

BILL ANALYSIS

Senate Research Center
78R4996 MXM-F

S.B. 1146
By: Madla
State Affairs
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DIGEST AND PURPOSE

Currently, Texas is one of the few states that does not have a law providing for the recognition of Native American tribes in Texas; thus, sovereignty was never established for many of the unrecognized Texas tribes. As proposed, S.B. 1146 provides a mechanism for the identification and recognition of previously unrecognized Texas tribes, thereby allowing tribes to apply for certain federal funds and helping them in the process of achieving federal recognition.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 4E, Government Code, by adding Chapter 463, as follows:

CHAPTER 463. STATE ACKNOWLEDGMENT OF NATIVE AMERICAN TRIBES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 463.001. DEFINITIONS. Defines "autonomous," "community," "continuously" or "continuous," "documented petition," "historically," "historical," or "history," "Indian group," "Indian tribe" or "tribe," "indigenous," "informed party," "interested party," "letter of intent," "member of an Indian group," "member of an Indian tribe," "petitioner," "political influence or authority," "tribal relations," and "tribal roll."

Sec. 463.002. APPLICABILITY; ELIGIBILITY. Provides that this chapter applies only to Indian groups indigenous to this state that can establish a substantially continuous tribal existence, and that have functioned as autonomous entities throughout history until the present.

Sec. 463.003. EXEMPTION. Sets forth groups to which this chapter does not apply.

[Reserves Sections 463.004-463.050 for expansion.]

SUBCHAPTER B. GENERAL POWERS AND DUTIES OF GOVERNOR AND PETITIONERS

Sec. 463.051. LIST OF STATE-ACKNOWLEDGED TRIBES. Requires the governor, at least once every three years, to publish in the Texas Register a list of all Indian tribes acknowledged by the state under this chapter.

Sec. 463.052. AVAILABILITY OF GUIDELINES. (a) Requires the governor, not later than January 1 of each odd-numbered year, to make available revised and expanded guidelines for the preparation of documented petitions.

(b) Sets forth information the guidelines must include.

(c) Authorizes the guidelines to be supplemented or updated as necessary. Provides that the example of a documented petition format, while preferable for use in a documented petition, does not preclude the use of any other format.

Sec. 463.053. **ADVICE FOR PETITIONERS.** (a) Requires the office of the governor to, on request, provide petitioners with suggestions and advice regarding preparation of a documented petition.

(b) Provides that the state is not responsible for performing research on behalf of a petitioner.

Sec. 463.054. **NOTICE IN TEXAS REGISTER; MAILING NOTICE.** Requires any notice that under this chapter must be published in the Texas Register to also be mailed to the petitioner and to other interested parties on request.

Sec. 463.055. **FILING LETTER OF INTENT.** (a) Authorizes an Indian group in this state that wishes to be acknowledged as an Indian tribe by this state and believes it can satisfy the criteria prescribed by Subchapter D to file a letter of intent with the governor. Requires the letter to be dated and signed by the governing body of the Indian group.

(b) Authorizes a letter of intent to be filed with or before a group's documented petition is filed.

Sec. 463.056. **CONTACT AFTER LETTER OF INTENT.** Authorizes the governor, after an Indian group has filed a letter of intent requesting state acknowledgment as an Indian tribe and until that group has actually submitted a documented petition, to contact the group periodically and request clarification, in writing, of its intent to continue with the petitioning process.

Sec. 463.057. **DISTRIBUTION OF LAW.** Requires the governor, not later than January 1 of each odd-numbered year, to provide a copy of this chapter to each person that has submitted a documented petition or a letter of intent.

[Reserves Sections 463.058-463.100 for expansion.]

SUBCHAPTER C. DOCUMENTED PETITION PROCEDURE

Sec. 463.101. **FORM OF PETITION.** (a) Authorizes a documented petition to be submitted to the governor in any readable form that contains detailed, specific evidence to support a request to the governor to acknowledge tribal existence.

(b) Requires the documented petition to include a certification that is signed and dated by members of the group's governing body and states that it is the group's official documented petition.

Sec. 463.102. **CONTENT OF PETITION.** (a) Requires the documented petition to demonstrate that the petitioner satisfies the criteria prescribed by Subchapter D.

(b) Requires the documented petition to include thorough explanations and supporting documentation for each criterion and to use and demonstrate an understanding of applicable definitions contained in Section 463.001.

