



Legislative Bulletin.....May 8, 2007

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H.R. 1294 — Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2006

Summary of the Bill Under Consideration Today:

Total Number of New Government Programs: 0

Total Cost of Discretionary Authorizations: \$41 million over five years

Effect on Revenue: \$0

Total Change in Mandatory Spending: \$0

Total New State & Local Government Mandates: 0

Total New Private Sector Mandates: 0

Number of Bills Without Committee Reports: 0

Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority: 1

H.R. 1294 — Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2007 (*Moran, D-VA*)

Order of Business: The bill is scheduled for consideration on Tuesday, May 8, 2007, likely subject to a closed rule.

Summary: H.R. 1294 would provide for the federal recognition of the following six Indian tribes located in Virginia:

- Chickahominy
- Eastern Division of the Chickahominy
- Upper Mattaponi
- Rappahannock
- Monacan
- Nansemond

These groups are currently recognized as tribes by the Commonwealth of Virginia, and according to CBO, their combined membership is approximately 3,175 individuals. Through federal recognition, members of these tribes would now be eligible for the same programs and services as other federally recognized Indian tribes, such as the Bureau of Indian Affairs and the Indian Health Service.

In addition, H.R. 1294 would designate service areas for each tribe for the delivery of federal services to tribal members. The bill provides that Secretary of the Interior would take certain land areas for into trust for the benefit of each tribe. The legislation also prohibits the tribes from conducting gambling activities under the Indian Gaming Rights Act. As such, if the tribes were going to establish gambling facilities, they would be required to apply for a license under the same state-established requirements as any other non-Indian entity.

H.R. 1294 lists a number of findings (some listed below) about each tribe, outlining their history and recent activities.

Chickahominy Indian Tribe:

- “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;
- “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;
- “in 1831, the names of the ancestors of the modern-day Chickahominy Indian Tribe began to appear in the Charles City County census records;
- “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;
- “in 1972, the Charles City County school board began receiving funds under the Indian Self-Determination and Education Assistance Act 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;
- “in 1974, the Chickahominy Indian Tribe bought land and built a tribal center using monthly pledges from tribal members to finance the transactions;
- “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
- “in 1985, Governor Gerald Baliles was the special guest at an intertribal Thanksgiving Day dinner hosted by the Chickahominy Indian Tribe.”

Upper Mattaponi Indian Tribe:

- “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;
- “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;
- “during the period of 1920 through 1921, the Chickahominy Indian Tribe—Eastern Division began forming a tribal government;
- “E.P. Bradby, the founder of the Tribe, was elected to be Chief; and

- “in 1983 the Chickahominy Indian Tribe—Eastern Division was granted State recognition along with 5 other Virginia Indian tribes.”

Rappahannock Indian Tribe:

- “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;
- “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;
- “today, a majority of the Upper Mattaponi Indians have ‘Adams’ as their surname; and
- “in 1983, the Upper Mattaponi Indians applied for and won State recognition as an Indian tribe.”

Monacan Indian Tribe:

- “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;
- “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 State of Virginia, not to allow Indians to register as Indians for the 1930 census;
- “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;
- “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; and
- “in 1989, the Monacan Tribe was recognized by the State of Virginia, which enabled the Tribe to apply for grants and participate in other programs.”

Nansemond Indian Tribe:

- “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;
- “in 1677, Nansemond Indians were signatories to the Treaty of 1677 with the King of England;
- “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; and
- “the Nansemonds were organized formally, with elected officers, in 1984, and later applied for and received State recognition.”

Additional Information: Each of the six tribes currently have petitions pending with the Bureau of Indian Affairs (BIA) for federal recognition as an Indian Tribe. Through a standard federal recognition process, the Secretary of the Interior determines if a petitioner has met the seven criteria necessary to become a tribe. According to the Natural Resources Committee, although the initial petitions have been submitted, each tribe is at different stages in the application process, and none of the tribes have provided all of the necessary documentation for the Secretary to review and make a final determination.

Proponents of the legislation contend that these groups should receive their federal recognition as tribes through the legislative process, since the destruction of records has made it difficult for the tribes to receive recognition through the standard procedure. According to the Committee Report, "... **it is not entirely clear that these tribes could meet the criteria** used by the Bureau of Indian Affairs as part of the Federal Acknowledgment Process. Although references exist from the 1600s until the present indicating the existence of Indians in the Virginia area, much documentation that would be required by the Bureau of Indian Affairs has been tampered with or destroyed" (emphasis added). In addition, some supporters have explained receiving federal recognition is necessary in order for these groups to participate in the Jamestown 400th anniversary celebration later this year. The Administration testified during a Committee Hearing on April 18, 2007, regarding this legislation, in which the Assistant Secretary for Indian Affairs stated the following:

"We recognize that under the United States Constitution, Congress has the authority to recognize a 'distinctly Indian community' as an Indian tribe. But along with that authority, it is important that all parties have the opportunity to review all the information available before recognition is granted. That is why we support a recognition process that requires groups go through the Federal acknowledgment process because it provides a deliberative uniform mechanism to review and consider groups seeking Indian tribal status.

Legislation such as H.R. 65 and H.R. 1294 would allow these groups to bypass this process - allowing them to avoid the scrutiny to which other groups have been subjected. While legislation in Congress can be a tool to accomplish this goal, a legislative solution should be used sparingly in cases where there is an overriding reason to bypass the process."

To learn more about the federal recognition process, please check out [this](#) CRS report.

Possible Conservative Concerns: Some conservatives may be concerned that this legislation would subvert the standard federal recognition process through which groups apply to be recognized as an Indian tribe, and allow six groups recognized by the Commonwealth of Virginia to be federally recognized without going through the established review process. In addition, some conservatives may be concerned that the legislation would add over 3,000 individuals to be eligible for federal services through the Indian Health Service and the BIA. Some conservatives may also be concerned that by allowing the federal government to take land into trust for each of the Tribes, this land essentially becomes a de-regulated zone that is not subject to many state and local regulations, such as health and environmental standards.

Committee Action: H.R. 1249 was introduced on March 1, 2007, and referred to the Committee on Natural Resources, which considered it, held a mark up, and reported it to the House by voice vote, on April 25, 2007.

Cost to Taxpayers: According to CBO, implementing H.R. 1249 would authorize \$8 million in FY 2008, and \$41 million over five years. CBO outlines that these costs are derived from providing additional federal services to the 3,175 individuals that would now be eligible for such programs and services.

Does the Bill Create New Federal Programs or Rules?: No.

Earmark Compliance: According to the Committee Report, the “H.R. 1294 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(t) of rule XXI.”

Constitutional Authority: The Natural Resources Committee cites Article I, Section 3 of the Constitution, but fails to cite a specific clause. House Rule XIII, Section 3(d)(1), requires that all committee reports contain “a statement citing the *specific* powers granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution” (*emphasis added*).

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