

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 675 State Recognition of Indian Tribes and Bands

**SPONSOR(S):** Local Administration, Federal Affairs & Special Districts Subcommittee, Salzman

**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1010

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration, Federal Affairs & Special Districts Subcommittee	15 Y, 0 N, As CS	Burgess	Darden
2) Commerce Committee	20 Y, 0 N	Thompson	Hamon
3) State Affairs Committee			

### 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 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, permit tribe members to market their arts and crafts as genuine, and apply for certain scholarship programs.

The bill provides for state recognition for the Santa Rosa Band of the Lower Muscogee.

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 also provides that state recognition does not grant any authority or ability for a tribe or band to consult on state undertakings by the Division of Historical Resources or activities carried out by the State Archaeologist.

The bill does not appear to have a fiscal impact on state 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.”<sup>1</sup> Indian tribes recognized by the federal government have a government-to-government relationship with the United States.<sup>2</sup> 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.<sup>3</sup>

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

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

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 Department of the Interior in 1978.<sup>6</sup> The FAP underwent significant revisions in 1994 and 2015.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup>

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<sup>1</sup> *Worcester v. Georgia*, 31 U.S. 515, 519 (1832).

<sup>2</sup> Bureau of Indian Affairs, *Frequently Asked Questions*, <https://www.bia.gov/frequently-asked-questions> (last visited Jan. 12, 2024).

<sup>3</sup> 88 Fed. Reg. 2112 (Jan. 12, 2023).

<sup>4</sup> Bureau of Indian Affairs, *Frequently Asked Questions*, <https://www.bia.gov/frequently-asked-questions> (last visited Jan. 12, 2024).

<sup>5</sup> 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.

<sup>6</sup> Bureau of Indian Affairs, *Frequently Asked Questions*, <https://www.bia.gov/frequently-asked-questions> (last visited Jan. 12, 2024).

<sup>7</sup> *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).

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

<sup>9</sup> 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.<sup>10</sup> Since 1978, the FAP has resulted in the acknowledgement of 18 tribes (out of 52 completed applications).<sup>11</sup>

Currently, the Muscogee Nation of Florida has a petition for federal acknowledgement that is “in-process” (pending) with the Department of the Interior Office of Federal Acknowledgement. It appears that the petition was originally filed in 1978.<sup>12</sup>

### 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.<sup>13</sup> The method of determining which tribes to recognize varies, from giving a decision-making role to other tribes in the state (e.g., North Carolina<sup>14</sup>), an advisory role to other tribes (e.g. Vermont<sup>15</sup>), or providing for recognition as determined solely by the legislature (e.g., Georgia<sup>16</sup>).

State recognition of a tribe can provide certain benefits. State-recognized tribes are eligible to apply to several federal grant programs.<sup>17</sup> Members of state-recognized tribes are also allowed to market their arts and crafts products as being genuine<sup>18</sup> and may access certain scholarship programs.<sup>19</sup>

### Indian Tribes in Florida

There are six federally-recognized tribes that are considered “culturally affiliated” with Florida.<sup>20</sup> 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 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.<sup>21</sup> This chapter:

- Describes the respective reservations of the tribes;<sup>22</sup>
- Provides that members may hunt, fish, and frog for personal consumption on tribal lands without paying licensing or permitting fees;<sup>23</sup>

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<sup>10</sup> National Congress of American Indians (NCAI), *Federal Recognition*, <https://www.ncai.org/policy-issues/tribal-governance/federal-recognition> (last visited Jan. 12, 2024).

<sup>11</sup> Bureau of Indian Affairs, *Petitions Resolved*, <https://www.bia.gov/as-ia/ofa/petitions-resolved> (last visited Jan. 12, 2024).

<sup>12</sup> US Department of the Interior, Indian Affairs, Petition #032: Muscogee Nation of Florida, FL, <https://www.bia.gov/as-ia/ofa/032-muscni-fl> (last visited Jan. 30, 2024).

<sup>13</sup> 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 Jan. 12, 2024)

<sup>14</sup> N.C. Gen. Stat. s. 143B-406(a)(10).

<sup>15</sup> Vt. Stat. Ann. tit. 1, s. 852(c)(5).

<sup>16</sup> Ga. Code Ann. S. 44-12-300.

<sup>17</sup> 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 Jan. 12, 2024) (“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 Jan. 12, 2024) (state-recognized tribes eligible for Administration for Native Americans programs).

<sup>18</sup> 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 Jan. 12, 2024).

<sup>19</sup> American Indian College Fund, *Scholarships*, <https://collegefund.org/students/scholarships/> (last visited Jan. 12, 2024).

<sup>20</sup> Fla. Dept. of Transportation, Office of Environmental Management Consulting Tribes, <https://www.fdot.gov/environment/na-website-files/consulting-tribes.shtm> (last visited Jan. 12, 2024)

<sup>21</sup> 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).

<sup>22</sup> S. 285.061, F.S.

<sup>23</sup> Ss. 285.09, 285.10, and 285.15, FS.

- Establishes state criminal and civil jurisdiction on reservations;<sup>24</sup>
- Creates special improvement districts for reservation lands;<sup>25</sup> and
- Provides for the gaming compact between the state and the Seminole Tribe of Florida.<sup>26</sup>

Additionally, Florida law previously provided for a Creek Indian Council to assist Creek Indians and their descendants in accessing state, local, and federal programs that could provide for economic, cultural, and social advancement.<sup>27</sup> This provision was repealed in 2001.<sup>28</sup>

### The Muscogee and the Santa Rosa Creek Band of the Lower Muscogee<sup>29</sup>

The Muscogee people are direct decedents of the great mound builders of what are today the southeastern states of Alabama, Georgia, Florida, and South Carolina.<sup>30</sup> After the Spanish came to North America, groups or bands spread out and formed their own tribes, which formed the Muscogee confederacy. Many Muscogee tribes took on or absorbed other tribes.

