).

<sup>21</sup>S. Report No. 108–259 (2004).

<sup>22</sup>See “The Official Nansemond Tribal Association Website,” supra 18.

<sup>23</sup>Rountree, Helen C. *Pocahontas’s People*. OK: Oklahoma University Press, 1990.

<sup>24</sup>S. 379, *Indian Tribes of Virginia Federal Recognition Act of 2011*, 112th Cong. §601(17).

<sup>25</sup>*Legislative Hearing on S. 724, Little Shell Tribe of Chippewa Indians Restoration Act of 2007; S. 514, Muskogee Nation of Florida Federal Recognition Act; S. 1058, Grand River Bands of Ottawa Indians of Michigan Referral Act; H.R. 1294, Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2007 Before the Senate Committee on Indian Affairs*, 110th Cong. 2, 28–30 (2008) (statement of Helen C. Rountree).

much interaction between the Chickahominy and the English settlers. The Chickahominy were an Algonquian speaking people numbering between 600–900 people.<sup>26</sup> Although allies with the Powhatan Confederacy, the Chickahominy were fairly independent and had their own form of government.

Surviving members of the Paspaheg Tribe found refuge with the Chickahominy during August 1610 after the family of Chief Wowinchopunk was murdered by settlers.<sup>27</sup> In the Treaty of 1614 with Jamestown's governor Sir Thomas Dale, the Tribe promised 300 warriors to fight against the Spanish<sup>28</sup> and received the right to self-governance in return. In 1623, and again in 1627, the Chickahominy were victims of raids.<sup>29</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, Chickahominy representatives signed the Treaty of Middle Plantation between several tribes and the King of England.<sup>30</sup> In 1702, the Tribe was forced from its reservation and lost the lands in 1718.<sup>31</sup>

Around 1750, the Chickahominy began moving back to their land in New Kent and Charles City Counties.<sup>32</sup> Charles City County census records show modern-day Chickahominy surnames in the area beginning in 1831.<sup>33</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>34</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>35</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>36</sup>

In order to be married as Chickahominy Indians instead of as "colored" under Virginia's Racial Integrity Act of 1924, some tribal members travelled 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>37</sup>

In the 1920s, the governors of Virginia wrote letters of introduction for the Chickahominy chiefs, who had official business in

<sup>26</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>27</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>28</sup>See S. 379, *supra* note 20.

<sup>29</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>30</sup>See Rountree, *supra* note 25, and S. 379, 112th Cong., *supra* note 20.

<sup>31</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>32</sup>S. 379, 112th Cong. § 101(8) (2011).

<sup>33</sup>S. 379, 112th Cong. § 101(10) (2011).

<sup>34</sup>S. 379, 111th Cong. § 101(11) (2011).

<sup>35</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>36</sup>S. 379, 112th Cong. § 101(12) (2011).

<sup>37</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).

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>38</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 U.S. Senate Committee on the Judiciary, requested information from Chickahominy Chief O.O. Adkins about Indians' constitutional rights "in [his] area" in Virginia.<sup>39</sup>

The Chickahominy Indians built a tribal center in 1974 funded by tribal members through monthly pledges.<sup>40</sup> Their assertion of tribal government came to a head in 1983 when they received State recognition from 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>41</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>42</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 was built in 1922 in spite of the dissenting members.<sup>43</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.

<sup>38</sup> See S. 379, 112th Cong. §§ 101(15)–(20) (2011) and Rountree statement, *supra* note 25.

<sup>39</sup> S. 379, 112th Cong. § 101(25) (2011).

<sup>40</sup> S. 379, 112th Cong. § 101(28) (2011).

<sup>41</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>42</sup> S. 379, 112th Cong. § 201(11) (2011).

<sup>43</sup> Rountree, Helen C. *Pocahontas's People*. OK: Oklahoma University Press, 1990. P. 218.

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 the Tribe's present-day location.<sup>44</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>45</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>46</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>47</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>48</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,

<sup>44</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>45</sup> H.R. Rep. No. 110-124, at 6 (2007).

<sup>46</sup> S. 379, 112th Cong. § 301 (10)-(12) (2011).

<sup>47</sup> S. 379, 112th Cong. § 301(13) (2011).

<sup>48</sup> S. 379, 112th Cong. §§ 301(14)-(16) (2011).

and a slave ship was sunk nearby as well according to Mattaponi oral tradition.<sup>49</sup>

Anthropologist James Mooney mentions the Upper Mattaponi in 1901 after hearing about them during a visit to the Pamunkey Tribe, but did not visit them himself. In 1928, University of Pennsylvania anthropologist Frank Speck published a book on modern Virginia Indians with a section on the Upper Mattaponi.<sup>50</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 Mattaponi 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>51</sup>

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 in England in December of 1603.<sup>52</sup>

The Rappahannock was a late addition to Powhatan’s Confederacy, differing culturally from the Mattaponi and Pamunkey mainstays of the confederacy. They were first recorded in Western society in 1605.<sup>53</sup> Captain John Smith encountered several Rappahannock villages during his 1607 capture in Chickahominy territory.<sup>54</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>55</sup>

Capt. William Claiborne attempted to establish treaty relations with the Rappahannock 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 Rappahannock 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 fugi-

<sup>49</sup> Rountree, Helen C. *Pocahontas’s People*. OK: Oklahoma University Press, 1990. p 198.

