

# CHAPTER 139

## Commission for Minority Affairs

### Editor's Note

1976 Code § 1-31-60, added by 2018 Act No. 163, eff May 3, 2018, provides that recognized Native American Indian groups continue to be recognized and eligible to exercise privileges and obligations authorized by that designation, that the Commission for Minority Affairs cease to recognize additional Native American Indian Groups, that any regulations providing for recognition as a Native American Indian Group are repealed, and that the commission revise its regulations to provide for the privileges and obligations of Native American Indian Groups that continue to be recognized.

### ARTICLE I

#### STATE RECOGNITION OF NATIVE AMERICAN INDIAN ENTITIES

(Statutory Authority: S.C. Code § 1-31-40(A)(10))

#### **139-100. Purpose.**

Section 1-31-40(A)(10), South Carolina Code of Laws provides that “The Commission shall promulgate regulations as may be necessary regarding State Recognition of Native American Indian entities in the State of South Carolina.”

**HISTORY:** Added by State Register Volume 28, Issue No. 6, eff June 25, 2004. Amended by State Register Volume 30, Issue No. 6, eff June 23, 2006.

#### **139-101. Scope.**

These rules and regulations shall be applicable to all entities seeking Native American Indian State Recognition as a:

- A. Native American Indian Tribe.
- B. Native American Indian Group.
- C. Native American Special Interest Organization.

**HISTORY:** Added by State Register Volume 28, Issue No. 6, eff June 25, 2004. Amended by State Register Volume 30, Issue No. 6, eff June 23, 2006.

#### **139-102. Definitions.**

As used in this article, unless the context clearly requires otherwise:

- A. “State” means the State of South Carolina.
- B. “Commission” means the South Carolina Commission for Minority Affairs.
- C. “Board” means a quorum or more of the oversight body of the Commission.
- D. “Tribe” means an assembly of Indian people comprising numerous families, clans, or generations together with their descendents, who have a common character, interest, and behavior denoting a separate ethnic and cultural heritage, and who have existed as a separate community, on a substantially continuous basis throughout the past 100 years. In general, core members of the tribe are related to

each other by blood. A tribal council and governmental authority unique to Native American Indians govern them.

E. "Group" means a number of individuals assembled together, which have different characteristics, interests and behaviors that do not denote a separate ethnic and cultural heritage today, as they once did. The group is composed of both Native American Indians and other ethnic races. They are not all related to one another by blood. A tribal council and governmental authority unique to Native American Indians govern them.

F. "Special Interest Organization" means an assembly of people who have united for the common purpose of promoting Native American culture and addressing socio-economic deprivation among people of Indian origin. The organization is made up of Native American Indians and other ethnic races. A tribal council or other form of governing body provides oversight and management. Membership is not required. They may be organized as a private nonprofit corporation under the laws of South Carolina.

G. "Official Record" means a record created, received, sanctioned by, or proceeding from an officer acting in an official capacity.

H. "Lineage" means direct descent from a particular ancestor or the descendants of a common ancestor considered the founder of the line.

**HISTORY:** Added by State Register Volume 28, Issue No. 6, eff June 25, 2004. Amended by State Register Volume 30, Issue No. 6, eff June 23, 2006.

### **139-103. Notification of Recognition Status, Appeals and Withdrawals.**

A. Formal acknowledgement of the decision of the Board of the Commission regarding the status of an application for State Recognition shall be in writing, and may be further acknowledged in other forms (certificate, plaque, and/or culturally appropriate ceremony) as determined appropriate by the Commission.

B. Whenever an entity receives an unfavorable recommendation from the State Recognition Committee, the entity will be notified by mail within five business days from the date of notification to the Board of the Commission. This notification will include the reason the unfavorable recommendation was given. The entity shall have ten business days from receipt of the notification letter to submit an appeal asking for reversal of that decision. The appeal must state clearly the reasons that the entity believes that the decision should be reversed. The Commission for Minority Affairs must receive the appeal in writing. Entities are barred from submitting new information, updated information, additional exhibits, charts, and/or any additional documentation that was not part of the original petition and considered by members of the State Recognition Committee.

