

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 713 Session of
2001

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MICOZZIE, ORIE, PISTELLA, PETRARCA AND THOMAS,
FEBRUARY 14, 2001

REFERRED TO COMMITTEE ON STATE GOVERNMENT, FEBRUARY 14, 2001

AN ACT

1 Providing for formal recognition by the Governor of Native
2 American bands or clans, nations and tribes indigenous to
3 Pennsylvania; providing for certification of Native American
4 organizations; establishing the Commission on Native American
5 Affairs; conferring powers and duties on the Department of
6 Community and Economic Development; imposing a penalty; and
7 making an appropriation.

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11 The General Assembly of the Commonwealth of Pennsylvania
12 hereby enacts as follows:

13 Section 1. Short title.

14 This act shall be known and may be cited as the Native
15 American Recognition Act.

16 Section 2. Legislative intent.

17 The General Assembly finds and declares as follows:

18 (1) This Commonwealth has been historically the homeland
19 of diverse groups.

20 (2) The Commonwealth has a duty and responsibility to
21 foster awareness, understanding and appreciation of the many
22 and varied contributions to the quality of life made by its
23 diverse ethnic communities, including Native Americans.

24 (3) It is in the public interest for the Commonwealth
25 and its citizens to identify, conserve and perpetuate the
26 diverse cultural and ethnic heritage of this Commonwealth and
27 to promote greater awareness and understanding for the
28 education, inspiration and the general public welfare of all
29 the people, including future generations.

30 (4) It is in the shared interest of the Commonwealth and

groups in Pennsylvania to avoid misrepresentation of Native American identity, culture and heritage.

(5) It is in the shared interest of the Commonwealth and groups in this Commonwealth to establish a formal procedure to recognize groups indigenous to Pennsylvania and to certify Native American organizations.

(6) Recognition and certification will enable the Commonwealth to provide access to Federal programs to eligible groups.

Section 3. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Band." A sociopolitical division of a tribe, separated from the tribe by historical events or geographical, political or similar causes.

"Certification." The process by which the Indian status of a Native American organization is approved by the commission for a period of two years subject to biennial recertification.

"Clan." A number of Native Americans related by bloodline descent.

"Commission." The Commission on Native American Affairs, established in section 4.

"Committee." A recognition advisory committee established in section 11.

"Delegate." An individual who serves on a committee.

"Department." The Department of Community and Economic Development of the Commonwealth.

"Group." A band, clan, tribe or nation.

"Indian organization." An organization of members.

1 "Indigenous to Pennsylvania." Having ancestors who inhabited
2 one or more specific areas within this Commonwealth before 1790.

3 "Members." Those individuals who have been determined by a
4 group to be its members according to criteria established by the
5 group.

6 "Nation." A distinct group of Native Americans, separated by
7 other groups by its own language, history, sacred places and
8 rituals, and rooted in and part of the land out of which it
9 grew.

10 "Native American." Any individual or group that is, or has
11 its members descended from, a group which inhabited North
12 America before European contact in 1492.

13 "Recognition." The process by which the Pennsylvania Indian
14 status of a Native American band, clan or tribe is granted by
15 the Governor.

16 "Tribe." A separate and distinct community of Native
17 Americans generally related by blood, marriage or adoption, with
18 common cultural ties and interests which differentiate members
19 from nonmembers.

20 Section 4. Commission.

21 (a) Establishment.--The Commission on Native American
22 Affairs is established in the department.

23 (b) Commissioners.--

24 (1) The commission shall consist of seven commissioners,
25 appointed by the Governor, with the consent of a majority of
26 the members elected to the Senate.

27 (2) Four commissioners must be Native Americans.

28 (3) If a commissioner is sentenced for an offense graded
29 above a summary offense, the commissioner shall forfeit
30 office.

1 (4) A commissioner shall serve a term of six years or
2 until a successor takes office. A commissioner may serve more
3 than unlimited terms.

4 (5) If a commissioner leaves office, a replacement shall
5 be appointed and approved under paragraphs (1) and (2) for
6 the remainder of the term.

7 (c) Quorum.--Four commissioners constitute a quorum.

8 (d) Officers.--The commission shall elect a chairperson from
9 among the commissioners.

10 (e) Compensation.--Commissioners shall serve without
11 compensation but shall be reimbursed for actual and necessary
12 expenses.

13 (f) Support.--The department shall provide staff and support
14 services for the commission.

15 (g) Powers and duties.--The commission has the following
16 powers and duties:

17 (1) Administer this act.