<sup>50</sup> S. 379, 112th Cong. §§ 301(17)–(18) (2011).

<sup>51</sup> S. 379, 111th Cong. §§ 301(19)–(21) (2011).

<sup>52</sup> “Virginia Indian Council; Virginia Indian Tribes.” *Rappahannock Tribe*. 12/10/2007. VCI. Nov 5, 2009. <http://indians.vipnet.org/>.

<sup>53</sup> Speck, Frank G. *The Rappahannock Indians of Virginia*. 1925. p25.

<sup>54</sup> Speck, Frank G. *The Rappahannock Indians of Virginia*. 1925. p28.

<sup>55</sup> Speck, Frank G. *The Rappahannock Indians of Virginia*. 1925. p36.

tives and encouraging the Rappahannock to make their children servants in English houses.<sup>56</sup>

A 1669 Virginia census records 30 Rappahannock and 50 Nantaughtacund (which both Speck and Mooney believe is reference to the Rappahannock).<sup>57</sup> The town referred to in this census was actually a hunting village used by the Rappahannock in the 1670s. The Rappahannock 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>58</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).

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>59</sup> This remained the case until Rappahannock Indian Baptist Church was established in 1964.<sup>60</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 in the town of Lloyds in Essex County. Chief George Nelson testified in Congress asking for \$50,000 to establish an Indian school in Virginia.<sup>61</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>62</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>63</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>64</sup>

#### LEGISLATIVE HISTORY

S. 1074 was introduced on May 23, 2013, by Senators Tim Kaine (D–VA) and Mark Warner (D–VA). A companion bill, H.R. 2190, has been introduced in the House of Representatives. Similar legislation was introduced in the 107th, 108th, 109th, 110th, 111th, and

<sup>56</sup> S. 379, 112th Cong. §§ 401(8)–(14) (2011).

<sup>57</sup> Speck, Frank G. *The Rappahannock Indians of Virginia*. 1925.

<sup>58</sup> S. Rep. No. 108–259 at 2 (2004).

<sup>59</sup> S. 379, 112th §§ Cong. 401(30)–(36) (2011).

<sup>60</sup> S. 379, 112th § Cong. 401(38) (2011).

<sup>61</sup> S. 379, 112th Cong. §§ 401(46)–(48) (2011).

<sup>62</sup> S. 379, 112th Cong. § 401(66) (2011).

<sup>63</sup> Rountree, Helen C. *Pocahontas's People*. OK: Oklahoma University Press, 1990 at 241.

<sup>64</sup> S. 379, 112th Cong. 401(68) (2011).

112th Congresses. The Senate Committee on Indian Affairs held a hearing on S. 1074 on October 30, 2013, at which Senator Kaine testified in strong support of the bill. On April 3, 2014, the Committee met to consider S. 1074. No amendments were offered, and the bill was ordered reported favorably by voice vote.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short title*

This Act may be cited as the “Indian Tribes of Virginia Federal Recognition Act of 2013.”

#### 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. 1074 does not expand, reduce or affect hunting, fishing, trapping, gathering, and water rights of the Tribe or its members.

##### *Section 108. Jurisdiction of the Commonwealth of Virginia*

This Section states that the Commonwealth 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. 1074 does not expand, reduce or affect hunting, fishing, trapping, gathering, and water rights of the Tribe or its members.

*Section 208. Jurisdiction of the Commonwealth of Virginia*

This Section states that the Commonwealth 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 & 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. 1074 does not expand, reduce or affect hunting, fishing, trapping, gathering, and water rights of the Tribe or its members.

*Section 308. Jurisdiction of the Commonwealth of Virginia*

This Section states that the Commonwealth 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, Richmond, Lancaster, King George, Essex, Caroline, New Kent, King William, and James City. This section also includes a prohibition on gaming.

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

This section states that enactment of S. 1074 does not expand, reduce or affect hunting, fishing, trapping, gathering, and water rights of the Tribe or its members.

*Section 408. Jurisdiction of the Commonwealth of Virginia*

This Section states that the Commonwealth 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. 1074 does not expand, reduce or affect hunting, fishing, trapping, gathering, and water rights of the Tribe or its members.

*Section 508. Jurisdiction of the Commonwealth of Virginia*

This Section states that the Commonwealth 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. 1074 does not expand, reduce or affect hunting, fishing, trapping, gathering, and water rights of the Tribe or its members.

*Section 608. Jurisdiction of the Commonwealth of Virginia*

This Section states that the Commonwealth 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.