Sec. 463.103. **GOVERNING DOCUMENT OR PROCEDURES; MEMBERSHIP CRITERIA.** Requires the petition to include a copy of the group's present governing document, including its membership criteria. Provides that in the absence of a written document, the petitioner is required to provide a statement describing in full its membership criteria and current governing procedures.

Sec. 463.104. **MEMBERSHIP LIST; STATEMENT.** (a) Requires the petition to

include a copy of the group's official membership list, separately certified by the group's governing body. Requires the list to include all known current members of the group.

(b) Sets forth information required to be included on the list.

(c) Requires the petitioner to also provide certain other information.

Sec. 463.105. FORMS OF EVIDENCE FOR PETITION. Provides that the specific forms of evidence listed together with the criteria prescribed by Subchapter D are not mandatory forms of evidence. Authorizes the criteria to be met alternatively by any suitable evidence that demonstrates that the petitioner meets the criteria.

Sec. 463.106. STANDARDS FOR REVIEWING PETITION. (a) Requires the governor to consider a criterion satisfied by a petition if the available evidence establishes a reasonable likelihood that the criterion has been met. Provides that conclusive proof of the facts relating to a criterion is not required for the criterion to be considered met.

(b) Requires the governor to take certain limitations into account.

(c) Requires existence of community and political influence or authority to be demonstrated on a substantially continuous basis, not at every point in time.

(d) Prohibits the governor from denying an acknowledgment based on fluctuations in tribal activity during the years.

(e) Requires the governor to interpret the criteria prescribed by Subchapter D as applying to tribes or groups that have historically combined and functioned as a single autonomous political entity.

Sec. 463.107. DENIAL OF PETITION. Authorizes the governor to deny a petition under certain circumstances.

[Reserves Sections 463.108-463.150 for expansion.]

SUBCHAPTER D. MANDATORY CRITERIA FOR STATE ACKNOWLEDGMENT

Sec. 463.151. IDENTIFICATION AS AMERICAN INDIAN ENTITY. (a) Requires the petitioner to be identified as an American Indian entity on a substantially continuous basis since 1900.

(b) Provides that evidence that the group's character as an Indian entity has from time to time been denied is not conclusive evidence that this criterion has not been met.

(c) Sets forth evidence that may be considered in determining a group's Indian identity.

Sec. 463.152. DISTINCT COMMUNITY. (a) Provides that a predominant portion of the petitioning group must constitute a distinct community and have existed as a community from historical times until the present.

(b) Sets forth evidence that the petitioner meets the definition of community in Section 463.001.

(c) Provides that the demonstration of historical political influence under Section 463.153 is evidence demonstrating historical community.

(d) Sets forth facts with which the petitioner may demonstrate sufficient evidence of community.

Sec. 463.153. POLITICAL INFLUENCE AS AUTONOMOUS ENTITY. (a) Requires the petitioner to have maintained political influence or authority over its members as an autonomous entity from historical times until the present.

(b) Sets forth a list of evidence with which, by showing some combination of the list or by other evidence that the petitioner meets the definition of political influence or authority in Section 463.001, the petitioner may demonstrate that it meets this criterion.

(c) Provides that a petitioner is considered to have provided sufficient evidence to demonstrate the exercise of political influence or authority by demonstrating that group leadership or other mechanisms exist or existed to perform certain tasks.

Sec. 463.154. MEMBERSHIP DESCENDED FROM HISTORICAL INDIAN TRIBE.

(a) Requires the petitioner to show that its membership consists of individuals who descend from a historical Indian tribe or from historical Indian tribes that combined and functioned as a single autonomous political entity.

(b) Sets forth evidence sufficient to prove this criterion.

Sec. 463.155. CRITERION REGARDING MEMBERSHIP IN OTHER

ACKNOWLEDGED TRIBES. (a) Requires the membership of the petitioner, except as provided by Subsection (b), to be composed principally of persons who are not members of any North American Indian tribe acknowledged under this chapter or described by Section 463.003(1).

(b) Authorizes the petitioner to be acknowledged even if its membership is composed principally of persons whose names have appeared on rolls of, or who have been otherwise associated with, a different and acknowledged Indian tribe, if the petitioner establishes certain facts.

[Reserves Sections 463.156-463.200 for expansion.]

SUBCHAPTER E. NOTICE AND PUBLISHING REQUIREMENTS

Sec. 463.201. RECEIPT OF PETITION; TIMING OF NOTICE. Requires the governor, not later than the 30th day after the date the governor receives a letter of intent, or a documented petition if a letter of intent has not previously been received and noticed, to acknowledge the receipt in writing to the petitioner and publish notice of the receipt in accordance with this subchapter.

