

OFFICE OF POLICY AND LEGAL ANALYSIS
Bill Analysis

To: Joint Standing Committee on Judiciary

From: Peggy Reinsch, Legislative Analyst

LD 71 An Act To Provide State Recognition for the Kineo Band of Maliseet Indians

Public Hearing Date: February 4, 2021

SUMMARY

This bill provides for state recognition of the Kineo Band of Maliseet Indians as a Native American tribe. The bill provides, however, that state recognition does not in and of itself establish any right or claim to land or real estate in the State or any right to conduct gambling activities that are otherwise prohibited by law. The bill provides that the band and its members remain subject to State laws.

TESTIMONY

Proponents

- Representative Stearns (sponsor)
 - Mt. Kineo has a long history and has been an important source of flint. State recognition of the Kineo Band would increase tourism to region. The bill does not grant any land rights or rights to operate gambling.
- Senator Davis (co-sponsor)
 - Represents District 3, which includes Piscataquis County and parts of Somerset and Penobscot counties.
 - The Kineo Band of Maliseet Indians have deep roots in the Moosehead area and have used rock from Mount Kino to create things like arrow heads.
- Annance, Loius
 - The Annance Family has played an important role in the Moosehead Lake Region, including leading groups in the area as guides.
 - John Francis Sprae, a journalist, wrote about Louis Annance in 1899.
- Boyce, Bryan
 - Was raised with a Maliseet identity and always wished to be part of the Tribe.
 - Family is from Greenville, Monsoon, and Dover-Foxcroft.
 - Family was not on the original ballot for the Houlton Band and have suffered for nearly 200 years as a result .
 - It is time to recognize the Kineo Band so that family and children can learn what it truly means to be Maliseet.
- Love, Tim
 - Penobscot citizen and formal tribal representative and tribal governor.

- There is a well documented history of Indigenous people in the region.
- Roten, Stephanie Nicholas
 - Member of the Kineo Tribe of Maliseets.
 - Father is Jeffrey Nicholas, who also testified.
 - It has always been known that Indigenous people lived in the areas around Moosehead Lake.
 - People blended in to survive but lost valuable culture and language.
 - It is time to be visible as a people and for the State to help the Tribe heal.
- Slagger, David, former Maliseet Tribal Representative to the Maine State Legislature.
 - Have included a copy of the 1839 petition by the citizens of Monsoon to the Maine Legislature on behalf of the St John Tribe, also known as Maliseet. The petition is signed by the founding father of Monsoon. This establishes that there were Indigenous people in the region. There are many examples of their presence.
 - This group has been left out for many years. Had they been included in the 1980 settlement they would have been granted recognition.
 - They are opposed by the Houlton Band, though recognition does not interfere with other tribes' rights.
 - Other Maine tribes were granted federal recognition via acts of Congress.
 - There is no other group that could claim tribal recognition in Maine.

Opponents

- Dana, Maggie, Tribal Chief, Passamaquoddy Tribe at Pleasant Point and William Nicholas, Passamaquoddy Tribe at Indian Township
 - Tribal state relations in Maine have a long and complex history.
 - In the midst of working to pass task force recommendations for changes to the state and tribal relationship. It seems counterintuitive to entertain a bill for state recognition of another tribe at this time.
 - Being a tribal nation is sacred and verification of claims of tribal status is necessary to protect tribal people, ancestors and territories.
 - The federal recognition process is based in statute, and demonstration of certain criteria is required.
 - In states that recognize tribes, there is an established commission or an Office on Indian Affairs to oversee the process.
 - State recognition of a tribe via a bill with no process could establish a harmful precedent. There is no burden of proof, so even people with no Indigenous ancestry could use this process to gain tribal recognition.
 - This could harm current services and programs for Indians.
- Dana, Maulian, Tribal Ambassador, Penobscot Nation
 - The Penobscot Nation, Passamaquoddy Tribes at Indian Township and Pleasant Point, Houlton Band of Maliseet Indians, and Aroostook Band of Micmacs are all federally recognized Tribes in Maine. These Tribes are currently working to amend the 1980 settlement. This bill is a distraction from the work of tribal state relations and tribal sovereignty.
 - This bill is an attempt to subvert the real process for recognition of a tribe and undermines the work being done to increase recognition of tribal sovereignty and to help people in reservation communities.
 - Any process for state recognition should be much more rigorous and have a heavier burden of proof than a short bill.
 - Success of this bill would establish a dangerous precedent, with unseen implication of allocation of resources, and could open up a form of tribal membership to individuals with no claim of ancestry to any actual tribe.

- This could be harmful to enrolled tribal citizens who are living with histories of oppression, attempted genocide, intergenerational trauma and who are attempting to heal their communities. Grandparents' generation faced violence and hate crimes for speaking their language and embracing their culture; many assimilated to survive.
- Downing, Paul, Chairperson, Maine Indian Tribal-State Commission
 - At the January 27, 2021 meeting of MITSC, LD 71 was discussed and a motion made and approved that that on behalf of MITSC the Chairperson and Managing Director would submit a statement to the Judiciary Committee stating that, based on the Commissioners' understanding and consideration of Tribal objections to the bill, the Commissioners voted unanimously that it is the sense of MITSC that the objections by the Tribes to the passage of LD 71 should be respected by the Maine Legislature.
- Francis, Kirk, Tribal Chief, Penobscot Nation
 - Penobscot Nation has a history in the Moosehead Lake area and the Nation's historical territory extends to Moosehead Lake.
 - The Nation's oral tradition also describes a presence in the Moosehead Lake region.
 - A lot of factual research needs to be completed here.
 - The federal recognition process is onerous
 - Not debating that there were Maliseet people in the region, but rather that there is a difference between acknowledging ones identity as an Indian and the existence of a tribe.
- Francis, James, Tribal historian, Penobscot Nation
 - The Nation has a long history in the areas of Mt Kineo. They have worked with the Moosehead Lake historical society for seven years.

BACKGROUND INFORMATION

The Federal Recognition Process

- A tribe is considered to be federally recognized when its status is published in the Federal Registrar. There are currently 554 federally recognized tribes.
- There are three pathways to federal recognition of a tribe:
 1. Administrative recognition through the Department of the Interior's Office of Federal Acknowledgement (see below);
 2. Federal legislation; and
 3. Order of a US court
- Administrative Recognition
 - The criteria and process for federal acknowledgement of Indian tribes through the Department of the Interior are described at 25 CFR Part 83.
 - There are seven mandatory criteria:
 1. The entity must have been identifiable by reliable external sources on a substantially continuous basis as an Indian entity since 1900;
 2. The entity must have maintained a continuous community from historical times to the present day;
 3. The entity must establish that it has maintained political authority or influence on a substantially continuous basis from historical times to the present day;

4. The entity must submit a copy of its governing document, or if it does not have a formal governing document, a statement describing its membership criteria and how that criteria are applied;
 5. The current members of the entity must, as a whole, descend from a historic tribe or tribes which amalgamated;
 6. The entity's members must not be mostly members of an already recognized tribe; and
 7. The entity must not have been previously terminated by legislation.
- The burden of proof is on the entity seeking recognition. The process, which begins with the submission by the entity of a Letter of Intent to Petition and ends with a final determination by the Assistant Secretary of Indian Affairs, can take many years.
 - Federal recognition, among other benefits, carries with it access to certain sources of federal funding.

