114TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
114–847

TO PROVIDE THAT AN INDIAN GROUP MAY RECEIVE FEDERAL ACKNOWLEDGMENT AS AN INDIAN TRIBE ONLY BY AN ACT OF CONGRESS, AND FOR OTHER PURPOSES

DECEMBER 7, 2016.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. BISHOP of Utah, from the Committee on Natural Resources, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 3764]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 3764) to provide that an Indian group may receive Federal acknowledgment as an Indian tribe only by an Act of Congress, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

TITLE I—FEDERAL RECOGNITION OF INDIAN TRIBES, GENERALLY

SEC. 101. SHORT TITLE.

This title may be cited as the "Tribal Recognition Act of 2016".

SEC. 102. FINDINGS.

Congress finds as follows:

(1) Article I, section 8, clause 3 of the Constitution (commonly known as the "Indian Commerce Clause") gives Congress authority over Indian affairs.

(2) Such authority is plenary and exclusive.

(3) Such authority may not be exercised by the executive branch, except as expressly delegated by an Act of Congress (or by a treaty ratified by the Senate before March 1871).

SEC. 103. DEFINITIONS.

As used in this title:

(1) ASSISTANT SECRETARY.—The term "Assistant Secretary" means the Assistant Secretary of Indian Affairs, or that officer's authorized representative.

(2) AUTONOMOUS.—The term "autonomous" means the exercise of political influence or authority independent of the control of any other Indian governing entity. Autonomous must be understood in the context of the history, geography, culture and social organization of the petitioning group.

(3) COMMUNITY.—The term "Community" means any group of people which can demonstrate that consistent interactions and significant social relationships exist within its membership and that its members are differentiated from and identified as distinct from nonmembers. Community must be understood in the context of the history, geography, culture and social organization of the group.

(4) CONTINENTAL UNITED STATES.—The term "continental United States" means the contiguous 48 States and Alaska.

(5) CONTINUOUSLY OR CONTINUOUS.—The term "continuously or continuous" means extending from first sustained contact with non-Indians throughout the group's history to the present substantially without interruption.

(6) DOCUMENTED PETITION.—The term "documented petition" means the detailed arguments made by a petitioner to substantiate its claim to continuous existence as an Indian tribe, together with the factual exposition and all documentary evidence necessary to demonstrate that these arguments address the mandatory criteria.

(7) HISTORICALLY, HISTORICAL OR HISTORY.—The term "historically, historical or history" means dating from first sustained contact with non-Indians.

(8) INDIAN GROUP OR GROUP.—The term "Indian group or group" means any Indian or Alaska Native aggregation within the continental United States that the Secretary of the Interior does not acknowledge to be an Indian tribe. Indian tribe, also referred to herein as tribe, means any Indian or Alaska Native tribe, band, pueblo, village, or community within the continental United States that the Secretary of the Interior has lawfully acknowledged as an Indian tribe.

(9) INDIGENOUS.—The term "indigenous" means native to the continental United States in that at least part of the petitioner's territory at the time of sustained contact extended into what is now the continental United States.

(10) INFORMED PARTY.—The term "informed party" means any person or organization, other than an interested party, who requests an opportunity to submit comments or evidence or to be kept informed of general actions regarding a specific petitioner.

(11) INTERESTED PARTY.—The term "interested party" means any person, organization or other entity who can establish a legal, factual or property interest in an acknowledgment determination and who requests an opportunity to submit comments or evidence or to be kept informed of general actions regarding a specific petitioner. "Interested party" includes the governor and attorney general of the State in which a petitioner is located, and may include, but is not limited to, local governmental units, and any recognized Indian tribes and unrecognized Indian groups that might be affected by an acknowledgment determination.

(12) LETTER OF INTENT.—The term "letter of intent" means an undocumented letter or resolution by which an Indian group requests Federal acknowledgment as an Indian tribe and expresses its intent to submit a documented petition.

(13) PETITIONER.—The term "petitioner" means any entity that has submitted a letter of intent to the Secretary requesting acknowledgment that it is an Indian tribe.

(14) POLITICAL INFLUENCE OR AUTHORITY.—The term "political influence or authority" means a tribal council, leadership, internal process or other mechanism which the group has used as a means of influencing or controlling the behavior of its members in significant respects, and/or making decisions for the group which substantially affect its members, and/or representing the group in dealing with outsiders in matters of consequence. This process is to be understood in the context of the history, culture and social organization of the group.

(15) PREVIOUS FEDERAL ACKNOWLEDGMENT.—The term "previous Federal acknowledgment" means action by the Federal Government clearly premised on identification of a tribal political entity and indicating clearly the recognition of a relationship between that entity and the United States.

(16) SECRETARY.—The term "Secretary" means the Secretary of the Interior or that officer's authorized representative.

(17) SUSTAINED CONTACT.—The term "sustained contact" means the period of earliest sustained non-Indian settlement and/or governmental presence in the

local area in which the historical tribe or tribes from which the petitioner descends was located historically.

SEC. 104. GROUPS ELIGIBLE TO SUBMIT PETITIONS.

(a) ELIGIBLE GROUPS.—Indian groups indigenous to the continental United States that are not federally recognized Indian tribes on the date of the enactment of this Act may submit a petition under this title.

(b) INELIGIBLE GROUPS.—The following may not submit a petition under this title:

(1) Splinter groups, political factions, communities or groups of any character that separate from the main body of a federally recognized Indian tribe, unless they can establish clearly that they have functioned throughout history until the present as an autonomous tribal entity, even if they have been regarded by some as part of or have been associated in some manner with a federally recognized Indian tribe.

(2) Indian tribes, organized bands, pueblos, Alaska native villages, or communities that have been lawfully acknowledged to be federally recognized Indian tribes and are receiving services from the Bureau of Indian Affairs.

(3) Groups that petitioned and were denied Federal acknowledgment under part 83 of title 25, Code of Federal Regulations, including reorganized or reconstituted petitioners previously denied, or splinter groups, spin-offs, or component groups of any type that were once part of petitioners previously denied.

(4) Groups for which a documented petition has not been filed pursuant to section 109 by the date that is five years after the date of the enactment of this Act.

(c) GROUPS WITH PETITIONS IN PROGRESS.—This title, including the criteria in section 107, shall apply to any Indian group whose documented petition was submitted and not denied on the date of the enactment of this Act.

SEC. 105. FILING A LETTER OF INTENT.

Any Indian group in the continental United States that believes it should be acknowledged as an Indian tribe and that it can satisfy the criteria in this title may submit a letter of intent requesting acknowledgment that an Indian group exists as an Indian tribe. The letter of intent submitted under this section—

(1) shall be filed with the Assistant Secretary—Indian Affairs, Department of the Interior;

(2) may be filed in advance of, or at the same time as, a group's documented petition; and

(3) shall be produced, dated and signed by the governing body of an Indian group.

SEC. 106. DUTIES OF THE ASSISTANT SECRETARY.

(a) GUIDELINES.—The Assistant Secretary shall make available guidelines for the preparation of documented petitions. These guidelines shall—

(1) include an explanation of the criteria, a discussion of the types of evidence which may be used to demonstrate particular criteria, and general suggestions and guidelines on how and where to conduct research;

(2) include an example of a documented petition format which shall provide guidance, but not preclude the use of any other format; and

(3) may be supplemented or updated as necessary.

(b) RESEARCH AND PREPARATION OF PETITION.—The Assistant Secretary—

(1) shall provide petitioners with suggestions and advice regarding preparation of the documented petition; and

(2) shall not be responsible for the actual research on behalf of the petitioner.

SEC. 107. CRITERIA FOR FEDERAL ACKNOWLEDGMENT.

The criteria for consideration for Federal acknowledgment is, at a minimum, the following:

(1) The petitioner has been identified as an American Indian entity on a substantially continuous basis since 1900. Evidence that the group's character as an Indian entity has from time to time been denied shall not be considered to be conclusive evidence that this criterion has not been met. Evidence to be relied upon in determining a group's Indian identity may include one or a combination of the following, as well as other evidence of identification by other than the petitioner itself or its members:

(A) Identification as an Indian entity by Federal authorities.

(B) Relationships with State governments based on identification of the group as Indian.

(C) Dealings with a county, parish, or other local government in a relationship based on the group's Indian identity.

(D) Identification as an Indian entity by anthropologists, historians, and/or other scholars.

(E) Identification as an Indian entity in newspapers and books.

(F) Identification as an Indian entity in relationships with Indian tribes or with national, regional, or State Indian organizations.

(2) A predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present.

(A) This criterion may be demonstrated by some combination of the following evidence and/or other evidence that the petitioner meets the definition of community:

(i) Significant rates of marriage within the group, and/or, as may be culturally required, patterned out-marriages with other Indian populations.

(ii) Significant social relationships connecting individual members.

(iii) Significant rates of informal social interaction which exist broadly among the members of a group.

(iv) A significant degree of shared or cooperative labor or other economic activity among the membership.

(v) Evidence of strong patterns of discrimination or other social distinctions by nonmembers.

(vi) Shared sacred or secular ritual activity encompassing most of the group.

(vii) Cultural patterns shared among a significant portion of the group that are different from those of the non-Indian populations with whom it interacts. These patterns must function as more than a symbolic identification of the group as Indian. They may include, but are not limited to, language, kinship organization, or religious beliefs and practices.

(viii) The persistence of a named, collective Indian identity continuously over a period of more than 50 years, notwithstanding changes in name.

(ix) A demonstration of historical political influence under the criterion in paragraph (3) shall be evidence for demonstrating historical community.

(B) A petitioner shall be considered to have provided sufficient evidence of community at a given point in time if evidence is provided to demonstrate any one of the following:

(i) More than 50 percent of the members reside in a geographical area exclusively or almost exclusively composed of members of the group, and the balance of the group maintains consistent interaction with some members of the community.

(ii) At least 50 percent of the marriages in the group are between members of the group.

(iii) At least 50 percent of the group members maintain distinct cultural patterns such as, but not limited to, language, kinship organization, or religious beliefs and practices.

(iv) There are distinct community social institutions encompassing most of the members, such as kinship organizations, formal or informal economic cooperation, or religious organizations.

(v) The group has met the criterion in paragraph (3) using evidence described in paragraph (3)(B).

(3) The petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present.

(A) This criterion may be demonstrated by some combination of the evidence listed below and/or by other evidence that the petitioner meets the definition of political influence or authority:

(i) The group is able to mobilize significant numbers of members and significant resources from its members for group purposes.

(ii) Most of the membership considers issues acted upon or actions taken by group leaders or governing bodies to be of importance.

(iii) There is widespread knowledge, communication and involvement in political processes by most of the group's members.

(iv) The group meets the criterion in paragraph (2) at more than a minimal level.

(v) There are internal conflicts which show controversy over valued group goals, properties, policies, processes and/or decisions.

(B) A petitioning group shall be considered to have provided sufficient evidence to demonstrate the exercise of political influence or authority at a given point in time by demonstrating that group leaders and/or other mechanisms exist or existed which—

(i) allocate group resources such as land, residence rights and the like on a consistent basis;

(ii) settle disputes between members or subgroups by mediation or other means on a regular basis;

(iii) exert strong influence on the behavior of individual members, such as the establishment or maintenance of norms and the enforcement of sanctions to direct or control behavior; and

(iv) organize or influence economic subsistence activities among the members, including shared or cooperative labor.

(C) A group that has met the requirements in paragraph (2)(B) at a given point in time shall be considered to have provided sufficient evidence to meet this criterion at that point in time.

(4) A copy of the group's present governing document including its membership criteria. In the absence of a written document, the petitioner must provide a statement describing in full its membership criteria and current governing procedures.

(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.

(A) Some types of evidence that can be used for this purpose include the following:

(i) Rolls prepared by the Secretary on a descendancy basis for purposes of distributing claims money, providing allotments, or other purposes.

(ii) State, Federal, or other official records or evidence identifying present members or ancestors of present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.

(iii) Church, school, and other similar enrollment records identifying present members or ancestors of present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.

(iv) Affidavits of recognition by tribal elders, leaders, or the tribal governing body identifying present members or ancestors of present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.

(v) Other records or evidence identifying present members or ancestors of present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.

(B) The petitioner must provide an official membership list, separately certified by the group's governing body, of all known current members of the group. This list must include each member's full name (including maiden name), date of birth, and current residential address. The petitioner must also provide a copy of each available former list of members based on the group's own defined criteria, as well as a statement describing the circumstances surrounding the preparation of the current list and, insofar as possible, the circumstances surrounding the preparation of former lists.

(6) The membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe. However, under certain conditions a petitioning group may be acknowledged even if its membership is composed principally of persons whose names have appeared on rolls of, or who have been otherwise associated with, an acknowledged Indian tribe. The conditions are that the group must establish that it has functioned throughout history until the present as a separate and autonomous Indian tribal entity, that its members do not maintain a bilateral political relationship with the acknowledged tribe, and that its members have provided written confirmation of their membership in the petitioning group.

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

SEC. 108. PREVIOUS FEDERAL ACKNOWLEDGMENT.

(a) IN GENERAL.—Unambiguous previous Federal acknowledgment shall be acceptable evidence of the tribal character of a petitioner to the date of the last such previous acknowledgment. If a petitioner provides substantial evidence of unambiguous Federal acknowledgment, the petitioner shall only be required to demonstrate that it meets the requirements of section 107 to the extent required by this section. A determination of the adequacy of the evidence of previous Federal action acknowl-

edging tribal status shall be made during the technical assistance review of the documented petition conducted pursuant to section 110(b).

(b) EVIDENCE.—Evidence to demonstrate previous Federal acknowledgment includes evidence that the group—

(1) has had treaty relations with the United States;

(2) has been denominated a tribe by an Act of Congress or Executive order; and

(3) has been treated by the Federal Government as having collective rights in tribal lands or funds.

SEC. 109. NOTICE OF RECEIPT OF A PETITION.

