

MAINE STATE LEGISLATURE

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L D 336

Date 6/21/23

Minority

(Filing No H-691)

JUDICIARY

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
131ST LEGISLATURE
FIRST SPECIAL SESSION

COMMITTEE AMENDMENT "A" to H P 210, L D 336, "An Act Regarding State Recognition of Native American Tribes"

Amend the bill by striking out everything after the enacting clause and inserting the following

Sec. 1. 5 MRSA §11053, sub-§3, as enacted by PL 2021, c 681, Pt A, §1, is amended to read

3. Tribal liaison. An agency shall designate an individual who reports directly to the head of the agency to serve as the agency's tribal liaison The tribal liaison shall

A Assist with developing and ensuring the implementation of the policy required by subsection 1,

B Serve as a contact person responsible for facilitating effective communication between the agency and the Indian tribes, and

C Coordinate the training of agency employees as provided in section 11054- and

D Provide technical assistance to state-recognized Indian tribes in accordance with section 26002, subsection 5, paragraph F

Sec. 2. 5 MRSA §12004-J, sub-§21 is enacted to read

21.

Table with 4 columns: Native American Indian Affairs, Maine Commission on Native American Indian Affairs, Legislative Per Diem and Expenses, 5 MRSA §26002

Sec. 3. 5 MRSA c. 633 is enacted to read

CHAPTER 633

STATE RECOGNITION OF INDIAN TRIBES

COMMITTEE AMENDMENT

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§26001. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings

1. Applicant. "Applicant" means a group seeking formal state recognition as a Native American Indian tribe

2. Commission. "Commission" means the Maine Commission on Native American Indian Affairs established by section 12004-J, subsection 21

3. Legislative committee. "Legislative committee" means the joint standing committee of the Legislature having jurisdiction over judiciary matters

4. Native American Indian tribe. "Native American Indian tribe" means a group of Native American Indian people who are related to each other by kinship and who trace their ancestry to a kinship group that has historically maintained an organizational structure that exerts influence and authority over its members

5. Recognized or recognition. "Recognized" or "recognition" means recognized by the State as a Native American Indian tribe pursuant to section 26003, subsection 4

6. Recognized tribe. "Recognized tribe" means a Native American Indian tribe recognized in accordance with this chapter

7. Review panel. "Review panel" means the group appointed pursuant to section 26003, subsection 3, paragraph E to review the sufficiency, accuracy and relevance of an application for recognition and any supporting documentation

§26002. Maine Commission on Native American Indian Affairs

1. Legislative intent. The purpose of this chapter is to establish a process for state recognition of Native American Indian tribes that

A Recognizes the historical and cultural contributions of Native Americans to the State,

B Protects and supports the heritage of Native Americans in the State, and

C Helps to address the needs of recognized tribes and their members by providing support from state agencies and benefits from relevant state policies, programs and activities

2. Commission established; membership. The Maine Commission on Native American Indian Affairs, established by section 12004-J, subsection 21, consists of 5 members, each of whom must have been a resident of the State for a minimum of 5 years. The Governor shall appoint commission members from a list of candidates prepared by the Chancellor of the University of Maine System pursuant to subsection 3. To the extent possible, the Governor shall appoint members who have different areas of expertise and professional affiliations and who live in different geographic locations in the State

3. Candidate list. The Chancellor of the University of Maine System, in consultation with the presidents of Colby College, Bates College and Bowdoin College, shall prepare a list of candidates for membership on the commission who have been residents of the State for a minimum of 5 years and each of whom must be