State Recognition

- State recognition refers to formal acknowledgment by a state of a tribal entity that is (usually) not federally recognized. Currently 13 states recognize approximately 66 tribes at the state level.
- The process of recognition and the meaning and benefits of recognition vary by state. Some states have a formal administrative recognition process while in others state recognition is through legislation.
- State recognition does not grant a tribe access to federal resources and benefits.
- List of State recognized tribes (Source: NCSL)

Alabama

- Cher-O-Creek Intra Tribal Indians
- Cherokee Tribe of Northeast Alabama
- Cherokees of Southeast Alabama
- Echota Cherokee Tribe of Alabama
- Ma-Chis Lower Creek Indian Tribe of Alabama
- Mowa Band of Choctaw Indians
- Piqua Shawnee Tribe
- Star Clan of Muscogee Creeks
- United Cherokee Ani-Yun-Wiya Nation

Connecticut

- Eastern Pequot Tribal Nation
- The Golden Hill Paugussett
- Schaghticoke Tribal Nation

Delaware

- Lenape Indian Tribe of Delaware
- Nanticoke Indian Tribe

Georgia

- Cherokee of Georgia Tribal Council
- Georgia Tribe of Eastern Cherokee
- Lower Muskogee Creek Tribe

Louisiana

- Addai Caddo Tribe
- Biloxi-Chitimacha Confederation of Muskogee
- Choctaw-Apache Community of Ebarb
- Clifton Choctaw
- Four Winds Tribe Louisiana Cherokee Confederacy
- Grand Caillou/Dulac Band
- Isle de Jean Charles Band
- Louisiana Choctaw Tribe
- Natchitoches Tribe of Louisiana
- Pointe-Au-Chien Indian Tribe
- United Houma Nation

Maryland

- Piscataway Indian Nation
- Piscataway Conoy Tribe

Massachusetts

- Nipmuc Nation

New Jersey

- Nanticoke Lenni-Lenape Tribal Nation
- Ramapough Lenape Nation
- The Powhatan Renape Nation

New York

- Tonawada Band of Seneca
- Tuscarora Nation
- Unkechaug Nation

North Carolina

- Cohaire Intra-Tribal Council, Inc.
- Haliwa-Saponi Indian Tribe
- Lumbee Tribe
- Meherrin Nation
- Occaneechi Band of the Saponi Nation
- Sappony
- Waccamaw-Siouan Tribe

South Carolina

- Beaver Creek Indians
- Edisto Natchez Kusso Tribe of South Carolina
- Pee Dee Indian Nation of Upper South Carolina
- Pee Dee Indian Tribe of South Carolina
- Santee Indian Organization
- The Waccamaw Indian People
- Wassamasaw Tribe of Varnertown Indians

Vermont

- Elnu Abenaki Tribe
- Nulhegan Band of the Coosuk Abenaki Nation
- Koasek Abenaki Tribe
- Mississquoi Abenaki Tribe

Virginia

- Cheroenhaka (Nottoway)
- Chickahominy Tribe
- Eastern Chickahominy Tribe
- Mattaponi

- Monacan Nation
- Nansemond
- Nottoway of Virginia
- Pamunkey
- Pattawomeck
- Rappahannock
- Upper Mattaponi Tribe

Examples of Pathways to State Recognition (these documents are attached)

1. Alabama: Alabama statute describes the procedures required to achieve state recognition. The decision as to whether to recognize a tribe rests with the Alabama Indian Affairs Commission.
 - Chapter 475-X-3 Procedures and Criteria for Recognition of Indian Tribes, Bands, Groups and Associations
2. North Carolina: North Carolina statute describes the procedures required to achieve state recognition. The decision as to whether to recognize a tribe rests with the North Carolina State Commission on Indian Affairs.
 - Authorizing Legislation - North Carolina Tribal Recognition Program
 - NC Tribal Recognition Procedures
3. Massachusetts: The Nipmuc Tribe in Massachusetts was recognized by legislation
 - 1976 Executive Order from Massachusetts Governor Dukakis creating the Massachusetts Commission on Indian Affairs and establishing a relationship with several tribes, including the Nipmuc Tribe.
4. Vermont: Vermont statute describes the procedures required to achieve state recognition. The Vermont Commission on Native American Affairs issues a recommendation, and recognition may be achieved either via approval of the General Assembly, or within two years after a recommendation for recognition has been made to the legislature, if the General Assembly takes no action.
 - ACT 107 Native American Indian People

FISCAL IMPACT: Not yet determined

ALABAMA INDIAN AFFAIRS COMMISSION
ADMINISTRATIVE CODE

CHAPTER 475-X-3
PROCEDURES AND CRITERIA FOR THE RECOGNITION
OF INDIAN TRIBES, BANDS, OR GROUPS

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475-X-3-.01 Procedure For Recognition.

(1) Petitioner shall submit to the Alabama Indian Affairs Commission a petition requesting state recognition which contains the information described below. The petition must indicate the type of recognition sought as specified in Rule No. 475-X-3-.02 of these regulations.

(2) A decision in favor of recognition must be rendered by a three-fourths (3/4) majority vote of the commission members. The time period in which the commission may process and render a decision on the petition shall not exceed fifteen (15) months from the date of receipt of applicability by the commission.

(3) A decision of denial may be timely appealed. Such appeal for reconsideration must be made not later than 30 days from the date of the commission decision. The request for reconsideration shall specify one of the following categories:

(a) Appeal with New and/or Additional Evidence:

1. Petitioner shall prepare an appeal of petition which presents new or additional evidence not previously presented to the commission for consideration. Petitioner shall have 90 days from the date of the request for reconsideration within which to submit said new or additional evidence.

(b) Appeal without New and/or Additional Evidence:

1. Petitioner shall prepare an appeal of petition stating specifically why the commission should reconsider its decision. Petitioner shall have 30 days from the date of request for reconsideration to present its case for reconsideration.

(c) In either of the above situations, the petitioner appellant must be afforded a hearing within 90 days of receipt of such documentation as stated in (a) and (b) above. The commission shall thereafter render its decision not more than fifteen (15) months from the date of such meeting.

(d) All notices called for shall be in writing by certified or registered mail.

Authors: Criteria Committee Draft modified and adopted by Alabama Indian Affairs Commission.

Statutory Authority: Code of Ala. 1975, §41-9-702.

History: Filed April 5, 1985. **Amended:** Filed June 13, 2003; effective July 18, 2003.

475-X-3-.02 Types Of Recognition.

(1) An "Indian Tribe, Band, or Group" is a population of Indian people related to one another by blood through their Indian ancestry, tracing their heritage to an Indian tribe, band, or group indigenous to Alabama. No splinter groups, political factions, communities or groups of any character which separate from the main body of a tribe, band, or group currently recognized by the State of Alabama may be considered for recognition by the Commission.

(a) Splinter groups are ineligible to make application for state recognition. Splinter groups are defined in the Glossary for the recognition criteria as "an individual member/former member or group of members/former members who have relinquished membership in a federal or state recognized Indian entity to start or participate in a parallel or similar Indian entity."

