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By: **Delegates Branch and Fulton**

Introduced and read first time: January 25, 2002

Assigned to: Commerce and Government Matters

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Committee Report: Favorable with amendments

House action: Adopted with floor amendments

Read second time: March 22, 2002

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Commission on Indian Affairs - Formal Recognition of Maryland Indian**  
3 **Status**

4 FOR the purpose of requiring the Commission on Indian Affairs, after making certain  
5 determinations, to make certain recommendations to the Secretary of Housing  
6 and Community Development regarding the granting of formal recognition of  
7 Maryland Indian status to a certain tribe, band, group, or clan; requiring the  
8 Secretary to make certain recommendations to the Governor within a certain  
9 period of time; requiring the Governor to ~~propose an executive order to provide~~  
10 ~~formal recognition to a certain tribe, band, group, or clan, upon receiving a~~  
11 ~~recommendation by the Commission on Indian Affairs; providing for accept or~~  
12 ~~reject the recommendations made by the Commission on Indian Affairs within a~~  
13 ~~certain period of time; prohibiting formal recognition to of a certain tribe, band,~~  
14 ~~group, or clan, without unless the Governor proposing proposes an executive~~  
15 ~~order granting formal recognition under certain circumstances; providing that~~  
16 ~~the grant of formal recognition of Maryland Indian status under this Act may~~  
17 ~~not be construed to create certain entitlements, benefits, or rights~~; providing for  
18 the application of this Act; and generally relating to the formal recognition of  
19 Maryland Indian status.

20 BY repealing and reenacting, with amendments,  
21 Article 83B - Department of Housing and Community Development  
22 Section 5-406  
23 Annotated Code of Maryland  
24 (1998 Replacement Volume and 2001 Supplement)

25 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
26 MARYLAND, That the Laws of Maryland read as follows:

**1 Article 83B - Department of Housing and Community Development**

2 5-406.

3 (a) Subject to the approval of the Secretary, the Commission may establish a  
4 process by which a native American tribe, band, group, or clan which is indigenous to  
5 Maryland can apply to the Commission for formal recognition of Maryland Indian  
6 status.

7 (b) (1) The Commission shall adopt regulations and procedures necessary to  
8 carry out the provisions of this section in accordance with the provisions of Title 10,  
9 Subtitle 1 of the State Government Article.

10 (2) The regulations shall address the application process and  
11 genealogical standards, and shall specify the criteria which must be satisfied by a  
12 tribe, band, group, or clan applying for recognition.

13 (3) The criteria shall be generally consistent with the criteria established  
14 by the U.S. Department of the Interior, Bureau of Indian Affairs, for tribal recognition  
15 by the United States of America, taking into account the special circumstances of  
16 American Indians indigenous to Maryland and shall include the following criteria:

17 (i) The petitioning group has been identified from historical times  
18 until the present as "American Indian" or "aboriginal";

19 (ii) The members of the petitioning group are descendants from a  
20 tribe that existed historically and is either indigenous to Maryland or derived from  
21 historical tribes indigenous to Maryland prior to 1790;

22 (iii) The members of the petitioning group are descendants of an  
23 Indian tribe that historically inhabited a specific area in Maryland prior to 1790;

24 (iv) The membership of the petitioning group is composed  
25 principally of persons who are not members of any other North American tribe, band,  
26 group, or clan; and

27 (v) Any other criteria that the Commission considers necessary  
28 through regulations adopted by the Commission.

29 (c) (1) Upon the Commission's determination that a particular tribe, band,  
30 group, or clan has met the requirements for recognition set forth in the regulations,  
31 the Commission [may recommend] SHALL SUBMIT TO THE SECRETARY, FOR  
32 TRANSMITTAL TO THE GOVERNOR, A RECOMMENDATION FOR formal recognition [to  
33 the Governor].

34 (2) WITHIN 60 DAYS OF RECEIVING THE COMMISSION'S  
35 RECOMMENDATION, THE SECRETARY SHALL TRANSMIT THE RECOMMENDATION FOR  
36 FORMAL RECOGNITION TO THE GOVERNOR.

1           [(2)]   (3)    A Commissioner may not vote or participate in any way in the  
2 deliberations with respect to any application for formal recognition of Maryland  
3 Indian status made by an Indian tribe, band, group, or clan of which the  
4 Commissioner is a member.

