

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 691 (Delegate Murphy, *et al.*)
Health and Government Operations

Maryland Native American Status - Standards for Recognition

This bill alters the date criteria for recognition of Maryland Indian status for an Indian community. An Indian community may be recognized if the members are descendants or derived from a tribe that was indigenous to the State or inhabited a specific area in the State before 1900. The bill also requires that a group petitioning for recognition be historically identified as Indian. The bill removes the requirement that standards adopted for recognition of Maryland Indian status must be generally consistent with the standards of U.S. Bureau of Indian Affairs for tribal recognition by the United States.

The bill may not be construed to affect the recognition of Maryland Indian status of any Indian community in the State or any rights regarding Indian tribe property or gaming under federal law.

Fiscal Summary

State Effect: None. State government operations and finances would not be materially affected.

Local Effect: None.

Small Business Effect: Potential minimal.

Analysis

Current Law: Chapter 521 of 2008 codified in statute the Governor's Office of Community Initiatives, which was established by executive order in 2007. It also transferred to the office the Commission on Indian Affairs from the Department of

Human Resources and the Commission on African American History and Culture from the Maryland Department of Planning. It codified placement of the Governor's Office on Service and Volunteerism within the office as well. It also transferred oversight of the two commissions from the Secretaries of Human Resources and Planning (respectively) to the Governor.

The Maryland Commission on Indian Affairs initiates and coordinates projects that further the understanding of Indian history and culture. The commission must study the status of all Indian communities (*i.e.*, tribe, band, group, or clan) in the State and assist them in obtaining recognition from the federal government. The commission must also study the economic and social needs of Indians in the State and make recommendations to meet these needs.

In order for a group to have its Maryland Indian status recognized, a member of that group must petition the commission. If the commission finds that a petitioning group meets the requirements for recognition, the commission may recommend to the Governor that it be granted recognition of Maryland Indian status. The Governor may issue an executive order providing recognition of Maryland Indian status to the petitioning group. Before formal recognition of Maryland Indian status, members of the petitioning group must submit an affidavit renouncing all tribal rights of ownership of land in the State.

The commission must adopt regulations to carry out the process of considering formal recognition of Maryland Indian status. Those regulations must require that the petitioning group be descendants or derived from an Indian tribe that existed historically and was indigenous to the State, or inhabited a specific area in the State, before 1790. The petitioning group must also be identified from historical times until the present as Indian. The regulations must also be generally consistent with the standards of the U.S. Bureau of Indian Affairs for tribal recognition by the United States.

Background: Pursuant to 25 CFR 83.7 of the Code of Federal Regulations (CFR), the U.S. Bureau of Indian Affairs requires that a petitioner for federal recognition as an Indian tribe produce evidence that its group has been identified as an American Indian entity on a substantially continuous basis since 1900. Evidence that may be relied upon in determining a group's Indian identity at the federal level may include one or more of the following:

- identification as an Indian entity by federal authorities;
- relationships with State governments based on identification of the group as Indian;
- dealings with a county, parish, or other local government in a relationship based on the group's Indian identity;

- identification as an Indian entity by anthropologists, historians, and/or other scholars;
- identification as an Indian entity in newspapers and books; and
- identification as an Indian entity in relationships with Indian tribes or with national, regional, or state Indian organizations.

The membership of the petitioner for federal recognition must consist of individuals who descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity. The federal Indian Gaming Regulatory Act (IGRA), 25 U.S.C. 29 § 2701, states that certain recognized Indian tribes have the exclusive right to regulate gaming activity on certain Indian lands if the gaming activity is not specifically prohibited by federal law and is conducted within a state which does not, as a matter of criminal law and public policy, prohibit such gaming activity. Thus, a tribe must be recognized under federal law in order to conduct gaming under IGRA.

The U.S. Bureau of Indian Affairs advises that there are no federally recognized Indian tribes in Maryland and that it holds no land in trust for an Indian tribe in Maryland. The February 2009 U.S. Supreme Court decision in *Carcieri vs. Salazar*, suggests that under current law the U.S. government may not hold land in trust on behalf of tribes that were not recognized by the U.S. government by the date of enactment of the 1934 federal Indian Reorganization Act.

Exhibit 1 shows the eight tribes currently identified by the Maryland Commission on Indian Affairs 2007 Annual Report as indigenous to Maryland. However, the Office of Community Initiatives advises that no tribes are formally recognized as tribes by the State. The office also advises that altering the date criteria may make more manageable the task of assembling documentation needed in order to petition for recognition.

Exhibit 1
Maryland Indigenous Tribes

Accohannock Indian Tribe
 Assateague Peoples Tribe
 Cedarville Band of Piscataway Indians
 Nause-Waiwash Band of Indians
 Piscataway Conoy Confederacy and Sub-Tribes
 Piscataway Indian Nation
 Pocomoke Indian Tribe
 Youghiogheny River Band of Shawnee Indians

Source: Maryland Department of Human Resources Commission on Indian Affairs, 2007 Annual Report

State Fiscal Effect: The Office of the Governor advises that the bill is unlikely to have a fiscal impact. Although State recognition of Indian status alone does not directly provide any State benefits, it could make it easier for businesses owned by an acknowledged Maryland tribe member, who is not an acknowledged member of a tribe that is recognized by another state or by the federal government, to be eligible as a minority business enterprise (MBE).

Small Business Effect: Potential minimal. To the extent that the bill makes it easier to be acknowledged as a Maryland Indian tribe, if a new tribe is recognized, its members may qualify as MBEs.

Additional Information

Prior Introductions: None.

Cross File: SB 575 (Senators Middleton and Dyson) - Education, Health, and Environmental Affairs.

Information Source(s): Office of the Attorney General, Governor's Office, Comptroller's Office, State Lottery Agency, U.S. Bureau of Indian Affairs, Department of Legislative Services

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