

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 136 Session of  
2007

INTRODUCED BY BISHOP, BELFANTI, BLACKWELL, CALTAGIRONE, COHEN,  
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WATSON, WILLIAMS, WOJNAROSKI, YOUNGBLOOD AND JOSEPHS,  
JANUARY 31, 2007

REFERRED TO COMMITTEE ON STATE GOVERNMENT, JANUARY 31, 2007

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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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.

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

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

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

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

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

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

#### 18 Section 4. Commission.

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

21 (b) Commissioners.--

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

25 (2) Four commissioners must be Native Americans.

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

29 (4) A commissioner shall serve a term of six years or  
30 until a successor takes office. A commissioner may serve

1 unlimited terms.

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

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

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

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

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

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

15 (1) Administer this act.

16 (2) Promulgate regulations to implement this act.

17 Section 5. Eligibility to petition.

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

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

21 (2) indigenous to Pennsylvania.

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

24 Section 6. Recognition criteria.

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

28 (1) The group:

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

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

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

(i) existed before 1790;

(ii) is indigenous to Pennsylvania;

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

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

#### Section 7. Application process for recognition.

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

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

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

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

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

(iii) Repeated dealings of the group with other federally or State recognized groups or national Native

1 American organizations in a relationship based on  
2 identification of the group as Native American.

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

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

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

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

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

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

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

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

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

30 (2) Affidavits from individuals attesting to the fact

1       that individuals have lived as members of the group.

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

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

8       Section 8. Certification criteria.

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

12           (1) The organization consists solely of members.

13           (2) The organization is incorporated in this  
14      Commonwealth.

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

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

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

21      Section 9. Application process for certification.

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

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

28           (1) Evidence of incorporated status in this  
29      Commonwealth.

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



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

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

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

9           Section 10. Notice of filing.

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

16          Section 11. Recognition advisory committee.

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

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

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

25                (2) Make recommendations for or against recognition.

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

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

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

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

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

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

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

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

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

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

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

24 Section 12. Processing petitions.

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

30       (b) Notice to group.--After a petition is received, the

1 commission shall notify the petitioning group in writing:

2 (1) that the petition is complete; or

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

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

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

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

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

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

1 the committee shall do all of the following:

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

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

11 Section 13. Determination by commission.

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

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

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

27 Section 14. Reconsideration of commission determination.

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

1 the commission. The petitioning group must file a letter of  
2 intent within 30 days of receipt of the commission's  
3 determination and must submit additional documentation within 90  
4 days.

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

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

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

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

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

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

1 action).

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

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

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

15 Section 16. Effects of recognition.

16 An executive order issued by the Governor under section 15  
17 (relating to governor's action on recognition recommendation)  
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, 2007, to June  
25 30, 2008, to carry out the provisions of this act.

26 Section 20. Effective date.

27 This act shall take effect in 60 days.