(a) IN GENERAL.—Not later than 30 days after receiving a letter of intent, or a documented petition if a letter of intent has not previously been received and noticed, the Assistant Secretary shall acknowledge to the sender such receipt in writing. Notice under this subsection shall—

(1) include the name, location, and mailing address of the petitioner and such other information to identify the entity submitting the letter of intent or documented petition and the date it was received;

(2) serve to announce the opportunity for interested parties and informed parties to submit factual or legal arguments in support of or in opposition to the petitioner's request for acknowledgment or to request to be kept informed of all general actions affecting the petition; and

(3) indicate where a copy of the letter of intent and the documented petition may be examined.

(b) NOTICE TO STATE GOVERNMENTS.—The Assistant Secretary shall notify, in writing—

(1) the Governor and Attorney General of the State or States in which a petitioner is located; and

(2) any recognized tribe and any other petitioner that—

(A) appears to have a historical or present relationship with the petitioner; or

(B) may otherwise be considered to have a potential interest in the acknowledgment determination.

(c) PUBLICATION.—Not later than 60 days after receiving a letter of intent, or a documented petition if a letter of intent has not previously been received and noticed, the Assistant Secretary shall have the notice required under this section published—

(1) in the Federal Register; and

(2) in a major newspaper or newspapers of general circulation in the town or city nearest to the petitioner.

SEC. 110. PROCESSING OF THE DOCUMENTED PETITION.

(a) REVIEW.—Upon receipt of a documented petition, the Assistant Secretary—

(1) shall cause a review to be conducted to determine the extent to which the petitioner has met the criteria set forth in section 107;

(2) shall include consideration of the documented petition and the factual statements contained therein;

(3) may initiate other research for any purpose relative to analyzing the documented petition and obtaining additional information about the petitioner's status; and

(4) may consider any evidence which may be submitted by interested parties or informed parties.

(b) TECHNICAL ASSISTANCE.—

(1) Prior to review of the documented petition under subsection (a), the Assistant Secretary shall conduct a preliminary review of the petition in order to provide technical assistance to the petitioner.

(2) The review under paragraph (1) shall be a preliminary review for the purpose of providing the petitioner an opportunity to supplement or revise the documented petition prior to the review under paragraph (1). Insofar as possible, technical assistance reviews under this paragraph will be conducted in the order of receipt of documented petitions. However, technical assistance reviews will not have priority over active consideration of documented petitions.

(3) After the technical assistance review, the Assistant Secretary shall notify the petitioner by letter of any obvious deficiencies or significant omissions apparent in the documented petition and provide the petitioner with an opportunity to withdraw the documented petition for further work or to submit additional information.

(4) If a petitioner's documented petition claims previous Federal acknowledgment or includes evidence of previous Federal acknowledgment, the technical assistance review shall also include a review to determine whether that evi-

dence is sufficient to meet the requirements of previous Federal acknowledgment.

(c) RESPONSE TO TECHNICAL ASSISTANCE REVIEW.—

(1) Petitioners may respond in part or in full to the technical assistance review letter or request, in writing, that the Assistant Secretary proceed with the active consideration of the documented petition using the materials already submitted.

(2) If the petitioner requests that the materials submitted in response to the technical assistance review letter be again reviewed for adequacy, the Assistant Secretary shall provide the additional review.

(3) If the assertion of previous Federal acknowledgment under section 108 cannot be substantiated during the technical assistance review, the petitioner may respond by providing additional evidence. A petitioner that claims previous Federal acknowledgment and fails to respond to a technical assistance review letter under this subsection, or whose response fails to establish the claim, shall have its documented petition considered on the same basis as documented petitions submitted by groups not claiming previous Federal acknowledgment. Petitioners that fail to demonstrate previous Federal acknowledgment after a review of materials submitted in response to the technical assistance review shall be so notified. Such petitioners may submit additional materials concerning previous acknowledgment during the course of active consideration.

(d) CONSIDERATION OF DOCUMENTED PETITIONS.—The Assistant Secretary shall—

(1) review documented petitions in the order that they are determined ready for review;

(2) establish and maintain a numbered register of documented petitions which have been determined ready for active consideration;

(3) maintain a numbered register of letters of intent or incomplete petitions based on the original date received by the Department of the Interior; and

(4) use the register of letters of intent or incomplete petitions to determine the order of review by the Assistant Secretary if two or more documented petitions are determined ready for review on the same date.

(e) REPORT.—Not later than 1 year after notifying the petitioner that review of the documented petition has begun, the Assistant Secretary shall—

(1) submit a report including a summary of the evidence, findings, petition, and supporting documentation, to the Committee on Natural Resources of the House of Representatives and the Committee on Indian Affairs of the Senate;

(2) notify the petitioner and interested parties that the review is complete and the report required under paragraph (1) has been submitted;

(3) provide copies of the report to the petitioner and interested parties; and

(4) provide copies of the report to informed parties and others upon written request.

SEC. 111. CLARIFICATION OF FEDERAL RECOGNITION AUTHORITY.

(a) ACT OF CONGRESS REQUIRED.—An Indian group may receive Federal acknowledgment (or reacknowledgment) as an Indian tribe only by an Act of Congress. The Secretary may not grant Federal acknowledgment (or reacknowledgment) to any Indian group.

(b) PREVIOUS ACKNOWLEDGMENT.—This title shall not affect the status of any Indian tribe that was federally acknowledged before the date of the enactment of this Act.

SEC. 112. FORCE AND EFFECT OF REGULATIONS.

Part 83 of title 25, Code of Federal Regulations, shall have no force or effect.

TITLE II—FEDERAL RECOGNITION OF VIRGINIA INDIAN TRIBES

SEC. 201. SHORT TITLE.

This title may be cited as the "Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2016".

SEC. 202. INDIAN CHILD WELFARE ACT OF 1978.

Nothing in this title affects the application of section 109 of the Indian Child Welfare Act of 1978 (25 U.S.C. 1919).

Subtitle A—Chickahominy Indian Tribe

SEC. 211. FINDINGS.

Congress finds that—

(1) in 1607, when the English settlers set shore along the Virginia coastline, the Chickahominy Indian Tribe was one of about 30 tribes that received them;

(2) in 1614, the Chickahominy Indian Tribe entered into a treaty with Sir Thomas Dale, Governor of the Jamestown Colony, under which—

(A) the Chickahominy Indian Tribe agreed to provide 2 bushels of corn per man and send warriors to protect the English; and

(B) Sir Thomas Dale agreed in return to allow the Tribe to continue to practice its own tribal governance;

(3) in 1646, a treaty was signed which forced the Chickahominy from their homeland to the area around the York Mattaponi River in present-day King William County, leading to the formation of a reservation;

(4) in 1677, following Bacon's Rebellion, the Queen of Pamunkey signed the Treaty of Middle Plantation on behalf of the Chickahominy;

(5) in 1702, the Chickahominy were forced from their reservation, which caused the loss of a land base;

(6) in 1711, the College of William and Mary in Williamsburg established a grammar school for Indians called Brafferton College;

(7) a Chickahominy child was one of the first Indians to attend Brafferton College;

(8) in 1750, the Chickahominy Indian Tribe began to migrate from King William County back to the area around the Chickahominy River in New Kent and Charles City Counties;

(9) in 1793, a Baptist missionary named Bradby took refuge with the Chickahominy and took a Chickahominy woman as his wife;

(10) in 1831, the names of the ancestors of the modern-day Chickahominy Indian Tribe began to appear in the Charles City County census records;

(11) in 1901, the Chickahominy Indian Tribe formed Samaria Baptist Church;

(12) from 1901 to 1935, Chickahominy men were assessed a tribal tax so that their children could receive an education;

(13) the Tribe used the proceeds from the tax to build the first Samaria Indian School, buy supplies, and pay a teacher's salary;

(14) in 1919, C. Lee Moore, Auditor of Public Accounts for Virginia, told Chickahominy Chief O.W. Adkins that he had instructed the Commissioner of Revenue for Charles City County to record Chickahominy tribal members on the county tax rolls as Indian, and not as White or colored;

(15) during the period of 1920 through 1930, various Governors of the Commonwealth of Virginia wrote letters of introduction for Chickahominy Chiefs who had official business with Federal agencies in Washington, DC;

(16) in 1934, Chickahominy Chief O.O. Adkins wrote to John Collier, Commissioner of Indian Affairs, requesting money to acquire land for the Chickahominy Indian Tribe's use, to build school, medical, and library facilities and to buy tractors, implements, and seed;

(17) in 1934, John Collier, Commissioner of Indian Affairs, wrote to Chickahominy Chief O.O. Adkins, informing him that Congress had passed the Act of June 18, 1934 (commonly known as the "Indian Reorganization Act") (25 U.S.C. 461 et seq.), but had not made the appropriation to fund the Act;

(18) in 1942, Chickahominy Chief O.O. Adkins wrote to John Collier, Commissioner of Indian Affairs, asking for help in getting the proper racial designation on Selective Service records for Chickahominy soldiers;

(19) in 1943, John Collier, Commissioner of Indian Affairs, asked Douglas S. Freeman, editor of the Richmond News-Leader newspaper of Richmond, Virginia, to help Virginia Indians obtain proper racial designation on birth records;

(20) Collier stated that his office could not officially intervene because it had no responsibility for the Virginia Indians, "as a matter largely of historical accident", but was "interested in them as descendants of the original inhabitants of the region";

(21) in 1948, the Veterans' Education Committee of the Virginia State Board of Education approved Samaria Indian School to provide training to veterans;

(22) that school was established and run by the Chickahominy Indian Tribe;

(23) in 1950, the Chickahominy Indian Tribe purchased and donated to the Charles City County School Board land to be used to build a modern school for students of the Chickahominy and other Virginia Indian tribes;

(24) the Samaria Indian School included students in grades 1 through 8;

(25) in 1961, Senator Sam Ervin, Chairman of the Subcommittee on Constitutional Rights of the Committee on the Judiciary of the Senate, requested Chickahominy Chief O.O. Adkins to provide assistance in analyzing the status of the constitutional rights of Indians "in your area";

(26) in 1967, the Charles City County school board closed Samaria Indian School and converted the school to a countywide primary school as a step toward full school integration of Indian and non-Indian students;

(27) in 1972, the Charles City County school board began receiving funds under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 458aa et seq.) on behalf of Chickahominy students, which funding is provided as of the date of enactment of this Act under title V of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 458aaa et seq.);

(28) in 1974, the Chickahominy Indian Tribe bought land and built a tribal center using monthly pledges from tribal members to finance the transactions;

(29) in 1983, the Chickahominy Indian Tribe was granted recognition as an Indian tribe by the Commonwealth of Virginia, along with 5 other Indian tribes; and

(30) in 1985, Governor Gerald Baliles was the special guest at an intertribal Thanksgiving Day dinner hosted by the Chickahominy Indian Tribe.

SEC. 212. DEFINITIONS.

In this subtitle:

(1) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(2) TRIBAL MEMBER.—The term "tribal member" means—

(A) an individual who is an enrolled member of the Tribe as of the date of enactment of this Act; and

(B) an individual who has been placed on the membership rolls of the Tribe in accordance with this subtitle.

(3) TRIBE.—The term "Tribe" means the Chickahominy Indian Tribe.

SEC. 213. FEDERAL RECOGNITION.

(a) FEDERAL RECOGNITION.—

(1) IN GENERAL.—Federal recognition is extended to the Tribe.

(2) APPLICABILITY OF LAWS.—All laws (including regulations) of the United States of general applicability to Indians or nations, Indian tribes, or bands of Indians (including the Act of June 18, 1934 (25 U.S.C. 461 et seq.)) that are not inconsistent with this subtitle shall be applicable to the Tribe and tribal members.

(b) FEDERAL SERVICES AND BENEFITS.—

(1) IN GENERAL.—On and after the date of enactment of this Act, the Tribe and tribal members shall be eligible for all services and benefits provided by the Federal Government to federally recognized Indian tribes without regard to the existence of a reservation for the Tribe.

(2) SERVICE AREA.—For the purpose of the delivery of Federal services to tribal members, the service area of the Tribe shall be considered to be the area comprised of New Kent County, James City County, Charles City County, and Henrico County, Virginia.

SEC. 214. MEMBERSHIP; GOVERNING DOCUMENTS.

The membership roll and governing documents of the Tribe shall be the most recent membership roll and governing documents, respectively, submitted by the Tribe to the Secretary before the date of enactment of this Act.

SEC. 215. GOVERNING BODY.

The governing body of the Tribe shall be—

(1) the governing body of the Tribe in place as of the date of enactment of this Act; or

(2) any subsequent governing body elected in accordance with the election procedures specified in the governing documents of the Tribe.

SEC. 216. RESERVATION OF THE TRIBE.

(a) IN GENERAL.—Upon the request of the Tribe, the Secretary of the Interior—

(1) shall take into trust for the benefit of the Tribe any land held in fee by the Tribe that was acquired by the Tribe on or before January 1, 2007, if such lands are located within the boundaries of New Kent County, James City County, Charles City County, or Henrico County, Virginia; and

(2) may take into trust for the benefit of the Tribe any land held in fee by the Tribe, if such lands are located within the boundaries of New Kent County, James City County, Charles City County, or Henrico County, Virginia.

(b) DEADLINE FOR DETERMINATION.—The Secretary shall make a final written determination not later than three years of the date which the Tribe submits a request

for land to be taken into trust under subsection (a)(2) and shall immediately make that determination available to the Tribe.

(c) RESERVATION STATUS.—Any land taken into trust for the benefit of the Tribe pursuant to this paragraph shall, upon request of the Tribe, be considered part of the reservation of the Tribe.

(d) GAMING.—The Tribe may not conduct gaming activities as a matter of claimed inherent authority or under the authority of any Federal law, including the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) or under any regulations thereunder promulgated by the Secretary or the National Indian Gaming Commission.

SEC. 217. HUNTING, FISHING, TRAPPING, GATHERING, AND WATER RIGHTS.

Nothing in this subtitle expands, reduces, or affects in any manner any hunting, fishing, trapping, gathering, or water rights of the Tribe and members of the Tribe.