C. An entity may withdraw its request for State Recognition at any point during the initial review process by the State Recognition Committee. After the State Recognition Committee makes its initial recommendations to the Board of the Commission, an entity may not withdraw its request.

**HISTORY:** Added by State Register Volume 28, Issue No. 6, eff June 25, 2004. Amended by State Register Volume 30, Issue No. 6, eff June 23, 2006.

### **139-104. Limitations.**

A. The Native American Indian entities recognized by this act, their members, lands, natural resources, or other property owned by such entities or their members, are subject to the civil, criminal, and regulatory jurisdiction and laws of the State of South Carolina, its agencies, and political subdivisions, and the civil and criminal jurisdiction of the courts of the State of South Carolina, to the same extent as any other person, citizen or land in South Carolina.

B. Notwithstanding their state certification, Native American Indian entities have no power or authority to take any action that would establish, advance or promote any form of gambling in the State of South Carolina; nor does this provision of law confer power or authority to take any action which could establish, advance or promote any form of gambling in the State.

C. Nothing in this act recognizes, creates, extends, or forms the basis of any right or claim of interest in land or real estate in this State for any Native American Indian entity recognized by the State.

D. Federally recognized tribes retain all federally recognized sovereignty of rights under this provision of law.

E. State recognized tribes that subsequently obtain federal recognition are not bound by the limitations of this provision and therefore, gain and retain all federally recognized sovereignty of rights under this provision of law.

F. Splinter groups, political factions, communities or groups that separate from the main body of a currently State acknowledged tribe or who claim the same ancestors, history, genealogy, institutions, establishments, or other primary characteristics of a currently recognized tribe, may not be acknowledged under these regulations. However, entities that can establish clearly and on a substantially continuous basis that they have functioned throughout the past one hundred years until the present as an autonomous tribal entity may be acknowledged under this part, even though they have been regarded by some as part of or as having been associated in some manner with an acknowledged South Carolina Indian Tribe. No entities formed after January 1, 2006 shall be granted State recognition as a "Tribe".

**HISTORY: Added by State Register Volume 28, Issue No. 6, eff June 25, 2004. Amended by State Register Volume 30, Issue No. 6, eff June 23, 2006.**

### **139-105. Criteria for State Recognition.**

A. Native American Indian Tribe - requirements 1 through 9 must be satisfactorily met to achieve State Recognition. Requirements 10 and 11 are optional.

(1) The tribe is headquartered in the State of South Carolina and indigenous to this State. The tribe must produce evidence of tribal organization and/or government and tribal rolls for a minimum of five years.

(2) Historical presence in the State for past 100 years and entity meets all of the characteristics of a "tribe" as defined in R. 139-102 (D)

(3) Organized for the purpose of preserving, documenting and promoting the Native American Indian culture and history, and have such reflected in its by-laws.

(4) Exist to meet one or more of the following needs of Native American Indian people - spiritual, social, economic, or cultural needs through a continuous series of educational programs and activities that preserve, document, and promote the Native American Indian culture and history.

(5) Claims must be supported by official records such as birth certificates, church records, school records, U.S. Bureau of the Census records, and other pertinent documents.

(6) Documented kinship relationships with other Indian tribes in and outside the State.

(7) Anthropological or historical accounts tied to the group's Indian ancestry.

(8) A minimum of one hundred living descendants who are eighteen years of age or older, whose Indian lineage can be documented by a lineal genealogy chart, and whose names, and current addresses appear on the Tribal Roll.

(9) Documented traditions, customs, legends, etc., that signify the specific group's Indian heritage.

(10) Letters, statements, and documents from state or federal authorities, that document a history of tribal related business and activities that specifically address Native American Indian culture, preservation, and affairs.

(11) Letters, statements, and documents from tribes in and outside of South Carolina which attest to the Indian heritage of the group.

B. Native American Indian Group - requirements 1 through 5 must be satisfactorily met to achieve State Recognition. Requirement 6 is optional.

(1) The group headquartered in South Carolina and indigenous to this State.

(2) Assembled as a "Group" for a minimum of three years, and entity meets all the characteristics of a "Group" as defined in R. 139-102 (E).

