

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 553 State Recognition of Indian Tribes and Bands

SPONSOR(S): State Affairs Committee, Salzman and others

TIED BILLS: IDEN./SIM. **BILLS:** SB 954

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration, Federal Affairs & Special Districts Subcommittee	16 Y, 0 N	Burgess	Darden
2) State Affairs Committee	18 Y, 0 N, As CS	Burgess	Williamson

SUMMARY ANALYSIS

Federal law recognizes Indian tribes as “distinct, independent political communities, retaining their original natural rights.” Indian tribes recognized by the federal government have a government-to-government relationship with the United States.

Historically, tribes secured federal recognition by treaties, acts of Congress, executive branch actions, or federal court decisions. Today, a tribe may gain federal recognition by an act of Congress, administrative procedures, or a decision by a federal court. The administrative process, known as the Federal Acknowledgment Process (FAP) is intended to recognize the continued existence of an inherent sovereign authority, not provide a grant of sovereign status or to create a tribe made of Indian descendants. Some non-recognized tribes have expressed that the administrative process for recognition can be costly and time-consuming. Since 1978, the FAP has resulted in the acknowledgement of 18 tribes (out of 52 completed applications). There are two federally recognized tribes, the Seminole Tribe of Florida and the Miccosukee Tribe of Indians of Florida, that currently reside and have tribal lands in the state.

Additionally, some states provide a process for tribal recognition. State recognition of a tribe may provide access to certain federal grant programs and permit tribe members to market their arts and crafts as genuine and apply for certain scholarship programs.

The bill provides for state recognition of five tribes with historic ties to the state: the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Santa Rosa Band of the Lower Muscogee, the Poarch Band of Creek Indians, and the Muscogee Nation of Florida. The bill clarifies that state recognition of an Indian tribe or band does not create any basis or authority for a tribe to engage in prohibited gaming activity or to claim any interest in real estate or land that is not already provided elsewhere in law.

The bill does not appear to have a fiscal impact on state government or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Tribal Sovereignty and Federal Recognition

Federal law recognizes Indian tribes as “distinct, independent political communities, retaining their original natural rights.”¹ Indian tribes recognized by the federal government have a government-to-government relationship with the United States.² There are currently 574 federally recognized Indian tribes in the United States, 347 in the contiguous 48 states and 227 federally recognized Native entities within the state of Alaska.³

Historically, tribes secured federal recognition by treaties, acts of Congress, executive branch actions, or federal court decisions.⁴ Today, a tribe may gain federal recognition by one of three processes:

- An act of Congress;
- Administrative procedures under 25 C.F.R. Part 83; or
- A decision by a federal court.⁵

The administrative process under 25 C.F.R. Part 83, known as the Federal Acknowledgment Process (FAP) originates from a regulation first issued by the Interior Department in 1978.⁶ The FAP underwent significant revision in 1994 and 2015.⁷ The purpose of the FAP was to recognize the continued existence of an inherent sovereign authority, not provide a grant of sovereign status or to create a tribe made of Indian descendants.⁸ To qualify for acknowledgment under the current version of the FAP, a petitioner must:

- Demonstrate that it has been identified as an American Indian entity on a substantially continuous basis since 1900;
- Show that the petitioning group comprises a distinct community and has existed as a community from 1900 until the present;
- Demonstrate that it has maintained political influence or authority over its members as an autonomous entity from 1900 until the present;
- Provide a copy of the group’s present governing document, including its membership criteria, or a written statement describing in full its membership criteria and current governing procedures;
- Demonstrate that its membership consists of individuals who descend from the historical Indian tribe or from historical Indian tribes that combined and functioned as a single autonomous political entity and provide a current membership list;
- Show that the membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe; and
- Demonstrate that neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship.⁹

¹ *Worcester v. Georgia*, 31 U.S. 515, 519 (1832).

² Bureau of Indian Affairs, *Frequently Asked Questions*, <https://www.bia.gov/frequently-asked-questions> (last visited Mar. 3, 2023).

³ 88 Fed. Reg. 2112 (Jan. 12, 2023).

⁴ Bureau of Indian Affairs, *Frequently Asked Questions*, <https://www.bia.gov/frequently-asked-questions> (last visited Mar. 3, 2023).

⁵ Federally Recognized Indian Tribe List Act of 1994, Pub. L. No. 103-454. If a tribe has previously had its relationship with the United States expressly terminated by an act of Congress, that tribe’s recognition may only be restored by a subsequent act.

⁶ Bureau of Indian Affairs, *Frequently Asked Questions*, <https://www.bia.gov/frequently-asked-questions> (last visited Mar. 3, 2023).

⁷ See *id.* and 80 Fed. Reg. 37887 (July 1, 2015) (publication of final rule for 25 C.F.R. Part 83, concerning Federal Acknowledgment of American Indian Tribes).

⁸ *The Federal Acknowledgment Process: Hearing Before S. Committee on Indian Affairs*, May 11, 2005 (statement of R. Lee Fleming, Director, Office of Federal Acknowledgment).

⁹ 25 C.F.R. s. 83.11 (2015).