18 (2) Promulgate regulations to implement this act.

19 Section 5. Eligibility to petition.

20 (a) Recognition.--A group may apply to the commission for
21 recognition if the group believes itself to be:

22 (1) a Native American band, clan, tribe or nation; and

23 (2) indigenous to Pennsylvania.

24 (b) Certification.--A group may apply to the commission for
25 certification.

26 Section 6. Recognition criteria.

27 The commission may recommend that an eligible petitioning
28 group be recognized if the petitioning group establishes all of
29 the following:

30 (1) The group:

1 (i) has been identified as Native American from
2 before 1790 until the present; and

3 (ii) has been part of a continuous Native American
4 community from before 1790 until the present.

5 (2) The members of the group are descendants from a
6 tribe which:

7 (i) existed before 1790;

8 (ii) is indigenous to Pennsylvania;

9 (iii) inhabited a specific area in Pennsylvania
10 before 1790; and

11 (iv) is composed principally of individuals who do
12 not belong to any other acknowledged or recognized group
13 and is not a splinter faction which has separated from a
14 group currently recognized.

15 Section 7. Application process for recognition.

16 (a) Compliance with regulations.--A petition for recognition
17 must comply with regulations promulgated by the commission.

18 (b) Documentation.--To document that the petitioning group
19 meets the established criteria, the petitioning group must
20 submit the following:

21 (1) Historical documents showing from before 1790 until
22 the present, two or more of the following:

23 (i) Long-standing relationships of the group with
24 the government of the Commonwealth or the United States
25 based on identification of the group or the group's
26 members as Native American.

27 (ii) Repeated dealings of the group with a county or
28 other local government in a relationship based on the
29 identification of the group or group's members as Native
30 Americans.

1 (iii) Repeated dealings of the group with other
2 federally or State recognized groups or national Native
3 American organizations in a relationship based on
4 identification of the group as Native American.

5 (iv) Identification of the group as Native American
6 by anthropologists, historians, genealogists or other
7 scholars.

8 (v) Repeated identification of the group or group's
9 members as Native American in official government
10 records, church or school records, medical records,
11 Bibles and other family records, newspapers, books,
12 photographs or oral histories.

13 (vi) Documents identifying the name of the group or
14 other term recognizing the group as Native American with
15 an approximate location in this Commonwealth from before
16 1790 until the present.

17 (2) Documentation of membership criteria of the group
18 which addresses all of the following:

19 (i) A list of membership criteria established by the
20 group.

21 (ii) A statement of the membership procedures
22 adopted by the group.

23 (iii) A list of all individuals included on the
24 group's current and previous rolls and the county in
25 which each resides.

26 (c) Other evidence.--The petitioner may submit any other
27 evidence recognizing individuals as members of the group. This
28 subsection includes:

29 (1) Affidavits from federally or State recognized tribal
30 elders, tribal leaders or tribal officials recognizing

1 individuals as members of the group.

2 (2) Affidavits from individuals attesting to the fact
3 that individuals have lived as members of the group.

4 (3) Documentation that individuals have participated in
5 programs available only to members of the group.

6 (d) Personal information confidential.--To protect the
7 confidential nature of this documentation, the commission shall
8 deny inspection or copying of any part of the documentation that
9 contains personal information relating to an individual.

10 Section 8. Certification criteria.

11 The commission shall certify an organization as a
12 Pennsylvania Native American organization if the applicant
13 demonstrates that it meets all of the following criteria:

14 (1) The organization consists solely of members.

15 (2) The organization is incorporated in this
16 Commonwealth.

17 (3) Fifty-one percent or more of the organization's
18 board belong to federally or state recognized tribes.

19 (4) Fifty-one percent or more of the organization's
20 membership are Native Americans.

21 (5) The organization has existed as an incorporated
22 organization for a minimum of two years.

23 Section 9. Application process for certification.

24 (a) Compliance with regulations.--A petition for
25 certification must comply with regulations promulgated by the
26 commission.

27 (b) Documentation.--To document that the petitioning
28 organization meets the established criteria, the petitioning
29 group must submit the following:

30 (1) Evidence of incorporated status in this

1 Commonwealth.

2 (2) A copy of the organization's bylaws.

3 (3) Evidence that 51% or more of its board belong to
4 federally or State recognized tribes.

5 (4) Evidence that 51% or more of the organization's
6 membership are Native Americans.

7 (c) Duration of certification.--Certification of Native
8 American organization status shall be in effect for a period of
9 two years. Organizations may reapply to renew their
10 certification.