- 1 A A professional or academic scholar with expertise in cultural or physical
- 2 anthropology, Indian law, archaeology, Native American Indian genealogy or Native
- 3 American Indian history or a related subject area, or
- 4 B A member of a Native American Indian tribe who presents evidence to the
- 5 Chancellor of the University of Maine System of that person's Native American Indian
- 6 affiliation
- 7 4. Terms; reappointment. Members of the commission are appointed for 2-year
- 8 terms A member may not serve more than 2 consecutive terms, unless there is an
- 9 insufficient number of eligible candidates to replace a member who has served 2
- 10 consecutive terms
- 11 5. Duties. The commission shall
 - 12 A Elect a chair from among its members annually,
 - 13 B Provide information and guidance, including an explanation of the application
 - 14 process, to applicants for state recognition,
 - 15 C Develop and maintain a list of professionals and academic scholars with expertise
 - 16 in cultural or physical anthropology, Indian law, archaeology, Native American Indian
 - 17 genealogy or history or a related subject area who are able and willing to participate on
 - 18 review panels,
 - 19 D Appoint a review panel pursuant to section 26003, subsection 3, paragraph E, to
 - 20 review each application and any associated documentation submitted for state
 - 21 recognition,
 - 22 E Review each application and any supplemental documentation as well as the
 - 23 findings of the review panel related to that application and make a recommendation to
 - 24 the legislative committee for or against state recognition of the applicant pursuant to
 - 25 section 26003, subsection 3, paragraph F, and
 - 26 F Facilitate communication between each recognized tribe and the tribal liaison
 - 27 appointed by agencies under section 11053, subsection 3 to enable the recognized tribe
 - 28 to obtain technical assistance from those agencies with
 - 29 (1) Securing state and federal grant funding and accessing other state and federal
 - 30 resources related to improving tribal social services, education, employment
 - 31 opportunities, health care and housing, and
 - 32 (2) Developing and marketing the Native American Indian tribe's fine arts and
 - 33 performing arts, crafts and cultural events
- 34 6. Meetings; expenses. The commission meets at the call of the chair Members
- 35 receive a legislative per diem and expenses for each meeting, except that members may not
- 36 receive a legislative per diem for more than 6 meetings in a single calendar year For
- 37 purposes of this subsection, "expenses" and "legislative per diem" have the same meanings
- 38 as in section 12002, subsections 2 and 3, respectively
- 39 7. Administrative support. The University of Maine System shall provide
- 40 administrative support to the commission, including assisting the commission as needed
- 41 with each of its duties under subsection 5 and with the evaluation of applications for state
- 42 recognition

1 **8. Funding.** The commission may accept funds from the Federal Government, from
 2 a political subdivision of the State or from any individual, foundation or corporation and
 3 may expend funds for purposes that are consistent with this chapter. Funds received under
 4 this subsection must be deposited in a nonlapsing account maintained by the commission
 5 to support the work of the commission.

6 **§26003 State recognition of Native American Indian tribes**

7 **1. Application; required materials.** To be considered for state recognition, an
 8 applicant must submit an application to the commission in a form or format approved by
 9 the commission demonstrating that

10 A A majority of the applicant's members currently reside in a specific geographic
 11 location within the State,

12 B A substantial number of the applicant's members are related by kinship and trace
 13 their ancestry to a kinship group through genealogy or other methods. Genealogical
 14 documents submitted in support of this criteria may include only those documents that
 15 show descentance from identified Maine or regional indigenous people,

16 C The applicant's Native American Indian tribe has a historical connection with other
 17 Native American Indian tribes, bands or nations that currently inhabit or have in the
 18 past inhabited the State,

19 D The applicant has an enduring community presence within the boundaries of the
 20 State that is documented by archaeology, ethnography, cultural or physical
 21 anthropology, history, folklore or other reliable research or data,

22 E The applicant is organized, at least in part

23 (1) To preserve, document and promote its Native American Indian culture and
 24 history and this purpose is reflected in bylaws or other documents of the applicant,
 25 and

26 (2) To address the social, economic, political or cultural needs of its members with
 27 ongoing educational programs and activities,

28 F The applicant's documented traditions, customs, oral stories and histories signify the
 29 applicant's Native American Indian heritage and connection to the applicant's historical
 30 homeland, and

31 G The applicant has not been recognized as an Indian tribe by any other state, province
 32 or nation.

33 **2. Application; supplemental documentation.** An applicant may supplement its
 34 application under subsection 1 with letters, statements and other written materials from

35 A Municipal, state or federal authorities documenting the applicant's history of Native
 36 American Indian tribe-related business and activities, and

37 B Tribes within and outside of the State attesting to the applicant's Native American
 38 Indian heritage.

39 **3. Application review procedures.** The commission shall establish policies and
 40 procedures for the review of each application that include, but are not limited to