The English called the Muscogee the "Creek", probably due to the large amount of rivers, creeks, and streams in their lands. The English further divided the Muscogee into the Upper Creek (living along the Coosa and the Tallapoosa rivers) and the Lower Creeks (living along the Chattahoochee and Flint rivers).<sup>31</sup>

Currently, the Santa Rosa Band of the Lower Muscogee membership is 2,000 individuals.<sup>32</sup> The band has held an annual festival on its 92 acre grounds for 32 years and, has extended its outreach to educating students about tribal history.<sup>33</sup> The Creek Band grounds feature a replica Creek village, immersing visitors into ancestral traditions.

### Division of Historical Resources

The Division of Historical Resources is granted many powers and responsibilities necessary to carry out the state policy regarding historical resources, including, but not limited to:

- Directing and conducting a comprehensive statewide survey of historic resources in cooperation with federal and state agencies, local governments, and private organizations;
- Developing a comprehensive statewide historic preservation plan;
- Ensuring that historic resources are taken into consideration at all levels of planning and development;
- Advising and assisting federal and state agencies and local governments in carrying out their historic preservation responsibilities and programs;
- Providing public information, education, and technical assistance relating to historic preservation programs;

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<sup>24</sup> S. 285.16, F.S.

<sup>25</sup> Ss. 285.17-285.18, F.S.

<sup>26</sup> Ch. 285, Part II, *passim*.

<sup>27</sup> Ch. 79-421, s. 1, Laws of Fla.

<sup>28</sup> Ch. 2001-89, Laws of Fla.

<sup>29</sup> Pensacola Bay Area Impact 100, Traditional Council Roundhouse, *The Santa Rosa Band Of The Lower Muscogee, Inc.*, <https://impact100pensacola.org/the-santa-rosa-band-of-the-lower-muscogee-inc/#:~:text=The%20Santa%20Rosa%20Creek%20Band,concealing%20their%20Native%20American%20identities>. (Last visited Jan. 31, 2024).

<sup>30</sup> The National Park Service, Little River Canyon, National Preserve, Alabama, *The Muscogee Creek - 1600–1840*, <https://www.nps.gov/liri/learn/historyculture/the-muscogee-creek-1600-1840.htm> (Last visited Jan. 31, 2023).

<sup>31</sup> *Id.*

<sup>32</sup> Pensacola Bay Area Impact 100, *The Santa Rosa Band Of The Lower Muscogee, Inc.*, <https://impact100pensacola.org/the-santa-rosa-band-of-the-lower-muscogee-inc/> (last visited Jan. 31, 2024).

<sup>33</sup> Tom McLaughlin, Pensacola News Journal, *Santa Rosa Commission asked to pay \$70k into Native American cultural center*, Mar. 22, 2023, <https://www.pnj.com/story/news/local/santa-rosa/2023/03/22/santa-rosa-band-of-the-lower-muscogee-seeks-help-with-cultural-center/70032599007/> (Last visited Jan. 31, 2024).

- Carrying out on behalf of the state the programs of the National Historic Preservation Act of 1966, to establish, maintain, and administer a state historic preservation program meeting the requirements of an approved program and fulfilling the responsibilities of state historic preservation programs as provided in s. 101(b) of that act;
- Establishing professional standards for the preservation, exclusive of acquisition, of historic resources in state ownership or control; and
- Advising and assisting federal and state agencies, local governments, and organizations and individuals in the recognition, protection, and preservation of the archaeological sites and artifacts of this state.<sup>34</sup>

The division also has jurisdiction over unmarked human burial in order to initiate efforts for the proper protection of the burial and the human skeletal remains and associated burial artifacts.<sup>35</sup> The State Archaeologist is responsible for determining whether an unmarked human burial is historically, archaeologically, or scientifically significant.<sup>36</sup> The State Archaeologist must make reasonable efforts to identify and locate persons who can establish direct kinship, tribal, community, or ethnic relationships with the individual or individuals discovered.<sup>37</sup> If the State Archaeologist is unable to establish a kinship, tribal, community, or ethnic relationship with the unmarked human burial, he or she must determine the proper disposition of the burial and consult with persons with relevant experience, which include:

- A human skeletal analyst.
- Two Native American members of current state tribes recommended by the Governor's Council on Indian Affairs, Inc., if the remains are those of a Native American;
- Two representatives of related community or ethnic groups if the remains are not those of a Native American; and
- An individual who has special knowledge or experience regarding the particular type of the unmarked human burial.<sup>38</sup>

### **Effect of Proposed Changes**

The bill provides for state recognition for the Santa Rosa Band of the Lower Muscogee.

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 also provides that state recognition does not grant any authority or ability to consult on state undertakings by the Division of Historical Resources or activities carried out by the State Archaeologist.

#### **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, 2024.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

None

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<sup>34</sup> See s. 267.031(5), F.S.

<sup>35</sup> S. 872.05(5), F.S.

<sup>36</sup> S. 872.05(6)(a), F.S.

<sup>37</sup> S. 872.05(6)(b), F.S.

<sup>38</sup> S. 872.05(6)(c), F.S.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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 January 19, 2024, the Local Administration, Federal Affairs, & Special Districts Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment removed the Muscogee Nation of Florida and the Lower Chattahoochee Band of Yuchi Indians from the list of state recognized tribes that would be created by the bill. The bill clarifies that state recognition of an Indian tribe or band does not create authority or ability to consult on state undertakings by the Division of Historical Resources or activities carried out by the State Archaeologist.

This analysis is drafted to the committee substitute as passed by the Local Administration, Federal Affairs & Special Districts Subcommittee.