



HOUSE OF REPRESENTATIVES

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March 15, 2023

Testimony of Representative Jennifer Poirier presenting

LD 336 “An Act Regarding State Recognition of Native American Tribes”

Before the Joint Standing Committee on Judiciary

Senator Carney, Representative Moonen and fellow members of the Joint Standing Committee on Judiciary, my name is Jennifer Poirier, and I proudly represent House District 70, which is comprised of Skowhegan. I am pleased to stand before you today to present **LD 336, An Act Regarding State Recognition of Native American Tribes**.

There are not many tribes knocking at doors of the State House pleading for recognition. For over a decade, the Kineo Band of Malecite have asked members of the State Legislature to recognize them. They have been denied repeatedly.

Last session, their request was met with opposition from existing tribes. Tribal leaders stated that they do not dispute the fact that the Kineo are a tribe but that the timing of the bill for recognition was not right due to impending legislation on tribal sovereignty. This committee denied recognition on the grounds of not having a commission or process in place.

Richard Dyer, a former chief of the Aroostook Band of Micmac Tribe, told Tribal Business News that tribal leaders previously opposed the Kineo Tribe's state recognition out of fear it would take federal dollars away from current recognized tribes. He said, “I can't for the life of me understand why my own people would be against my own people, I just can't fathom it.”

The Malecite, once called the St. John Tribe, have historical documentation, and can prove lineage. They are not seeking land rights, gaming rights, or anything that would affect the calls for tribal sovereignty. Their main objective is to preserve their culture and heritage.

LD 336 creates a defined path to tribal recognition and enlists an impartial board of experts. Historical documentation and lineage must be presented for the board's consideration. LD 336

adapts from a formal process that was established through the Vermont Legislature in 2010. Four tribes in Vermont have gained recognition through this process.

Recognition can be an emotional topic for members. Jeffrey Nicholas, whose family has connections to the Moosehead Lake area, testified in 2013 that not being recognized as Malecite has left a hole in their hearts and in their lives. He stated, "We wish to live in peace and harmony with our fellow Mainers while filling this hole in our hearts and teaching our descendants how to be Malecite."

It saddens me that as Maine works to mend relations with current tribes, we neglect a basic human request of recognition to others who deserve the dignity and respect to be recognized for who they are.

Passing LD 336 demonstrates to our Native brothers and sisters that we see them, we hear them, and we respect their history in this great state that we now share.

For the reasons I have explained and more, I respectfully ask you to support LD 336 and I thank you for your consideration.

I would be glad to answer any questions.

A handwritten signature in black ink that reads "Jennifer Poirier". The script is cursive and fluid, with the first name and last name clearly legible.

Rep. Jennifer Poirier

to go w/ REP. POIRIER'S
testimony

LD 336

Committee: JUD

LA: JS

LR (item): 0749(02)

New Title? No

Add Emergency? No

File Name: G:\COMMITTEES\JUD\Bill analyses\131st 1st\LD 336\Janet.Second.Draft.Amend.for.Rep.Poirier
(2.24.23).docx

Date: 3/4/23

Sponsor's Proposed Committee Amendment
For public hearing (March 15, 2023)

LD 336, An Act Regarding State Recognition of Native American Tribes

Amend the bill/resolve by striking out everything after the enacting clause and before the summary and inserting in its place the following:

Sec. 1. 5 MRSA §12004-J, sub-§21 is enacted to read:

21.

Native American
Affairs

Maine Commission on
Native American
Affairs

Legislative Per Diem
and Expenses

5 MRSA §26002

Sec 2. 5 MRSA c. 632 is enacted to read:

CHAPTER 632 **STATE RECOGNITION OF INDIAN TRIBES**

§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 Affairs.

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 acknowledged as a Native American Indian tribe by the Legislature pursuant to section 26003, subsection 4.