Subtitle B—Chickahominy Indian Tribe—Eastern Division

SEC. 221. FINDINGS.

Congress finds that—

(1) in 1607, when the English settlers set shore along the Virginia coastline, the Chickahominy Indian Tribe was one of about 30 tribes that received them;

(2) in 1614, the Chickahominy Indian Tribe entered into a treaty with Sir Thomas Dale, Governor of the Jamestown Colony, under which—

(A) the Chickahominy Indian Tribe agreed to provide 2 bushels of corn per man and send warriors to protect the English; and

(B) Sir Thomas Dale agreed in return to allow the Tribe to continue to practice its own tribal governance;

(3) in 1646, a treaty was signed which forced the Chickahominy from their homeland to the area around the York River in present-day King William County, leading to the formation of a reservation;

(4) in 1677, following Bacon's Rebellion, the Queen of Pamunkey signed the Treaty of Middle Plantation on behalf of the Chickahominy;

(5) in 1702, the Chickahominy were forced from their reservation, which caused the loss of a land base;

(6) in 1711, the College of William and Mary in Williamsburg established a grammar school for Indians called Brafferton College;

(7) a Chickahominy child was one of the first Indians to attend Brafferton College;

(8) in 1750, the Chickahominy Indian Tribe began to migrate from King William County back to the area around the Chickahominy River in New Kent and Charles City Counties;

(9) in 1793, a Baptist missionary named Bradby took refuge with the Chickahominy and took a Chickahominy woman as his wife;

(10) in 1831, the names of the ancestors of the modern-day Chickahominy Indian Tribe began to appear in the Charles City County census records;

(11) in 1870, a census revealed an enclave of Indians in New Kent County that is believed to be the beginning of the Chickahominy Indian Tribe—Eastern Division;

(12) other records were destroyed when the New Kent County courthouse was burned, leaving a State census as the only record covering that period;

(13) in 1901, the Chickahominy Indian Tribe formed Samaria Baptist Church;

(14) from 1901 to 1935, Chickahominy men were assessed a tribal tax so that their children could receive an education;

(15) the Tribe used the proceeds from the tax to build the first Samaria Indian School, buy supplies, and pay a teacher's salary;

(16) in 1910, a 1-room school covering grades 1 through 8 was established in New Kent County for the Chickahominy Indian Tribe—Eastern Division;

(17) during the period of 1920 through 1921, the Chickahominy Indian Tribe—Eastern Division began forming a tribal government;

(18) E.P. Bradby, the founder of the Tribe, was elected to be Chief;

(19) in 1922, Tsena Commocko Baptist Church was organized;

(20) in 1925, a certificate of incorporation was issued to the Chickahominy Indian Tribe—Eastern Division;

(21) in 1950, the 1-room Indian school in New Kent County was closed and students were bused to Samaria Indian School in Charles City County;

(22) in 1967, the Chickahominy Indian Tribe and the Chickahominy Indian Tribe—Eastern Division lost their schools as a result of the required integration of students;

(23) during the period of 1982 through 1984, Tsena Commocko Baptist Church built a new sanctuary to accommodate church growth;

(24) in 1983 the Chickahominy Indian Tribe—Eastern Division was granted State recognition along with 5 other Virginia Indian tribes;

(25) in 1985—

(A) the Virginia Council on Indians was organized as a State agency; and

(B) the Chickahominy Indian Tribe—Eastern Division was granted a seat on the Council;

(26) in 1988, a nonprofit organization known as the "United Indians of Virginia" was formed; and

(27) Chief Marvin "Strongoak" Bradby of the Eastern Band of the Chickahominy presently chairs the organization.

SEC. 222. DEFINITIONS.

In this subtitle:

(1) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(2) TRIBAL MEMBER.—The term "tribal member" means—

(A) an individual who is an enrolled member of the Tribe as of the date of enactment of this Act; and

(B) an individual who has been placed on the membership rolls of the Tribe in accordance with this subtitle.

(3) TRIBE.—The term "Tribe" means the Chickahominy Indian Tribe—Eastern Division.

SEC. 223. FEDERAL RECOGNITION.

(a) FEDERAL RECOGNITION.—

(1) IN GENERAL.—Federal recognition is extended to the Tribe.

(2) APPLICABILITY OF LAWS.—All laws (including regulations) of the United States of general applicability to Indians or nations, Indian tribes, or bands of Indians (including the Act of June 18, 1934 (25 U.S.C. 461 et seq.)) that are not inconsistent with this subtitle shall be applicable to the Tribe and tribal members.

(b) FEDERAL SERVICES AND BENEFITS.—

(1) IN GENERAL.—On and after the date of enactment of this Act, the Tribe and tribal members shall be eligible for all future services and benefits provided by the Federal Government to federally recognized Indian tribes without regard to the existence of a reservation for the Tribe.

(2) SERVICE AREA.—For the purpose of the delivery of Federal services to tribal members, the service area of the Tribe shall be considered to be the area comprised of New Kent County, James City County, Charles City County, and Henrico County, Virginia.

SEC. 224. MEMBERSHIP; GOVERNING DOCUMENTS.

The membership roll and governing documents of the Tribe shall be the most recent membership roll and governing documents, respectively, submitted by the Tribe to the Secretary before the date of enactment of this Act.

SEC. 225. GOVERNING BODY.

The governing body of the Tribe shall be—

(1) the governing body of the Tribe in place as of the date of enactment of this Act; or

(2) any subsequent governing body elected in accordance with the election procedures specified in the governing documents of the Tribe.

SEC. 226. RESERVATION OF THE TRIBE.

(a) IN GENERAL.—Upon the request of the Tribe, the Secretary of the Interior—

(1) shall take into trust for the benefit of the Tribe any land held in fee by the Tribe that was acquired by the Tribe on or before January 1, 2007, if such lands are located within the boundaries of New Kent County, James City County, Charles City County, or Henrico County, Virginia; and

(2) may take into trust for the benefit of the Tribe any land held in fee by the Tribe, if such lands are located within the boundaries of New Kent County, James City County, Charles City County, or Henrico County, Virginia.

(b) DEADLINE FOR DETERMINATION.—The Secretary shall make a final written determination not later than three years of the date which the Tribe submits a request for land to be taken into trust under subsection (a)(2) and shall immediately make that determination available to the Tribe.

(c) RESERVATION STATUS.—Any land taken into trust for the benefit of the Tribe pursuant to this paragraph shall, upon request of the Tribe, be considered part of the reservation of the Tribe.

(d) GAMING.—The Tribe may not conduct gaming activities as a matter of claimed inherent authority or under the authority of any Federal law, including the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) or under any regulations thereunder promulgated by the Secretary or the National Indian Gaming Commission.

SEC. 227. HUNTING, FISHING, TRAPPING, GATHERING, AND WATER RIGHTS.

Nothing in this subtitle expands, reduces, or affects in any manner any hunting, fishing, trapping, gathering, or water rights of the Tribe and members of the Tribe.

Subtitle C—Upper Mattaponi Tribe

SEC. 231. FINDINGS.

Congress finds that—

(1) during the period of 1607 through 1646, the Chickahominy Indian Tribes—

(A) lived approximately 20 miles from Jamestown; and

(B) were significantly involved in English-Indian affairs;

(2) Mattaponi Indians, who later joined the Chickahominy Indians, lived a greater distance from Jamestown;

(3) in 1646, the Chickahominy Indians moved to Mattaponi River basin, away from the English;

(4) in 1661, the Chickahominy Indians sold land at a place known as "the cliffs" on the Mattaponi River;

(5) in 1669, the Chickahominy Indians—

(A) appeared in the Virginia Colony's census of Indian bowmen; and

(B) lived in "New Kent" County, which included the Mattaponi River basin at that time;

(6) in 1677, the Chickahominy and Mattaponi Indians were subjects of the Queen of Pamunkey, who was a signatory to the Treaty of 1677 with the King of England;

(7) in 1683, after a Mattaponi town was attacked by Seneca Indians, the Mattaponi Indians took refuge with the Chickahominy Indians, and the history of the 2 groups was intertwined for many years thereafter;

(8) in 1695, the Chickahominy and Mattaponi Indians—

(A) were assigned a reservation by the Virginia Colony; and

(B) traded land of the reservation for land at the place known as "the cliffs" (which, as of the date of enactment of this Act, is the Mattaponi Indian Reservation), which had been owned by the Mattaponi Indians before 1661;

(9) in 1711, a Chickahominy boy attended the Indian School at the College of William and Mary;

(10) in 1726, the Virginia Colony discontinued funding of interpreters for the Chickahominy and Mattaponi Indian Tribes;

(11) James Adams, who served as an interpreter to the Indian tribes known as of the date of enactment of this Act as the "Upper Mattaponi Indian Tribe" and "Chickahominy Indian Tribe", elected to stay with the Upper Mattaponi Indians;

(12) today, a majority of the Upper Mattaponi Indians have "Adams" as their surname;

(13) in 1787, Thomas Jefferson, in Notes on the Commonwealth of Virginia, mentioned the Mattaponi Indians on a reservation in King William County and said that Chickahominy Indians were "blended" with the Mattaponi Indians and nearby Pamunkey Indians;

(14) in 1850, the census of the United States revealed a nucleus of approximately 10 families, all ancestral to modern Upper Mattaponi Indians, living in central King William County, Virginia, approximately 10 miles from the reservation;

(15) during the period of 1853 through 1884, King William County marriage records listed Upper Mattaponis as "Indians" in marrying people residing on the reservation;

(16) during the period of 1884 through the present, county marriage records usually refer to Upper Mattaponis as "Indians";

(17) in 1901, Smithsonian anthropologist James Mooney heard about the Upper Mattaponi Indians but did not visit them;

(18) in 1928, University of Pennsylvania anthropologist Frank Speck published a book on modern Virginia Indians with a section on the Upper Mattaponis;

(19) from 1929 until 1930, the leadership of the Upper Mattaponi Indians opposed the use of a "colored" designation in the 1930 United States census and won a compromise in which the Indian ancestry of the Upper Mattaponis was recorded but questioned;

(20) during the period of 1942 through 1945—

(A) the leadership of the Upper Mattaponi Indians, with the help of Frank Speck and others, fought against the induction of young men of the Tribe into "colored" units in the Armed Forces of the United States; and

(B) a tribal roll for the Upper Mattaponi Indians was compiled;

(21) from 1945 to 1946, negotiations took place to admit some of the young people of the Upper Mattaponi to high schools for Federal Indians (especially at Cherokee) because no high school coursework was available for Indians in Virginia schools; and

(22) in 1983, the Upper Mattaponi Indians applied for and won State recognition as an Indian tribe.

SEC. 232. DEFINITIONS.

In this subtitle:

(1) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(2) TRIBAL MEMBER.—The term "tribal member" means—

(A) an individual who is an enrolled member of the Tribe as of the date of enactment of this Act; and

(B) an individual who has been placed on the membership rolls of the Tribe in accordance with this subtitle.

(3) TRIBE.—The term "Tribe" means the Upper Mattaponi Tribe.

SEC. 233. FEDERAL RECOGNITION.

(a) FEDERAL RECOGNITION.—

(1) IN GENERAL.—Federal recognition is extended to the Tribe.

(2) APPLICABILITY OF LAWS.—All laws (including regulations) of the United States of general applicability to Indians or nations, Indian tribes, or bands of Indians (including the Act of June 18, 1934 (25 U.S.C. 461 et seq.)) that are not inconsistent with this subtitle shall be applicable to the Tribe and tribal members.

(b) FEDERAL SERVICES AND BENEFITS.—

(1) IN GENERAL.—On and after the date of enactment of this Act, the Tribe and tribal members shall be eligible for all services and benefits provided by the Federal Government to federally recognized Indian tribes without regard to the existence of a reservation for the Tribe.

(2) SERVICE AREA.—For the purpose of the delivery of Federal services to tribal members, the service area of the Tribe shall be considered to be the area within 25 miles of the Sharon Indian School at 13383 King William Road, King William County, Virginia.

SEC. 234. MEMBERSHIP; GOVERNING DOCUMENTS.

The membership roll and governing documents of the Tribe shall be the most recent membership roll and governing documents, respectively, submitted by the Tribe to the Secretary before the date of enactment of this Act.

SEC. 235. GOVERNING BODY.

The governing body of the Tribe shall be—

(1) the governing body of the Tribe in place as of the date of enactment of this Act; or

(2) any subsequent governing body elected in accordance with the election procedures specified in the governing documents of the Tribe.

SEC. 236. RESERVATION OF THE TRIBE.

(a) IN GENERAL.—Upon the request of the Tribe, the Secretary of the Interior—

(1) shall take into trust for the benefit of the Tribe any land held in fee by the Tribe that was acquired by the Tribe on or before January 1, 2007, if such lands are located within the boundaries of King William County, Caroline County, Hanover County, King and Queen County, and New Kent County, Virginia; and

(2) may take into trust for the benefit of the Tribe any land held in fee by the Tribe, if such lands are located within the boundaries of King William County, Caroline County, Hanover County, King and Queen County, and New Kent County, Virginia.

(b) DEADLINE FOR DETERMINATION.—The Secretary shall make a final written determination not later than three years of the date which the Tribe submits a request for land to be taken into trust under subsection (a)(2) and shall immediately make that determination available to the Tribe.

(c) RESERVATION STATUS.—Any land taken into trust for the benefit of the Tribe pursuant to this paragraph shall, upon request of the Tribe, be considered part of the reservation of the Tribe.

(d) GAMING.—The Tribe may not conduct gaming activities as a matter of claimed inherent authority or under the authority of any Federal law, including the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) or under any regulations thereunder promulgated by the Secretary or the National Indian Gaming Commission.

SEC. 237. HUNTING, FISHING, TRAPPING, GATHERING, AND WATER RIGHTS.

Nothing in this subtitle expands, reduces, or affects in any manner any hunting, fishing, trapping, gathering, or water rights of the Tribe and members of the Tribe.

