
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 594 Session of
2013

INTRODUCED BY BISHOP, BROWNLEE, MICOZZIE, MCGEEHAN, O'BRIEN, D.
COSTA, THOMAS, KINSEY, YOUNGBLOOD, GROVE AND PARKER,
FEBRUARY 8, 2013

REFERRED TO COMMITTEE ON STATE GOVERNMENT, FEBRUARY 8, 2013

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

10 Section 1. Short title.

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

13 Section 2. Legislative intent.

14 The General Assembly finds and declares as follows:

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

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

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

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

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

1 groups in this Commonwealth to establish a formal procedure
2 to recognize groups indigenous to Pennsylvania and to certify
3 Native American organizations.

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

7 Section 3. Definitions.

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

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

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

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

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

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

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

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

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

26 "Indian organization." An organization of members.

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

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

1 group.

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

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

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

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

16 Section 4. Commission.

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

19 (b) Commissioners.--

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

23 (2) Four commissioners must be Native Americans.

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

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

30 (5) If a commissioner leaves office, a replacement shall

1 be appointed and approved under paragraphs (1) and (2) for
2 the remainder of the term.

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

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

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

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

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

13 (1) Administer this act.

14 (2) Promulgate regulations to implement this act.

15 Section 5. Eligibility to petition.

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

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

19 (2) indigenous to Pennsylvania.

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

22 Section 6. Recognition criteria.

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

26 (1) The group:

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

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

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

3 (i) existed before 1790;

4 (ii) is indigenous to Pennsylvania;

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

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

11 Section 7. Application process for recognition.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (3) Documentation that individuals have participated in

1 programs available only to members of the group.

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

6 Section 8. Certification criteria.

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

10 (1) The organization consists solely of members.

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

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

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

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

20 Section 9. Application process for certification.

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

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

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

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

30 (3) Evidence that 51% or more of its board belong to

1 federally recognized or State-recognized tribes.

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

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

8 Section 10. Notice of filing.

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

15 Section 11. Recognition advisory committee.

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

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

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

24 (2) Make recommendations for or against recognition.

25 (c) Role of Native American commissioner.--The Native
26 American commissioner shall:

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

28 (2) Call all meetings of the committee for petition
29 reviews to order.

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

1 (4) Transmit all recommendations of the committee to the
2 commission.

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

6 (1) Two Native Americans from different federally
7 recognized or State-recognized groups, other than the
8 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 American.

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 that:

2 (1) the petition is complete; or

3 (2) the petition is incomplete and which 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.--

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

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

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

7 (ii) 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
12 of 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 recognition
19 criteria of this act, the commission shall submit to the
20 Governor a determination of findings and request that the
21 petitioning 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 recognition
26 criteria of this act, then the commission shall notify the
27 petitioning group of its determination. The petitioning group
28 may request reconsideration.

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.--

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

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

23 (3) Failure to act within the time specified in this
24 subsection shall be deemed a notification to reconsider.

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

26 (1) affirm its original finding and promptly notify the
27 petitioning group; or

28 (2) submit to the Governor its reconsidered
29 determination and recommendation for recognition.

30 (e) Notice to petitioning group.--The commission shall

1 promptly notify the petitioning group of the commission's
2 recommendation and final determination. The commission's
3 determination under subsection (d) is subject to 2 Pa.C.S. Ch. 7
4 Subch. A (relating to judicial review of Commonwealth agency
5 action).

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

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

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

19 Section 16. Effects of recognition.

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

22 (1) Create rights to land.

23 (2) Create rights or entitlements.

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

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

29 Section 17. Fees.

30 (a) Establishment.--Fees required under this act shall be

1 established and published by the commission as a notice in the
2 Pennsylvania Bulletin. Fees shall be established by the
3 commission in order to offset costs necessary to administer the
4 provisions of this act and shall be nonrefundable.

5 (b) Time for payment.--Payment of the fee established by the
6 commission must be received at the time of filing the petition
7 for recognition, certification or recertification.

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

12 Section 18. Penalty.

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

15 (1) Knowingly and intentionally falsifies or conceals a
16 material fact.

17 (2) Makes a false, fictitious, fraudulent statement or
18 representation.

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

22 (b) Penalty.--A person who violates subsection (a) commits a
23 summary offense.

24 Section 19. Effective date.

25 This act shall take effect in 60 days.