Sec. 463.202. CONTENT OF NOTICE. (a) Requires the notice published by the governor to include the name, location, and mailing address of the petitioner and any other information necessary to identify the entity submitting the letter of intent or documented petition and the date it was received.

(b) Requires the notice to also announce the opportunity for interested parties and informed parties to submit factual or legal arguments in support of or in opposition to the petitioner's request for acknowledgment or to request to be kept informed of all general actions affecting the petition.

(c) Requires the notice to indicate where a copy of the letter of intent and the documented petition may be examined.

Sec. 463.203. PUBLISHING REQUIRED. (a) Requires the governor to publish the notice in the Texas Register.

(b) Requires the governor to publish the notice and the letter of intent, or the documented petition if a letter of intent has not been previously received, in a

major newspaper or newspapers of general circulation in the municipality nearest to the petitioner.

Sec. 463.204. ADDITIONAL REQUIREMENTS FOR NOTICE TO LEGISLATURE, ATTORNEY GENERAL, AND CERTAIN OTHER PARTIES. Requires the governor to provide the notice prepared under Section 463.203 to certain authorities.

[Reserves Sections 463.205-463.250 for expansion.]

SUBCHAPTER F. PROCESSING OF DOCUMENTED PETITION

Sec. 463.251. GENERAL DUTIES OF GOVERNOR REGARDING REVIEW. (a) Requires the governor, on receipt of a documented petition, to review the petition to determine whether the petitioner is entitled to be acknowledged as an Indian tribe.

(b) Authorizes the governor to initiate other research for any purpose relative to analyzing the documented petition and obtaining additional information about the petitioner's status.

(c) Authorizes the governor to consider any evidence submitted by interested parties or informed parties.

Sec. 463.252. PRELIMINARY TECHNICAL ASSISTANCE REVIEW. (a) Requires the governor, before active consideration of the documented petition, to conduct a preliminary review of the petition for purposes of technical assistance.

(b) Provides that a technical assistance review is not a review to determine if the petitioner is entitled to be acknowledged as an Indian tribe. Requires the technical assistance review to provide the petitioner an opportunity to supplement or revise the documented petition before active consideration.

(c) Requires the governor to attempt to conduct technical assistance reviews in the order of receipt of documented petitions.

(d) Requires the governor to give priority to active consideration of other documented petitions over technical assistance reviews.

Sec. 463.253. NOTIFICATION OF DEFECTS BASED ON TECHNICAL REVIEW. Requires the governor, after the technical assistance review, to notify the petitioner by letter of any obvious deficiencies or significant omissions apparent in the documented petition and provide the petitioner with an opportunity to withdraw the documented petition for further work or to submit additional information or clarification.

Sec. 463.254. PETITIONER'S RESPONSE TO TECHNICAL REVIEW; REQUEST FOR ADDITIONAL REVIEW. (a) Authorizes a petitioner, in responding to a technical assistance review, to respond in full or in part to the technical assistance review letter, or request in writing that the governor proceed with active consideration of the documented petition, using the materials already submitted.

(b) Requires the governor, if the petitioner requests that the materials submitted in response to the technical assistance review letter be reviewed again for adequacy, to provide the additional review.

Sec. 463.255. ORDER OF CONSIDERATION: NOTIFICATION. (a) Requires the governor to determine the order of consideration of documented petitions based on whether a documented petition is ready for active consideration.

(b) Requires the governor to notify the petitioner that the documented petition is ready to be placed on active consideration.

Sec. 463.256. ORDER OF CONSIDERATION; REGISTER OF LETTERS OF INTENT AND DOCUMENTED PETITIONS. (a) Requires the governor to establish and maintain a numbered register of documented petitions that have been determined ready for active consideration.

(b) Requires the governor to maintain a numbered register of letters of intent or incomplete petitions based on the original date of filing with the governor.

(c) Requires the register, if two or more documented petitions are determined ready for active consideration on the same date, to list the order of active consideration as determined by the governor.

Sec. 463.257. INITIAL INVESTIGATION OF EVIDENCE. Requires the governor, before actively considering a documented petition, to investigate any petitioner whose documented petition and response to the technical assistance review letter indicates that there is little or no evidence that establishes that the group can meet the mandatory criteria in Section 463.154 or 463.155.

Sec. 463.258. LACK OF EVIDENCE AFTER INITIAL INVESTIGATION; DECLINE OF ACKNOWLEDGMENT; COMMENTS. Sets forth the governor's required course of action if the initial investigation shows that the evidence clearly establishes that the group does not meet the mandatory criteria in Section 463.154 or 463.155.