Subtitle D—Rappahannock Tribe, Inc.

SEC. 241. FINDINGS.

Congress finds that—

(1) during the initial months after Virginia was settled, the Rappahannock Indians had 3 encounters with Captain John Smith;

(2) the first encounter occurred when the Rappahannock weroance (headman)—

(A) traveled to Quiyocohannock (a principal town across the James River from Jamestown), where he met with Smith to determine whether Smith had been the "great man" who had previously sailed into the Rappahannock River, killed a Rappahannock weroance, and kidnapped Rappahannock people; and

(B) determined that Smith was too short to be that "great man";

(3) on a second meeting, during John Smith's captivity (December 16, 1607, to January 8, 1608), Smith was taken to the Rappahannock principal village to show the people that Smith was not the "great man";

(4) a third meeting took place during Smith's exploration of the Chesapeake Bay (July to September 1608), when, after the Moraughtacund Indians had stolen 3 women from the Rappahannock King, Smith was prevailed upon to facilitate a peaceful truce between the Rappahannock and the Moraughtacund Indians;

(5) in the settlement, Smith had the 2 Indian tribes meet on the spot of their first fight;

(6) when it was established that both groups wanted peace, Smith told the Rappahannock King to select which of the 3 stolen women he wanted;

(7) the Moraughtacund King was given second choice among the 2 remaining women, and Mosco, a Wighcocomoco (on the Potomac River) guide, was given the third woman;

(8) in 1645, Captain William Claiborne tried unsuccessfully to establish treaty relations with the Rappahannocks, as the Rappahannocks had not participated in the Pamunkey-led uprising in 1644, and the English wanted to "treat with the Rappahannocks or any other Indians not in amity with Opechancanough, concerning serving the county against the Pamunkeys";

(9) in April 1651, the Rappahannocks conveyed a tract of land to an English settler, Colonel Morre Fauntleroy;

(10) the deed for the conveyance was signed by Accopatough, weroance of the Rappahannock Indians;

(11) in September 1653, Lancaster County signed a treaty with Rappahannock Indians, the terms of which treaty—

(A) gave Rappahannocks the rights of Englishmen in the county court; and

(B) attempted to make the Rappahannocks more accountable under English law;

(12) in September 1653, Lancaster County defined and marked the bounds of its Indian settlements;

(13) according to the Lancaster clerk of court, "the tribe called the great Rappahannocks lived on the Rappahannock Creek just across the river above Tappahannock";

(14) in September 1656, (Old) Rappahannock County (which, as of the date of enactment of this Act, is comprised of Richmond and Essex Counties, Virginia) signed a treaty with Rappahannock Indians that—

(A) mirrored the Lancaster County treaty from 1653; and
(B) stated that—
(i) Rappahannocks were to be rewarded, in Roanoke, for returning English fugitives; and
(ii) the English encouraged the Rappahannocks to send their children to live among the English as servants, who the English promised would be well-treated;
(15) in 1658, the Virginia Assembly revised a 1652 Act stating that "there be no grants of land to any Englishman whatsoever de futuro until the Indians be first served with the proportion of 50 acres of land for each bowman";
(16) in 1669, the colony conducted a census of Virginia Indians;
(17) as of the date of that census—
(A) the majority of the Rappahannocks were residing at their hunting village on the north side of the Mattaponi River; and
(B) at the time of the visit, census-takers were counting only the Indian tribes along the rivers, which explains why only 30 Rappahannock bowmen were counted on that river;
(18) the Rappahannocks used the hunting village on the north side of the Mattaponi River as their primary residence until the Rappahannocks were removed in 1684;
(19) in May 1677, the Treaty of Middle Plantation was signed with England;
(20) the Pamunkey Queen Cockacoeske signed on behalf of the Rappahannocks, "who were supposed to be her tributaries", but before the treaty could be ratified, the Queen of Pamunkey complained to the Virginia Colonial Council "that she was having trouble with Rappahannocks and Chickahominies, supposedly tributaries of hers";
(21) in November 1682, the Virginia Colonial Council established a reservation for the Rappahannock Indians of 3,474 acres "about the town where they dwelt";
(22) the Rappahannock "town" was the hunting village on the north side of the Mattaponi River, where the Rappahannocks had lived throughout the 1670s;
(23) the acreage allotment of the reservation was based on the 1658 Indian land act, which translates into a bowman population of 70, or an approximate total Rappahannock population of 350;
(24) in 1683, following raids by Iroquoian warriors on both Indian and English settlements, the Virginia Colonial Council ordered the Rappahannocks to leave their reservation and unite with the Nanzatico Indians at Nanzatico Indian Town, which was located across and up the Rappahannock River some 30 miles;
(25) between 1687 and 1699, the Rappahannocks migrated out of Nanzatico, returning to the south side of the Rappahannock River at Portobacco Indian Town;
(26) in 1706, by order of Essex County, Lieutenant Richard Covington "escorted" the Portobaccos and Rappahannocks out of Portobacco Indian Town, out of Essex County, and into King and Queen County where they settled along the ridgeline between the Rappahannock and Mattaponi Rivers, the site of their ancient hunting village and 1682 reservation;
(27) during the 1760s, 3 Rappahannock girls were raised on Thomas Nelson's Bleak Hill Plantation in King William County;
(28) of those girls—
(A) one married a Saunders man;
(B) one married a Johnson man; and
(C) one had 2 children, Edmund and Carter Nelson, fathered by Thomas Cary Nelson;
(29) in the 19th century, those Saunders, Johnson, and Nelson families are among the core Rappahannock families from which the modern Tribe traces its descent;
(30) in 1819 and 1820, Edward Bird, John Bird (and his wife), Carter Nelson, Edmund Nelson, and Carter Spurlock (all Rappahannock ancestors) were listed on the tax roles of King and Queen County and taxed at the county poor rate;
(31) Edmund Bird was added to the tax roles in 1821;
(32) those tax records are significant documentation because the great majority of pre-1864 records for King and Queen County were destroyed by fire;
(33) beginning in 1819, and continuing through the 1880s, there was a solid Rappahannock presence in the membership at Upper Essex Baptist Church;
(34) that was the first instance of conversion to Christianity by at least some Rappahannock Indians;

(35) while twenty-six identifiable and traceable Rappahannock surnames appear on the pre-1863 membership list, and twenty-eight were listed on the 1863 membership roster, the number of surnames listed had declined to twelve in 1878 and had risen only slightly to fourteen by 1888;

(36) a reason for the decline is that in 1870, a Methodist circuit rider, Joseph Mastin, secured funds to purchase land and construct St. Stephens Baptist Church for the Rappahannocks living nearby in Caroline County;

(37) Mastin referred to the Rappahannocks during the period of 1850 to 1870 as "Indians, having a great need for moral and Christian guidance";

(38) St. Stephens was the dominant tribal church until the Rappahannock Indian Baptist Church was established in 1964;

(39) at both churches, the core Rappahannock family names of Bird, Clarke, Fortune, Johnson, Nelson, Parker, and Richardson predominate;

(40) during the early 1900s, James Mooney, noted anthropologist, maintained correspondence with the Rappahannocks, surveying them and instructing them on how to formalize their tribal government;

(41) in November 1920, Speck visited the Rappahannocks and assisted them in organizing the fight for their sovereign rights;

(42) in 1921, the Rappahannocks were granted a charter from the Commonwealth of Virginia formalizing their tribal government;

(43) Speck began a professional relationship with the Tribe that would last more than 30 years and document Rappahannock history and traditions as never before;

(44) in April 1921, Rappahannock Chief George Nelson asked the Governor of Virginia, Westmoreland Davis, to forward a proclamation to the President of the United States, along with an appended list of tribal members and a handwritten copy of the proclamation itself;

(45) the letter concerned Indian freedom of speech and assembly nationwide;

(46) in 1922, the Rappahannocks established a formal school at Lloyds, Essex County, Virginia;

(47) prior to establishment of the school, Rappahannock children were taught by a tribal member in Central Point, Caroline County, Virginia;

(48) in December 1923, Rappahannock Chief George Nelson testified before Congress appealing for a $50,000 appropriation to establish an Indian school in Virginia;

(49) in 1930, the Rappahannocks were engaged in an ongoing dispute with the Commonwealth of Virginia and the United States Census Bureau about their classification in the 1930 Federal census;

(50) in January 1930, Rappahannock Chief Otho S. Nelson wrote to Leon Truesdell, Chief Statistician of the United States Census Bureau, asking that the 218 enrolled Rappahannocks be listed as Indians;

(51) in February 1930, Truesdell replied to Nelson saying that "special instructions" were being given about classifying Indians;

(52) in April 1930, Nelson wrote to William M. Steuart at the Census Bureau asking about the enumerators' failure to classify his people as Indians, saying that enumerators had not asked the question about race when they interviewed his people;

(53) in a followup letter to Truesdell, Nelson reported that the enumerators were "flatly denying" his people's request to be listed as Indians and that the race question was completely avoided during interviews;

(54) the Rappahannocks had spoken with Caroline and Essex County enumerators, and with John M.W. Green at that point, without success;

(55) Nelson asked Truesdell to list people as Indians if he sent a list of members;

(56) the matter was settled by William Steuart, who concluded that the Bureau's rule was that people of Indian descent could be classified as "Indian" only if Indian "blood" predominated and "Indian" identity was accepted in the local community;

(57) the Virginia Vital Statistics Bureau classed all nonreservation Indians as "Negro", and it failed to see why "an exception should be made" for the Rappahannocks;

(58) therefore, in 1925, the Indian Rights Association took on the Rappahannock case to assist the Rappahannocks in fighting for their recognition and rights as an Indian tribe;

(59) during the Second World War, the Pamunkeys, Mattaponis, Chickahominies, and Rappahannocks had to fight the draft boards with respect to their racial identities;

(60) the Virginia Vital Statistics Bureau insisted that certain Indian draftees be inducted into Negro units;

(61) finally, 3 Rappahannocks were convicted of violating the Federal draft laws and, after spending time in a Federal prison, were granted conscientious objector status and served out the remainder of the war working in military hospitals;

(62) in 1943, Frank Speck noted that there were approximately 25 communities of Indians left in the Eastern United States that were entitled to Indian classification, including the Rappahannocks;

(63) in the 1940s, Leon Truesdell, Chief Statistician, of the United States Census Bureau, listed 118 members in the Rappahannock Tribe in the Indian population of Virginia;

(64) on April 25, 1940, the Office of Indian Affairs of the Department of the Interior included the Rappahannocks on a list of Indian tribes classified by State and by agency;

(65) in 1948, the Smithsonian Institution Annual Report included an article by William Harlen Gilbert entitled, "Surviving Indian Groups of the Eastern United States", which included and described the Rappahannock Tribe;

(66) in the late 1940s and early 1950s, the Rappahannocks operated a school at Indian Neck;

(67) the State agreed to pay a tribal teacher to teach 10 students bused by King and Queen County to Sharon Indian School in King William County, Virginia;

(68) in 1965, Rappahannock students entered Marriott High School (a White public school) by executive order of the Governor of Virginia;

(69) in 1972, the Rappahannocks worked with the Coalition of Eastern Native Americans to fight for Federal recognition;

(70) in 1979, the Coalition established a pottery and artisans company, operating with other Virginia tribes;

(71) in 1980, the Rappahannocks received funding through the Administration for Native Americans of the Department of Health and Human Services to develop an economic program for the Tribe; and

(72) in 1983, the Rappahannocks received State recognition as an Indian tribe.

SEC. 242. DEFINITIONS.

In this subtitle:

(1) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(2) TRIBAL MEMBER.—The term "tribal member" means—

(A) an individual who is an enrolled member of the Tribe as of the date of enactment of this Act; and

(B) an individual who has been placed on the membership rolls of the Tribe in accordance with this subtitle.

(3) TRIBE.—

(A) IN GENERAL.—The term "Tribe" means the organization possessing the legal name Rappahannock Tribe, Inc.

(B) EXCLUSIONS.—The term "Tribe" does not include any other Indian tribe, subtribe, band, or splinter group the members of which represent themselves as Rappahannock Indians.

SEC. 243. FEDERAL RECOGNITION.

(a) FEDERAL RECOGNITION.—

(1) IN GENERAL.—Federal recognition is extended to the Tribe.

(2) APPLICABILITY OF LAWS.—All laws (including regulations) of the United States of general applicability to Indians or nations, Indian tribes, or bands of Indians (including the Act of June 18, 1934 (25 U.S.C. 461 et seq.)) that are not inconsistent with this subtitle shall be applicable to the Tribe and tribal members.

(b) FEDERAL SERVICES AND BENEFITS.—

(1) IN GENERAL.—On and after the date of enactment of this Act, the Tribe and tribal members shall be eligible for all services and benefits provided by the Federal Government to federally recognized Indian tribes without regard to the existence of a reservation for the Tribe.

(2) SERVICE AREA.—For the purpose of the delivery of Federal services to tribal members, the service area of the Tribe shall be considered to be the area comprised of King and Queen County, Caroline County, Essex County, and King William County, Virginia.

SEC. 244. MEMBERSHIP; GOVERNING DOCUMENTS.

The membership roll and governing documents of the Tribe shall be the most recent membership roll and governing documents, respectively, submitted by the Tribe to the Secretary before the date of enactment of this Act.

SEC. 245. GOVERNING BODY.

The governing body of the Tribe shall be—

(1) the governing body of the Tribe in place as of the date of enactment of this Act; or

(2) any subsequent governing body elected in accordance with the election procedures specified in the governing documents of the Tribe.

SEC. 246. RESERVATION OF THE TRIBE.

(a) IN GENERAL.—Upon the request of the Tribe, the Secretary of the Interior—

(1) shall take into trust for the benefit of the Tribe any land held in fee by the Tribe that was acquired by the Tribe on or before January 1, 2007, if such lands are located within the boundaries of King and Queen County, Stafford County, Spotsylvania County, Richmond County, Essex County, and Caroline County, Virginia; and

(2) may take into trust for the benefit of the Tribe any land held in fee by the Tribe, if such lands are located within the boundaries of King and Queen County, Richmond County, Lancaster County, King George County, Essex County, Caroline County, New Kent County, King William County, and James City County, Virginia.

