
By: Chairman, Commerce and Government Matters Committee (Departmental - Human Resources)

Introduced and read first time: February 12, 1996
Assigned to: Commerce and Government Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Commission on Indian Affairs**

3 FOR the purpose of transferring the Commission on Indian Affairs from the Department
4 of Housing and Community Development to the Department of Human Resources;
5 providing for continued access by the Commissioner to the programs and staff of the
6 Maryland Historical Trust; and providing for the severability of this Act.

7 BY transferring

8 Article 83B - Department of Housing and Community Development
9 Section 5-401 through 5-406 and the subtitle "Subtitle 4. Commission on Indian
10 Affairs", respectively
11 Annotated Code of Maryland
12 (1995 Replacement Volume)

13 to be

14 Article 41 - Governor - Executive and Administrative Departments
15 Section 6-801 through 6-806 and the subtitle "Subtitle 8. Commission on Indian
16 Affairs", respectively
17 Annotated Code of Maryland
18 (1993 Replacement Volume and 1995 Supplement)

19 BY repealing and reenacting, with amendments,

20 Article 83B - Department of Housing and Community Development
21 Section 1-204(a) and 5-101
22 Annotated Code of Maryland
23 (1995 Replacement Volume)

24 BY repealing and reenacting, without amendments,

25 Article 41 - Governor - Executive and Administrative Departments
26 Section 6-801, 6-803, and 6-804
27 Annotated Code of Maryland
28 (1993 Replacement Volume and 1995 Supplement)
29 (As enacted by Section 1 of this Act)

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1 BY repealing and reenacting, with amendments,
2 Article 41 - Governor - Executive and Administrative Departments
3 Section 6-802, 6-805, and 6-806
4 Annotated Code of Maryland
5 (1993 Replacement Volume and 1995 Supplement)
6 (As enacted by Section 1 of this Act)

7 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
8 MARYLAND, That Section(s) 5-401 through 5-406 and the subtitle "Subtitle 4.
9 Commission on Indian Affairs", respectively, of Article 83B - Department of Housing
10 and Community Development of the Annotated Code of Maryland be transferred to be
11 Section(s) 6-801 through 6-806 and the subtitle "Subtitle 8. Commission on Indian
12 Affairs", respectively, of Article 41 - Governor - Executive and Administrative
13 Departments of the Annotated Code of Maryland.

14 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
15 read as follows:

16 **Article 83B - Department of Housing and Community Development**

17 1-204.

18 (a) The following agencies, boards, commissions, councils, corporations,
19 authorities, trusts, and divisions shall be included within the Department:

- 20 (1) Division of Housing Finance;
- 21 (2) Maryland Housing Policy Commission;
- 22 (3) Community Development Administration;
- 23 (4) Division of Housing Credit Assurance;
- 24 (5) Maryland Housing Fund;
- 25 (6) Division of Community Assistance;
- 26 (7) Division of Historical and Cultural Programs;
- 27 (8) Historic St. Mary's City Commission;
- 28 (9) Commission on Afro-American History and Culture; AND
- 29 (10) [Commission on Indian Affairs; and
- 30 (11)] Maryland Historical Trust.

31 5-101.

32 (a) There is a Division of Historical and Cultural Programs as an organizational
33 unit within the Department of Housing and Community Development.

34 (b) The Division of Historical and Cultural Programs includes:

- 35 (1) The Historic St. Mary's City Commission;

3

1 (2) The Commission on African American History and Culture;

2 (3) [The Commission on Indian Affairs;

3 (4)] The Maryland Historical Trust; and

4 [(5)] (4) The Historical and Cultural Museum Assistance Program.

5 **Article 41 - Governor - Executive and Administrative Departments**

6 Subtitle 8. Commission on Indian Affairs.

7 6-801.

8 The Commission on Indian Affairs is an agency in the Department. In this subtitle,
9 it shall be referred to as the "Commission".

10 6-802.

11 (a) (1) The Commission shall consist of nine members appointed by the
12 Governor, with the advice and consent of the Senate, a majority of whom shall be
13 members of the native American Indian communities of this State, and at least 3 of whom
14 shall be appointed from Indian communities that are indigenous to Maryland. Each
15 member of the Commission shall have a demonstrable knowledge of Indian culture and
16 history, and be sensitive to the problems of the Indian communities. The term of a
17 member is 3 years. At the end of a term, a member continues to serve until a successor is
18 appointed and qualifies. A member who is appointed after a term has begun serves only
19 for the rest of the term and until a successor is appointed and qualifies. A member may
20 succeed himself, but may not serve more than 6 years consecutively.