(b) A group, as a religious sect or a political faction, that has broken away from a parent group.
Author: Criteria Committee Draft modified and adopted by Alabama Indian Affairs Commission.

Statutory Authority: Code of Ala. 1975, §41-9-702.

History: Filed April 5, 1985. **Amended:** Filed April 5, 1995; effective May 10, 1995. **Amended:** Filed June 13, 2003; effective July 18, 2003.

475-X-3-.03 Criteria For Recognition As A Tribe, Band Or Group.

(1) Petitioner must meet all criteria as specified in this section.

(2) Petitioner must present a list of at least five hundred (500) members who reside in the state of Alabama, of the tribe, band, or group (list must be inclusive by name and physical addresses), unless this requirement is waived by an affirmative vote of three-fourths (3/4) of the membership of the commission.

(3) Petitioner must present evidence that each of its members is a descendent of individuals recognized as Indian members of an historical Alabama tribe, band, or group found on rolls compiled by the federal government or otherwise identified on other official records or documents. Copies of ancestry charts with certified copies of birth certificates, or other official documents that clearly link petitioner to ancestor for each member must accompany the petition. Each chart must bear the notarized signature of the individual to whom it pertains.

(4) Petitioner must present satisfactory evidence that its members form a kinship group whose Indian ancestors were related by blood and such ancestors were members of a tribe, band or group indigenous to Alabama. This evidence may be the equivalent of the ancestry charts required in Section 3 above.

(5) The petitioner must swear or affirm the following:

(a) No individual holding or eligible for membership in a federally or state recognized tribe, band or group may be accepted for membership in the petitioning group.

NOTE: This requirement is for the protection of members of federally or state recognized tribes who might otherwise forfeit services by becoming members of a non-recognized tribal group.

(6) Evidence must be presented that the petitioning tribe, band or group has been identified with a tribe, band or group or Indian community from historical times (200 years) until the present as "American Indian" and has a currently functioning governing body.

(a) Ancestry charts must be verified and approved by written acknowledgement of a Certified Genealogist (CSL) who is a

non-member of the petitioning tribe, band, group or Indian community.

(b) Genealogist must submit a copy of current licensure and documentation of credentials.

(c) Tribal history is a requirement. It may be prepared and written by the tribe, but it must be validated by a certified historian and/or anthropologist.

(d) Historian must submit a resume' of prior work along with documentation of credentials.

(7) Petitioner must include a statement bearing the notarized signatures of the three highest ranking officers of the petitioning tribe, band or group certifying that to the best of their knowledge and belief all information contained therein is true and accurate.

Author: Criteria Committee Draft modified and adopted by Alabama Indian Affairs Commission.

Statutory Authority: Code of Ala. 1975, §41-9-702.

History: Filed April 5, 1985. **Emergency amendment** filed August 28, 1985. **Permanent amendment** filed November 5, 1985.

Amended: Filed June 13, 2003; effective July 18, 2003.

475-X-3-.04 Criteria For Recognition As An Indian Association.
(Repealed 7/18/03)

Author: Criteria Committee Draft modified and adopted by Alabama Indian Affairs Commission

Statutory Authority: Code of Ala. 1975, §41-9-702.

History: Filed April 5, 1985. **Repealed:** Filed June 13, 2003; effective July 18, 2003.

Part 15. North Carolina State Commission of Indian Affairs.

§ 143B-404. North Carolina State Commission of Indian Affairs – creation; name.

There is hereby created and established the North Carolina State Commission of Indian Affairs. The Commission shall be administered under the direction and supervision of the Department of Administration pursuant to G.S. 143A-6(b) and (c). (1977, c. 849, s. 1; 1977, 2nd Sess., c. 1189.)

§ 143B-405. North Carolina State Commission of Indian Affairs – purposes for creation.

The purposes of the Commission shall be as follows:

- (1) To deal fairly and effectively with Indian affairs.
- (2) To bring local, State, and federal resources into focus for the implementation or continuation of meaningful programs for Indian citizens of the State of North Carolina.
- (3) To provide aid and protection for Indians as needs are demonstrated; to prevent undue hardships.
- (4) To hold land in trust for the benefit of State-recognized Indian tribes. This subdivision shall not apply to federally recognized Indian tribes.
- (5) To assist Indian communities in social and economic development.
- (6) To promote recognition of and the right of Indians to pursue cultural and religious traditions considered by them to be sacred and meaningful to Native Americans. (1977, c. 849, s. 1; 1977, 2nd Sess., c. 1189; 2001-344, s. 1; 2006-264, s. 15.)

§ 143B-406. North Carolina State Commission of Indian Affairs – duties; use of funds.

- (a) The Commission shall have the following duties:
- (1) To study, consider, accumulate, compile, assemble and disseminate information on any aspect of Indian affairs.
 - (2) To investigate relief needs of Indians of North Carolina and to provide technical assistance in the preparation of plans for the alleviation of such needs.
 - (3) To confer with appropriate officials of local, State and federal governments and agencies of these governments, and with such congressional committees that may be concerned with Indian affairs to encourage and implement coordination of applicable resources to meet the needs of Indians in North Carolina.

- (4) To cooperate with and secure the assistance of the local, State and federal governments or any agencies thereof in formulating any such programs, and to coordinate such programs with any programs regarding Indian affairs adopted or planned by the federal government to the end that the State Commission of Indian Affairs secure the full benefit of such programs.
- (5) To act as trustee for any interest in real property that may be transferred to the Commission for the benefit of State-recognized Indian tribes in accordance with a trust agreement approved by the Commission. The Commission shall not hold any interest in real property for the benefit of federally recognized Indian tribes.
- (6) To review all proposed or pending State legislation and amendments to existing State legislation affecting Indians in North Carolina.
- (7) To conduct public hearings on matters relating to Indian affairs and to subpoena any information or documents deemed necessary by the Commission.
- (8) To study the existing status of recognition of all Indian groups, tribes and communities presently existing in the State of North Carolina.
- (9) To establish appropriate procedures to provide for legal recognition by the State of presently unrecognized groups.
- (10) To provide for official State recognition by the Commission of such groups.
- (11) To initiate procedures for their recognition by the federal government.

(b) The Commission may adopt rules to implement the provisions of subdivision (a)(5) of this section. (1977, c. 849, s. 1; 1977, 2nd Sess., c. 1189; 2001-344, s. 2.)

§ 143B-407. North Carolina State Commission of Indian Affairs – membership; term of office; chairman; compensation.

