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SENATE

{ REPORT
114-141

THOMASINA E. JORDAN INDIAN TRIBES OF VIRGINIA FEDERAL RECOGNITION ACT OF 2015

SEPTEMBER 10, 2015.—Ordered to be printed

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

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany S. 465]

The Committee on Indian Affairs, to which was referred the bill (S. 465) to extend Federal recognition to the Chickahominy Indian Tribe, the Chickahominy Indian Tribe—Eastern Division, the Upper Mattaponi Tribe, the Rappahannock Tribe, Inc., the Monacan Indian Nation, and the Nansemond Indian Tribe, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of S. 465 is to provide federal recognition to six tribes in the Commonwealth of Virginia—the Chickahominy Indian Tribe, the Chickahominy Indian Tribe—Eastern Division, the Upper Mattaponi Tribe, the Rappahannock Tribe, Inc., the Monacan Indian Nation, and the Nansemond Indian Tribe, and make applicable to these groups and their members all laws that are generally applicable to American Indians and federally recognized Indian tribes.

NEED FOR LEGISLATION

Although there is a Federal regulatory process by which an Indian group may obtain Federal recognition (described below), the ability of a group to meet the regulatory requirements is highly de-

pendent upon the availability of documentary evidence and records. The six Virginia tribal groups proposed for recognition in S. 465 maintain that the unique history of the Commonwealth of Virginia and its relations with these groups prevents the tribes from being able to meet the level of documentary evidence required by the Department of the Interior (Department).

Many of the courthouses that housed records and documents related to these tribal groups burned during the Civil War, making records up to the late 1800s difficult to find.¹ Additionally, through the Racial Integrity Act of 1924, the Commonwealth of Virginia required all segments of the population to be registered at birth in one of two categories: “White” or “Colored.”² The “Colored” category was mandated for all persons determined to be non-White, regardless of race or ethnicity.³ Officials from the State’s Bureau of Vital Statistics interpreted the law as allowing them to retroactively change a person’s birth certificate to the “Colored” category if they believed there was evidence that the person was not “fully” White.⁴

While the primary target of the Racial Integrity Act of 1924 was the African American community,⁵ some saw the Virginia Indian community as a threat because, as long as a person had not more than $\frac{1}{16}$ Indian blood quantum, the Racial Integrity Act of 1924 allowed persons of White and Virginia Indian ancestry to be classified as “White.”⁶ Supporters of the law—including Dr. Walter Plecker, the Registrar for Virginia’s Bureau of Vital Statistics—saw this exception for Indians as an opportunity for persons of mixed heritage to move from the “Colored” category to the “White” category.⁷ Officials from the State’s Bureau of Vital Statistics actively sought to denigrate persons of Virginia Indian descent and deny them the right to identify as “Indians” or “White”, instead forcing them to be declared “Colored”.⁸

The Racial Integrity Act of 1924 remained in effect until 1967, when the United States Supreme Court declared it unconstitutional in *Loving v. Virginia* (388 U.S. 1). In 1997, Virginia Governor George Allen signed into law a bill allowing Virginia Indians to correct their birth records.⁹ However, the six Virginia tribes proposed for recognition in S. 465 contend that the existence of the law for several decades makes it unlikely that adequate docu-

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

²Legislative Hearing on S. 724, *Little Shell Tribe of Chippewa Indians Restoration Act of 2007*; S. 514, *Muskogee Nation of Florida Federal Recognition Act*; S. 1058, *Grand River Bands of Ottawa Indians of Michigan Referral Act*; and H.R. 1294, *Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2007*. Before the S. Comm. On Indian Affairs. 110th Cong. 2 (2008) (Statement of Timothy M. Kaine, Governor of the Commonwealth of Virginia).

³*Id.*

⁴*Id.*

⁵*To Extend Federal Recognition to the Chickahominy Tribe, The Chickahominy Indian Tribe—Eastern Division, the Upper Mattaponi Tribe, The Rappahannock Tribe, Inc., the Monacan Tribe, and the Nansemond Tribe Before the Senate Committee on Indian Affairs, 107th Congress 2, 74–76 and 111–116 (2002)* (statement of Danielle Moretti-Langholtz, Ph.D., American Indian Resource Center, coordinator).

⁶Section 5 of 1924 Racial Integrity Act.

