
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 980 Session of
2011

INTRODUCED BY BISHOP, YOUNGBLOOD, THOMAS, MCGEEHAN, MICOZZIE,
MURT, MYERS, M. O'BRIEN AND CALTAGIRONE, MARCH 8, 2011

REFERRED TO COMMITTEE ON STATE GOVERNMENT, MARCH 8, 2011

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; and imposing a penalty.

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7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. Short title.

10 This act shall be known and may be cited as the Native
11 American Recognition Act.

12 Section 2. Legislative intent.

13 The General Assembly finds and declares as follows:

14 (1) This Commonwealth has been historically the homeland
15 of diverse groups.

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

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

26 (4) It is in the shared interest of the Commonwealth and
27 groups in Pennsylvania to avoid misrepresentation of Native
28 American identity, culture and heritage.

29 (5) It is in the shared interest of the Commonwealth and
30 groups in this Commonwealth to establish a formal procedure

1 to recognize groups indigenous to Pennsylvania and to certify
2 Native American organizations.

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

6 Section 3. Definitions.

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

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

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

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

18 "Commission." The Commission on Native American Affairs.

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

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

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

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

25 "Indian organization." An organization of members.

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

28 "Members." Those individuals who have been determined by a
29 group to be its members according to criteria established by the
30 group.

1 "Nation." A distinct group of Native Americans, separated by
2 other groups by its own language, history, sacred places and
3 rituals, and rooted in and part of the land out of which it
4 grew.

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

8 "Recognition." The process by which the Pennsylvania Indian
9 status of a Native American band, clan or tribe is granted by
10 the Governor.

11 "Tribe." A separate and distinct community of Native
12 Americans generally related by blood, marriage or adoption, with
13 common cultural ties and interests which differentiate members
14 from nonmembers.

15 Section 4. Commission.

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

18 (b) Commissioners.--

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

22 (2) Four commissioners must be Native Americans.

23 (3) If a commissioner is sentenced for an offense graded
24 above a summary offense, the commissioner shall forfeit
25 office.

26 (4) A commissioner shall serve a term of six years or
27 until a successor takes office. A commissioner may serve
28 unlimited terms.

29 (5) If a commissioner leaves office, a replacement shall
30 be appointed and approved under paragraphs (1) and (2) for

1 the remainder of the term.

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

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

5 (e) Compensation.--Commissioners shall serve without
6 compensation but shall be reimbursed for actual and necessary
7 expenses.

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

10 (g) Powers and duties.--The commission has the following
11 powers and duties:

12 (1) Administer this act.

13 (2) Promulgate regulations to implement this act.

14 Section 5. Eligibility to petition.

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

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

18 (2) indigenous to Pennsylvania.

19 (b) Certification.--A group may apply to the commission for
20 certification.

21 Section 6. Recognition criteria.

22 The commission may recommend that an eligible petitioning
23 group be recognized if the petitioning group establishes all of
24 the following:

25 (1) The group:

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

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

30 (2) The members of the group are descendants from a

1 tribe which:

2 (i) existed before 1790;

3 (ii) is indigenous to Pennsylvania;

4 (iii) inhabited a specific area in Pennsylvania
5 before 1790; and

6 (iv) is composed principally of individuals who do
7 not belong to any other acknowledged or recognized group
8 and is not a splinter faction which has separated from a
9 group currently recognized.

10 Section 7. Application process for recognition.

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

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

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

18 (i) Long-standing relationships of the group with
19 the government of the Commonwealth or the United States
20 based on identification of the group or the group's
21 members as Native American.

22 (ii) Repeated dealings of the group with a county or
23 other local government in a relationship based on the
24 identification of the group or group's members as Native
25 Americans.

26 (iii) Repeated dealings of the group with other
27 federally or State recognized groups or national Native
28 American organizations in a relationship based on
29 identification of the group as Native American.

30 (iv) Identification of the group as Native American

1 by anthropologists, historians, genealogists or other
2 scholars.

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

8 (vi) Documents identifying the name of the group or
9 other term recognizing the group as Native American with
10 an approximate location in this Commonwealth from before
11 1790 until the present.

12 (2) Documentation of membership criteria of the group
13 which addresses all of the following:

14 (i) A list of membership criteria established by the
15 group.

16 (ii) A statement of the membership procedures
17 adopted by the group.