21 (2) (i) Each applicant shall submit, under oath or affirmation, a list of the
22 applicant's qualifications, including:

- 23 1. The applicant's educational history;
- 24 2. The applicant's employment background or other relevant
25 experience; and
- 26 3. In the case of an individual applying for appointment as an
27 American Indian member of the Commission, documentation or proof of Indian tribe,
28 band, group, or clan membership, under the sworn and notarized signature of the
29 authorized custodian of the records of the membership rolls of the applicable Indian
30 tribe, band, group, or clan.

31 (ii) The Governor may require the production of any other documents
32 necessary to prove:

- 33 1. The standing or history of the Indian tribe, band, group, or
34 clan of which an applicant claims membership; or
- 35 2. The qualifications of an individual applicant.

36 (3) (i) Any person who, in any matter within the scope of this section,
37 knowingly and willfully falsifies or conceals, by any trick, scheme, or device, a material

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1 fact, or makes any false, fictitious, or fraudulent statements or representations, or makes
2 or uses any false writing or document knowing the writing or document contains any false,
3 fictitious, or fraudulent statement or entry, is guilty of a misdemeanor.

4 (ii) Except as otherwise provided by law, a person who violates this
5 section is subject to a fine of not more than \$1,000, or imprisonment for not more than 6
6 months, or both.

7 (b) Members of the Commission shall receive no compensation for their services,
8 but they may be reimbursed for proper and necessary expenses incurred in the discharge
9 of their duties on the Commission in accordance with the Standard State Travel
10 Regulations.

11 (c) The Commissioners shall elect annually a chairman and vice-chairman from
12 among the members of the Commission.

13 (d) The Commission shall meet at the call of the chairman, a majority of the
14 members, or the Secretary OF HUMAN RESOURCES.

15 6-803.

16 The Commission shall:

17 (1) Initiate, direct, and coordinate projects which further the understanding
18 of Indian history and culture;

19 (2) Conduct a survey of historic buildings, sites, artifacts, archives and
20 repositories, and publish and disseminate these findings and information;

21 (3) Undertake a comprehensive study of indigenous American Indian tribes
22 including but not limited to the Crees, Creeks, Cherokees, Chippewas, Choptanks,
23 Delawares, Haliwas, Lumbees, Nanticokes, Piscataways, Potomacs, Rappahannocks,
24 Seminoles, Susquehannas, and Wicomicos, and their influence upon Maryland history
25 and culture;

26 (4) Study the status of all Indian groups, tribes and communities in the State
27 and assist them in obtaining recognition from the federal government;

28 (5) Study the economic and social needs of Indians in Maryland and make
29 recommendations for the alleviation of these needs;

30 (6) Locate, preserve and disseminate information to the public about
31 significant buildings and sites relating to Indian history and culture, respectively; and

32 (7) Publish an annual report and any other material it deems necessary.

33 6-804.

34 (a) The Commission may seek funds from the federal government, foundations
35 and private sources in addition to State funding.

36 (b) The Commission may accept any gifts, grants, donations, bequests, or
37 endowments for any purposes of the Commission.

1 (c) (1) If any funds received under subsection (a) or (b) of this section or any
2 income and fees received by the Commission that are derived from educational materials
3 and activities of the Commission are unexpended at the end of the fiscal year, the funds
4 or income may not revert to the General Fund of the State, but instead, shall be
5 maintained as special funds available to the Commission for carrying out the purposes of
6 this subtitle.

7 (2) Funds maintained under this subsection shall be subject to audit by the
8 State, including by the legislative auditor.

9 6-805.

10 (a) The Commissioners, subject to the approval of the Secretary OF HUMAN
11 RESOURCES, shall appoint, from without their number, an administrator of the
12 Commission.

13 (b) The administrator shall serve at the pleasure of the Commissioners, subject to
14 the concurrence of the Secretary OF HUMAN RESOURCES, and shall be in the
15 unclassified service of the State Personnel Management System.