⁷Legislative Hearing on S. 724; S. 514; S. 1058; and H.R. 1294. Before the S. Comm. On Indian Affairs. 110th Cong. 2 (2008) (Statement of Timothy M. Kaine, Governor of the Commonwealth of Virginia).

⁸Moretti-Langholtz, *supra* note 4.

⁹Legislative Hearing on S. 724; S. 514; S. 1058; and H.R. 1294. Before the S. Comm. On Indian Affairs. 110th Cong. 2 (2008) (Statement of Timothy M. Kaine, Governor of the Commonwealth of Virginia).

mentation exists to meet Department regulations governing acknowledgment of Indian groups.¹⁰

The Commonwealth of Virginia has strongly supported extending Federal recognition to the six Virginia groups listed in S. 465. During the 109th Congress, former Governor George Allen, then-Senator, introduced S. 480, which would have granted Federal recognition to the six groups listed in S. 465.

BACKGROUND

History of federally recognizing Indian tribes

The act of federally recognizing an Indian tribe is highly significant. It is an affirmation by the United States of the existence of a formal government-to-government relationship between the United States and the tribe. Once federally recognized, a tribe and its members have access to Federal benefits and programs, and the tribal government incurs a formal responsibility to its members as the primary governing body of the community.

Before Congress ended the practice of treaty-making with Indian tribes in 1871, treaties were the usual manner of recognizing a government-to-government relationship between the United States and an Indian tribe. Since the conclusion of this practice, the United States has recognized Indian tribes by legislation, executive orders, and administrative decisions. Additionally, Federal courts may clarify the status of an Indian group.

In order to provide a uniform and consistent process by which an Indian tribe may be federally recognized, the Department of the Interior (Department) developed an administrative process in 1978 to allow Indian groups to petition for formal acknowledgment of a government-to-government relationship with the United States. Standards and procedures for this process were set forth in Part 83 of Title 25 of the Code of Federal Regulations (Part 83 or the Federal acknowledgement process). These regulations, as amended in 1994, required a petitioner to satisfy seven mandatory requirements, including:

- (1) The petitioner “has been identified as an American Indian entity on a substantially continuous basis since 1900”;
- (2) A predominant portion of the petitioning “group comprises a distinct community and has existed as a community from historical times until the present”;
- (3) The petitioner has “maintained political influence or authority over its members as an autonomous entity from historical times to the present”;
- (4) The group must “provide a copy of its present governing documents and membership criteria”;
- (5) The petitioner’s “membership consists of individuals who descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity”;
- (6) The “membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe” and do not maintain a bilateral political relationship with the acknowledge tribe; and

¹⁰Such declarations were made prior to the Department’s publication of new regulations in July 2015 reforming the Federal acknowledgement process.

(7) “Neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship”.¹¹

The Department issued new Part 83 regulations on July 1, 2015.¹²

History of changes made to the department’s Part 83 regulations

The Federal acknowledgement process has been criticized as “broken” for decades.¹³ Nonetheless, until the Department’s recent effort to reform Part 83 (discussed below), there have been only a handful of changes made to the Federal acknowledgement process since its inception.¹⁴

Complaints about the Department’s Federal acknowledgement process have centered primarily on the high cost of gathering documentary evidence to meet the seven mandatory criteria, the length of time it takes the Department to review a petition, and the Department’s inconsistent application of the listed criteria.¹⁵ Of the 567 tribes that have been federally recognized, only 18 have been acknowledged through the Part 83 process.

Since 1970, Congress has passed legislation to federally recognize or reaffirm 17 Indian tribes.¹⁶ To date, the Department has issued 50 decisions under the Part 83 process, including one decision issued after new Part 83 regulations were published in July 2015.¹⁷

Recent developments

On June 21, 2013, the Assistant Secretary—Indian Affairs (AS–IA) released a Discussion Draft proposing changes to Part 83. The related comment period closed on September 30, 2013. On May 29, 2014, the AS–IA published a Proposed Rule in the Federal Register. The Department received substantial input from tribes, state and local governments, and the public, during the associated comment period, which closed on September 30, 2014.¹⁸

¹¹See 59 Fed. Reg. 94–3934. (February 25, 1994).

¹²80 Fed. Reg. 37861 (July 1, 2015).

¹³See 80 Fed. Reg. 37862.