(3) Organized for the purpose of preserving, documenting and promoting the Native American Indian culture and history, and have such reflected in its by-laws.

(4) Exist to meet one or more of the following needs of Native American Indian people - spiritual, social, economic, or cultural needs through a continuous series of educational programs and activities that preserve, document, and promote the Native American Indian culture and history.

(5) Claims must be supported by official records such as birth certificates, church records, school records, U.S. Bureau of the Census records, or other pertinent documents.

(6) Letters, statements, and documents from state or federal authorities, that document a history of tribal related business and activities that specifically address Native American Indian culture, preservation and affairs.

C. Native American Special Interest Organization - requirements 1 through 4 must be satisfactorily met to achieve State recognition. Requirement 5 is optional.

(1) The organization must represent the interest of Native American Indian people residing in South Carolina.

(2) The organization is recognized as a private nonprofit corporation under the laws of the State.

(3) Letters, statements, and documents from tribes attesting to the work of the organization as it promotes Native American culture and addresses socio-economic deprivation among people of Indian origin.

(4) Formed and operating for a minimum of two years.

(5) Letters, statements, and documents from state and federal authorities that document a history of tribal related business and activities that specifically address Native American Indian culture, preservation, and affairs.

**HISTORY: Added by State Register Volume 28, Issue No. 6, eff June 25, 2004. Amended by State Register Volume 30, Issue No. 6, eff June 23, 2006.**

### **139–106. Purpose of the Native American Indian Advisory Committee.**

It shall be the purpose of the Native American Indian Advisory Committee to preserve the true aboriginal culture of the Americas in the State of South Carolina and to advance the Native American Indian culture by:

(A) Advising the Commission regarding Native American Indian Affairs.

(B) Identifying the needs and concerns of the Native American Indian people of South Carolina by bringing such needs and concerns to the attention of the Commission.

(C) Making recommendations to the Commission to address the needs and concerns of Native American Indian people.

(D) Inviting individuals recognized as specialists in Native American Indian Affairs and representatives of the state and federal agencies to present information to members of the Advisory Committee.

**HISTORY: Added by State Register Volume 28, Issue No. 6, eff June 25, 2004. Amended by State Register Volume 30, Issue No. 6, eff June 23, 2006.**

### **139–107. Membership Requirements for the Native American Advisory Committee.**

Entities who want to participate on the Native American Indian Advisory Committee must meet and comply with the following minimum requirements:

(A) The entity must have obtained State Recognition designation as either:

(1) A Tribe.

(2) A Group.

(B) Upon receiving State Recognition, the tribal council, and/or governmental authority of the “Tribe” or “Group” must provide in writing to the Commission, the name, address, and telephone number of the voting representative to serve on the Advisory Committee. Designees shall continue to serve until such time as the Executive Director of the Commission is notified in writing of a change by the appointing tribal council and/or governmental authority.

(C) Additionally, representatives from the following organizations shall serve as non-voting advisors to members of the Native American Indian Advisory Committee:

(1) Office of the Governor.

(2) Office of the State Archeologist.

(3) Federally Recognized Tribes.

(4) Commission for Minority Affairs.

(5) Representatives from South Carolina state agencies having a vested interest in Native American affairs.

(D) The Chair of the Native American Indian Advisory Committee shall be the Executive Director of the Commission for Minority Affairs or a designee appointed by the Executive Director.

(E) The Native American Indian Advisory Committee serves at the pleasure of the Board of the Commission for Minority Affairs.

(F) The Native American Indian Advisory Committee shall meet at least twice a year or at the call of the chair.

(G) The Native American Indian Advisory Committee may establish subcommittees to carry out its purpose.

**HISTORY: Added by State Register Volume 28, Issue No. 6, eff June 25, 2004. Amended by State Register Volume 30, Issue No. 6, eff June 23, 2006.**

### **139–108. Membership, Terms, and Voting Power of the State Recognition Committee.**

(A) The State Recognition Committee shall consist of five (5) members:

(1) The State Archeologist.

(2) The Executive Director of the Commission for Minority Affairs.

(3) Two members of the Native American Indian Advisory Committee.