(a) The State Commission of Indian Affairs shall consist of two persons appointed by the General Assembly, the Secretary of Health and Human Services, the Director of the State Employment Security Commission, the Secretary of Administration, the Secretary of Environment and Natural Resources, the Commissioner of Labor or their designees and 21 representatives of the Indian community. These Indian members shall be selected by tribal or community consent from the Indian groups that are recognized by the State of North Carolina and are principally geographically located as follows: the Coharie of Sampson and Harnett Counties; the Eastern Band of Cherokees; the Haliwa Saponi of Halifax, Warren, and adjoining counties; the Lumbees of Robeson, Hoke and Scotland Counties; the Meherrin of Hertford County; the Waccamaw-Siouan from Columbus and Bladen Counties; the Sappony; the Occaneechi Band of the Saponi Nation of Alamance and Orange Counties, and the Native Americans located in Cumberland, Guilford, Johnston, Mecklenburg, Orange, and Wake Counties. The

Coharie shall have two members; the Eastern Band of Cherokees, two; the Haliwa Saponi, two; the Lumbees, three; the Meherrin, one; the Waccamaw-Siouan, two; the Sappony, one; the Cumberland County Association for Indian People, two; the Guilford Native Americans, two; the Metrolina Native Americans, two; the Occaneechi Band of the Saponi Nation, one, the Triangle Native American Society, one. Of the two appointments made by the General Assembly, one shall be made upon the recommendation of the Speaker, and one shall be made upon recommendation of the President Pro Tempore of the Senate. Appointments by the General Assembly shall be made in accordance with G.S. 120-121 and vacancies shall be filled in accordance with G.S. 120-122.

(b) Members serving by virtue of their office within State government shall serve so long as they hold that office. Members representing Indian tribes and groups shall be elected by the tribe or group concerned and shall serve for three-year terms except that at the first election of Commission members by tribes and groups one member from each tribe or group shall be elected to a one-year term, one member from each tribe or group to a two-year term, and one member from the Lumbees to a three-year term. The initial appointment from the Indians of Person County shall expire on June 30, 1999. The initial appointment from the Triangle Native American Society shall expire June 30, 2003. The initial appointment of the Occaneechi Band of the Saponi Nation shall expire June 30, 2005. Thereafter, all Commission members will be elected to three-year terms. All members shall hold their offices until their successors are appointed and qualified. Vacancies occurring on the Commission shall be filled by the tribal council or governing body concerned. Any member appointed to fill a vacancy shall be appointed for the remainder of the term of the member causing the vacancy. The Governor shall appoint a chairman of the Commission from among the Indian members of the Commission, subject to ratification by the full Commission. The initial appointments by the General Assembly shall expire on June 30, 1983. Thereafter, successors shall serve for terms of two years.

(c) Commission members who are seated by virtue of their office within the State government shall be compensated at the rate specified in G.S. 138-6. Commission members who are members of the General Assembly shall be compensated at the rate specified in G.S. 120-3.1. Indian members of the commission shall be compensated at the rate specified in G.S. 138-5. (1977, c. 771, s. 4; c. 849, s. 1; 1977, 2nd Sess., c. 1189; 1981, c. 47, s. 5; 1981 (Reg. Sess., 1982), c. 1191, ss. 74, 76; 1989, c. 727, s. 218(149); 1991, c. 467, s. 1; 1995, c. 490, s. 27; 1997-147, s. 2; 1997-293, s. 2; 1997-443, ss. 11A.118(a), 11A.119(a); 2001-318, s. 1; 2002-126, s. 19.1A(a); 2003-87, s. 2.)

§ 143B-408. North Carolina State Commission of Indian Affairs – meetings; quorum; proxy vote.

(a) The Commission shall meet quarterly, and at any other such time that it shall deem necessary. Meetings may be called by the chairman or by a petition signed by a majority of the members of the Commission. Ten days' notice shall be given in writing prior to the meeting date.

(b) Simple majority of the Indian members of the Commission must be present to constitute a quorum.

(c) Proxy vote shall not be permitted. (1977, c. 849, s. 1; 1977, 2nd Sess., c. 1189.)

§ 143B-409. North Carolina State Commission of Indian Affairs – reports.

The Commission shall prepare a written annual report giving an account of its proceedings, transactions, findings, and recommendations. This report shall be submitted to the Governor and the legislature. The report will become a matter of public record and will be maintained in the State Historical Archives. It may also be furnished to such other persons or agencies as the Commission may deem proper. (1977, c. 849, s. 1; 1977, 2nd Sess., c. 1189.)

§ 143B-410. North Carolina State Commission of Indian Affairs – fiscal records; clerical staff.

Fiscal records shall be kept by the Secretary of Administration. The audit report will become a part of the annual report and will be submitted in accordance with the regulations governing preparation and submission of the annual report. (1977, c. 849, s. 1; 1977, 2nd Sess., c. 1189; 1983, c. 913, s. 41.)

§ 143B-411. North Carolina State Commission of Indian Affairs – executive director; employees.

The Commission may, subject to legislative or other funds that would accrue to the Commission, employ an executive director to carry out the day-to-day responsibilities and business of the Commission. The executive director shall serve at the pleasure of the Commission. The executive director, also subject to legislative or other funds that would accrue to the Commission, may hire additional staff and consultants to assist in the discharge of his responsibilities, as determined by the Commission. The executive director shall not be a member of the Commission, and shall be of Indian descent. (1977, c. 849, s. 1; 1977, 2nd Sess., c. 1189; 1991, c. 88.)

CHAPTER 15 – COMMISSION OF INDIAN AFFAIRS

SECTION .0200 – LEGAL RECOGNITION OF AMERICAN INDIAN GROUPS

01 NCAC 15 .0201 AUTHORIZATION

The rules in this Section, establish procedures to provide for the legal recognition by the State of presently unrecognized American Indian groups.

History Note: Authority G.S. 143B-406;
Eff. November 1, 1976;
Amended Eff. February 1, 2006.

01 NCAC 15 .0202 DEFINITIONS

When used in this Section the following definitions apply:

- (1) "AMERICAN INDIAN TRIBE" means a population of Indian people all related to one another by blood or kinship, tracing their heritage to indigenous Indian tribes, and recognized by the State or federal government.
- (2) "COMMISSION" means the North Carolina Commission of Indian Affairs.
- (3) "GROUP" means the members of a community, inter-related by blood, and listed on submitted membership rolls as defined in Item (5) of this Rule, and petitioning the state for official recognition as an American Indian tribe.
- (4) "INDIGENOUS" means native to North Carolina.
- (5) "MEMBERSHIP ROLL" means a list of those individuals who have been determined by a group to meet the group's membership requirements. The membership roll shall list the names, addresses, date of birth, names of both parents (including mothers' maiden names), and telephone numbers of the people and relate each one to their kinship ties. These kinship ties shall be consistent with information documented in genealogy charts submitted in accordance with Rule .0212(2) of this Section.
- (6) "NOTICE OF INTENT TO PETITION" means a letter without supporting petition-related documents from a group requesting official recognition by the State of North Carolina.
- (7) "PETITION" means the presented documents and arguments made by a group to substantiate its claims that it satisfies the criteria identified in Rules .0203 and .0212 of this Section.
- (8) "PETITIONER" means any group that has submitted a Notice of Intent to Petition to the Commission requesting State recognition as an American Indian tribe.
- (9) "SPLINTER GROUP" means a political faction, community, or group of any character that separates or has separated from the main body of a state or federally recognized American Indian tribe, and has not functioned throughout history as an autonomous American Indian tribe.
- (10) "STATE" means the State of North Carolina.

History Note: Authority G.S. 143B-406;
Eff. November 1, 1976;
Amended Eff. February 1, 2006; April 1, 1999.

