

HOUSE BILL 991

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HB 342/02 - CGM

2003 Regular Session
3lr2412

By: **Delegates Proctor, Vallario, Branch, Harrison, and Fulton**
Introduced and read first time: February 14, 2003
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Re-referred to: Ways and Means, February 27, 2003
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Committee Report: Favorable
House action: Adopted
Read second time: March 21, 2003

CHAPTER _____

1 AN ACT concerning

2 **Commission on Indian Affairs - Formal Acknowledgment of Maryland**
3 **Indian 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 acknowledgment
7 of 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 accept or reject the recommendations
10 made by the Commission on Indian Affairs within a certain period of time;
11 prohibiting formal acknowledgment of a certain tribe, band, group, or clan,
12 unless the Governor proposes an executive order granting formal
13 acknowledgment under certain circumstances; providing that the grant of
14 formal acknowledgment of Maryland Indian status under this Act may not be
15 construed to create certain entitlements, benefits, or rights; providing for the
16 application of this Act; and generally relating to the formal acknowledgment of
17 Maryland Indian status.

18 BY repealing and reenacting, with amendments,
19 Article 83B - Department of Housing and Community Development
20 Section 5-406
21 Annotated Code of Maryland
22 (1998 Replacement Volume and 2002 Supplement)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
24 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] ACKNOWLEDGMENT
6 of Maryland Indian 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] ACKNOWLEDGMENT.

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
15 [recognition] ACKNOWLEDGMENT by the United States of America, taking into
16 account the special circumstances of American Indians indigenous to Maryland and
17 shall include the following criteria:

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

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

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

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

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

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

35 (2) WITHIN 60 DAYS OF RECEIVING THE COMMISSION'S
36 RECOMMENDATION, THE SECRETARY SHALL TRANSMIT THE RECOMMENDATION FOR
37 FORMAL ACKNOWLEDGMENT 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]
3 ACKNOWLEDGMENT of Maryland Indian status made by an Indian tribe, band, group,
4 or clan of which the 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:

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

10 (II) REJECT THE COMMISSION'S RECOMMENDATION.

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

15 (3) IF THE GOVERNOR REJECTS THE COMMISSION'S RECOMMENDATION,
16 AND DOES NOT ISSUE AN EXECUTIVE ORDER WITHIN 120 DAYS OF RECEIVING THE
17 RECOMMENDATION FOR FORMAL ACKNOWLEDGMENT FROM THE SECRETARY, THE
18 PARTICULAR TRIBE, BAND, GROUP, OR CLAN MAY NOT BE GRANTED FORMAL
19 ACKNOWLEDGMENT OF MARYLAND INDIAN STATUS UNLESS A SUBSEQUENT
20 APPLICATION IS SUBMITTED AND APPROVED IN ACCORDANCE WITH THIS SECTION.

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

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

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

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

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

1 (2) Except as otherwise provided by law, a person who violates this
2 section is subject to a fine of not more than \$1,000, or imprisonment for not more than
3 6 months, or both.

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

7 SECTION 2. AND BE IT FURTHER ENACTED, That the grant of formal
8 acknowledgment of Maryland Indian status to a particular native American tribe,
9 band, group, or clan under this Act may not be construed to create any entitlements,
10 benefits, or rights to conduct, manage, or operate any gambling or gaming activities
11 in the State.

12 SECTION 3. AND BE IT FURTHER ENACTED, That:

13 (1) this Act shall be construed to apply retroactively and shall be applied
14 to and interpreted to affect any application that has been recommended by the
15 Commission on Indian Affairs to the Governor for formal acknowledgment of
16 Maryland Indian status on or after January 1, 2002, and on which the Governor has
17 not taken any action by October 1, 2003; and

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

21 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
22 October 1, 2003.