41 A Public notice of the receipt of the application and any supplemental documentation,

- 1 B Written notice to the applicant when each step in the review process has been
2 completed.
- 3 C A policy that any member of the commission who is a member of or affiliated with
4 the applicant is ineligible to participate in any action by the commission on the
5 applicant's application.
- 6 D At least one public hearing on each application.
- 7 E Appointment, in coordination with the applicant, of a 3-member review panel to
8 determine the sufficiency, accuracy and relevance of the application materials and any
9 supplemental documentation and to submit a detailed written report of its findings and
10 conclusions to the commission, the applicant and the legislative committee. The
11 members appointed must be professional or academic specialists with expertise in
12 cultural or physical anthropology, Indian law, archaeology, Native American Indian
13 genealogy or history or a related subject area. Members of the review panel may not
14 be commission members, members of the applicant or affiliated with the applicant.
- 15 F Review by the commission of the application and any supporting documentation,
16 the report of the review panel and any other relevant information to determine
17 compliance with subsection 1 and to recommend whether the Legislature should grant
18 or deny state recognition of the applicant. A recommendation in favor of state
19 recognition of the applicant may be made only by a majority vote of eligible
20 commission members. If the commission recommends that the Legislature deny state
21 recognition of the applicant, it must provide the applicant and the legislative committee
22 with a written notice of the reasons for the denial, including specific information
23 regarding the criteria in subsection 1 that were not satisfied.
- 24 G Deadlines for the review panel to submit its written report to the commission and
25 for the commission to notify the applicant and the legislative committee of its
26 recommendation. The deadline for the commission to notify the applicant and the
27 legislative committee of its recommendation may not be later than one year after the
28 date that the application and any supporting documentation were filed, unless the
29 commission provides a written explanation to the applicant and the legislative
30 committee of the reasons for the delay that identifies the expected date for the
31 commission's issuance of its recommendation.
- 32 H A process for the applicant to file, within one year of receiving notice of the denial,
33 a request for reconsideration supported by additional documentation. An applicant that
34 fails to file a request for reconsideration within the time required by this paragraph may
35 not file a new application for 2 years following the date the applicant received the
36 notice of denial.
- 37 I Procedures for the applicant to withdraw its application at any time before the
38 commission issues a recommendation under paragraph F, which must prohibit the
39 applicant from filing a new application for 2 years following the date that the
40 application is withdrawn, and
- 41 J A requirement that a new application filed by an applicant more than 2 years after
42 receiving a notice of denial or more than 2 years following the withdrawal of its earlier
43 application must be considered without reference to the denied or withdrawn

1 application and any supporting documentation that was submitted with the denied or
 2 withdrawn application

3 **4. State recognition.** An applicant may be recognized only

4 A By approval of the Legislature, or

5 B By the failure of the Legislature to take action on a recommendation from the
 6 commission in favor of state recognition within 2 years after receipt of the
 7 recommendation by the legislative committee For purposes of this paragraph, the
 8 Legislature fails to act if the Legislature fails to enact legislation recognizing the
 9 applicant or denying recognition to the applicant

10 **5. Effect of state recognition.** Recognized tribes and their members are subject to all
 11 laws of the State Recognition confers only those rights specifically described in this
 12 chapter and may not be construed to grant the recognized tribe or its members any right or
 13 claim to land or real estate in the State or right to conduct any gambling activities except
 14 as otherwise allowed by the laws of the State

15 **6. Confidentiality.** Records of genealogy submitted as part of an application or in
 16 support of an application for state recognition under this section are confidential and may
 17 be disclosed by the commission only to members of the review panel

18 **Sec. 4. Staggered terms.** Notwithstanding the Maine Revised Statutes, Title 5,
 19 section 26002, subsection 4, for the original appointments of members of the Maine
 20 Commission on Native American Indian Affairs, the Governor shall designate the terms of
 21 2 of the members as one-year terms An initial term of one year under this section may not
 22 be considered a full term for purposes of limiting the number of terms for which a member
 23 of the commission may serve

24 **Sec. 5. Meetings.** Notwithstanding the Maine Revised Statutes, Title 5, section
 25 26002, subsection 6, the Maine Commission on Native American Indian Affairs shall meet
 26 at least 3 times during the first 12 months following the effective date of this legislation '

27 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
 28 number to read consecutively

29 **SUMMARY**

30 This amendment, which is the minority report of the committee, replaces the bill, which
 31 is a concept draft It establishes a process for state recognition of Native American Indian
 32 tribes, which is designed to recognize the historical and cultural contributions of Native
 33 Americans to the State, to protect and strengthen the heritage of Native Americans in the
 34 State and to provide technical assistance to state-recognized Native American Indian tribes
 35 and their members related to state and federal programs and activities It establishes the
 36 Maine Commission on Native American Indian Affairs, a 5-member panel of experts
 37 appointed by the Governor to review and to make recommendations on applications for
 38 state recognition of Native American Indian tribes in the State and to provide specific
 39 assistance to state-recognized Native American Indian tribes and their members The
 40 ultimate decision whether to confer state recognition lies with the Legislature

41 State-recognized Native American Indian tribes and their members remain subject to
 42 all of the laws of the State and recognition may not be construed to grant the state-

COMMITTEE AMENDMENT "A" to H P 210, L D 336

1 recognized Native American Indian tribe or its members any right or claim to land or real
2 estate in the State or the right to conduct any gambling activities otherwise prohibited by
3 law

FISCAL NOTE REQUIRED

(See attached)



Approved 06/18/23 *mac*

131st MAINE LEGISLATURE

LD 336

LR 749(02)

An Act Regarding State Recognition of Native American Tribes

Fiscal Note for Bill as Amended by Committee Amendment "A" (H-691)
Committee: Judiciary
Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - University of Maine System

Fiscal Detail and Notes

Additional costs to the University of Maine System to prepare the required list of candidates for membership on the commission can be absorbed within existing budgeted resources