## COST AND BUDGETARY CONSIDERATIONS

Summary: S. 1074 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 \$79 million over the 2015–2019 period, assuming appropriation of the necessary funds. Enacting S. 1074 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

S. 1074 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government: The estimated budgetary effect of S. 1074 is shown in the following table. The costs of this legislation fall within budget functions 450 (community and regional development 0 and 550 (health).

	By fiscal year, in millions of dollars—					2015– 2019
	2015	2016	2017	2018	2019	
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Bureau of Indian Affairs:						
Estimated Authorization Level .....	5	6	6	6	6	29
Estimated Outlays .....	4	6	6	6	6	28
Indian Health Service:						
Estimated Authorization Level .....	10	10	10	11	11	52
Estimated Outlays .....	9	10	10	11	11	51
Total Changes:						
Estimated Authorization Level .....	15	16	16	17	17	81
Estimated Outlays .....	13	16	16	17	17	79

Basis of estimate: For this estimate, CBO assumes that S. 1074 will be enacted near the end of 2014, that the necessary amounts will be appropriated each year, and that outlays will follow historical patterns for similar assistance to other tribes.

S. 1074 would provide federal recognition to six Indian tribes in Virginia. Such recognition would allow about 4,700 tribal members and other eligible 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. 1074 would cost \$61 million over the 2015–2019 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 to the six tribes would cost \$28 million over the 2015–2019 period, assuming appropriation of the necessary funds and adjusting for anticipated inflation. This estimate is based on current per capita expenditures of around \$1,200 for other federally recognized tribes located in the eastern states.

#### *Indian Health Service*

S. 1074 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 55 percent of tribal members—or about 2,600 people—would receive benefits each year. CBO assumes that the cost to serve those individuals would be similar to costs for current IHS beneficiaries—about \$3,050 per individual in 2013. Assuming appropriation of the necessary funds and adjusting for anticipated inflation, CBO estimates that IHS benefits for the tribes would cost \$51 million over the 2015–2019 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 support from those departments. Thus, CBO estimates that implementing S. 1074 would not increase spending from those agencies' programs.

Pay-As-You-Go considerations: None.

Intergovernmental and private-sector impact: S. 1074 contains no intergovernmental or private-sector mandates as defined in UMRA.

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

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. 1074 will have a minimal impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 1074.

## ADDITIONAL VIEWS FROM VICE CHAIRMAN BARRASSO

I understand how important Federal recognition is for tribal groups and how difficult and challenging the administrative recognition process is for them. Nevertheless, it is my view that legislative recognition—legislation that deems a group or tribe to be federally recognized—is not the right way to decide which groups should be recognized and which groups should not be recognized. That is a function best performed by the Executive Branch of the Government following regulations that have been adopted for that purpose. Federal recognition of a group as an Indian tribe may have profound consequences for the group, its members, other Indian tribes, the general public, and the Federal Government.

In terms of impact on the Federal Treasury, the Congressional Budget Office estimates that implementing S. 1074 will cost \$61 million over a 5-year period, assuming appropriation of the necessary funds. Most of that cost would be in the form of programs and services available through the Bureau of Indian Affairs and Indian Health Service for which the tribe and its members will become eligible. Even if that additional money is never appropriated, recognition of the tribe will in and of itself place significant additional stress on the limited resources of these agencies, since tribal members will not be turned away from programs and services for which they are eligible. Tribal recognition is indeed a weighty decision, with real consequences.

Testifying about several recognition bills at a hearing before this Committee during the 110th Congress, the Director of the Office of Federal Acknowledgement at the Department of the Interior stated—

Legislation such as S. 514, S. 724, S. 1058, and H.R. 1294 would allow these groups to bypass this [the Federal acknowledgement] process—allowing them to avoid the scrutiny to which other groups have been subjected. The Administration supports all groups going through the Federal acknowledgment process under 25 CFR Part 83.<sup>65</sup>

The Department's witness went on to point out that, in light of the importance and implications of recognition decisions, the Department adopted its Federal acknowledgment regulations at 25 CFR Part 83 in 1978 in recognition of "the need to end ad hoc decision making and adopt uniform regulations for Federal acknowledgment."<sup>66</sup>

This bill represents a step away from a process that applies uniform, established acknowledgment criteria to the history of the

<sup>65</sup>*Hearing on S.514, S.724, S.1058, and H.R.1294 Before the S. Comm. on Indian Affairs, 110th Congress, 1, 35 (2008) (statement of R. Lee Fleming, Director, Office of Federal Acknowledgment, U.S. Department of the Interior).*

<sup>66</sup>*Id.*

group and in the direction of “ad hoc” recognition decisions. I do not think that Congress is in the best position to undertake the detailed historical, cultural, political and ethnographic analysis that should go into a recognition decision.

If a particular group has some unique historical or other barriers so that it cannot fairly access the administrative process, then perhaps it would be appropriate for Congress to consider whether those barriers should be removed or modified so that the group can have fair access to that process. I do not feel it is appropriate for Congress to simply deem a group to be a recognized Indian tribe.

CHANGES IN EXISTING LAW

In accordance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee finds that the enactment of S. 1074 will not make any changes in existing law.