Some non-recognized tribes have expressed that the administrative process for recognition can be costly and time-consuming.¹⁰ Since 1978, the FAP has resulted in the acknowledgement of 18 tribes (out of 52 completed applications).¹¹

State Recognition of Indian Tribes

There are currently 63 state-recognized tribes across 11 states: Alabama, Connecticut, Georgia, Louisiana, Maryland, Massachusetts, New York, North Carolina, South Carolina, Vermont, and Virginia.¹² The method of determining which tribes to recognize varies, from giving a decision-making role to other tribes in the state (e.g., North Carolina¹³), an advisory role to other tribes (e.g. Vermont¹⁴), or providing for recognition as determined solely by the legislature (e.g., Georgia¹⁵).

State recognition of a tribe can provide certain benefits. State-recognized tribes are eligible to apply to several federal grant programs.¹⁶ Members of state-recognized tribes are also allowed to market their arts and crafts products as being genuine¹⁷ and may access certain scholarship programs.¹⁸

Indian Tribes in Florida

There are six federally-recognized tribes that are considered “culturally affiliated” with Florida.¹⁹ Two tribes, the Seminole Tribe of Florida and the Miccosukee Tribe of Indians of Florida, currently reside and have tribal lands in the state. Four other tribes, the Muscogee Creek Nation, the Poarch Band of Creek Indians, the Seminole Nation of Oklahoma, and the Mississippi Band of Choctaw Indians do not currently have reservation lands within the state, but have previously lived in the state and have a direct historical and cultural association.

Most state law governing the relationship between the state and the federally-recognized tribes with tribal lands in the state is contained in ch. 285, F.S.²⁰ This chapter:

- Describes the respective reservations of the tribes;²¹
- Provides that members may hunt, fish, and frog for personal consumption on tribal lands without paying licensing or permitting fees;²²
- Establishes state criminal and civil jurisdiction on reservations;²³
- Creates special improvement districts for reservation lands;²⁴ and
- Provides for the gaming compact between the state and the Seminole Tribe of Florida.²⁵

¹⁰ National Congress of American Indians (NCAI), *Federal Recognition*, <https://www.ncai.org/policy-issues/tribal-governance/federal-recognition> (last visited Mar. 3, 2023).

¹¹ Bureau of Indian Affairs, *Petitions Resolved*, <https://www.bia.gov/as-ia/ofa/petitions-resolved> (last visited Mar. 3, 2023).

¹² Natl. Conf. of State Legislatures, *State Recognition of American Indian Tribes*, <https://www.ncsl.org/quad-caucus/state-recognition-of-american-indian-tribes> (last visited Mar. 3, 2023)

¹³ N.C. Gen. Stat. s. 143B-406(a)(10).

¹⁴ Vt. Stat. Ann. tit. 1, s. 852(c)(5).

¹⁵ Ga. Code Ann. S. 44-12-300.

¹⁶ See Natl. Conf. of State Legislatures, *State Recognition of American Indian Tribes*, <https://www.ncsl.org/quad-caucus/state-recognition-of-american-indian-tribes> (last visited Mar. 3, 2023) (“Departments of Housing and Urban Development, Labor, Education, and Health and Human Services have statutory and regulatory authority to provide funding for state-recognized tribes). See also U.S. Dept. of Health and Human Services, *Tribal Programs*, <https://www.acf.hhs.gov/tribal-programs> (last visited Mar. 5, 2023) (state-recognized tribes eligible for Administration for Native Americans programs).

¹⁷ Dept. of the Interior Indian Arts and Crafts Board, *The Indian Arts and Crafts Act of 1990*, <https://www.doi.gov/iacb/act> (last visited Mar. 5, 2023).

¹⁸ American Indian College Fund, *Scholarships*, <https://collegefund.org/students/scholarships/> (last visited Mar. 5, 2023).

¹⁹ Fla. Dept. of Transportation, Office of Environmental Management Consulting Tribes, <https://www.fdot.gov/environment/NA-Website-Files/Consulting-Tribes.shtm> (last visited Mar. 3, 2023)

²⁰ Ch. 285, F.S. *But see* s. 210.1801, F.S. (exempting the sale of cigarettes to tribe members on reservation land for personal use from the cigarette excise tax).

²¹ S. 285.061, F.S.

²² Ss. 285.09, 285.10, and 285.15, FS.

²³ S. 285.16, F.S.

²⁴ Ss. 285.17-285.18, F.S.

²⁵ Ch. 285, Part II, *passim*.

Additionally, Florida law previously provided for a Creek Indian Council to assist Creek Indians and their descendants to access state, local, and federal programs that could provide for economic, cultural, and social advancement.²⁶ This provision was repealed in 2001.²⁷

Effect of Proposed Changes

The bill provides for state recognition of five tribes with historic ties to the state:

- Seminole Tribe of Florida;
- Miccosukee Tribe of Indians of Florida;
- Santa Rosa Band of the Lower Muscogee;
- Poarch Band of Creek Indians; and
- Muscogee Nation of Florida.

The bill clarifies that state recognition of an Indian tribe or band does not create any basis or authority for a tribe to engage in prohibited gaming activity or to claim any interest in real estate or land that is not already provided elsewhere in law.

B. SECTION DIRECTORY:

Section 1: Creates s. 285.195, F.S., relating to state recognition of Indian tribes and bands.

Section 2: Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

²⁶ Ch. 79-421, s. 1, Laws of Fla.

²⁷ Ch. 2001-89, Laws of Fla.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 31, 2023, the State Affairs Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment removed the process for other Indian tribes and bands to apply to the Secretary of State for state recognition.

This analysis is drafted to the committee substitute as approved by the State Affairs Committee.