01 NCAC 15 .0203 GROUPS ELIGIBLE FOR PETITIONING PROCESS

(a) Only American Indian groups located in North Carolina who can trace their historic origins to indigenous American Indian tribes prior to 1790 are eligible to petition or to be considered for State recognition as an American Indian tribe.

(b) Each group seeking recognition shall document their organizational status and structure. The formal status and type of organizational structure of the petitioning group shall not be a factor in the recognition process.

History Note: Authority G.S. 143B-406;
Eff. November 1, 1976;
Amended Eff. February 1, 2006; April 1, 1999.

01 NCAC 15 .0204 GROUPS INELIGIBLE FOR RECOGNITION

The following groups and entities are ineligible to petition for official State recognition as American Indian tribes:

- (1) Splinter Groups – as defined in Rule .0202 of this Section.
- (2) Previously denied petition groups or entities - Groups, or successors in interest of groups, that have petitioned for and been denied or refused recognition as an American Indian tribe under the State's administrative rules for State recognition as an American Indian tribe, unless the group has new evidence to justify the petition.
- (3) Parties to certain actions – Any group that:
 - (a) in any action in State or federal court of competent jurisdiction to which the group was a party attempted to establish its status as an American Indian tribe or successor in interest to an American Indian tribe; and
 - (b) was determined by that court:
 - (i) not to be an American Indian tribe; or
 - (ii) not to be a successor in interest to an American Indian tribe; or
 - (iii) to be incapable of establishing one or more of the criteria set forth in Rules .0203 or .0212 of this Section.

History Note: *Authority G.S. 143B-406;*
 Eff. November 1, 1976;
 Amended Eff. February 1, 2006; April 1, 1999.

01 NCAC 15 .0205 COMMISSION ASSISTANCE TO PETITIONER

- (a) When a group has identified itself as an American Indian group, it shall request technical assistance from the Commission. The Commission shall explain the administrative processes for the legal recognition of an American Indian group.
- (b) The Commission of Indian Affairs assistance to the Petitioner shall be limited to an explanation of the procedure and technical advice.

History Note: *Authority G.S. 143B-406;*
 Eff. November 1, 1976;
 Amended Eff. February 1, 2006.

01 NCAC 15 .0206 SEATS ON THE COMMISSION

History Note: *Authority G.S. 71-16;*
 Eff. November 1, 1976;
 Repealed Eff. February 27, 1979.

01 NCAC 15 .0207 NOTICE OF INTENT TO PETITION FOR RECOGNITION

- (a) A petitioning American Indian group shall file a Notice of Intent to Petition (hereinafter referred to as the "Notice of Intent") with the Commission's Recognition Committee. The Commission shall acknowledge receipt of the Petitioner's Notice of Intent.
- (b) The Notice of Intent shall be produced, dated and shall be signed by each member of the governing body of the petitioning American Indian group, and shall include the group's name, address, number of members, geographic location of the petitioning group's members, historic origin and existing recognition.

History Note: *Authority G.S. 143B-406;*
 Eff. February 11, 1980;
 Amended Eff. February 1, 2006; April 1, 1999; August 1, 1988.

01 NCAC 15 .0208**RECOGNITION COMMITTEE**

(a) The Recognition Committee shall be appointed by the chairperson of the Commission of Indian Affairs from the Commission members who are representing the recognized American Indian tribes and organizations in North Carolina.

(b) Once a Petitioner has completed the recognition process, the Recognition Committee shall make a recommendation to the Commission regarding the group's State recognition as an American Indian tribe. Thereafter, the Commission shall render its decision as under Rule .0209 of this Section.

*History Note: Authority G.S. 143B-406;
Eff. February 11, 1980;
Amended Eff. February 1, 2006; April 1, 1999; February 1, 1982.*

01 NCAC 15 .0209**PROCEDURE FOR RECOGNITION**

The procedure to be followed for recognition shall be:

- (1) Petitioner shall submit a Notice of Intent to Petition, as set out in Rule .0207 of this Section, to the Commission of Indian Affairs.
- (2) The Commission shall acknowledge receipt of the Petitioner's Notice of Intent to Petition and shall explain procedure to Petitioner;
- (3) Upon receipt of the Notice of Intent, the Commission shall notify, in writing, the following interested parties:
 - (a) State recognized Indian tribes and organizations; and
 - (b) local and county governments within a 25 mile radius of the Petitioner's geographic area;
- (4) All petitions and responses to petitions must be received at least 10 days prior to the meeting at which they are to be considered.
- (5) The Petitioner shall provide an original and at least five copies when submitting petitions, responses to petitions, or other supplementary information to the Commission during the petition process.
- (6) The Petitioner shall complete and submit a fully documented petition to the Recognition Committee, including current membership rolls as defined in Rule .0202 of this Section and all past membership lists of the group. The failure to submit these membership rolls is sufficient grounds to deny the petition.
- (7) The Petitioner may submit additional petition documentation and materials throughout the petition process until such time as a recognition decision is made by the full Commission, as described in this Rule.
- (8) The Recognition Committee shall conduct initial review of petition and shall notify Petitioner of preliminary findings and deficiencies.
- (9) Upon receipt of the Recognition Committee's preliminary findings, Petitioner shall have 180 days in which to respond, in writing, to any deficiencies in the petition noted by the Recognition Committee. Not less than 30 days prior to the expiration of the initial response period, Petitioner may request and be granted an additional 180 days to respond. If requested, the additional response period shall commence on the 181st day after the receipt of the Recognition Committee's preliminary findings. No further requests for additional time shall be granted.
- (10) The Recognition Committee shall conduct a hearing to consider the petition, including Petitioner's responses to all deficiencies initially noted.
- (11) The Recognition Committee shall introduce its recommendation at the next Commission meeting. Further Commission action shall not take place until the second Commission meeting after the Recognition Committee's decision.
- (12) If the Recognition Committee's recommendation is against recognizing the Petitioner, within 30 days following the receipt of that recommendation the Petitioner may request and be granted a hearing before the full Commission. If a request for a hearing is made, the hearing shall not take place prior to the next regularly scheduled quarterly Commission of Indian Affairs meeting. In the event that a Petitioner does not request a hearing within 30 days, the petition is deemed withdrawn.
- (13) At a subsequent meeting after the Recognition Committee's recommendation is introduced, the Commission may, as permitted by these rules, request additional

- information, conduct additional hearings, approve or deny the petition, or return the petition to the Recognition Committee if it has received additional information.
- (14) A decision by the full Commission regarding State recognition shall be rendered by a majority of members present and voting (abstentions not counted) at a duly constituted meeting.
 - (15) If the Commission's decision is for recognition, the group is recognized as an American Indian tribe by the State. Thereafter, the Commission shall explain all services available to the tribe through the Commission.
 - (16) If the decision is against recognition, the Petitioner may appeal to the Office of Administrative Hearings for a hearing pursuant to G.S. 150B-23.
 - (17) A Petitioner may withdraw from the petition process at any time prior to the decision of the full Commission. After a petition is withdrawn, the Petitioner may not initiate a new petition until one year from the date of the withdrawal.
 - (18) During the petition process, any such other material or documents the Recognition Committee or Commission may request are relevant to the Commission's decision. Any additional materials or documents shall be:
 - (a) relevant to the recognition decision; or
 - (b) shall be directly related to recognition requirement deficiencies as outlined by the Recognition Committee or the full Commission.
 - (19) The Commission shall issue a public notification to the news media in the Petitioner's area, giving notification of the group's status as a State recognized American Indian tribe.