¹⁴Examples of changes made to the process prior to recent reform efforts include regulations clarifying the evidence needed to support a recognition petition, 59 Fed. Reg. 94–3934 (February 25, 1994); a notice regarding internal BIA processing of federal acknowledgment petitions, 65 Fed. Reg. 7052–53 (February 11, 2000); and a notice providing guidance and direction to streamline the process, 73 Fed. Reg. 30146 (May 23, 2008).

¹⁵See 80 Fed. Reg. 37861 (July 1, 2015).

¹⁶See Tonto Apache Tribe of Arizona, Pub. L. 92–470 (1972); Modoc Tribe of Oklahoma, Pub. L. 95–281 (1978); Pasqua Yaqui Tribe of Arizona, Pub. L. 95–375 (1978); Houlton Band of Maliseet Indians of Maine, Pub. L. 96–420 (1980); Cow Creek Band of Umpqua Indians of Oregon, Pub. L. 97–391; Kickapoo Traditional Tribe of Texas, Pub. L. 97–429 (1983); Mashantucket Pequot Tribe of Connecticut, Pub. L. 98–134 (1983); Ysleta Del Sur Pueblo of Texas, Pub. L. 100–89 (1987); Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan, Pub. L. 100–420 (1988); Coquille Tribe of Oregon, Pub. L. 101–42 (1989); Aroostook Band of Micmac Indians of Maine, Pub. L. 102–171 (1991); Pokagon Band of Potawatomi Indians of Michigan, Pub. L. 103–323 (1994); Little River Band of Ottawa Indians of Michigan, Pub. L. 103–324 (1994); Little Traverse Band of Odawa Indians of Michigan, Pub. L. 103–324 (1994); Central Council of the Tlingit & Haida Indian Tribes of Alaska, Pub. L. 103–454 (1994); Graton Rancheria of California, Pub. L. 106–568 (2000); and Loyal Shawnee Tribe of Oklahoma, Pub. L. 106–568 (2000).

¹⁷The Department of the Interior issued a final determination recognizing the Pamunkey Indian Tribe, see 80 Fed. Reg. 39144 (July 2, 2015).

¹⁸See U.S. Department of the Interior, News Release, *Department of the Interior Announces Final Federal Recognition Process to Acknowledge Indian Tribes* (June 29, 2015) (stating that more than 2,800 commenters provided input on the Discuss Draft, and that there were over 330 unique comments on the Proposed Rule). The Department also received feedback from tribes during consultations and public meetings. *Id.*

Ultimately, the Department published a Final Rule on July 1, 2015, which took effect on July 31, 2015.¹⁹ Assistant Secretary Washburn also issued a policy statement indicating that the Department will rely on the new Part 83 process as the “sole administrative avenue” for Federal acknowledgement for tribes.²⁰

According to the Department, the Final Rule preserves the existing standard of proof and seven mandatory criteria to “maintain the substantive rigor and integrity of the Part 83 process.”²¹ In order to promote timeliness and efficiency, the Final Rule provides for a two-phased review of petitions that establishes certain threshold criteria and may result in the earlier issuance of final decisions, as well as a uniform evaluation period (1900 to present) to satisfy the tribal identification, community and political authority criteria.²² The Final Rule is intended to promote efficiency by providing for limited reconsideration of final agency determinations.²³ The Department states that the Final Rule promotes fairness and consistency by providing that prior decisions finding evidence or methodology sufficient to satisfy any particular criterion will also be sufficient for a petitioner under the new Part 83 process.²⁴ It also states that the Final Rule promotes transparency by providing for increased public access to petitions for Federal acknowledgement and associated public materials and, in the case of a negative proposed finding, providing petitioners the opportunity for a hearing.²⁵

Indian tribes that applied for federal acknowledgment prior to publication of the Final Rule on July 1, 2015, are allowed to choose to have the Department evaluate their application under the previous application process or the new application process.²⁶

Since the Final Rule was published, one Indian tribe has been federally recognized.²⁷

LEGISLATIVE HISTORY

S. 465 was introduced by Senators Tim Kaine [D–VA] and Mark Warner [D–VA] on February 11, 2015. The bill was read twice and referred to the Committee on Indian Affairs. On March 18, 2015, the Committee held a business meeting to discuss the measure, and ordered the bill to be reported favorably, without amendment. Chairman Barrasso recorded a vote opposing the measure.