(4) One notable Native American leader or scholar from across the United States, excluding South Carolina.

(B) The State Archaeologist and the Executive Director of the Commission for Minority Affairs shall serve indefinitely. The Executive Director of the Commission for Minority Affairs shall serve as chair of the State Recognition Committee. The three remaining positions shall serve for two-year terms beginning July 1 and ending June 30 of each two-year term.

(C) Initially, three persons shall compose the Interim State Recognition Committee. This interim group shall consist of:

(1) The State Archeologist.

(2) The Executive Director of the Commission for Minority Affairs.

(3) One representative from a South Carolina Native American Indian entity or notable Native American leader or scholar from across the United States, to be decided by the State Archaeologist and the Executive Director of the Commission for Minority Affairs.

(D) The two entities first obtaining State Recognition shall take their seats on the following July 1 and will represent the Native American Indian Advisory Committee on the State Recognition Committee. Thereafter, the two members representing the Native American Indian Advisory Committee shall be selected by the Committee members, by majority vote from among those “Tribes” and “Groups” having obtained State Recognition.

(E) Upon seating the first two entities to obtain State Recognition on the State Recognition Committee, the four members of the State Recognition Committee shall select one person to fill the seat designated for “One representative from a South Carolina Native American Indian entity or a notable Native American leader or scholar from across the United States.” The four State Recognition Committee members may select an individual from among the following categories:

(1) State recognized “Tribe” or “Group”.

(2) Federally recognized “Tribe”.

(3) Native American Entity.

(4) Native American Leader or Scholar.

(F) Thereafter, the four members of the State Recognition Committee shall select one person from among the following categories:

(1) Federally recognized “Tribe”.

(2) Notable Native American leader or scholar from across the United States, excluding South Carolina.

(G) The establishment of the first three-member Interim State Recognition Committee shall be at the discretion of the Executive Director of the Commission for Minority Affairs. Thereafter, elections shall be held in April every other year, prior to the end of the two-year term for seating of State Recognition Committee members.

(H) An entity applying for State Recognition must receive a majority vote or three affirmative votes out of five to be recommended for State Recognition. The absence of a member or failure of a committee member to vote will be counted as an “Abstention” vote. No member may cast a vote for another member.

(I) In the event that a member is no longer able to serve due to death, illness, or other personal reasons, a written letter of resignation from the governing body of the entity represented should be sent to the Executive Director of the Commission for Minority Affairs. Upon receiving the letter of resignation, the Executive Director shall move forward to fill the vacancy and the remaining unexpired term in accordance with the guidelines set forth herein. If a member fails to participate after having been appointed to the State Recognition Committee, the Executive Director shall make the Chairperson of the Board of the Commission for Minority Affairs aware of the impact upon the State Recognition process, and the Board may vote to declare the seat vacant. If such occurs, a new appointment may be made in accordance with the manner in which the seat was filled, and in accordance with the guidelines set forth herein.

**HISTORY:** Added by State Register Volume 28, Issue No. 6, eff June 25, 2004. Amended by State Register Volume 30, Issue No. 6, eff June 23, 2006.

### **139–109. Duties of the State Recognition Committee.**

(A) The State Recognition Committee shall review all information submitted to the Commission for Minority Affairs from entities seeking State Recognition as:

(1) A Tribe.

(2) A Group.

(3) A Special Interest Organization.

(B) The State Recognition Committee shall review all information submitted in accordance with R. 139–102 (D)(E)(F) and R. 139–105 (A)(B)(C), and request such information as it deems appropriate and necessary to make a recommendation to the Board of the Commission. State Recognition Committee may seek clarification through written correspondence or by meeting with an entity as it deems appropriate. The State Recognition Committee will not accept unsolicited additional documentation.

(C) The State Recognition Committee shall receive applications twice a year from entities seeking State Recognition, that being on or before April 1 and September 1 of each year.

(D) The State Recognition Committee shall make its recommendations within 120 days. The Chair of the State Recognition Committee must notify the Chair of the Board of the Commission for Minority Affairs of its recommendation regarding each entity.