5           (d)    (1)    [If the Governor concurs with] WITHIN 120 DAYS OF RECEIVING the  
6 Commission's recommendation, the Governor [may propose] ~~SHALL FORMALLY~~  
7 ~~RECOGNIZE SHALL:~~

8                    (I)    GRANT FORMAL RECOGNITION OF MARYLAND INDIAN STATUS,  
9 by executive [order to provide formal recognition to] ORDER, TO the particular tribe,  
10 band, group, or clan AS RECOMMENDED BY THE COMMISSION; OR

11                   (II)   REJECT THE COMMISSION'S RECOMMENDATION.

12           (2)    An executive order [proposed to be] ~~promulgated~~ ISSUED under this  
13 subsection shall first be presented to the Joint Committee on Administrative,  
14 Executive, and Legislative Review for review by the members of the Committee. The  
15 executive order shall take effect 30 days after submission to the Committee.

16           (3)    IF THE GOVERNOR REJECTS THE COMMISSION'S RECOMMENDATION,  
17 AND DOES NOT ISSUE AN EXECUTIVE ORDER WITHIN 120 DAYS OF RECEIVING THE  
18 RECOMMENDATION FOR FORMAL RECOGNITION FROM THE SECRETARY, THE  
19 PARTICULAR TRIBE, BAND, GROUP, OR CLAN SHALL RECEIVE MAY NOT BE GRANTED  
20 FORMAL RECOGNITION WITHOUT AN EXECUTIVE ORDER OF MARYLAND INDIAN  
21 STATUS UNLESS A SUBSEQUENT APPLICATION IS SUBMITTED AND APPROVED IN  
22 ACCORDANCE WITH THIS SECTION.

23           (e)    (1)    The provisions of this section are not intended to create any rights of  
24 ownership or other rights to land or to create any benefits or entitlements of any kind,  
25 nor are they intended to impair valid existing rights, benefits, or entitlements  
26 belonging to American Indians residing in the State.

27           (2)    The provisions of this section may not impair existing judicial rulings  
28 of the State regarding Maryland's American Indians.

29           (3)    Prior to formal recognition of Maryland Indian status, members of  
30 the petitioning group shall submit an affidavit renouncing all tribal rights of  
31 ownership with respect to land in the State.

32           (4)    ~~NOTHING IN THIS SUBTITLE OR REGULATIONS ADOPTED UNDER~~  
33 ~~THIS SUBTITLE MAY BE CONSTRUED TO PROHIBIT A PARTICULAR TRIBE, BAND,~~  
34 ~~GROUP, OR CLAN FROM RECEIVING FORMAL RECOGNITION BY EXECUTIVE ORDER~~  
35 ~~FROM THE GOVERNOR IF THE COMMISSION HAS RECOMMENDED THE RECOGNITION~~  
36 ~~TO THE GOVERNOR.~~

37           (f)    Any action or failure to take action by the Commission under this section  
38 does not create a private cause of action under the laws of the State.

1 (g) (1) Any person who, in any matter within the scope of this section,  
2 knowingly and willfully falsifies or conceals, by any trick, scheme, or device, a  
3 material fact, or makes any false, fictitious, or fraudulent statements or  
4 representations, or makes or uses any false writing or document, knowing the writing  
5 or document contains any false, fictitious, or fraudulent statement or entry, is guilty  
6 of a misdemeanor.

7 (2) Except as otherwise provided by law, a person who violates this  
8 section is subject to a fine of not more than \$1,000, or imprisonment for not more than  
9 6 months, or both.

10 (h) The provisions of this section may not be construed to create in the  
11 Commission any power to establish criteria for membership in a tribe, band, group, or  
12 clan. That power is specifically reserved to the individual tribe, band, group, or clan.

13 SECTION 2. AND BE IT FURTHER ENACTED, That the grant of formal  
14 recognition of Maryland Indian status to a particular native American tribe, band,  
15 group, or clan under this Act may not be construed to create any entitlements,  
16 benefits, or rights to conduct, manage, or operate any gambling or gaming activities  
17 in the State.

18 ~~SECTION 3.~~ SECTION 3. AND BE IT FURTHER ENACTED, That:

19 (1) this Act shall be construed to apply retroactively and shall be applied  
20 to and interpreted to affect any application that has been recommended by the  
21 Commission on Indian Affairs to the Governor for formal recognition of Maryland  
22 Indian status on or after January 1, 2001, and on which the Governor has not taken  
23 any action by October 1, 2002; and

24 (2) the Governor shall have 120 days from the effective date of this Act to  
25 comply with Article 83B, § 5-406(d) of the Code, as enacted by this Act, with respect  
26 to an application described under item (1) of this section.

27 ~~SECTION 4.~~ SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take  
28 effect October 1, 2002.