11 Section 10. Notice of filing.

12 Upon receipt of a complete application for recognition or
13 certification, including payment of any required fees, the
14 commission shall publish a notice of filing of the petition in
15 the Pennsylvania Bulletin. Persons or groups wishing to support
16 or challenge a petition must provide written comments within 30
17 days of the filing of the notice in the Pennsylvania Bulletin.

18 Section 11. Recognition advisory committee.

19 (a) Convening of committee.--The commission shall convene a
20 separate recognition advisory committee for each petition
21 requesting recognition.

22 (b) Role and responsibilities of committee.--The committee
23 has the following powers and duties:

24 (1) Review the petition for recognition to determine if
25 any additional information is needed from the applicant
26 before determination of the petition can be finalized.

27 (2) Make recommendations for or against recognition.

28 (c) Role of Native American commissioner.--A Native American
29 commissioner on the commission has the following function with
30 respect to the committee:

- 1 (1) To serve as the chairperson of the committee.
- 2 (2) To call all meetings for petition reviews to order.
- 3 (3) To be a nonvoting delegate of the committee.
- 4 (4) To transmit all recommendations of the committee to
- 5 the commission.

6 (d) Composition of committee.--The committee shall consist
7 of five voting delegates who, appointed by the commission shall
8 appoint the following delegates:

9 (1) Two Native Americans from different Federal or State
10 recognized groups, other than the petitioning group.

11 (2) One individual with demonstrated expertise in
12 genealogy and if possible, in American Indian genealogy. If
13 possible, this delegate must be a Native American.

14 (3) Two individuals qualified in anthropology,
15 ethnohistory or related fields. If possible, these delegates
16 must be Native Americans.

17 (e) Conflict of interest.--A delegate or the Native American
18 Commissioner may not participate in any deliberations with
19 respect to a petition made by a petitioning group of which the
20 delegate or the commissioner is a member.

21 (f) Compensation.--Delegates shall serve without salary or
22 compensation but shall be reimbursed for actual and necessary
23 expenses incurred while performing official functions required
24 by this act, in accordance with procedures established by the
25 Executive Board.

26 Section 12. Processing petitions.

27 (a) Acceptance by commission.--The commission shall accept
28 for review all complete petitions. A petition may not be
29 considered complete until the commission has received payment of
30 required fees and all information requested in the petition form

1 or required by this act.

2 (b) Notice to group.--After a petition is received, the
3 commission shall notify the petitioning group in writing that
4 the petition is complete or that the petition is incomplete and
5 specific additional information is required to complete the
6 petition.

7 (c) Failure to complete petition.--If the petitioning group
8 fails to complete the petition within one year after notice is
9 mailed to the petitioning group that the petition is not
10 complete, the petition shall be deemed withdrawn and the
11 commission shall notify the petitioning group.

12 (d) Additional period to complete petition.--If the
13 petitioning group during the one-year period requires additional
14 time to complete the petition and provides reasonable
15 justification, the commission may grant one additional period of
16 up to one year for the petitioning group to complete the
17 petition.

18 (e) Referral of petition to committee.--After the commission
19 determines the petition is complete, the commission shall refer
20 the petition to the committee.

21 (f) Preliminary review.--Within 25 days after referral under
22 subsection (e), the committee shall review the documentation
23 submitted for the petition and may, through the commission,
24 request the petitioning group to submit any specific additional
25 documentation necessary to determine whether a petitioning group
26 meets the criteria set forth in section 6.

27 (g) Completion of review.--After the commission notifies the
28 petitioning group that all documentation requested has been
29 received, the committee shall complete review of the petition
30 and advise the commission whether the petitioning group meets

1 the recognition criteria set forth in section 6. In advising the
2 commission whether a petition meets the recognition criteria set
3 forth in section 6, the committee shall do all of the following:

4 (1) Consider the petition, all factual or legal
5 submissions in support of or in opposition to the petition,
6 and the petitioning group's written response.

7 (2) Use to the maximum extent practicable the
8 information and sources available to it, including
9 individuals not on the committee who have knowledge or
10 expertise with Federal or other state Indian tribe
11 recognition procedures or an understanding of the history of
12 Native Americans in this Commonwealth.

13 Section 13. Determination by commission.

14 (a) Review of committee recommendation.--The commission
15 shall review the committee's recommendation and determine
16 whether the petition meets the criteria set forth in section 6.

17 (b) Recognition criteria established.--If the commission
18 determines that the petitioning group meets the criteria set
19 forth in section 6, the commission shall submit to the Governor
20 a determination of findings and request that the petitioning
21 group be recognized.