(b) DEADLINE FOR DETERMINATION.—The Secretary shall make a final written determination not later than three years of the date which the Tribe submits a request for land to be taken into trust under subsection (a)(2) and shall immediately make that determination available to the Tribe.

(c) RESERVATION STATUS.—Any land taken into trust for the benefit of the Tribe pursuant to this paragraph shall, upon request of the Tribe, be considered part of the reservation of the Tribe.

(d) GAMING.—The Tribe may not conduct gaming activities as a matter of claimed inherent authority or under the authority of any Federal law, including the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) or under any regulations thereunder promulgated by the Secretary or the National Indian Gaming Commission.

SEC. 247. HUNTING, FISHING, TRAPPING, GATHERING, AND WATER RIGHTS.

Nothing in this subtitle expands, reduces, or affects in any manner any hunting, fishing, trapping, gathering, or water rights of the Tribe and members of the Tribe.

Subtitle E—Monacan Indian Nation

SEC. 251. FINDINGS.

Congress finds that—

(1) in 1677, the Monacan Tribe signed the Treaty of Middle Plantation between Charles II of England and 12 Indian "Kings and Chief Men";

(2) in 1722, in the Treaty of Albany, Governor Spotswood negotiated to save the Virginia Indians from extinction at the hands of the Iroquois;

(3) specifically mentioned in the negotiations were the Monacan tribes of the Totero (Tutelo), Saponi, Ocheneeches (Occaneechi), Stengenocks, and Meipontskys;

(4) in 1790, the first national census recorded Benjamin Evans and Robert Johns, both ancestors of the present Monacan community, listed as "white" with mulatto children;

(5) in 1782, tax records also began for those families;

(6) in 1850, the United States census recorded 29 families, mostly large, with Monacan surnames, the members of which are genealogically related to the present community;

(7) in 1870, a log structure was built at the Bear Mountain Indian Mission;

(8) in 1908, the structure became an Episcopal Mission and, as of the date of enactment of this Act, the structure is listed as a landmark on the National Register of Historic Places;

(9) in 1920, 304 Amherst Indians were identified in the United States census;

(10) from 1930 through 1931, numerous letters from Monacans to the Bureau of the Census resulted from the decision of Dr. Walter Plecker, former head of the Bureau of Vital Statistics of the Commonwealth of Virginia, not to allow Indians to register as Indians for the 1930 census;

(11) the Monacans eventually succeeded in being allowed to claim their race, albeit with an asterisk attached to a note from Dr. Plecker stating that there were no Indians in Virginia;

(12) in 1947, D'Arcy McNickle, a Salish Indian, saw some of the children at the Amherst Mission and requested that the Cherokee Agency visit them because they appeared to be Indian;

(13) that letter was forwarded to the Department of the Interior, Office of Indian Affairs, Chicago, Illinois;

(14) Chief Jarrett Blythe of the Eastern Band of Cherokee did visit the Mission and wrote that he "would be willing to accept these children in the Cherokee school";

(15) in 1979, a Federal Coalition of Eastern Native Americans established the entity known as "Monacan Co-operative Pottery" at the Amherst Mission;

(16) some important pieces were produced at Monacan Co-operative Pottery, including a piece that was sold to the Smithsonian Institution;

(17) the Mattaponi-Pamunkey-Monacan Consortium, established in 1981, has since been organized as a nonprofit corporation that serves as a vehicle to obtain funds for those Indian tribes from the Department of Labor under Native American programs;

(18) in 1989, the Monacan Tribe was recognized by the Commonwealth of Virginia, which enabled the Tribe to apply for grants and participate in other programs; and

(19) in 1993, the Monacan Tribe received tax-exempt status as a nonprofit corporation from the Internal Revenue Service.

SEC. 252. DEFINITIONS.

In this subtitle:

(1) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(2) TRIBAL MEMBER.—The term "tribal member" means—

(A) an individual who is an enrolled member of the Tribe as of the date of enactment of this Act; and

(B) an individual who has been placed on the membership rolls of the Tribe in accordance with this subtitle.

(3) TRIBE.—The term "Tribe" means the Monacan Indian Nation.

SEC. 253. FEDERAL RECOGNITION.

(a) FEDERAL RECOGNITION.—

(1) IN GENERAL.—Federal recognition is extended to the Tribe.

(2) APPLICABILITY OF LAWS.—All laws (including regulations) of the United States of general applicability to Indians or nations, Indian tribes, or bands of Indians (including the Act of June 18, 1934 (25 U.S.C. 461 et seq.)) that are not inconsistent with this subtitle shall be applicable to the Tribe and tribal members.

(b) FEDERAL SERVICES AND BENEFITS.—

(1) IN GENERAL.—On and after the date of enactment of this Act, the Tribe and tribal members shall be eligible for all services and benefits provided by the Federal Government to federally recognized Indian tribes without regard to the existence of a reservation for the Tribe.

(2) SERVICE AREA.—For the purpose of the delivery of Federal services to tribal members, the service area of the Tribe shall be considered to be the area comprised of all land within 25 miles from the center of Amherst, Virginia.

SEC. 254. MEMBERSHIP; GOVERNING DOCUMENTS.

The membership roll and governing documents of the Tribe shall be the most recent membership roll and governing documents, respectively, submitted by the Tribe to the Secretary before the date of enactment of this Act.

SEC. 255. GOVERNING BODY.

The governing body of the Tribe shall be—

(1) the governing body of the Tribe in place as of the date of enactment of this Act; or

(2) any subsequent governing body elected in accordance with the election procedures specified in the governing documents of the Tribe.

SEC. 256. RESERVATION OF THE TRIBE.

(a) IN GENERAL.—Upon the request of the Tribe, the Secretary of the Interior—

(1) shall take into trust for the benefit of the Tribe any land held in fee by the Tribe that was acquired by the Tribe on or before January 1, 2007, if such lands are located within the boundaries of Amherst County, Virginia; and

(2) may take into trust for the benefit of the Tribe any land held in fee by the Tribe, if such lands are located within the boundaries of Amherst County, Virginia, and those parcels in Rockbridge County, Virginia (subject to the consent of the local unit of government), owned by Mr. J. Poole, described as East 731 Sandbridge (encompassing approximately 4.74 acres) and East 731 (encompassing approximately 5.12 acres).

(b) DEADLINE FOR DETERMINATION.—The Secretary shall make a final written determination not later than three years of the date which the Tribe submits a request

for land to be taken into trust under subsection (a)(2) and shall immediately make that determination available to the Tribe.

(c) RESERVATION STATUS.—Any land taken into trust for the benefit of the Tribe pursuant to this paragraph shall, upon request of the Tribe, be considered part of the reservation of the Tribe.

(d) GAMING.—The Tribe may not conduct gaming activities as a matter of claimed inherent authority or under the authority of any Federal law, including the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) or under any regulations thereunder promulgated by the Secretary or the National Indian Gaming Commission.

SEC. 257. HUNTING, FISHING, TRAPPING, GATHERING, AND WATER RIGHTS.

Nothing in this subtitle expands, reduces, or affects in any manner any hunting, fishing, trapping, gathering, or water rights of the Tribe and members of the Tribe.

Subtitle F—Nansemond Indian Tribe

SEC. 261. FINDINGS.

Congress finds that—

(1) from 1607 until 1646, Nansemond Indians—

(A) lived approximately 30 miles from Jamestown; and

(B) were significantly involved in English-Indian affairs;

(2) after 1646, there were 2 sections of Nansemonds in communication with each other, the Christianized Nansemonds in Norfolk County, who lived as citizens, and the traditionalist Nansemonds, who lived further west;

(3) in 1638, according to an entry in a 17th century sermon book still owned by the Chief's family, a Norfolk County Englishman married a Nansemond woman;

(4) that man and woman are lineal ancestors of all of members of the Nansemond Indian tribe alive as of the date of enactment of this Act, as are some of the traditionalist Nansemonds;

(5) in 1669, the 2 Nansemond sections appeared in Virginia Colony's census of Indian bowmen;

(6) in 1677, Nansemond Indians were signatories to the Treaty of 1677 with the King of England;

(7) in 1700 and 1704, the Nansemonds and other Virginia Indian tribes were prevented by Virginia Colony from making a separate peace with the Iroquois;

(8) Virginia represented those Indian tribes in the final Treaty of Albany, 1722;

(9) in 1711, a Nansemond boy attended the Indian School at the College of William and Mary;

(10) in 1727, Norfolk County granted William Bass and his kinsmen the "Indian privileges" of clearing swamp land and bearing arms (which privileges were forbidden to other non-Whites) because of their Nansemond ancestry, which meant that Bass and his kinsmen were original inhabitants of that land;

(11) in 1742, Norfolk County issued a certificate of Nansemond descent to William Bass;

(12) from the 1740s to the 1790s, the traditionalist section of the Nansemond tribe, 40 miles west of the Christianized Nansemonds, was dealing with reservation land;

(13) the last surviving members of that section sold out in 1792 with the permission of the Commonwealth of Virginia;

(14) in 1797, Norfolk County issued a certificate stating that William Bass was of Indian and English descent, and that his Indian line of ancestry ran directly back to the early 18th century elder in a traditionalist section of Nansemonds on the reservation;

(15) in 1833, Virginia enacted a law enabling people of European and Indian descent to obtain a special certificate of ancestry;

(16) the law originated from the county in which Nansemonds lived, and mostly Nansemonds, with a few people from other counties, took advantage of the new law;

(17) a Methodist mission established around 1850 for Nansemonds is currently a standard Methodist congregation with Nansemond members;

(18) in 1901, Smithsonian anthropologist James Mooney—

(A) visited the Nansemonds; and

(B) completed a tribal census that counted 61 households and was later published;

(19) in 1922, Nansemonds were given a special Indian school in the segregated school system of Norfolk County;

(20) the school survived only a few years;

(21) in 1928, University of Pennsylvania anthropologist Frank Speck published a book on modern Virginia Indians that included a section on the Nansemonds; and

(22) the Nansemonds were organized formally, with elected officers, in 1984, and later applied for and received State recognition.

SEC. 262. DEFINITIONS.

In this subtitle:

(1) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(2) TRIBAL MEMBER.—The term "tribal member" means—

(A) an individual who is an enrolled member of the Tribe as of the date of enactment of this Act; and

(B) an individual who has been placed on the membership rolls of the Tribe in accordance with this subtitle.

(3) TRIBE.—The term "Tribe" means the Nansemond Indian Tribe.

SEC. 263. FEDERAL RECOGNITION.

(a) FEDERAL RECOGNITION.—

(1) IN GENERAL.—Federal recognition is extended to the Tribe.

(2) APPLICABILITY OF LAWS.—All laws (including regulations) of the United States of general applicability to Indians or nations, Indian tribes, or bands of Indians (including the Act of June 18, 1934 (25 U.S.C. 461 et seq.)) that are not inconsistent with this subtitle shall be applicable to the Tribe and tribal members.

(b) FEDERAL SERVICES AND BENEFITS.—

(1) IN GENERAL.—On and after the date of enactment of this Act, the Tribe and tribal members shall be eligible for all services and benefits provided by the Federal Government to federally recognized Indian tribes without regard to the existence of a reservation for the Tribe.

(2) SERVICE AREA.—For the purpose of the delivery of Federal services to tribal members, the service area of the Tribe shall be considered to be the area comprised of the cities of Chesapeake, Hampton, Newport News, Norfolk, Portsmouth, Suffolk, and Virginia Beach, Virginia.

SEC. 264. MEMBERSHIP; GOVERNING DOCUMENTS.

The membership roll and governing documents of the Tribe shall be the most recent membership roll and governing documents, respectively, submitted by the Tribe to the Secretary before the date of enactment of this Act.

SEC. 265. GOVERNING BODY.

The governing body of the Tribe shall be—

(1) the governing body of the Tribe in place as of the date of enactment of this Act; or

(2) any subsequent governing body elected in accordance with the election procedures specified in the governing documents of the Tribe.

SEC. 266. RESERVATION OF THE TRIBE.

(a) IN GENERAL.—Upon the request of the Tribe, the Secretary of the Interior—

(1) shall take into trust for the benefit of the Tribe any land held in fee by the Tribe that was acquired by the Tribe on or before January 1, 2007, if such lands are located within the boundaries of the city of Suffolk, the city of Chesapeake, or Isle of Wight County, Virginia; and

(2) may take into trust for the benefit of the Tribe any land held in fee by the Tribe, if such lands are located within the boundaries of the city of Suffolk, the city of Chesapeake, or Isle of Wight County, Virginia.

(b) DEADLINE FOR DETERMINATION.—The Secretary shall make a final written determination not later than three years of the date which the Tribe submits a request for land to be taken into trust under subsection (a)(2) and shall immediately make that determination available to the Tribe.

(c) RESERVATION STATUS.—Any land taken into trust for the benefit of the Tribe pursuant to this paragraph shall, upon request of the Tribe, be considered part of the reservation of the Tribe.

(d) GAMING.—The Tribe may not conduct gaming activities as a matter of claimed inherent authority or under the authority of any Federal law, including the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) or under any regulations thereunder promulgated by the Secretary or the National Indian Gaming Commission.

SEC. 267. HUNTING, FISHING, TRAPPING, GATHERING, AND WATER RIGHTS.

Nothing in this subtitle expands, reduces, or affects in any manner any hunting, fishing, trapping, gathering, or water rights of the Tribe and members of the Tribe.

TITLE III—LITTLE SHELL TRIBE OF CHIPPEWA INDIANS

SEC. 301. SHORT TITLE.

This title may be cited as the "Little Shell Tribe of Chippewa Indians Restoration Act of 2016".

SEC. 302. FINDINGS.