A companion bill, H.R. 872, was introduced by Representative Robert J. Wittman [R–VA] on February 11, 2015, with three original cosponsors, including Representatives Gerald Connolly [D–VA], Robert Scott [D–VA], and Donald Beyer [D–VA]. On March 16, 2015, the bill was referred to the Subcommittee on Indian, Insular and Alaska Native Affairs.

Legislation similar to S. 465 was also introduced in the 107th, 108th, 109th, 110th, 111th, and 112th Congresses.

¹⁹ 80 Fed. Reg. 37861 (July 1, 2015).

²⁰ 80 Fed. Reg. 37538–39. (July 1, 2015).

²¹ 80 Fed. Reg. 37861 (July 1, 2015).

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ 80 Fed. Reg. 37861 (July 1, 2015).

²⁷ The Department of the Interior issued a final determination recognizing the Pamunkey Indian Tribe on July 2, 2015. *See* 80 Fed. Reg. 39144.

SECTION-BY-SECTION ANALYSIS

TITLE I—CHICKAHOMINY INDIAN TRIBE

Section 101—Findings

This section lists Congressional findings.

Section 102—Definitions

This section defines key terms.

Section 103—Federal recognition

This section extends Federal recognition to the Chickahominy Tribe, making the Tribe and its members eligible for all services and benefits provided by the Federal government to federally recognized Indian tribes and their members. This section also establishes a Federal service area for the Tribe.

Section 104—Membership; governing documents

This section states that the membership roll and governing documents of the Tribe shall be the most recent membership roll and governing documents, submitted to the Secretary before the date of enactment of this Act.

Section 105—Governing body

This section states that the governing body of the Tribe shall be either the governing body in place at the time of the enactment of this Act, or a governing body that is elected in accordance with the election procedures specified in the Tribe's governing documents.

Section 106—Reservation of the Tribe

This section requires that, upon request by the Tribe, the Secretary take into trust any land held in fee by the Tribe that was acquired by the Tribe on or before January 1, 2007, and is located in New Kent County, James City County, Charles City County or Henrico County, Virginia.

This section further permits the Secretary to take other land held in fee by the Tribe into trust for the benefit of the Tribe, if such lands are located in New Kent County, James City County, Charles City County or Henrico County, Virginia. The Secretary must make a final determination not later than three years from the date the Tribe submits a request for land to be taken into trust, and must immediately make that determination available to the Tribe.

This section provides that any land taken into trust pursuant to this section shall, upon request of the Tribe, be considered part of the reservation of the Tribe.

This section restricts the Tribe's ability to conduct gaming activities.

Section 107—Hunting, fishing, trapping, gathering, and water rights

This section states that nothing in this title expands, reduces, or affects in any manner any hunting, fishing, trapping, gathering, or water rights of the Tribe or its members.

TITLE II—CHICKAHOMINY INDIAN TRIBE—EASTERN DIVISION

Section 201—Findings

This section lists Congressional findings.

Section 202—Definitions

This section defines key terms.

Section 203—Federal recognition

This section extends Federal recognition to the Chickahominy Tribe—Eastern Division, making the Tribe and its members eligible for all services and benefits provided by the Federal government to federally recognized Indian tribes and their members. This section also establishes a Federal service area for the Tribe.

Section 204—Membership; governing documents

This section states that the membership roll and governing documents of the Tribe shall be the most recent membership roll and governing documents, submitted to the Secretary before the date of enactment of this Act.

Section 205—Governing body

This section states that the governing body of the Tribe shall be either the governing body in place at the time of the enactment of this Act, or a governing body that is elected in accordance with the election procedures specified in the Tribe's governing documents.

Section 206—Reservation of the Tribe

This section requires that, upon request by the Tribe, the Secretary take into trust any land held in fee by the Tribe that was acquired by the Tribe on or before January 1, 2007, and is located in New Kent County, James City County, Charles City County or Henrico County, Virginia.

This section further permits the Secretary to take other land held in fee by the Tribe into trust for the benefit of the Tribe, if such lands are located in New Kent County, James City County, Charles City County or Henrico County, Virginia. The Secretary must make a final determination not later than three years from the date the Tribe submits a request for land to be taken into trust, and must immediately make that determination available to the Tribe.

This section provides that any land taken into trust pursuant to this section shall, upon request of the Tribe, be considered part of the reservation of the Tribe.

