

S T A T E O F N E W Y O R K

7420--B

2011-2012 Regular Sessions

I N A S S E M B L Y

May 4, 2011

Introduced by M. of A. THIELE -- read once and referred to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Judiciary in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the Indian law, in relation to establishing a procedure to evaluate the claim of the Montaukett Indians for acknowledgment as an Indian tribe by the state of New York

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Legislative findings. The legislature hereby finds that
2 historically it has granted recognition or acknowledgment to Indian
3 groups in the state of New York by an act of the legislature. There have
4 not been any objective standards enacted to consider a request by an
5 Indian group to obtain recognition by the state. The Montaukett Indians
6 seek to be acknowledged or recognized by the state. Such recognition
7 and acknowledgement was questionably removed from the Montaukett Indians
8 in 1910 in the case of PHARAOH V. BENSON, 69 Misc. Rep. 241 (Supreme,
9 Suffolk Co., 1910) affirmed 164 App. Div. 51, affirmed 222 N.Y. 665 when
10 the Montaukett Indians were declared to be extinct. In 1994, the State
11 Supreme Court, in the case of BREAKERS MOTEL, INC. V. SUNBEACH MONTAUK
12 TWO, INC., subsequently described the Pharoah case as being of "ques-
13 tionable propriety". It is the purpose of this act to establish objec-
14 tive criteria for consideration of acknowledgment or recognition which
15 may be used by the legislature in evaluating such request.

16 S 2. The Indian law is amended by adding a new article 11 to read as
17 follows:

18 ARTICLE 11
19 EVALUATION OF ACKNOWLEDGMENT OF
20 MONTAUKETT INDIANS

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

LBD10689-04-2

1 SECTION 160. ACKNOWLEDGMENT PROCEDURES.

2 S 160. ACKNOWLEDGMENT PROCEDURES. 1. ACKNOWLEDGMENT OF THE MONTAUKETT
3 INDIANS MAY ONLY BE GRANTED BY AN ACT OF THE LEGISLATURE IN COMPLIANCE
4 WITH THE PROVISIONS OF THIS SECTION.

5 2. A REQUEST FOR ACKNOWLEDGMENT SHALL BE INITIATED BY A DOCUMENTED
6 PETITION TO THE SECRETARY OF STATE CONTAINING DETAILED SPECIFIC EVIDENCE
7 TO SUPPORT THE REQUEST. SUCH DOCUMENTED PETITION SHALL BE CERTIFIED,
8 SIGNED, AND DATED BY THE GOVERNING BODY, STATING THAT IT IS THE GROUP'S
9 OFFICIAL DOCUMENTED PETITION.

10 3. THE SECRETARY OF STATE SHALL EVALUATE THE DOCUMENTED PETITION AND
11 SUBMIT A RECOMMENDATION TO THE LEGISLATURE REGARDING THE APPROVAL OR
12 DENIAL OF ACKNOWLEDGMENT BASED UPON THE CRITERIA PROVIDED IN SUBDIVISION
13 FOUR OF THIS SECTION.

14 4. THE SECRETARY OF STATE SHALL UTILIZE THE MANDATORY CRITERIA FOR
15 FEDERAL ACKNOWLEDGMENT PROVIDED FOR IN 25 CFR SECTION 83.7 TO EVALUATE
16 THE DOCUMENTED PETITION.

17 5. THE SECRETARY OF STATE SHALL PROMULGATE RULES AND REGULATIONS TO
18 IMPLEMENT THIS SECTION WITHIN ONE HUNDRED EIGHTY DAYS OF THE EFFECTIVE
19 DATE OF THIS SECTION. SUCH RULES AND REGULATIONS SHALL ESTABLISH THE
20 LEVEL OF PROOF AND DOCUMENTATION THAT SHALL BE NECESSARY TO MEET THE
21 MANDATORY CRITERIA.

22 S 3. Severability. If any clause, sentence, paragraph, section or
23 part of this act shall be adjudged by any court of competent jurisdic-
24 tion to be invalid, such judgment shall not affect, impair or invalidate
25 the remainder thereof, but shall be confined in its operation to the
26 clause, sentence, paragraph, section or part thereof directly involved
27 in the controversy in which such judgment shall have been rendered.

28 S 4. This act shall take effect immediately.