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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 63

Session of  
2003

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INTRODUCED BY BISHOP, THOMAS, LYNCH, BEBKO-JONES, YOUNGBLOOD,  
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DeLUCA, PRESTON, KIRKLAND, ROBERTS, JAMES, WATERS,  
J. WILLIAMS AND FRANKEL, JANUARY 29, 2003

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REFERRED TO COMMITTEE ON STATE GOVERNMENT, JANUARY 29, 2003

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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.

8 TABLE OF CONTENTS

- 9 Section 1. Short title.
- 10 Section 2. Legislative intent.
- 11 Section 3. Definitions.
- 12 Section 4. Commission.
- 13 Section 5. Eligibility to petition.
- 14 Section 6. Recognition criteria.
- 15 Section 7. Application process for recognition.
- 16 Section 8. Certification criteria.
- 17 Section 9. Application process for certification.
- 18 Section 10. Notice of filing.
- 19 Section 11. Recognition advisory committee.

1 Section 12. Processing petitions.  
2 Section 13. Determination by commission.  
3 Section 14. Reconsideration of commission determination.  
4 Section 15. Governor's action on recognition recommendation.  
5 Section 16. Effects of recognition.  
6 Section 17. Fees.  
7 Section 18. Penalty.  
8 Section 19. Appropriation.  
9 Section 20. Effective date.

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

12 Section 1. Short title.

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

15 Section 2. Legislative intent.

16 The General Assembly finds and declares as follows:

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

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

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

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

"Indigenous to Pennsylvania." Having ancestors who inhabited

1 one or more specific areas within this Commonwealth before 1790.

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

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

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

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

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

19 Section 4. Commission.

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

22 (b) Commissioners.--

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

26 (2) Four commissioners must be Native Americans.

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

30 (4) A commissioner shall serve a term of six years or

1       until a successor takes office. A commissioner may serve  
2       unlimited terms.

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

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

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

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

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

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

16           (1) Administer this act.

17           (2) Promulgate regulations to implement this act.

18      Section 5. Eligibility to petition.

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

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

22           (2) indigenous to Pennsylvania.

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

25      Section 6. Recognition criteria.

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

29           (1) The group:

30               (i) has been identified as Native American from

1 before 1790 until the present; and

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

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

6 (i) existed before 1790;

7 (ii) is indigenous to Pennsylvania;

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

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

14 Section 7. Application process for recognition.

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

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

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

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

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

30 (iii) Repeated dealings of the group with other

1 federally or State recognized groups or national Native  
2 American organizations in a relationship based on  
3 identification of the group as Native American.

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

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

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

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

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

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

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

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

28 (1) Affidavits from federally or State recognized tribal  
29 elders, tribal leaders or tribal officials recognizing  
30 individuals as members of the group.

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

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

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

#### Section 8. Certification criteria.

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

(1) The organization consists solely of members.

(2) The organization is incorporated in this Commonwealth.

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

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

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

#### Section 9. Application process for certification.

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

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

(1) Evidence of incorporated status in this Commonwealth.



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

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

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

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

10          Section 10. Notice of filing.

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

17          Section 11. Recognition advisory committee.

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

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

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

26                 (2) Make recommendations for or against recognition.

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

30                 (1) To serve as the chairperson of the committee.

1           (2) To call all meetings for petition reviews to order.

2           (3) To be a nonvoting delegate of the committee.

3           (4) To transmit all recommendations of the committee to  
4 the commission.

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

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

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

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

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

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

25 Section 12. Processing petitions.

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

1 (b) Notice to group.--After a petition is received, the  
2 commission shall notify the petitioning group in writing:

3 (1) that the petition is complete; or

4 (2) that the petition is incomplete and what additional  
5 information is required to complete the petition.

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

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

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

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

26 (g) Completion of review.--After the commission notifies the  
27 petitioning group that all documentation requested has been  
28 received, the committee shall complete review of the petition  
29 and advise the commission whether the petitioning group meets  
30 the recognition criteria set forth in section 6. In advising the

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

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

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

12 Section 13. Determination by commission.

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

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

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

28 Section 14. Reconsideration of commission determination.

29 (a) Procedure for taking appeal.--Upon receipt of a  
30 determination that the criteria for recognition have not been

1 met, the petitioning group may appeal for a reconsideration by  
2 the commission. The petitioning group must file a letter of  
3 intent within 30 days of receipt of the commission's  
4 determination and must submit additional documentation within 90  
5 days.

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

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

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

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

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

27 (e) Notice to petitioning group.--The commission shall  
28 promptly notify the petitioning group of the commission's  
29 recommendation and final determination. The commission's  
30 determination under subsection (d) is subject to 2 Pa.C.S. Ch. 7

1 Subch. A (relating to judicial review of Commonwealth agency  
2 action).

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

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

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

16 Section 16. Effects of recognition.

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

19 (1) Create rights to land.

20 (2) Create rights or entitlements.

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

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

26 Section 17. Fees.

27 (a) Establishment.--Fees required under this act shall be  
28 set by the commission and published as a notice in the  
29 Pennsylvania Bulletin. Fees shall be set by the commission in  
30 order to offset costs necessary to administer the provisions of

1 this act and shall be nonrefundable.

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

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

9 Section 18. Penalty.

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

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

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

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

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

21 Section 19. Appropriation.

22 The sum of \$ , or as much thereof as may be necessary,  
23 is hereby appropriated to the Department of Community and  
24 Economic Development for the fiscal year July 1, 2003, to June  
25 30, 2004, to carry out the provisions of this act.

26 Section 20. Effective date.

27 This act shall take effect in 60 days.