Congress finds that—

(1) the Little Shell Tribe of Chippewa Indians is a political successor to signatories of the Pembina Treaty of 1863, under which a large area of land in the State of North Dakota was ceded to the United States;

(2) the Turtle Mountain Band of Chippewa of North Dakota and the Chippewa-Cree Tribe of the Rocky Boy's Reservation of Montana, which also are political successors to the signatories of the Pembina Treaty of 1863, have been recognized by the Federal Government as distinct Indian tribes;

(3) the members of the Little Shell Tribe continue to live in the State of Montana, as their ancestors have for more than 100 years since ceding land in the State of North Dakota as described in paragraph (1);

(4) in the 1930s and 1940s, the Tribe repeatedly petitioned the Federal Government for reorganization under the Act of June 18, 1934 (25 U.S.C. 461 et seq.) (commonly known as the "Indian Reorganization Act");

(5) Federal agents who visited the Tribe and Commissioner of Indian Affairs John Collier attested to the responsibility of the Federal Government for the Tribe and members of the Tribe, concluding that members of the Tribe are eligible for, and should be provided with, trust land, making the Tribe eligible for reorganization under the Act of June 18, 1934 (25 U.S.C. 461 et seq.) (commonly known as the "Indian Reorganization Act");

(6) due to a lack of Federal appropriations during the Depression, the Bureau of Indian Affairs lacked adequate financial resources to purchase land for the Tribe, and the members of the Tribe were denied the opportunity to reorganize;

(7) in spite of the failure of the Federal Government to appropriate adequate funding to secure land for the Tribe as required for reorganization under the Act of June 18, 1934 (25 U.S.C. 461 et seq.) (commonly known as the "Indian Reorganization Act"), the Tribe continued to exist as a separate community, with leaders exhibiting clear political authority;

(8) the Tribe, together with the Turtle Mountain Band of Chippewa of North Dakota and the Chippewa-Cree Tribe of the Rocky Boy's Reservation of Montana, filed 2 lawsuits under the Act of August 13, 1946 (60 Stat. 1049) (commonly known as the "Indian Claims Commission Act"), to petition for additional compensation for land ceded to the United States under the Pembina Treaty of 1863 and the McCumber Agreement of 1892;

(9) in 1971 and 1982, pursuant to Acts of Congress, the tribes received awards for the claims described in paragraph (8);

(10) in 1978, the Tribe submitted to the Bureau of Indian Affairs a petition for Federal recognition, which is still pending as of the date of enactment of this Act; and

(11) the Federal Government, the State of Montana, and the other federally recognized Indian tribes of the State have had continuous dealings with the recognized political leaders of the Tribe since the 1930s.

SEC. 303. DEFINITIONS.

In this title:

(1) MEMBER.—The term "member" means an individual who is enrolled in the Tribe pursuant to section 307.

(2) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(3) TRIBE.—The term "Tribe" means the Little Shell Tribe of Chippewa Indians of Montana.

SEC. 304. FEDERAL RECOGNITION.

(a) IN GENERAL.—Federal recognition is extended to the Tribe.

(b) EFFECT OF FEDERAL LAWS.—Except as otherwise provided in this title, all Federal laws (including regulations) of general application to Indians and Indian tribes, including the Act of June 18, 1934 (25 U.S.C. 461 et seq.) (commonly known as the "Indian Reorganization Act"), shall apply to the Tribe and members.

SEC. 305. FEDERAL SERVICES AND BENEFITS.

(a) IN GENERAL.—Beginning on the date of enactment of this Act, the Tribe and each member shall be eligible for all services and benefits provided by the United States to Indians and federally recognized Indian tribes, without regard to—

(1) the existence of a reservation for the Tribe; or

(2) the location of the residence of any member on or near an Indian reservation.

(b) SERVICE AREA.—For purposes of the delivery of services and benefits to members, the service area of the Tribe shall be considered to be the area comprised of Blaine, Cascade, Glacier, and Hill Counties in the State of Montana.

SEC. 306. REAFFIRMATION OF RIGHTS.

(a) IN GENERAL.—Nothing in this title diminishes any right or privilege of the Tribe or any member that existed before the date of enactment of this Act.

(b) CLAIMS OF TRIBE.—Except as otherwise provided in this title, nothing in this title alters or affects any legal or equitable claim of the Tribe to enforce any right or privilege reserved by, or granted to, the Tribe that was wrongfully denied to, or taken from, the Tribe before the date of enactment of this Act.

SEC. 307. MEMBERSHIP ROLL.

(a) IN GENERAL.—As a condition of receiving recognition, services, and benefits pursuant to this title, the Tribe shall submit to the Secretary, by not later than 18 months after the date of enactment of this Act, a membership roll consisting of the name of each individual enrolled as a member of the Tribe.

(b) DETERMINATION OF MEMBERSHIP.—The qualifications for inclusion on the membership roll of the Tribe shall be determined in accordance with sections 1 through 3 of article 5 of the constitution of the Tribe dated September 10, 1977 (including amendments to the constitution).

(c) MAINTENANCE OF ROLL.—The Tribe shall maintain the membership roll under this section.

SEC. 308. TRANSFER OF LAND.

(a) HOMELAND.—The Secretary shall acquire, for the benefit of the Tribe, trust title to 200 acres of land within the service area of the Tribe to be used for a tribal land base.

(b) ADDITIONAL LAND.—The Secretary may acquire additional land for the benefit of the Tribe pursuant to section 5 of the Act of June 18, 1934 (25 U.S.C. 465) (commonly known as the "Indian Reorganization Act").

PURPOSE OF THE BILL

The purpose of H.R. 3764 is to provide that an Indian group may receive Federal acknowledgement as an Indian tribe only by an Act of Congress.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 3764 reclaims Congress's Constitutional Article I role over recognizing tribes from the Executive Branch, which has wrongly appropriated this power. The bill establishes a statutory process for examining the evidence submitted by groups seeking recognition as tribes and for reserving to Congress the prerogative to render a final determination.

H.R. 3764 is necessary because the Indian Commerce Clause (Article I, Section 8) gives sole responsibility for Indian policy to Congress (not to the Secretary of the Interior or the Bureau of Indian Affairs). The Committee holds that this is a separation of powers issue of significant constitutional importance, rather than a parochial Indian matter.

The Framers vested responsibility over Indian affairs to the Congress—the political branch. Article I, Section 8, Clause 3 of the Constitution grants Congress power to "regulate commerce . . . with the Indian tribes." Supplemented by the Treaty making

power [1] in the Constitution, the so-called Indian Commerce Clause delegates to Congress what the Supreme Court has said is "plenary" power over Indian affairs.[2] Inherent in this delegation of authority to Congress is the power to recognize a tribe, as well as the prerogative not to extend recognition. Congress may create, modify, or terminate any of the services, benefits, powers, and privileges described above.

Federal recognition of an Indian tribe is a solemn act of the United States, with substantial, long-term consequences not only to the tribe's members, but to other tribes, states, and non-Indian citizens. A federally recognized tribe is eligible to obtain a variety of federal services and benefits and to enjoy certain powers and privileges available to it because of the Indian status of its members. These include: immunity from taxation and from state civil and criminal jurisdiction; operation of a non-taxable casino; absolute sovereign immunity against any person or government except the federal government; federal protection in controversies where states, local governments, or private citizens are adverse parties; and the exercise of special political authority over Indians in the tribe's territory. Current law authorizes the Bureau of Indian Affairs (BIA) to accept title to Indian land in trust, divesting state and local government jurisdiction over such property. A tribe is not deemed to be a party to the Constitution and as a result, an individual in tribal court does not possess the rights guaranteed by the Constitution, except as provided by Act of Congress. Federally recognizing a tribe incurs an obligation on Congress to increase funding for Indian programs lest the share of funds for other tribes is reduced by the addition of individuals eligible for benefits from the government.

While the Executive Branch has played an important role in Indian affairs, often serving as a first point of contact with the tribes and to carry out Acts of Congress concerning the administration of tribal affairs, the historical record is clear: federal Indian policy, which includes the question of extending formal recognition to a tribe, is not the province of an unelected, unaccountable bureaucracy (today known as the BIA), but to the elected, publicly accountable branch of government.

The importance of reserving the power over recognizing a tribe to the accountable branch of government is highlighted by a tribal leader in the second legislative hearing on H.R. 3764, testifying that "the current process [of federally recognizing tribes] is inherently flawed and subject to influence by those who have the best relationships within the Executive Branch." [3]

On the other hand, in recent years Congress has often passed legislation to recognize new tribes whose histories were not often clear or fully examined. Where the BIA hires professional historians and ethnographers to process and evaluate documented peti-

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[1] Treaty making with the Indian tribes was abolished by Congress in 1871 (". . . *Provided,* That hereafter no Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty . . ." [U.S. Statutes at Large, 16:566]).

[2] According to the Supreme Court, Congress's power regarding Indian tribes "has always been deemed a political one, not subject to be controlled by the judicial department of the government." *Lone Wolf* v. *Hitchcock*, 187 U.S. 553 (1903) at 565.

[3] *http://naturalresources.house.gov/uploadedfiles/martin*__testimony__*12__8__15.pdf.*

tions from groups seeking recognition, the Congress generally does not.

H.R. 3764 combines the analytical expertise of BIA's personnel with the judgment of a more transparent, accountable Congress.

BIA Regulations

In 1978, the BIA crafted tribal recognition regulations—now contained in 25 CFR Part 8 to recognize any group that can meet seven mandatory criteria to establish a continuous existence as an autonomous Indian tribe throughout history to the present. The BIA developed these regulations even as Congress discussed, but did not enact, a bill to establish standards and conditions for when federal recognition may be extended to a tribe. Thus, the "Part 83" regulations, today administered by the Office of Federal Acknowledgment of the Department of the Interior, should not have the force of law.

The 1978 regulations (then codified in Part 54) cited the following as the sources of authority for the BIA to recognize tribes: "5 U.S.C. 301; and sections 463 and 465 of the revised statutes 25 U.S.C. 2 and 9; and 230 DM 1 and 2." ("DM" in the citation of BIA authority stands for Departmental Manual, which is not a source of law). Today, the Part 83 regulations cite the following as the sources of authority for the BIA to recognize tribes: "5 U.S.C. 301; 25 U.S.C 2, 9, 479a–1; Pub. L. 103–454 Sec. 103 (Nov. 2, 1994); and 43 U.S.C. 1457."

None of these sources on their face authorize the Executive Branch, let alone an obscure office within a Bureau of the Department of the Interior, to promulgate the Part 83 regulations or otherwise extend recognition without express direction from Congress. A discussion of each statute the BIA wrongly cites as a delegation of power to create rules for the recognition of tribes follows here.

5 U.S.C. 301 is merely an authorization for all Executive departments to promulgate rules, and not a source of authority for a specific rule.

25 U.S.C. 2 (Section 43 of the Revised Statutes). Duties of Commissioner

The Commissioner of Indian Affairs shall, under the direction of the Secretary of the Interior, and agreeably to such regulations as the President may prescribe, have the management of all Indian affairs and of all matters arising out of Indian relations.

This provision of law is a codification of a section of the Revised Statutes derived from the Act of July 9, 1932, ch. 174, section 1, 4 Stat. 564. 25 U.S.C. 2 simply creates a position of Commission of Indian Affairs within the War Department. Congress believed it to be necessary to enact this law because "Secretary of War [John C.] Calhoun, by his own order, *and without special authorization from Congress,* created in the War Department what he called the Bureau of Indian Affairs [BIA]. To head the office Calhoun appointed McKenney [a Superintendent of Indian Trade] and assigned him two clerks as assistants. . . ."[4] (Italics added for emphasis).

[4] Francis Paul Prucha, *American Indian Policy in the Formative Years: The Indian Trade and Intercourse Acts, 1790–1834,* at 57 (1971 ed.).

This statute cannot be reasonably read to imply that the early 19th-century creation of a relatively small bureaucratic post carries with it the solemn power to recognize tribal nations endowed with the large range of powers, privileges, and immunities described previously.

25 U.S.C. 9. Regulations by President

The President may prescribe such regulations as he may think fit for carrying into effect the various provisions of any act relating to Indian affairs, and for the settlement of the accounts of Indian affairs.

This provision of law is derived from the Act of June 30, 1834, ch. 162, Sec. 17, 4 Stat. 738. The plain text unambiguously does *not* authorize the President or anyone else to extend federal recognition to a tribe. 25 U.S.C. 9 simply authorizes the President to prescribe regulations for "carrying into effect" laws concerning tribal affairs and for the settlement of their accounts. It is not a substantive source of authority for the laws that the President's regulations implement.

25 U.S.C. 479a–1, now reclassified as 25 U.S.C. 5131.

§ 5131. Publication of list of recognized tribes

(a) PUBLICATION OF LIST.—The Secretary shall publish in the Federal Register a list of all Indian tribes which the Secretary recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(b) FREQUENCY OF PUBLICATION.—The list shall be published within 60 days of November 2, 1994, and annually on or before every January 30 thereafter.

This statute does not provide a substantive source of authority for the Secretary of the Interior to recognize tribes. Its purpose is to require the Secretary of the Interior to implement the administrative duty of publishing a list of federally recognized tribes on an annual basis in the Federal Register.

Excerpts of the statements of the House Floor Managers describing the purpose and intent of Title I of H.R. 4180, later codified as 25 U.S.C. 479a (now 25 U.S.C. 5131), reveal no authority was granted to the Secretary to extend recognition to tribes:

> Mr. RICHARDSON [Majority Floor Manager]. Mr. Speaker, H.R. 4180 is a bill with three titles. The first title simply requires the Secretary of the Interior to promulgate an annual list of federally recognized Indian tribes.
>
> Mr. THOMAS of Wyoming [Minority Floor Manager]. Mr. Speaker, I yield myself such time as I may consume.
>
> Mr. Speaker, as the sponsor of H.R. 4180 I rise to urge my colleagues to support it. Title I would require the Secretary to publish an annual list of all the recognized tribes. *Congressional Record*, Oct. 3, 1994, page H10490)

Public Law 103–454, Sec. 103 (Nov. 2, 1994).