This section restricts the Tribe's ability to conduct gaming activities.

Section 207—Hunting, fishing, trapping, gathering, and water rights

This section states that nothing in this title expands, reduces, or affects in any manner any hunting, fishing, trapping, gathering, or water rights of the Tribe or its members.

TITLE III—UPPER MATTAPONI TRIBE

Section 301—Findings

This section lists Congressional findings.

Section 302—Definitions

This section defines key terms.

Section 303—Federal recognition

This section extends Federal recognition to the Upper Mattaponi Tribe, making the Tribe and its members eligible for all services and benefits provided by the Federal government to federally recognized Indian tribes and their members. This section also establishes a Federal service area for the Tribe.

Section 304—Membership; governing documents

This section states that the membership roll and governing documents of the Tribe shall be the most recent membership roll and governing documents, submitted to the Secretary before the date of enactment of this Act.

Section 305—Governing body

This section states that the governing body of the Tribe shall be either the governing body in place at the time of the enactment of this Act, or a governing body that is elected in accordance with the election procedures specified in the Tribe's governing documents.

Section 306—Reservation of the Tribe

This section requires that, upon request by the Tribe, the Secretary take into trust any land held in fee by the Tribe that was acquired by the Tribe on or before January 1, 2007, and is located in King William County, Caroline County, Hanover County, King and Queen County, and New Kent County, Virginia.

This section further permits the Secretary to take other land held in fee by the Tribe into trust for the benefit of the Tribe, if such lands are located in King William County, Caroline County, Hanover County, King and Queen County, and New Kent County, Virginia. The Secretary must make a final determination not later than three years from the date the Tribe submits a request for land to be taken into trust, and must immediately make that determination available to the Tribe.

This section provides that any land taken into trust pursuant to this section shall, upon request of the Tribe, be considered part of the reservation of the Tribe.

This section restricts the Tribe's ability to conduct gaming activities.

Section 307—Hunting, fishing, trapping, gathering, and water rights

This section states that nothing in this title expands, reduces, or affects in any manner any hunting, fishing, trapping, gathering, or water rights of the Tribe or its members.

TITLE IV—RAPPAHANNOCK TRIBE, INC.

Section 401—Findings

This section lists Congressional findings.

Section 402—Definitions

This section defines key terms.

Section 403—Federal recognition

This section extends Federal recognition to the Rappahannock Tribe, Inc., making the Tribe and its members eligible for all services and benefits provided by the Federal government to federally recognized Indian tribes and their members. This section also establishes a Federal service area for the Tribe.

Section 404—Membership; governing documents

This section states that the membership roll and governing documents of the Tribe shall be the most recent membership roll and governing documents, submitted to the Secretary before the date of enactment of this Act.

Section 405—Governing body

This section states that the governing body of the Tribe shall be either the governing body in place at the time of the enactment of this Act, or a governing body that is elected in accordance with the election procedures specified in the Tribe's governing documents.

Section 406—Reservation of the Tribe

This section requires that, upon request by the Tribe, the Secretary take into trust any land held in fee by the Tribe that was acquired by the Tribe on or before January 1, 2007, and is located in King and Queen County, Stafford County, Spotsylvania County, Richmond County, Essex County and Caroline County, Virginia.

This section further permits the Secretary to take other land held in fee by the Tribe into trust for the benefit of the Tribe, if such lands are located in 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. The Secretary must make a final determination not later than three years from the date the Tribe submits a request for land to be taken into trust, and must immediately make that determination available to the Tribe.

This section provides that any land taken into trust pursuant to this section shall, upon request of the Tribe, be considered part of the reservation of the Tribe.

This section restricts the Tribe's ability to conduct gaming activities.

Section 407—Hunting, fishing, trapping, gathering, and water rights

This section states that nothing in this title expands, reduces, or affects in any manner any hunting, fishing, trapping, gathering, or water rights of the Tribe or its members.

TITLE V—MONACAN INDIAN NATION

Section 501—Findings

This section lists Congressional findings.

Section 502—Definitions

This section defines key terms.

Section 503—Federal recognition

This section extends Federal recognition to the Monacan Indian Nation, making the Tribe and its members eligible for all services and benefits provided by the Federal government to federally recognized Indian tribes and their members. This section also establishes a Federal service area for the Tribe.