History Note: Authority G.S. 143B-406; 150B-23
 Eff. February 11, 1980;
 Amended Eff. February 1, 2006; April 1, 1999.

01 NCAC 15 .0210 CRITERIA FOR RECOGNITION AS A GROUP OR ORGANIZATION

History Note: Authority G.S. 143B-406;
 Eff. February 11, 1980;
 Repealed Eff. April 1, 1999.

01 NCAC 15 .0211 RECOGNITION REQUIREMENT

History Note: Authority G.S. 143B-407
 Eff. February 11, 1980;
 Amended Eff. April 1, 1999;
 Repealed Eff. February 1, 2006.

01 NCAC 15 .0212 CRITERIA FOR RECOGNITION AS AN AMERICAN INDIAN TRIBE

In deciding whether to grant recognition to petitioner, the Commission shall proceed as follows:

- (1) The Petitioner shall demonstrate continuous American Indian identity on a historic basis in satisfying each of these criteria. Documents that shall be used to demonstrate the group's American Indian identity shall include, family bible accounts, baptismal records, and any other material that can substantiate the petitioning group's historic and continuous identification as an American Indian entity. For periods of time where this identification cannot be documented, the Petitioner shall submit a narrative to explain the lack of continuous American Indian identification.
- (2) The criteria to be used in the decision whether to extend State recognition as an American Indian tribe are listed below in Subitems (a) through (h).
 - (a) Traditional North Carolina American Indian names, as they relate to the petitioning group. Surnames among the petitioning group that have been commonly identified as being American Indian since 1790 in the Petitioner's local geographic area shall be considered to be traditional North Carolina American Indian names;

- (b) Kinship relationships with other recognized American Indian tribes. Relationships with other recognized American Indian tribes shall be based on the petitioner's identification as an American Indian group or community, and shall be evidenced by historic blood and marriage kinship ties and communal interaction of spiritual, educational, and social institutions; or other cultural relationships between known (recognized) tribal communities and the petitioner's community;
 - (c) Official records, which may include, birth, church, school, military, medical, local or county government records, or other official records identifying the group as American Indian. Vital records shall also be used in assisting the group's documentation of American Indian identity.
 - (d) State or federal documents identifying the group as American Indian. Any instance of historic government-to-government relationships between the Petitioner and federal or state governments shall be evidenced;
 - (e) Anthropological, historical, or genealogical documents identifying the group as American Indian and demonstrating the group's American Indian ancestry;
 - (f) Identification from State or federally recognized American Indian tribes attesting to the petitioning group's identification as American Indian, based on both the historic and current relationships existing between the tribe and the petitioning group.
 - (g) Any other documented traditions, customs, legends, etc., that are uniquely American Indian and signify the petitioning group's American Indian heritage;
 - (h) Participation in grants from sources or programs designated as for American Indian only.
- (3) Five of the recognition criteria listed in Item (2) of this Rule must be satisfactorily met to achieve state recognition.

History Note: Authority G.S. 143B-406
 Eff. February 11, 1980;
 Amended Eff. February 1, 2006.

01 NCAC 15 .0213 SPECIAL COMMITTEE ON RECOGNITION
 01 NCAC 15 .0214 TRIBAL ROLL

History Note: Authority G.S. 143B-406;
 Eff. February 11, 1980;
 Amended Eff. April 1, 1999; August 1, 1988;
 Repealed Eff. February 1, 2006.

BY HIS EXCELLENCY

MICHAEL S. DUKAKIS

EXECUTIVE ORDER NO. 126

MASSACHUSETTS NATIVE AMERICANS

WHEREAS, as one of the first Thirteen Colonies, the Commonwealth of Massachusetts has long maintained a special relationship with the Native American people of the region, and

WHEREAS, for over three centuries, the Commonwealth has molded this relationship by Treaty and Agreement, Legislative Act and Executive Order, and has never ceased to recognize their special status, and

WHEREAS, the state has never ceased to recognize its indigenous tribes, living within or near the boundaries of current or former territories and reservations; nor has it ceased to recognize those Tribes with which it has Treaties; and

WHEREAS, there are approximately eight thousand Indians residing within the Commonwealth of Massachusetts, and

WHEREAS, the Tribal Councils of the Nipmuc, Mashpee and the Gay Head Wampanoag Tribes are the recognized governing bodies, respectively, of the Nupmuc Tribe, the Mashpee Tribe, and the Gay Head Wampanoag Tribe, and exercise substantial governmental functions; and

WHEREAS, there are Wampanoag Indians within the Commonwealth who are members of neither the Gay Head Wampanoag nor the Mashpee Tribes, and

WHEREAS, as further evidence of the Commonwealth's commitment to the Native American people, the General Court has established by Statute (M.G.L. c.7, s. 38) the Massachusetts Commission on Indian Affairs to advise the commonwealth as to how best to establish positive relationships with the Tribes; and

WHEREAS, the General Court of the Commonwealth has enacted a Statute (Act of 1939, C.384) authorizing the Commissioner of Conservation to establish a reservation within the Fall River Freetown State Forest, and

WHEREAS, in 1945, the said Reservation was laid out, and established in accordance with the authority conferred by the aforesaid Act of 1939, but has not been further developed; and

WHEREAS, the Massachusetts Commission on Indian Affairs and interested groups have presented to Executive Branch officials information concerning the present availability of certain federal funds and services for the benefit of Native Americans, and

WHEREAS, research indicates that Indians who live within the Commonwealth may be able to qualify for several millions of dollars of federal funds which the Congress of the United States has made available to provide benefits and services to Native Americans;

NOW, THEREFORE, I, Michael S. Dukakis, Governor of the Commonwealth of Massachusetts, by virtue of all authority vested in me as the Supreme Executive Magistrate, do hereby order as follows:

Section I

State agencies shall deal directly with the Mashpee Wampanoag Indian Tribal Council on matters affecting the Mashpee Tribe; with the Wampanoag Tribal council of Gay Head on matters affecting the Gay Head Wampanoag Tribe, with the commission on Indian Affairs on matters affecting Wampanoag Indians who are members of neither the Gay Head nor the Mashpee Tribes; and with the Massanamisco Nipmuc Tribal council on matters affecting the Nipmuc Tribe.

Section II

In support of the concept of Native American self-determination, the Secretary of the Executive Office of Environmental

Affairs and the Commissioner of Environmental Management shall take appropriate measures to insure that the wishes of the Gay Head Wampanoag and Mashpee Tribes, as expressed by their governing bodies, shall be followed in the management and development of the Wampanoag Reservation within the Fall River-Freetown State Forest.

All other agencies of the Commonwealth, especially agencies within the Executive Offices of Communities and Development and Human Services, are directed to assist as requested in development plans for the Reservation.

The Massachusetts Commission on Indian Affairs shall be involved in all state deliberations regarding the disposition of the Wampanoag Reservation within the Fall River-Freetown State Forest.