(E) The Board of the Commission shall either reject or accept the recommendations of the State Recognition Committee in part, or in whole. In either event, all entities will be advised of the status of their requests and the reason for approval or rejection.

(F) Entities who fail to achieve State Recognition shall not be eligible to reapply for the same status for one year from their original date of submission, that being April 1 or September 1 and in accordance with R. 139–109(C).

**HISTORY:** Added by State Register Volume 28, Issue No. 6, eff June 25, 2004. Amended by State Register Volume 30, Issue No. 6, eff June 23, 2006.

### **139–110. Verification of Authenticity of Documents.**

(A) All copies of official records and other documents submitted in support of State Recognition of Native American Indian entities must include a means for the State Recognition Committee to

ascertain authenticity. In the case of official records, this may include a stamped, dated, embossed, and signed certification on the document by the office from which the record was obtained. For other documents, a signed and notarized affidavit of origin and other relevant information to support authentication is required.

(B) In those instances where records are maintained under lock and key, such as tribal rolls, adoption papers, birth certificates and other legal papers, members of the State Recognition Committee may conduct an on-site review of such documents on the premises of the entity making application. Members of the Committee may request supporting documentation on-site that provides evidence of the existence of a viable Native American Indian “Tribe”, “Group”, and “Organization”.

**HISTORY:** Added by State Register Volume 28, Issue No. 6, eff June 25, 2004. Amended by State Register Volume 30, Issue No. 6, eff June 23, 2006.

## **ARTICLE II ADVISORY COMMITTEES**

(Statutory Authority: S.C. Code § 1-31-40(A)(7) and (10))

### **139-200. Purpose.**

Section 1-31-40(A)(7),(10), South Carolina Code of Laws, provides that “The Commission shall establish advisory committees representative of minority groups, as the Commission considers appropriate to advise the Commission,” and “The Commission shall promulgate regulations as may be necessary to carry out the provisions of this article including, but not limited to, regulations regarding State Recognition of Native American Indian entities in the State of South Carolina;”

**HISTORY:** Added by State Register Volume 28, Issue No. 6, eff June 25, 2004. Amended by State Register Volume 30, Issue No. 6, eff June 23, 2006.

### **139-201. Scope.**

These rules and regulations shall be applicable to all advisory committees, except as specifically addressed separately for Native American Indians.

**HISTORY:** Added by State Register Volume 28, Issue No. 6, eff June 25, 2004. Amended by State Register Volume 30, Issue No. 6, eff June 23, 2006.

### **139-202. Duties of Advisory Committees.**

A. Advise the Commission for Minority Affairs regarding socio-economic issues relevant to African Americans, Hispanics/Latinos, Asians and other ethnic minority groups in South Carolina.

B. Identify the needs and concerns of the various ethnic minorities and bring such needs and concerns to the attention of the Commission for Minority Affairs.

C. Make recommendations to the Commission for Minority Affairs to address the needs and concerns of ethnic minority groups.

**HISTORY:** Added by State Register Volume 28, Issue No. 6, eff June 25, 2004. Amended by State Register Volume 30, Issue No. 6, eff June 23, 2006.

### **139-203. Membership, Terms, Size, and Administration of the Advisory Committees.**

A. The recommendation and selection of persons to serve on the Advisory Committees shall be made by the Executive Director of the Commission, with the review and approval of the Board of the Commission for Minority Affairs.

B. The committee members shall serve for two year terms and may be recommended for reappointment by the Executive Director of the Commission, with the review and approval of the Board of the Commission for Minority Affairs.

C. Advisory Committees shall not exceed twenty persons.

D. The chair of all Advisory Committees shall be the Executive Director of the Commission for Minority Affairs or a designee appointed by the Executive Director.

E. Advisory Committees serve at the pleasure of the Board of the Commission for Minority Affairs.

F. Advisory Committee members, including Native Americans, serve without compensation or per diem.

G. All meetings, documents and work produced or performed by an Advisory Committee, except as exempted by these regulations, shall be covered by the Freedom of Information Act.

**HISTORY: Added by State Register Volume 28, Issue No. 6, eff June 25, 2004. Amended by State Register Volume 30, Issue No. 6, eff June 23, 2006.**