Section 504—Membership; governing documents

This section states that the membership roll and governing documents of the Tribe shall be the most recent membership roll and governing documents, submitted to the Secretary before the date of enactment of this Act.

Section 505—Governing body

This section states that the governing body of the Tribe shall be either the governing body in place at the time of the enactment of this Act, or a governing body that is elected in accordance with the election procedures specified in the Tribe's governing documents.

Section 506—Reservation of the Tribe

This section requires that, upon request by the Tribe, the Secretary take into trust any land held in fee by the Tribe that was acquired by the Tribe on or before January 1, 2007, and is located in Amherst, Virginia.

This section further permits the Secretary to take other land held in fee by the Tribe into trust for the benefit of the Tribe, if such lands are located in Amherst County, Virginia, and those parcels in Rockbridge County, Virginia (subject to the consent of the local government), owned by Mr. J. Poole, described as East 731 Sandbridge and East 731. The Secretary must make a final determination not later than three years from the date the Tribe submits a request for land to be taken into trust, and must immediately make that determination available to the Tribe.

This section provides that any land taken into trust pursuant to this section shall, upon request of the Tribe, be considered part of the reservation of the Tribe.

This section restricts the Tribe's ability to conduct gaming activities.

Section 507—Hunting, fishing, trapping, gathering, and water rights

This section states that nothing in this title expands, reduces, or affects in any manner any hunting, fishing, trapping, gathering, or water rights of the Tribe or its members.

TITLE VI—NANSEMOND INDIAN TRIBE

Section 601—Findings

This section lists Congressional findings.

Section 602—Definitions

This section defines key terms.

Section 603—Federal recognition

This section extends Federal recognition to the Nansemond Indian Tribe, making the Tribe and its members eligible for all services and benefits provided by the Federal government to federally recognized Indian tribes and their members. This section also establishes a Federal service area for the Tribe.

Section 604—Membership; governing documents

This section states that the membership roll and governing documents of the Tribe shall be the most recent membership roll and governing documents, submitted to the Secretary before the date of enactment of this Act.

Section 605—Governing body

This section states that the governing body of the Tribe shall be either the governing body in place at the time of the enactment of this Act, or a governing body that is elected in accordance with the election procedures specified in the Tribe's governing documents.

Section 606—Reservation of the Tribe

This section requires that, upon request by the Tribe, the Secretary take into trust any land held in fee by the Tribe that was acquired by the Tribe on or before January 1, 2007, and is located in the City of Suffolk, the City of Chesapeake, or Isle of Wight County, Virginia.

This section further permits the Secretary to take other land held in fee by the Tribe into trust for the benefit of the Tribe, if such lands are located in the City of Suffolk, the City of Chesapeake, or Isle of Wight County, Virginia. The Secretary must make a final determination not later than three years from the date the Tribe submits a request for land to be taken into trust, and must immediately make that determination available to the Tribe.

This section provides that any land taken into trust pursuant to this section shall, upon request of the Tribe, be considered part of the reservation of the Tribe.

This section restricts the Tribe's ability to conduct gaming activities.

Section 607—Hunting, fishing, trapping, gathering, and water rights

This section states that nothing in this title expands, reduces, or affects in any manner any hunting, fishing, trapping, gathering, or water rights of the Tribe or its members.

TITLE VII—EMINENT DOMAIN

Section 701—Limitation

This section states that eminent domain may not be used to acquire lands in fee or in trust for an Indian tribe recognized under this Act.

COST AND BUDGETARY CONSIDERATIONS

The following cost estimate, as provided by the Congressional Budget Office, dated March 26, 2015, was prepared for S. 465:

S. 465—Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2015

Summary: S. 465 would provide federal recognition to six Indian tribes in Virginia—the Chickahominy Indian Tribe, the Eastern Division of the Chickahominy Indian Tribe, the Upper Mattaponi Tribe, the Rappahannock Tribe, Inc., the Monacan Indian Nation, and the Nansemond Indian Tribe. Federal recognition would make the tribes eligible to receive benefits from various federal programs.