SEC. 103. FINDINGS.

The Congress finds that—

(1) the Constitution, as interpreted by Federal case law, invests Congress with plenary authority over Indian Affairs;

(2) ancillary to that authority, the United States has a trust responsibility to recognized Indian tribes, maintains a government-to-government relationship with those tribes, and recognizes the sovereignty of those tribes;

(3) Indian tribes presently may be recognized by Act of Congress; by the administrative procedures set forth in part 83 of the Code of Federal Regulations denominated 'Procedures for Establishing that an American Indian Group Exists as an Indian Tribe;' or by a decision of a United States court;

(4) a tribe which has been recognized in one of these manners may not be terminated except by an Act of Congress;

(5) Congress has expressly repudiated the policy of terminating recognized Indian tribes, and has actively sought to restore recognition to tribes that previously have been terminated;

(6) the Secretary of the Interior is charged with the responsibility of keeping a list of all federally recognized tribes;

(7) the list published by the Secretary should be accurate, regularly updated, and regularly published, since it is used by the various departments and agencies of the United States to determine the eligibility of certain groups to receive services from the United States; and

(8) the list of federally recognized tribes which the Secretary publishes should reflect all of the federally recognized Indian tribes in the United States which are eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Section 103 of Public Law 103–454 is no more than a set of "Findings." Congressional findings are often points of contention but are frequently included in acts because they have no substantive force and effect and they do not provide a substantive source of authority. As the Minority Floor Manager for the bill enacted as Pubic Law 103–454, complained: "[F]indings are not legally binding." (*Congressional Record,* Oct. 3, 1994, page H10490).

43 U.S.C. 1457

§ 1457. Duties of Secretary

The Secretary of the Interior is charged with the supervision of public business relating to the following subjects and agencies:

1. Alaska Railroad.
2. Alaska Road Commission.
3. Bounty-lands.
4. Bureau of Land Management.
5. United States Bureau of Mines.
6. Bureau of Reclamation.
7. Division of Territories and Island Possessions.
8. Fish and Wildlife Service.
9. United States Geological Survey.
10. Indians.
11. National Park Service.
12. Petroleum conservation.
13. Public lands, including mines.

43 U.S.C. 1457 is derived from a large number of acts of Congress dating back to 1849 and up to 1992. On its face this section

of the U.S. Code cannot be reasonably construed to grant the Secretary of the Interior with power to promulgate regulations for the recognition of new tribes any more than it can be construed to give the Secretary power to create new U.S. territories or new National Parks.

If it is assumed for the sake of argument that any or all of these statutes vested the BIA with some kind of power to promulgate the Part 83 regulations, there can be no question that none of these statutes contain standards, guidelines, or even suggestions for who may be eligible for federal recognition as a tribe.

Addressing Opposition to Congress Reclaiming Power over Tribal Recognition

Opponents of H.R. 3764 argue that the bill "politicizes" tribal recognition.[5] In their view, the Department of the Interior should have the primary role of making the rules for recognizing tribes, not Congress. Inexplicably, several of the Members who voted against H.R. 3764 in Committee because it "politicizes" tribal recognition have also cosponsored and voted in favor of legislation to recognize new tribes that did not undergo any formal analysis by the BIA. It would appear that opponents of H.R. 3764 would prefer to extend legislative recognition only to groups about which they know very little. Either that or many of the opponents of H.R. 3764 hold simultaneously contradictory views on the proper role of Congress in tribal recognition.

H.R. 3764 is necessary to ensure that when such Members cast their votes on a bill to recognize a tribe, they do so after receiving the BIA's formal analysis of that group. This improves Congress' ability to make fully informed, reasoned decisions, and puts into its proper place the BIA's unauthorized role over recognition, which has its own checkered history of political machinations and unethical behavior (see Office of Inspector General Investigative Report: "Allegations Involving Irregularities in the Tribal Recognition Process and Concerns Related to Indian Gaming," February 2002, U.S. Department of the Interior).[6]

Controversial BIA Revision of Recognition Standards

On July 1, 2015, the Bureau of Indian Affairs finalized a controversial rule to revise the "Part 83" recognition regulations.[7] At an April 22, 2015, Subcommittee on Indian, Insular, and Alaska Native Affairs hearing[8], the then-proposed rule was the focus of criticism from bipartisan Members of the House and Senate, and from several federally recognized tribes. Though the Government Accountability Office, Members of Congress, federally recognized tribes, and other interest holders (states and local governments) for years have criticized the Part 83 process for being inefficient, inconsistent, and lacking transparency, there has been virtually no requests for the Administration to relax the criteria or lower the

[5] *https://democrats-naturalresources.house.gov/media/press-releases/ranking-member-grijalva-i-join-tribes-in-strongly-opposing-just-pas2DKA1:[E.TRAP]sed-republican-bill-that-politicizes-tribal-recognition-process.*

[6] *https://www.doioig.gov/sites/doioig.gov/files/01-i-329.pdf.*

[7] *http://www.bia.gov/cs/groups/xofa/documents/text/idc1–031255.pdf.*

[8] *http://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=398320.*

evidentiary standards a petitioner must meet to be acknowledged as a tribe.

During the Subcommittee's April hearing, the proposed revisions were sharply criticized by several tribal witnesses. For example, one tribal leader testified that "the proposed revisions fail to uphold or establish safeguards to protect the federal government's treaty and trust obligations to existing federally recognized tribes."[9] Another tribal witness asked that the Department "withdraw the proposed rule in its entirety" because the changes to recognition standards "threaten the fabric which currently binds all tribal nations. . . ."[10]

The proposed revisions were endorsed by the National Congress of American Indians,[11] even though a number of recognized tribal governments have entered opposition to the revisions into the public record.[12]

The final rule published in the Federal Register on July 1, 2015 (80 FR 37861), addressed some of the concerns raised by tribes, non-tribal stakeholders, and certain Members of Congress, but the rule remains flawed in two major respects: (1) the standards and criteria, finalized by administrative fiat, are not authorized by Congress; and (2) the standards and criteria have been relaxed.

The Summary of the Final Rule states that the rule does not substantively change the Part 83 criteria, except in two instances: (1) allowing internal as well as external evidence for . . . identity as an American Indian entity; and (2) changing the way marriages are counted as evidence for . . . community. This statement, however, is misleading. The final rule makes several substantive changes that relax the acknowledgment criteria. For example, petitioners will not have to provide evidence prior to 1900 to meet criteria relating to community, political influence or authority. This reduces the evidentiary requirement for these criteria by 111 years. The final rule also restricts the rights of third parties to participate in the Secretary's review of a petition, compared to the participants having an equal footing with the petitioner under the previous rules.

In addition, without providing an explanation of its grounds for doing so in the proposed rule, the final rule eliminates the important requirement for the Department to approve additions to a tribe's base roll so as to prevent a tribe from transforming itself into a different entity after it obtains recognition from the Secretary. Moreover, the rule fails to address a troubling phenomenon that has grown in recent years: that of certain Indian tribes rescinding the membership of certain individuals from their rolls without meaningful review by the Congress, the BIA, or the federal courts.

Analysis of H.R. 3764

H.R. 3764 invokes Article I, Section 8, Clause 3 to set forth a comprehensive process for determining whether a group petitioning

[9] *Testimony of Fawn Sharp, President, Quinault Indian Nation.*
[10] *Testimony of Robert Martin, Chairman, Morongo Band of Mission Indians.*
[11] *Testimony of the National Congress of American Indians.*
[12] A number of tribes and tribal organizations submitted comments to the BIA raising concerns with the relaxation of criteria and standards in the proposed rule; other tribes passed formal resolutions opposing the proposed rule (e.g., see Resolution No. 15–13 of the Inter-Tribal Council of the Five Civilized Tribes).

for recognition as an Indian tribe shall be accorded such status. Under the bill, the BIA will process and examine petitions according to standards borrowed from the Part 83 rules, and upon completion of its analysis, submits its findings to Congress, which then decides whether to extend recognition. The bill prohibits the Department of the Interior from making the determination.

The process established by H.R. 3764 enables Members of Congress to weigh the merits of a group's documented history and the impact of extending recognition to them on: the federal budget; the interests of other tribes, some of which assert that petitioning groups are actually splinter groups of existing tribes; and state and local governments, whose civil, criminal, and tax jurisdiction is divested when a tribal reservation is created.

It is anticipated that controversies such as off-reservation gambling can be partly addressed through the process created under H.R. 3764. Many of these disputes occur after a tribe is recognized by the BIA (usually but not always under the Part 83 process). Under the Indian Gaming Regulatory Act of 1988, a newly recognized tribe under Part 83 obtains the right to operate a casino on its "initial reservation," which is on lands acquired by the tribe and put in trust by the BIA. Such initial reservations are sometimes located in areas where the local populace or the state opposes the presence of a casino and the impacts it may bring. Because the BIA, not being elected or accountable, may ignore objections of those most affected by its decisions—and this usually includes nearby Indian tribes—there is little anyone can do outside of filing expensive lawsuits to persuade the BIA to locate the initial reservation in an area presenting fewer conflicts.

Under H.R. 3764, if Congress chose to recognize a tribe, it could write in appropriate stipulations and limits on the tribe's powers to conduct gaming or the location of its trust lands on which a casino may be operated. Congress would be inclined to weigh interests of all stakeholders, including states, counties, cities, landowners, and other tribes for the simple fact that such stakeholders can hold them accountable every two or six years. The BIA is incapable of properly weighing such interests for the simple fact it is not elected, and most BIA staff are career employees who, while well intentioned, do not suffer any consequences for making the wrong decisions.

In the Committee markup of H.R. 3764, an amendment in the nature of a substitute offered by Chairman Rob Bishop was adopted. The amendment made several technical changes, and added two titles to recognize six Virginia tribes and a tribe in Montana. Though not fully consistent with the requirement of the underlying bill that a group undergo a formal analysis by the BIA, these groups have been studied and debated in Congress for several years. In addition, the group from Montana fully documented a petition through the Part 83 process (that petition, however, was initially rejected but the group has appealed it). The addition of the two new titles represents a compromise to show that Congress is willing to extend recognition to tribes when the BIA's power to do so is eliminated.

COMMITTEE ACTION

H.R. 3764 was introduced on October 20, 2015, by Congressman Rob Bishop (R–UT). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Indian, Insular and Alaska Native Affairs. The Subcommittee held two hearings on the bill, one on October 28, 2015, and another on December 8, 2015. On September 7, 2016, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. Congressman Rob Bishop offered an amendment in the nature of a substitute designated 001. Congressman Raúl M. Grijalva (D–AZ) offered an amendment to the amendment in the nature of a substitute designated 037; it was not adopted by a roll call vote of 14 ayes to 20 nays, as follows:

Committee on Natural Resources
U.S. House of Representatives
114th Congress

Date: 09.08.16 Recorded Vote: #1

FC Mark Up on 4 bills: **Grijalva_037 Amendment to H.R. 3764 (Rep. Rob Bishop),** To provide that an Indian group may receive Federal acknowledgment as an Indian tribe only by an Act of Congress, and for other purposes. *"Tribal Recognition Act of 2015"*

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Bishop, UT, Chairman		X		**Mr. LaMalfa, CA**		X	
Mr.Grijalva, AZ, Ranking Member	X			*Mrs. Dingell, MI*			
Mr. Young, AK				**Mr. Denham, CA**		X	
Mrs. Napolitano, CA	X			*Mr. Gallego, AZ*	X		
Mr. Gohmert, TX		X		**Mr. Cook, CA**		X	
Mrs. Bordallo, Guam	X			*Mrs. Capps, CA*	X		
Mr. Lamborn, CO		X		**Mr. Westerman, AR**			
Mr. Costa, CA	X			*Mr. Polis, CO*	X		
Mr. Wittman, VA		X		**Mr. Graves, LA**		X	
Mr. Sablan, CNMI	X			*Mr. Clay, MO*	X		
Mr. Fleming, LA		X		**Mr. Newhouse, WA**		X	
Mrs. Tsongas, MA	X			**Mr. Zinke, MT**			
Mr. McClintock, CA		X		**Mr. Hice, GA**		X	
Mr. Pierluisi, Puerto Rico				**Mrs. Radewagen, AS**		X	
Mr. Thompson, PA				**Mr. MacArthur, NJ**		X	
Mr. Huffman, CA				**Mr. Mooney, WV**		X	
Mrs. Lummis, WY				**Mr. Hardy, NV**		X	
Mr. Ruiz, CA	X			**Mr. LaHood, IL**		X	
Mr. Benishek, MI		X					
Mr. Lowenthal, CA	X						
Mr. Duncan, SC		X					
Mr. Cartwright, PA	X						
Mr. Gosar, AZ		X					
Mr. Beyer, VA							
Mr. Labrador, ID							
Mrs. Torres, CA	X			**TOTALS**	14	20	

Congressman Raúl M. Grijalva offered an amendment to the amendment in nature of a substitute designated 040; it was not adopted by a roll call vote of 16 ayes to 22 nays, as follows:

Committee on Natural Resources
U.S. House of Representatives
114th Congress

Date: 09.08.16 Recorded Vote: #2

FC Mark Up on 4 bills: **Grijalva_040 Amendment to H.R. 3764 (Rep. Rob Bishop),** To provide that an Indian group may receive Federal acknowledgment as an Indian tribe only by an Act of Congress, and for other purposes. *"Tribal Recognition Act of 2015"*