6. Review panel. “Review panel” means a group of 3 professionals and academic scholars with expertise in cultural or physical anthropology, Indian law, archaeology, Native American Indian genealogy, history or related subject areas appointed pursuant to section 26003, subsection 3, paragraph E to review the sufficiency, accuracy and relevance of an application for state recognition and any supporting documentation.

§26002. Maine Commission on Native American Affairs

1. Legislative intent. By establishing a process for state recognition of Native American Indian tribes, it is the intent of the Legislature to recognize the historical and cultural contributions of Native Americans to the State, to protect and strengthen the heritage of Native Americans in the State and to address the needs of state-recognized Native American Indian tribes and their members related to state policy, programs and activities.

2. Commission established; membership. The Maine Commission on Native American 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 Maine Historic Preservation Commission pursuant to subsection 3. To the extent possible, the Governor shall appoint members who reflect a diversity of affiliations and geographic locations in the State.

3. Candidate list. The Maine Historic Preservation Commission shall prepare a list of candidates for membership on the Maine Commission on Native American Affairs who have been residents of the State for a minimum of 5 years and who:

A. Are professionals or academic scholars with expertise in cultural or physical anthropology, Indian law, archeology or Native American Indian genealogy, history or a related subject area; or

B. Apply to the Maine Historic Preservation Commission to be considered for inclusion on the list of candidates and are approved by the commission. Individuals who apply to be included on the list shall indicate their residence and Native American affiliation.

4. Terms; reappointment. Members of the commission are appointed for 2-year terms. A member may not serve more than 2 consecutive terms, unless there is an insufficient number of eligible candidates to replace a member who has served 2 consecutive terms.

5. Duties and powers. The commission shall:

A. Elect a chair from among its members annually;

B. Provide technical assistance, including an explanation of the application process, to applicants for state recognition under section 26003.

C. Develop and maintain a list of professionals and academic scholars with expertise in cultural or physical anthropology, Indian law, archaeology, Native American Indian genealogy, history or a related subject area who are able and willing to participate on review panels.

D. Appoint a review panel pursuant to section 26003, subsection 3, paragraph E, to review each application for state recognition and associated supplemental documentation;

E. Review each application and any supplemental documentation as well as the findings of the review panel related to that application and make a recommendation to the legislative committee for or against state recognition of the applicant pursuant to section 26003, subsection 3, paragraph F;

F. Facilitate communication between each Native American Indian tribe that has been recognized by the State under this chapter and the tribal liaisons appointed by agencies under section 11053, subsection 3 to enable the Native American Indian tribe to obtain technical assistance from those agencies with:

(1) Securing state and federal grant funding and accessing other state and federal resources related to improving tribal social services, education, employment opportunities, health care and housing; and

(2) Developing and marketing the Native American Indian tribe's fine and performing arts, craft work and cultural events.

6. Meetings; expenses. The commission shall meet at the call of the chairs. Members shall receive a legislative per diem and expenses for each meeting, except that members may not receive a legislative per diem for more than 6 meetings in a single calendar year. For purposes of this subsection, "expenses" and "legislative per diem" have the same meanings as in section 12002, subsections 2 and 3, respectively.

7. Administrative support. The State Historic Preservation Officer shall provide administrative support to the commission, including by assisting the commission, as needed, with each of its duties under subsection 5 and with the evaluation of applications for state recognition under section 26003.

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

§26003. State recognition of Native American Indian tribes

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

A. A majority of the applicant's members currently reside in a specific geographic location within the State;

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

C. The applicant has a connection with Native American Indian tribes, bands or nations that have historically inhabited the State;

D. The applicant has an enduring community presence within the boundaries of the State that is documented by archaeology, ethnography, physical anthropology, history, folklore or any other applicable scholarly research and data;

E. The applicant is organized, at least in part:

(1) To preserve, document and promote its Native American Indian culture and history and this purpose is reflected in the applicant's bylaws; and

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

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

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

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

A. Municipal, state or federal authorities documenting the applicant's history of tribe-related business and activities; and

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

3. Application review procedures. The commission shall establish policies and procedures for the review of each application that include, at a minimum, the following:

A. Public notice of the receipt of the application and any supplemental documentation;

B. Written notice to the applicant when each step in the review process has been completed;

C. That any member of the commission who is a member of or affiliated with the applicant is ineligible to participate in any action by the commission on the applicant's application.

