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

S. 769 A. 73

2013-2014 Regular Sessions

S E N A T E - A S S E M B L Y

(PREFILED)

January 9, 2013

IN SENATE -- Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

IN ASSEMBLY -- Introduced by M. of A. THIELE -- read once and referred to the Committee on Judiciary

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:

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

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

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

LBD03507-01-3

ARTICLE 11
EVALUATION OF ACKNOWLEDGMENT OF
MONTAUKETT INDIANS

SECTION 160. ACKNOWLEDGMENT PROCEDURES.

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

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

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

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

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

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

S 4. This act shall take effect immediately.