CBO estimates that implementing this legislation would cost \$78 million over the 2016–2020 period, assuming appropriation of the necessary funds. Enacting S. 465 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

S. 465 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government: The estimated budgetary effect of S. 465 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—					
	2016	2017	2018	2019	2020	2016–2020
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Department of the Interior :						
Estimated Authorization Level	6	6	6	6	6	30
Estimated Outlays	4	6	6	6	6	29
Indian Health Service:						
Estimated Authorization Level	9	10	10	10	11	50
Estimated Outlays	8	10	10	10	11	49
Total Changes:						
Estimated Authorization Level	15	16	16	17	17	81
Estimated Outlays	13	16	16	17	17	78

Note: Components may not sum to totals because of rounding.

Basis of estimate: For this estimate, CBO assumes that S. 465 will be enacted in 2015, that the necessary amounts will be appropriated each year, and that outlays will follow historical patterns for similar assistance to other tribes.

S. 465 would provide federal recognition to six Indian tribes in Virginia. Such recognition would allow those tribes and about 4,800 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 S. 465) to receive benefits from various programs administered by the Department of the Interior (DOI) and the Indian Health Service (IHS). Based on the average per capita expenditures by those agen-

cies for other Indian tribes, CBO estimates that implementing S. 465 would cost \$78 million over the 2016–2020 period, assuming appropriation of the necessary funds.

Department of the Interior

DOI, primarily through the Bureau of Indian Affairs, provides funding to federally recognized tribes for various purposes, including child welfare services, adult care, community development, and general assistance. In total, CBO estimates that providing those services to the six tribes would cost \$29 million over the 2016–2020 period, assuming appropriation of the necessary funds and adjusting for anticipated inflation. This estimate is based on current per capita expenditures of around \$1,200 for other federally recognized tribes located in the eastern states.

Indian Health Service

S. 465 also would make members of the tribes eligible to receive health benefits from the IHS. Based on information from the IHS, CBO estimates that about 55 percent of tribal members—or about 2,650 people—would receive benefits each year. CBO assumes that the cost to serve those individuals would be similar to costs for current IHS beneficiaries—about \$3,300 per individual in 2015. Assuming appropriation of the necessary funds and adjusting for anticipated inflation, CBO estimates that IHS benefits for the tribes would cost \$49 million over the 2016–2020 period.

Other Federal Agencies

In addition to DOI and IHS funding, certain Indian tribes also receive support from other federal programs within the Departments of Education, Housing and Urban Development, Labor, and Agriculture. Based on their status as tribes recognized by Virginia, the tribes specified in the bill are already eligible to receive support from those departments. Thus, CBO estimates that implementing S. 465 would not increase spending from those agencies' programs.

Pay-As-You-Go considerations: None.

Intergovernmental and private-sector impact: S. 465 contains no intergovernmental or private-sector mandates as defined in UMRA.

Estimate prepared by: Federal Costs: Martin von Gnechten—Bureau of Indian Affairs; Robert Stewart—Indian Health Service; Impact on State, Local, and Tribal Governments: Melissa Merrell; Impact on the Private Sector: Amy Petz.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 465 will have a minimal impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 465.

ADDITIONAL VIEWS OF CHAIRMAN BARRASSO

The decision to federally recognize an Indian tribe is extremely important, with far-reaching implications for the group seeking recognition and its members, other Indian tribes, and the United States government. To maintain the import and integrity of this unique status, related decision-making should be as fair and transparent as possible. In my view, this is best achieved through careful and consistent analysis by technical experts with specialized training—historians, anthropologists, genealogists, and other professionals, applying regulations that have been developed for this very purpose.

This Committee has held numerous hearings on the Federal acknowledgment process. Testimony from these hearings makes clear that, prior to recent revisions to Part 83 regulations, the Federal acknowledgment process was protracted, inefficient, costly, and unpredictable.

To be sure, the Part 83 process has been flawed for some time, and some groups have suffered immensely as a result. With this in mind, it is easy to understand why some groups might try to avoid the administrative process by seeking recognition through the Congress.

Nonetheless, in my view, the best way to address flaws in the Part 83 process—the solution that is most practical, most transparent, and would allow for thorough and fair analysis of every Federal acknowledgement petition—is to improve the Part 83 process.

I have long supported the consistent application of an improved administrative process for Federal recognition decisions. Unfortunately, this bill represents a step in the opposite direction.

The Department has acknowledged the need to improve the Federal acknowledgment process, and I am hopeful that recent changes to Part 83 regulations will address the recurring concerns highlighted above.

CHANGES IN EXISTING LAW

In accordance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee finds that the enactment of S. 465 will not make any changes in existing law.