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Bishop, UT, Chairman		X		**Mr. LaMalfa, CA**		X	
Mr.Grijalva, AZ, Ranking Member	X			*Mrs. Dingell, MI*			
Mr. Young, AK				**Mr. Denham, CA**		X	
Mrs. Napolitano, CA	X			*Mr. Gallego, AZ*	X		
Mr. Gohmert, TX				**Mr. Cook, CA**		X	
Mrs. Bordallo, Guam	X			*Mrs. Capps, CA*	X		
Mr. Lamborn, CO		X		**Mr. Westerman, AR**			
Mr. Costa, CA	X			*Mr. Polis, CO*	X		
Mr. Wittman, VA		X		**Mr. Graves, LA**		X	
Mr. Sablan, CNMI	X			*Mr. Clay, MO*	X		
Mr. Fleming, LA		X		**Mr. Newhouse, WA**		X	
Mrs. Tsongas, MA	X			**Mr. Zinke, MT**		X	
Mr. McClintock, CA		X		**Mr. Hice, GA**		X	
Mr. Pierluisi, Puerto Rico				**Mrs. Radewagen, AS**		X	
Mr. Thompson, PA		X		**Mr. MacArthur, NJ**		X	
Mr. Huffman, CA	X			**Mr. Mooney, WV**		X	
Mrs. Lummis, WY		X		**Mr. Hardy, NV**		X	
Mr. Ruiz, CA	X			**Mr. LaHood, IL**		X	
Mr. Benishek, MI		X					
Mr. Lowenthal, CA	X						
Mr. Duncan, SC		X					
Mr. Cartwright, PA	X						
Mr. Gosar, AZ		X					
Mr. Beyer, VA	X						
Mr. Labrador, ID							
Mrs. Torres, CA	X			**TOTALS**	16	22	

Congressman Raul Ruiz (D–CA) offered an amendment to the amendment in nature of a substitute designated 039; it was adopted by voice vote. The amendment in the nature of a substitute offered by Congressman Rob Bishop (001), as amended, was adopted by voice vote. No other amendments were offered, and the bill, as amended, was ordered favorably reported to the House of Representatives by a bipartisan roll call vote of 23 ayes to 13 nays on September 8, 2016, as follows:

Committee on Natural Resources

U.S. House of Representatives

114th Congress

Date: 09.08.16 Recorded Vote: #3

FC Mark Up on 4 bills: **On Favorably Reporting H.R. 3764 (Rep. Rob Bishop),** To provide that an Indian group may receive Federal acknowledgment as an Indian tribe only by an Act of Congress, and for other purposes. *"Tribal Recognition Act of 2015"*

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Bishop, UT, Chairman	X			**Mr. LaMalfa, CA**	X		
Mr.Grijalva, AZ, Ranking Member		X		*Mrs. Dingell, MI*			
Mr. Young, AK				**Mr. Denham, CA**	X		
Mrs. Napolitano, CA		X		*Mr. Gallego, AZ*			
Mr. Gohmert, TX				**Mr. Cook, CA**	X		
Mrs. Bordallo, Guam		X		*Mrs. Capps, CA*		X	
Mr. Lamborn, CO	X			**Mr. Westerman, AR**	X		
Mr. Costa, CA		X		*Mr. Polis, CO*		X	
Mr. Wittman, VA	X			**Mr. Graves, LA**			
Mr. Sablan, CNMI	X			*Mr. Clay, MO*		X	
Mr. Fleming, LA	X			**Mr. Newhouse, WA**	X		
Mrs. Tsongas, MA		X		**Mr. Zinke, MT**	X		
Mr. McClintock, CA	X			**Mr. Hice, GA**	X		
Mr. Pierluisi, Puerto Rico				**Mrs. Radewagen, AS**	X		
Mr. Thompson, PA	X			**Mr. MacArthur, NJ**	X		
Mr. Huffman, CA		X		**Mr. Mooney, WV**	X		
Mrs. Lummis, WY	X			**Mr. Hardy, NV**	X		
Mr. Ruiz, CA		X		**Mr. LaHood, IL**	X		
Mr. Benishek, MI	X						
Mr. Lowenthal, CA		X					
Mr. Duncan, SC	X						
Mr. Cartwright, PA							
Mr. Gosar, AZ	X						
Mr. Beyer, VA		X					
Mr. Labrador, ID							
Mrs. Torres, CA		X		**TOTALS**	23	13	

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation and the Congressional Budget Act of 1974. With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the enclosed cost estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 22, 2016.

HON. ROB BISHOP,
Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3764, the Tribal Recognition Act of 2016.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Robert Reese (for programs of the Bureau of Indian Affairs), and Robert Stewart (for programs of the Indian Health Service).

Sincerely,

MARK P. HADLEY
(For Keith Hall, Director).

Enclosure.

H.R. 3764—Tribal Recognition Act of 2016

Summary: H.R. 3764 would stipulate that an Indian group can become a federally recognized Indian tribe only through the Congress enacting legislation to that effect. The bill would outline the process for such Indian groups to file petitions for federal recognition with the Department of the Interior (DOI).

The bill also would provide federal recognition to the Little Shell Tribe of Chippewa Indians of Montana and 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 $100 million over the 2017–2021 period, assuming appropriation of the necessary amounts. Enacting H.R. 3764 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 3764 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

H.R. 3764 would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) by exempting some lands from taxation by state and local governments, but CBO estimates the cost of the mandate would be small and well below the threshold established in that act ($77 million in 2016, adjusted annually for inflation).

H.R. 3764 contains no private-sector mandates as defined in UMRA.

Estimated cost to the Federal Government: The estimated budgetary effect of H.R. 3764 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—				
	2017	2018	2019	2020 2021	2017–2021
INCREASES IN SPENDING SUBJECT TO APPROPRIATION					
Department of the Interior:					
Estimated Authorization Level	9	9	9	10	46
Estimated Outlays	8	9	9	10	45
Indian Health Service:					
Estimated Authorization Level	11	11	11	11	55
Estimated Outlays	11	11	11	11	55
Total Increases:					
Estimated Authorization Level	20	20	20	21	101
Estimated Outlays	19	20	20	21	100

Basis of estimate: For this estimate, CBO assumes that H.R. 3764 will be enacted before the end of calendar year 2016, that the necessary amounts will be provided each year, and that outlays will follow historical patterns for similar assistance to other tribes.

The bill would repeal the current framework for the federal government to recognize Indian groups as Indian tribes, which has been in place since 2015. The bill also would stipulate new administrative procedures for Indian groups to petition for federal recognition. Those procedures would be similar to the procedures that existed before 2015. CBO estimates that implementing the procedures required in H.R. 3764 would not significantly change DOI's administrative costs over the 2017–2021 period. (In 2016, DOI allocated about $2 million for administrative expenses related to Indian tribal recognition.)

H.R. 3764 also would provide federal recognition to an Indian tribe in Montana and six Indian tribes in Virginia. Such recognition would allow those tribes and about 7,460 tribal members (including members of other federally recognized tribes who live far from their own tribal service area, but close to the service area of the tribes that would be recognized under H.R. 3764) to receive benefits from various programs administered by DOI and the Indian Health Service (IHS).

Based on average per capita expenditures by DOI and the IHS for other Indian tribes, CBO estimates that implementing H.R. 3764 would cost $100 million over the 2017–2021 period, assuming appropriation of the necessary amounts.

Department of the Interior

DOI, primarily through the Bureau of Indian Affairs, provides funding to federally recognized tribes for various purposes, includ-

ing child welfare services, adult care, community development, and other general assistance. In total, CBO estimates that providing those services to the seven tribes that would be recognized under H.R. 3764 would cost $45 million over the 2017–2021 period, assuming appropriation of the necessary amounts and accounting for anticipated inflation. That estimate reflects per capita expenditures for services provided to the newly recognized tribes that would be similar to those for other federally recognized tribes located in the eastern states. (In 2015, the most recent year for which historical information on such spending is available, per capita expenditures for eastern tribes averaged about $1,200.)

Indian Health Service

H.R. 3764 also would make members of the tribes newly recognized under H.R. 3764 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 4,300 people—would receive benefits each year. CBO expects that the cost to serve those individuals would be similar to the costs for current IHS beneficiaries—about $2,650 per individual in 2017. Assuming appropriation of the necessary funds and accounting for anticipated inflation, CBO estimates that health benefits for those tribes would cost $55 million over the 2017–2021 period.

Other Federal agencies

In addition to assistance from DOI and IHS, 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 and Montana, the tribes specified in the bill are already eligible to receive support from those departments. Thus, CBO estimates that implementing H.R. 3764 would not authorize additional spending by those agencies.

Pay-as-you-go considerations: None.

Estimated impact on state, local, and tribal governments: H.R. 3764 would impose an intergovernmental mandate as defined in UMRA by exempting some lands from taxation by state and local governments, but CBO estimates the cost of the mandate would be small and well below the threshold established in that act ($77 million in 2016, adjusted annually for inflation).

Estimated impact on the private sector: H.R. 3764 contains no private-sector mandates as defined in UMRA.

Previous CBO estimates: CBO has transmitted estimates for two other bills with provisions that are similar to provisions of H.R. 3764:

- On March 25, 2015, CBO transmitted a cost estimate for S. 35, the Little Shell Tribe of Chippewa Indians Restoration Act of 2015, as ordered reported by the Senate Committee on Indian Affairs on March 18, 2015. S. 35 is similar to Title III of H.R. 3764.
- On March 26, 2015, CBO transmitted a cost estimate for S. 465, the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2015, as ordered reported by the Senate Committee on Indian Affairs on March 18, 2015. S. 465 is similar to Title II of H.R. 3764.

Differences in our estimates of spending subject to appropriation under the relevant sections of H.R. 3764, S. 35, and S. 465 reflect increases in the estimated size of tribal populations served (because of expected growth between 2015 and 2017) and in the per capita cost of benefits provided by the IHS.

Estimate prepared by: Federal Costs: Robert Reese—Bureau of Indian Affairs, Robert Stewart—Indian Health Service; Impact on State, Local, and Tribal Governments: Rachel Austin; Impact on the Private Sector: Amy Petz.

Estimate approved by: H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

2. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to provide that an Indian group may receive Federal acknowledgement as an Indian tribe only by an Act of Congress.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. The Chairman does not believe that this bill directs any executive branch official to conduct any specific rule-making proceedings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95–220, as amended by Public Law 98–169) as relating to other programs.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

DISSENTING VIEWS

Chairman Bishop's legislation would give Congress sole authority to formally recognize Native American tribes. Aside from further delaying an already interminable process, the bill would consolidate the power of tribal recognition in the hands of a very few Members of Congress, including the Chairman of this Committee.

The Secretary of Interior's authority to acknowledge the existence of Indian tribes is deeply rooted in the laws passed by Congress and the structure of the Constitution. Congress rightly granted the Assistant Secretary of Indian Affairs the authority to "have management of all Indian affairs and of all matters arising out of Indian relations."[1] This includes the authority to administratively acknowledge Indian tribes. This authority is well established, and has been upheld by the courts.[2]

The Congressional findings that supported the Federally Recognized Indian Tribe List Act of 1994 reiterated that Indian tribes could be recognized "by the administrative procedures set forth in part 83 of the Code of Federal Regulations denominated 'Procedures for Establishing that an American Indian Group Exists as an Indian Tribe,'" and described the relationship that the United States has with federally recognized tribes.[3]

In addition to the power delegated by Congress, the Executive Branch has independent constitutional authority to recognize Tribal Nations through the Constitution's Treaty Clause.[4]

H.R 3764 seeks to upset this recognized authority by stipulating that *only* Congress has the authority to recognize Indian tribes.

The bill obscures its true intent by setting forth its own process by which a tribe can petition the Department of Interior for recognition. However, the only requirement at the end of that process would be for the Department to "submit a report including a summary of the evidence, findings, petition, and supporting documentation, to the Committee on Natural Resources of the House of Representatives and the Committee on Indian Affairs of the Senate." There would be no final step forward for administrative recognition.

Chairman Bishop successfully offered an amendment in the nature of a substitute (ANS) which added two new titles to the end of the introduced bill consisting of the texts of H.R. 286: Little Shell Tribe of Chippewa Indians Restoration Act of 2015, and H.R. 872: To extend Federal recognition to the Chickahominy Indian Tribe, the Chickahominy Indian Tribe-Eastern Division, the Upper

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[1] 25 U.S.C. § 2 and § 9, and 43 U.S.C. § 1457.

[2] See, e.g., Miami Nation of Indians of Indiana. Inc. v. United States Dept of the Interior, 255 F.3d 342, 346 (7th Cir. 2001); James v. United States Dep 't of Health & Human Servs., 824 F.2d 1132, 1137 (D.C. Cir. 1987).

[3] See Public Law 103–454 Sec. 103(2), (3), (8) (Nov. 2, 1994).

[4] U.S. Const., art. II, § 2, cl. 2.

Mattaponi Tribe, the Rappahannock Tribe, Inc., the Monacan Indian Nation, and the Nansemond Indian Tribe.

These are long overdue and non-controversial recognition bills, both of which would have passed out of Committee unanimously. Their inclusion in this highly controversial legislation is a disservice to the six Virginia tribes and the Little Shell Tribe of Chippewa Indians of Montana.

The ANS also amends Sec. 104 to require that any new documented petitions must be filed within five years of enactment of this Act. This has the effect of setting an arbitrary deadline for the United States Government to halt the entire tribal recognition process, no matter what future evidence might show.

Ranking Member Raúl Grijalva offered an amendment to remove Title I and instead pass these two titles independently; the amendment was defeated on a party line vote. The Ranking Member also offered an amendment to ensure that all land taken into trust prior to the *Carcieri* decision is reaffirmed as tribal trust land, but this was also defeated along party fines.

Many tribes have still not established or reaffirmed their relationship with the federal government. The Department of Interior's Part 83 process provides a ton-partisan, research based approach to determining the validity of tribal claims—a rigorous, time-consuming process that is based on hard science and meticulous investigation.

Taking that process away, and leaving an act of Congress as the sole option will only result in further delays and difficulties for tribes. Most dangerous of all, it will leave tribal recognition decisions victim to political whims and special interest influence.

For these reasons, we opposed the adoption of H.R. 3764.

RAÚL GRIJALVA,
Ranking Member.
GRACE F. NAPOLITANO.
ALAN LOWENTHAL.
DONALD S. BEYER, Jr.
JARED POLIS.

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