D. The conduct of at least one public hearing by the commission on each application:

E. Appointment, in coordination with the applicant, of a 3-member review panel to determine the sufficiency, accuracy and relevance of the application materials and any supplemental documentation and to submit a detailed written report of its findings and conclusions to the commission, the applicant and the legislative committee. Members of the review panel may not be commission members, members of the applicant or affiliated with the applicant. If the applicant and the Commission are unable to agree on the membership of the review panel, the State Historical Preservation Officer shall appoint the panel.

F. Review by the commission of the application and any supporting documentation, the report of the review panel and any other relevant information to determine compliance with subsection 1 and to recommend whether the Legislature should grant or deny state recognition of the applicant. A recommendation in favor of state recognition of the applicant may only be made by a majority vote of eligible commission members. If the commission recommends that the Legislature deny state recognition of the applicant, it must provide the applicant and the legislative committee with a written notice of the reasons for the denial, including specific information regarding the criteria in subsection 1 that were not satisfied.

G. Deadlines for the review panel to submit its written report to the commission and for the commission to notify the applicant and the legislative committee of its recommendation. The deadline for the commission to notify the applicant and the legislative committee of its recommendation may not be later than one year after the date that the application and any supporting documentation were filed, unless the commission provides a written explanation to the applicant and the legislative committee of the reasons for the delay that identifies the expected date for the commission's issuance of its recommendation.

H. A process for the applicant to file, within one year of receiving notice of the denial, a request for reconsideration supported by additional documentation. An applicant that fails to file a request for reconsideration within the time required by this paragraph may not file a new application for 2 years following the date that of receiving the notice of denial.

I. Procedures for the applicant to withdraw its application at any time before the commission issues a recommendation under paragraph F, which must prohibit the applicant from filing a new application for 2 years following the date that the application is withdrawn.

J. A new application filed by an applicant more than 2 years after receiving a notice of denial or more than 2 years following the withdrawal of its earlier application must be considered without reference to the denied or withdrawn application and any supporting documentation that was submitted with the denied or withdrawn application.

4. State recognition. An applicant may be recognized as a Native American Indian tribe by the State only:

A. By approval of the Legislature; or

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

5. Effect of state recognition. State-recognized Native American Indian tribes and their members are subject to all laws of the State. Recognition confers only those rights specifically described in this chapter and may not be construed to grant the recognized Native American Indian tribe or its members any right or claim to land or real estate in the State or right to conduct any gambling activities otherwise prohibited by law.

6. Confidentiality. Records of genealogy submitted as part of an application or in support of an application for state recognition under this section are confidential and may be disclosed by the commission only to members of the review panel appointed under subsection 3, paragraph E.

Sec. 3. Staggered terms. Notwithstanding the Maine Revised Statutes, Title 5, section 26002, subsection 4, for the original appointments of members of the Maine Commission on Native American Affairs, the Governor shall designate the terms of 2 of the members as one-year terms. An initial term of one year under this section may not be considered a full term for purposes of limiting the number of terms for which a member of the commission may serve.

Sec. 4. Meetings. Notwithstanding the Maine Revised Statutes, Title 5, section 26002, subsection 6, the Maine Commission on Native American Affairs shall meet at least 3 times during the first 12 months following the effective date of this legislation.

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

SUMMARY

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

State-recognized Native American Indian tribes and their members remain subject to all of the laws of the State and recognition may not be construed to grant the recognized Native American Indian tribe or its members any right or claim to land or real estate in the State or the right to conduct any gambling activities otherwise prohibited by law.