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

21 (c) Other evidence.--The petitioner may submit any other
22 evidence recognizing individuals as members of the group,
23 including, but not limited to:

24 (1) Affidavits from federally or State recognized tribal
25 elders, tribal leaders or tribal officials recognizing
26 individuals as members of the group.

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

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

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

5 Section 8. Certification criteria.

6 The commission shall certify an organization as a
7 Pennsylvania Native American organization if the applicant
8 demonstrates that:

9 (1) The organization consists solely of members.

10 (2) The organization is incorporated in this
11 Commonwealth.

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

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

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

18 Section 9. Application process for certification.

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

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

25 (1) Evidence of incorporated status in this
26 Commonwealth.

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

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

30 (4) Evidence that 51% or more of the organization's

1 membership are Native Americans.

2 (c) Duration of certification.--Certification of Native
3 American organization status shall be in effect for a period of
4 two years. Organizations may reapply to renew their
5 certification.

6 Section 10. Notice of filing.

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

13 Section 11. Recognition advisory committee.

14 (a) Convening of committee.--The commission shall convene a
15 separate recognition advisory committee for each petition
16 requesting recognition.

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

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

22 (2) Make recommendations for or against recognition.

23 (c) Role of Native American commissioner.--The Native
24 American commissioner shall:

25 (1) Serve as the chairperson of the committee.

26 (2) Call all meetings of the committee for petition
27 reviews to order.

28 (3) Be a nonvoting delegate of the committee.

29 (4) Transmit all recommendations of the committee to the
30 commission.

1 (d) Composition of committee.--The committee shall consist
2 of five voting delegates who, appointed by the commission shall
3 appoint the following delegates:

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

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

9 (3) Two individuals qualified in anthropology,
10 ethnohistory or related fields. If possible, these delegates
11 must be Native Americans.

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

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

21 Section 12. Processing petitions.

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

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

29 (1) the petition is complete; or

30 (2) the petition is incomplete and which additional

1 information is required to complete the petition.

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

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

13 (e) Referral of petition to committee.--After the commission
14 determines the petition is complete, the commission shall refer
15 the petition to the committee.

16 (f) Preliminary review.--Within 25 days after referral under
17 subsection (e), the committee shall review the documentation
18 submitted for the petition and may, through the commission,
19 request the petitioning group to submit any specific additional
20 documentation necessary to determine whether a petitioning group
21 meets the recognition criteria of this act.

22 (g) Completion of review.--

23 (1) After the commission notifies the petitioning group
24 that all documentation requested has been received, the
25 committee shall complete review of the petition and advise
26 the commission whether the petitioning group meets the
27 recognition criteria of this act.

28 (2) In advising the commission whether a petition meets
29 the recognition criteria of this act, the committee shall do
30 all of the following:

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

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

10 Section 13. Determination by commission.

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

14 (b) Recognition criteria established.--If the commission
15 determines that the petitioning group meets the recognition
16 criteria of this act, the commission shall submit to the
17 Governor a determination of findings and request that the
18 petitioning group be recognized.

19 (c) Inadequate information or documentation.--If the
20 commission determines that the information or documentation
21 submitted in support of the petition is not adequate to
22 establish that the petitioning group meets the recognition
23 criteria of this act, then the commission shall notify the
24 petitioning group of its determination. The petitioning group
25 may request reconsideration.

26 Section 14. Reconsideration of commission determination.

27 (a) Procedure for taking appeal.--Upon receipt of a
28 determination that the criteria for recognition have not been
29 met, the petitioning group may appeal for a reconsideration by
30 the commission. The petitioning group must file a letter of

1 intent within 30 days of receipt of the commission's
2 determination and must submit additional documentation within 90
3 days.

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

11 (c) Report of panel.--

12 (1) The panel shall report its findings and
13 recommendations to the commission within 60 days after
14 expiration of the 90-day appeal period.

15 (2) If the appeal panel concludes that the commission
16 failed to adequately consider any evidence submitted and that
17 the evidence if adequately considered may reverse the
18 commission's determination, the appeal panel shall notify the
19 commission to reconsider its previous determination.

20 (3) Failure to act within the time specified in this
21 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 established and published by the commission as a notice in the
29 Pennsylvania Bulletin. Fees shall be established by the
30 commission in order to offset costs necessary to administer the

1 provisions of this act and shall be nonrefundable.

2 (b) Time for payment.--Payment of the fee established 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 the commission determines that payment of the fee will create
8 financial 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. Effective date.

22 This act shall take effect in 60 days.