Section III

The Boston Indian Council shall be designated as the state's liaison with resident members of the Passamaquoddy, Penobscot, Maliseet, MicMac Tribes, with whom the state has entered into Treaties and other Agreements.

Section IV

The Massachusetts Commission on Indian Affairs shall investigate problems common to Indian residents of the Commonwealth and shall assist Tribal Councils, Indian organizations and individuals in their dealings with agencies of state and local government. All state agencies are to cooperate with the Commission in the performance of these important functions, as well as other functions assigned to it by statute. The same level of cooperation will be extended to Tribal Councils and Inter-Tribal organizations in determining which programs require special Native American emphasis within their areas.

Section V

Each state agency shall be responsible for evaluating its own services which are received by the Native American population and shall propose means to rectify any lack of adequate services. The Head of each state agency providing services to Native Americans is directed to determine within a reasonable amount of time whether or not federal, state, or other funds are available to improve such services. Where it is determined that funds may be available for services and benefits to Native Americans, the agency and the appropriate tribal government or inter-tribal organization shall work together to prepare applications for such funds. The Commission's advice on such matters may be sought and the Commission shall be informed of all funding proposals submitted by state agencies.

Section VI

Unless otherwise determined from time to time by the Governor, the Secretary of the Executive Office of Communities and Development, with the cooperation of the Lieutenant Governor of the Commonwealth, shall act in conjunction with the Massachusetts Commission on Indian Affairs as the principle liaison for the Commonwealth in its relations with the Bureau of Indian Affairs within the Federal Department of Interior, and with other agencies of the Federal Government, in matters affecting resident Massachusetts Native Americans.

Section VII

In addition to seeking the advice of the Massachusetts Commission on Indian Affairs, the appropriate tribal council(s), and other legitimate tribal representatives, as appropriate, with respect to matters affecting Native Americans and within jurisdiction of such groups, state agencies should also attempt to include Native Americans on boards and commissions, particularly those whose functions have a noticeably special impact upon Native Americans. In this connection, the Massachusetts Commission on Indian Affairs may be contacted for assistance in identifying Native Americans with skills and experience, or interest in the particular area of concern; provided, however, that Native Americans who are serving as commissioners on the Massachusetts Commission on Indian Affairs shall be ineligible, during their terms of office, for appointment to such boards and commissions.

Given at the Executive Chamber

2/4/2021

<https://www.mass.gov/doc/eo-126-1976/download>

in Boston this eighth day of
July in the year of our Lord
one thousand nine hundred and
seventy-six and of the Indepen-
dence of the United States the
two hundredth.

Michael S. Dukakis
Governor
Commonwealth of Massachusetts

Paul Guzzi
Secretary of the Commonwealth

The Vermont Statutes Online

Title 1: General Provisions

Chapter 23: Native American Indian People

§ 851. Findings

The General Assembly finds that:

(1) At least 1,700 Vermonters claim to be direct descendants of the several indigenous Native American peoples, now known as Western Abenaki tribes, who originally inhabited all of Vermont and New Hampshire, parts of western Maine, parts of southern Quebec, and parts of upstate New York for hundreds of years, beginning long before the arrival of Europeans.

(2) There is ample archaeological evidence that demonstrates that the Missisquoi and Cowasuck Abenaki were indigenous to and farmed the river floodplains of Vermont at least as far back as the 1100s A.D.

(3) The Western Abenaki, including the Missisquoi, have a very definite and carefully maintained oral tradition that consistently references the Champlain valley in western Vermont.

(4) State recognition confers official acknowledgment of the long-standing existence in Vermont of Native American Indians who predated European settlement and enhances dignity and pride in their heritage and community.

(5) Many contemporary Abenaki families continue to produce traditional crafts and intend to continue to pass on these indigenous traditions to the younger generations. In order to create and sell Abenaki crafts that may be labeled as Indian- or Native American-produced, the Abenaki must be recognized by the State of Vermont.

(6) According to a public affairs specialist with the U.S. Bureau of Indian Affairs (BIA), State recognition of Indian tribes plays a very small role with regard to federal recognition. The only exception is when a state recognized a tribe before 1900.

(7) At least 15 other states have recognized their resident indigenous people as Native American Indian tribes without any of those tribes previously or subsequently acquiring federal recognition.

(8) State-recognized Native American Indian tribes and their members will continue to be subject to all laws of the State, and recognition shall not be construed to create any basis or authority for tribes to establish or promote any form of prohibited gambling activity or to claim any interest in land or real estate in Vermont. (Added 2005, No. 125 (Adj. Sess.), § 1, eff. May 3, 2006; amended 2009, No. 107 (Adj. Sess.), § 1, eff. May 14, 2010.)

§ 852. Vermont Commission on Native American Affairs established; authority

(a) In order to recognize the historic and cultural contributions of Native Americans to Vermont, to protect and strengthen their heritage, and to address their needs in State policy, programs, and actions, there is hereby established the Vermont Commission on Native American Affairs (the "Commission").

(b) The Commission shall be composed of nine members appointed by the Governor for staggered two-year terms from a list of candidates compiled by the Division for Historic Preservation. The Governor shall appoint members who have been residents of Vermont for a minimum of three years and reflect a diversity of affiliations and geographic locations in Vermont. A member may serve for no more than two consecutive terms, unless there are insufficient eligible candidates. The Division shall compile a list of candidates from the following:

(1) Recommendations from Native American communities residing in Vermont. Once a Native American Indian tribe has been recognized under this chapter, a qualified candidate recommended by that tribe shall have priority for appointment to fill the next available vacancy on the Commission.

(2) Individuals who apply to the Division for Historical Preservation. Candidates shall indicate their residence and Native American affiliation.

(c) The Commission shall:

(1) elect a chair each year;

(2) provide technical assistance and an explanation of the process to applicants for State recognition;

(3) compile and maintain a list of professionals and scholars for appointment to a review panel;

(4) appoint a three-member panel acceptable to both the applicant and the Commission to review supporting documentation of an application for recognition and advise the Commission of its accuracy and relevance;

(5) review each application, supporting documentation and findings of the review panel, and make recommendations for or against State recognition to the legislative committees;

(6) assist Native American Indian tribes recognized by the State to:

(A) secure assistance for social services, education, employment opportunities, health care, and housing;

(B) develop and market Vermont Native American fine and performing arts, craft work, and cultural events; and

(7) develop policies and programs to benefit Vermont's Native American Indian population within the scope of the Commission's authority.

(d) During fiscal year 2011, the Commission shall meet at least three times a year and at any other times at the request of the Chair and Commission members shall receive a per diem pursuant to 32 V.S.A. § 1010. In fiscal year 2012 and thereafter, the Commission shall meet as needed but members shall receive a per diem pursuant to 32 V.S.A. § 1010 no more than six times a year. The Division for Historic Preservation within the Agency of Commerce and Community Development shall provide administrative support to the Commission, including providing communication and contact resources.

(e) The Commission may seek and receive funding from federal and other sources to assist with its work. (Added 2005, No. 125 (Adj. Sess.), § 1, eff. May 3, 2006; amended 2009, No. 107 (Adj. Sess.), § 3, eff. May 14, 2010; 2011, No. 3, § 99.)