Sec. 463.259. SUFFICIENT EVIDENCE AFTER INITIAL INVESTIGATION; NOTICE OF ACTIVE CONSIDERATION. (a) Requires the governor, if the governor does not decline the petition under Section 463.258, to, during active consideration of the documented petition, undertake a full evaluation of the documented petition under the mandatory criteria.

(b) Requires the governor to notify the petitioner and interested parties that the documented petition is under active consideration. Sets forth information that the notice must include.

(c) Authorizes the petitioner to respond to any substantive comments contained in the notice.

Sec. 463.260. SUSPENSION OF ACTIVE CONSIDERATION. (a) Authorizes the governor to suspend active consideration of a documented petition, either conditionally or for a stated period, on a showing to the petitioner that there are technical problems with the documented petition or administrative problems that temporarily preclude continuing active consideration.

(b) Provides that on resolution of the technical or administrative problems that are the basis for a suspension under Subsection (a), the documented petition has priority on the numbered register of documented petitions to the extent possible. Requires the governor to notify the petitioner and interested parties when active consideration of the documented petition is resumed.

(c) Provides that the governor is not required to cease consideration based on requests by the petitioner or interested parties to cease consideration. Authorizes the governor to consider a request by a petitioner for suspension of consideration and to grant the request for good cause.

(d) Requires the timetables in this subchapter to begin anew on the resumption of active consideration.

Sec. 463.261. PROPOSED FINDINGS; EXTENSION OF TIME. (a) Requires the governor, not later than the first anniversary of the date the governor notified the petitioner that active consideration of the documented petition has begun, to publish the

proposed findings in the Texas Register.

(b) Authorizes the governor to extend the one-year period for not more than an additional 180 days. Requires the governor to notify the petitioner and interested parties of the extension.

(c) Requires the governor, in addition to the proposed findings, to prepare a report summarizing the evidence, reasoning, and analyses that are the basis for the proposed decision. Requires the governor to provide the report to the petitioner, interested parties, and informed parties and make the report available to others on written request.

Sec. 463.262. COMMENT ON FINDINGS. (a) Authorizes the petitioner or any other person wishing to challenge or support the proposed findings, not later than the 180th day after the date of publication of the proposed findings, to submit arguments and evidence to the governor to rebut or support the proposed findings.

(b) Authorizes the governor to extend the period for comment up to an additional 180 days for good cause. Requires the governor to notify the petitioner and interested parties of an extension.

(c) Requires interested and informed parties who submit arguments and evidence to the governor to provide copies of their submissions to the petitioner.

(d) Requires the governor, during the comment period, to provide technical advice concerning the factual basis for the proposed findings, the reasoning used in preparing them, and suggestions regarding the preparation of materials in response to the proposed findings. Requires the governor to make available to the petitioner in a timely fashion any records used for the proposed findings not already held by the petitioner, to the extent allowed by state law.

(e) Prohibits the governor from accepting further comments from interested or informed parties after the end of the regular response period.

Sec. 463.263. FORMAL MEETING. (a) Requires the governor, during the comment period and if requested by the petitioner or any interested party, to hold a formal meeting to respond to inquiries about the reasoning, analyses, and factual bases for the proposed findings.

(b) Provides that the proceedings of the meeting are a public record.

(c) Authorizes the governor to consider the record of the meeting in reaching a final determination.

Sec. 463.264. PETITIONER'S RESPONSE TO OTHER SUBMISSIONS. (a) Authorizes the petitioner, during the comment period and not later than the 60th day after the date of a submission, to respond to any submissions by interested and informed parties.

(b) Authorizes the governor to extend the time to respond if warranted by the extent and nature of the comments or submissions.

(c) Requires the governor to notify the petitioner and interested parties by letter of any extension.

Sec. 463.265. PERIOD FOR CONSIDERATION OF ARGUMENTS ON PROPOSED FINDINGS. (a) Requires the governor, after completion of the comment period, to consult with the petitioner and interested parties to determine an equitable length of time for the consideration of written arguments and evidence submitted during the response

period.

(b) Requires the governor to notify the petitioner and interested parties of the period chosen.

Sec. 463.266. UNSOLICITED COMMENTS RECEIVED AFTER COMMENT PERIOD. Prohibits the governor, in making a final determination, from considering unsolicited comments submitted after the close of the comment period under Section 463.262.