22 (c) Inadequate information or documentation.--If the
23 commission determines that the information or documentation
24 submitted in support of the petition is not adequate to
25 establish that the petitioning group meets the criteria set
26 forth in section 6, then the commission shall notify the
27 petitioning group of its determination. The petitioning group
28 may request a reconsideration under section 14.

29 Section 14. Reconsideration of commission determination.

30 (a) Procedure for taking appeal.--Upon receipt of a

1 determination that the criteria for recognition have not been
2 met, the petitioning group may appeal for a reconsideration by
3 the commission. The petitioning group must file a letter of
4 intent within 30 days of receipt of the commission's
5 determination and must submit additional documentation within 90
6 days.

7 (b) Appointment of review panel.--After receiving a request
8 for review, the commission shall appoint a three-individual
9 panel to review the commission's determinations and all the
10 evidence submitted in support of or in opposition to the
11 petition. The panel shall include at least one commissioner and
12 one delegate, who together shall nominate the third individual
13 to the commission for appointment.

14 (c) Report of panel.--The panel shall report its findings
15 and recommendations to the commission within 60 days after
16 expiration of the 90-day appeal period. If the appeal panel
17 concludes that the commission failed to adequately consider any
18 evidence submitted and that the evidence if adequately
19 considered may reverse the commission's determination, the
20 appeal panel shall notify the commission to reconsider its
21 previous determination. Failure to act within the time specified
22 in this subsection shall be deemed a notification to reconsider.

23 (d) Action by commission.--The commission may either:

24 (1) affirm its original finding and promptly notify the
25 petitioning group; or

26 (2) submit to the Governor its reconsidered
27 determination and recommendation for recognition.

28 (e) Notice to petitioning group.--The commission shall
29 promptly notify the petitioning group of the commission's
30 recommendation and final determination. The commission's

1 determination under subsection (d) is subject to 2 Pa.C.s. Ch. 7
2 Subch. A (relating to judicial review of Commonwealth agency
3 action).

4 Section 15. Governor's action on recognition recommendation.

5 (a) Concurrence with request for recognition.--If the
6 Governor concurs with a request for recognition by the
7 commission, the Governor may issue an executive order to
8 recognize the Pennsylvania Indian status of the petitioning
9 group. The commission shall promptly notify appropriate
10 governmental agencies and national and State Native American
11 organizations of the executive order.

12 (b) Nonconcurrence with request for recognition.--If the
13 Governor does not concur with a request for formal recognition
14 by the commission, the Governor shall notify the commission of
15 the reasons and the commission shall promptly notify the
16 petitioning group.

17 Section 16. Effects of recognition.

18 An executive order issued by the Governor under section 15
19 shall not do any of the following:

20 (1) Create rights to land.

21 (2) Create rights or entitlements.

22 (3) Impair valid or existing rights, benefits or
23 entitlements of any Native Americans residing in this
24 Commonwealth.

25 (4) Impair existing judicial rulings of the Commonwealth
26 regarding Native Americans indigenous to this Commonwealth.

27 Section 17. Fees.

28 (a) Establishment.--Fees required under this act shall be
29 set by the commission and published as a notice in the
30 Pennsylvania Bulletin. Fees shall be set by the commission in

1 order to offset costs necessary to administer the provisions of
2 this act and shall be nonrefundable.

3 (b) Time for payment.--Payment of fee as set by the
4 commission must be received at the time of filing the petition
5 for recognition, certification or recertification.

6 (c) Waiver of fee.--The commission may upon request of a
7 petitioning group waive the petition fee, in full or in part, if
8 it determines that payment of the fee will create financial
9 hardship for the petitioning group.

10 Section 18. Penalty.

11 (a) Offense created.--In any matter relating to a petition
12 under this act, a person commits a misdemeanor if the person:

13 (1) Knowingly and intentionally falsifies or conceals a
14 material fact.

15 (2) Makes a false, fictitious, fraudulent statement or
16 representation.

17 (3) Makes or uses a writing or document with knowledge
18 that the writing or document contains false, fictitious or
19 fraudulent statements or entries.

20 (b) Penalty.--A person who violates subsection (a) commits a
21 summary offense.

22 Section 19. Appropriation.

23 The sum of \$, or as much thereof as may be necessary,
24 is hereby appropriated to the Department of Community and
25 Economic Development for the fiscal year July 1, 2001, to June
26 30, 2002, to carry out the provisions of this act.

27 Section 20. Effective date.

28 This act shall take effect in 60 days.