§ 853. Criteria and process for State recognition of Native American Indian tribes

(a) For the purposes of this section:

(1) "Applicant" means a group or band seeking formal State recognition as a Native American Indian tribe.

(2) "Legislative committees" means the House Committee on General, Housing and Military Affairs and the Senate Committee on Economic Development, Housing and General Affairs.

(3) "Recognized" or "recognition" means acknowledged as a Native American Indian tribe by the Vermont General Assembly.

(4) "Tribe" means an assembly 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.

(b) The State recognizes all individuals of Native American Indian heritage who reside in Vermont as an ethnic minority. This designation does not confer any status to any collective group of individuals.

(c) In order to be eligible for recognition, an applicant must file an application with the Commission and demonstrate compliance with subdivisions (1) through (8) of this subsection which may be supplemented by subdivision (9) of this subsection:

(1) A majority of the applicant's members currently reside in a specific geographic location within Vermont.

(2) A substantial number of the applicant's members are related to each other by kinship and trace their ancestry to a kinship group through genealogy or other methods. Genealogical documents shall be limited to those that show a descendency from identified Vermont or regional native people.

(3) The applicant has a connection with Native American Indian tribes and bands that have historically inhabited Vermont.

(4) The applicant has historically maintained an organizational structure that exerts influence and authority over its members that is supported by documentation of the structure, membership criteria, the names and residential addresses of its members, and the methods by which the applicant conducts its affairs.

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

(6) The applicant is organized in part:

(A) to preserve, document, and promote its Native American Indian culture and history, and this purpose is reflected in its bylaws;

(B) to address the social, economic, political, or cultural needs of the members with ongoing educational programs and activities.

(7) The applicant can document traditions, customs, oral stories, and histories that signify the applicant's Native American heritage and connection to their historical homeland.

(8) The applicant has not been recognized as a tribe in any other state, province, or nation.

(9) Submission of letters, statements, and documents from:

(A) municipal, State, or federal authorities that document the applicant's history of tribe-related business and activities;

(B) tribes in and outside Vermont that attest to the Native American Indian heritage of the applicant.

(d) The Commission shall consider the application pursuant to the following process which shall include at least the following requirements:

(1) The Commission shall:

(A) provide public notice of receipt of the application and supporting documentation;

(B) hold at least one public hearing on the application; and

(C) provide written notice of completion of each step of the recognition process to the applicant.

(2) Established appropriate time frames that include a requirement that the Commission and the review panel shall complete a review of the application and issue a determination regarding recognition within one year after an application and all the supporting documentation have been filed, and if a recommendation is not issued, the Commission shall provide written explanation to the applicant and the legislative committees of the reasons for the delay and the expected date that a decision will be issued.

(3) A process for appointing a three-member review panel for each application to review the supporting documentation and determine its sufficiency, accuracy, and relevance. The review panel shall provide a detailed written report of its findings and conclusions to the Commission, the applicant, and legislative committees. Members of each review panel shall be appointed cooperatively by the Commission and the applicant from a list of professionals and academic scholars with expertise in cultural or physical anthropology, Indian law, archaeology, Native American Indian genealogy, history, or another related Native American Indian subject area. If the applicant and the Commission are unable to agree on a panel, the State Historic Preservation Officer shall appoint the panel. No member of the review panel may be a member of the Commission or affiliated with or on the tribal rolls of the applicant.

(4) The Commission shall review the application, the supporting documentation, the report from the review panel, and any other relevant information to determine compliance with subsection (b) of this section and make a determination to recommend or deny recognition. The decision to recommend recognition shall require a majority vote of all eligible members of the Commission. A member of the Commission who is on the tribal roll of the applicant is ineligible to participate in any action regarding the application. If the Commission denies recognition, the Commission shall provide the applicant and the legislative committees with written notice of the reasons for the denial, including specifics of all insufficiencies of the application.

(5) The applicant may file additional supporting documentation for reconsideration within one year after receipt of the notice of denial.

(6) An applicant may withdraw an application any time before the Commission issues a recommendation, and may not file a new application for two years following withdrawal. A new application and supporting documentation shall be considered a de novo filing, and the Commission shall not consider the withdrawn application or its supporting documentation.

(7) [Repealed.]

(8) All proceedings, applications, and supporting documentation shall be public except material exempt pursuant to subdivision 317(c)(40) of this title. Any documents relating to genealogy submitted in support of the application shall be available only to the three-member review panel.

(e) An applicant for recognition shall be recognized as follows:

(1) by approval of the General Assembly;

(2) two years after a recommendation to recognize a tribe by the Commission is filed with the legislative committees, provided the General Assembly took no action on the recommendation.

(f) A decision by the Commission to recommend denial of recognition is final unless an applicant or a successor of interest to the applicant that has previously applied for and been denied recognition under this chapter provides new and substantial documentation and demonstrates that the new documentation was not reasonably available at the time of the filing of the original application.

(g) Vermont Native American Indian bands and tribes and individual members of those bands and tribes remain subject to all the laws of the State.

(h) Recognition of a Native American Indian tribe shall not be construed to create, extend, or form the basis of any right or claim to land or real estate in Vermont or right to conduct any gambling activities prohibited by law, but confers only those rights specifically described in this chapter. (Added 2005, No. 125 (Adj. Sess.), § 1, eff. May 3, 2006; amended 2009, No. 107 (Adj. Sess.), § 4, eff. May 14, 2010; 2013, No. 142 (Adj. Sess.), § 80, eff. July 1, 2014.)

§ 853a. Recognition of Elnu Abenaki tribe

The Elnu Abenaki tribe has filed an application for tribal recognition with the Vermont Commission on Native American Affairs and has complied with the recognition requirements contained in subdivisions 853(c)(1)-(9) of this title and is hereby recognized by the State of Vermont as a Native American Indian tribe. (Added 2011, No. 9, § 1, eff. April 22, 2011.)

§ 854. Recognition of Nulhegan Band of the Coosuk Abenaki Nation

The Nulhegan Band of the Coosuk Abenaki Nation has filed an application for tribal recognition with the Vermont Commission on Native American Affairs and has complied with the recognition requirements contained in subdivisions 853(c)(1)-(9) of this title and is hereby recognized by the State of Vermont as a Native American Indian tribe. (Added 2011, No. 8, § 1, eff. April 22, 2011.)

§ 855. Recognition of Koasek Abenaki of the Koas

The Koasek Abenaki of the Koas has filed an application for tribal recognition with the Vermont Commission on Native American Affairs and has complied with the recognition requirements contained in subdivisions 853(c)(1)-(9) of this title and is hereby recognized by the State of Vermont as a Native American Indian tribe. (Added 2011, No. 106 (Adj. Sess.), § 1, eff. May 7, 2012.)

§ 856. Recognition of Missisquoi, St. Francis-Sokoki band

The Missisquoi, St. Francis-Sokoki Band has filed an application for tribal recognition with the Vermont Commission on Native American Affairs and has complied with the recognition requirements contained in subdivisions 853(c)(1)-(9) of this title and is hereby recognized by the State of Vermont as a Native American Indian tribe. (Added 2011, No. 105 (Adj. Sess.), § 1, eff. May 7, 2012.)