Sec. 463.267. ADDITIONAL INFORMATION AND RESEARCH. (a) Authorizes the governor to request additional explanations and information from the petitioner or from commenting parties to support or supplement their comments on a proposed finding.

(b) Authorizes the governor to conduct additional research necessary to evaluate and supplement the record.

(c) Requires the governor to include the information and research obtained under this section in the petition record.

Sec. 463.268. FINAL DETERMINATION; PUBLICATION. (a) Requires the governor, after consideration of the written arguments and evidence rebutting or supporting the proposed findings and the petitioner's response to the comments of interested parties and informed parties, to make a final determination regarding the petitioner's status.

(b) Requires the governor, not later than the 60th day after the date on which the consideration of the written arguments and evidence rebutting or supporting the proposed findings began, to publish a summary of the written arguments and evidence together with the final determination in the Texas Register.

(c) Authorizes the governor to extend the period for the preparation of a final determination if warranted by the extent and nature of evidence and arguments received during the comment period.

(d) Requires the governor to notify the petitioner and interested parties of the extension.

(e) Provides that the final determination takes effect on the 90th day after the date of publication in the Texas Register if the determination is not appealed under Section 463.270. Provides that if the determination is appealed under Section 463.270, the final determination takes effect on the 90th day after the exhaustion of judicial review, including any remands and later final determinations and appeals.

Sec. 463.269. EFFECT OF FINAL DETERMINATION; ACKNOWLEDGMENT BY STATE. (a) Requires the governor, if the governor determines that the group satisfies the criteria prescribed by Subchapter D, to acknowledge, on behalf of the state, the existence of the petitioner as an Indian tribe. Provides that this determination is final for the state.

(b) Requires the governor, if the governor determines that the group fails to satisfy a criterion prescribed by Subchapter D, to decline to acknowledge that the petitioner is an Indian tribe.

(c) Requires the governor, if the governor declines to acknowledge that a petitioner is an Indian tribe, to inform the petitioner of alternatives, if any, to acknowledgment under these procedures. Provides that alternatives may include other means through which the petitioning group may achieve the status of an acknowledged Indian tribe or through which any of its members may become

eligible for services and benefits from the state as Indians, or become members of an acknowledged Indian tribe.

Sec. 463.270. JUDICIAL REVIEW OF FINAL DETERMINATION. (a) Authorizes the petitioner or any interested party to request judicial review of the final determination in a Travis County district court.

(b) Requires the district court to review the final determination under Subchapter G, Chapter 2001, as if the determination were a contested case under Chapter 2001, except that a motion for rehearing is not a prerequisite for review.

(c) Requires the court to conduct the review using the substantial evidence rule under Section 2001.174.

[Reserves Sections 463.271-463.300 for expansion.]

SUBCHAPTER G. RIGHTS OF ACKNOWLEDGED TRIBE

Sec. 463.301. ACKNOWLEDGMENT OF TRIBAL STATUS; APPLICABILITY. Provides that this subchapter applies to each tribe acknowledged by the state under Section 463.269.

Sec. 463.302. ELIGIBILITY FOR SERVICES AND BENEFITS. (a) Provides that acknowledgment of tribal existence by this state under this chapter or an earlier law is a prerequisite to the protection, services, and benefits of the state government available to Indian tribes by virtue of their status as tribes.

(b) Provides that the tribe is eligible for the services and benefits from the state that are available to other federally recognized tribes.

(c) Provides that to receive benefits, the tribe must meet the specific program requirements for programs for which it is eligible.

Sec. 463.303. STATUS AS HISTORIC TRIBE; POWERS AND DUTIES. (a) Provides that the tribe is considered a historic tribe and is entitled to the privileges and immunities available to other state-acknowledged historic tribes by virtue of their state-to-tribal relationship with this state.

(b) Provides that the tribe has the responsibilities and obligations of historic tribes.

(c) Provides that the tribe is subject to the same authority of Texas laws and the United States as are other state-acknowledged tribes.

Sec. 463.304. CONSULTATION WITH STATE AGENCIES REGARDING NEEDS; GOVERNOR. (a) Requires the appropriate state agency, not later than six months after the date of the acknowledgment, to consult with the newly acknowledged tribe and develop, in cooperation with the tribe, a determination of needs.

(b) Prohibits a tribe from requesting money from the state until the determination of needs is completed.

(c) Requires the state agency to forward this determination of needs to the governor and make recommendations to the governor regarding those needs and budgetary requirements to fulfill the needs.

(d) Requires the governor to consider the recommended budget along with the other recommendations.

SECTION 2. Effective date: upon passage or September 1, 2003.