16 (c) Subject to the rules and policies set forth by the Commissioners and the
17 administrative supervision of the Secretary OF HUMAN RESOURCES in accordance with
18 §§ 1-201, 1-202, and 1-205 of this article, the administrator shall:

19 (1) Be the chief administrative officer of the Commission;

20 (2) Direct, administer, and supervise the activities of the Commission; and

21 (3) Supervise the appointment and removal of personnel employed by the
22 Commission.

23 6-806.

24 (a) Subject to the approval of the Secretary OF HUMAN RESOURCES, the
25 Commission may establish a process by which a native American tribe, band, group, or
26 clan which is indigenous to Maryland can apply to the Commission for formal recognition
27 of Maryland Indian status.

28 (b) (1) The Commission shall adopt regulations and procedures necessary to
29 carry out the provisions of this section in accordance with the provisions of Title 10,
30 Subtitle 1 of the State Government Article.

31 (2) The regulations shall address the application process and genealogical
32 standards, and shall specify the criteria which must be satisfied by a tribe, band, group, or
33 clan applying for recognition.

34 (3) The criteria shall be generally consistent with the criteria established by
35 the U.S. Department of the Interior, Bureau of Indian Affairs, for tribal recognition by
36 the United States of America, taking into account the special circumstances of American
37 Indians indigenous to Maryland and shall include the following criteria:

38 (i) The petitioning group has been identified from historical times
39 until the present as "American Indian" or "aboriginal";

1 (ii) The members of the petitioning group are descendants from a
2 tribe that existed historically and is either indigenous to Maryland or derived from
3 historical tribes indigenous to Maryland prior to 1790;

4 (iii) The members of the petitioning group are descendants of an
5 Indian tribe that historically inhabited a specific area in Maryland prior to 1790;

6 (iv) The membership of the petitioning group is composed principally
7 of persons who are not members of any other North American tribe, band, group, or clan;
8 and

9 (v) Any other criteria that the Commission considers necessary
10 through regulations adopted by the Commission.

11 (c) (1) Upon the Commission's determination that a particular tribe, band,
12 group, or clan has met the requirements for recognition set forth in the regulations, the
13 Commission may recommend formal recognition to the Governor.

14 (2) A Commissioner may not vote or participate in any way in the
15 deliberations with respect to any application for formal recognition of Maryland Indian
16 status made by an Indian tribe, band, group, or clan of which the Commissioner is a
17 member.

18 (d) (1) If the Governor concurs with the Commission's recommendation, the
19 Governor may propose by executive order to provide formal recognition to the particular
20 tribe, band, group, or clan.

21 (2) An executive order proposed to be promulgated under this subsection
22 shall first be presented to the Joint Committee on Administrative, Executive, and
23 Legislative Review for review by the members of the Committee. The executive order
24 shall take effect 30 days after submission to the Committee.

25 (e) (1) The provisions of this section are not intended to create any rights of
26 ownership or other rights to land or to create any benefits or entitlements of any kind, nor
27 are they intended to impair valid existing rights, benefits, or entitlements belonging to
28 American Indians residing in the State.

29 (2) The provisions of this section may not impair existing judicial rulings of
30 the State regarding Maryland's American Indians.

31 (3) Prior to formal recognition of Maryland Indian status, members of the
32 petitioning group shall submit an affidavit renouncing all tribal rights of ownership with
33 respect to land in the State.

34 (f) Any action or failure to take action by the Commission under this section does
35 not create a private cause of action under the laws of the State.

36 (g) (1) Any person who, in any matter within the scope of this section,
37 knowingly and willfully falsifies or conceals, by any trick, scheme, or device, a material
38 fact, or makes any false, fictitious, or fraudulent statements or representations, or makes
39 or uses any false writing or document, knowing the writing or document contains any
40 false, fictitious, or fraudulent statement or entry, is guilty of a misdemeanor.

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1 (2) Except as otherwise provided by law, a person who violates this section is
2 subject to a fine of not more than \$1,000, or imprisonment for not more than 6 months, or
3 both.

4 (h) The provisions of this section may not be construed to create in the
5 Commission any power to establish criteria for membership in a tribe, band, group, or
6 clan. That power is specifically reserved to the individual tribe, band, group, or clan.

7 SECTION 3. AND BE IT FURTHER ENACTED, That, except as expressly
8 provided to the contrary in this Act, any transaction affected by or flowing from any
9 statute here amended, repealed, or transferred, and validly entered into before the
10 effective date of this Act and every right, duty, or interest following from it remains valid
11 after the effective date of this Act and may be terminated, completed, consummated, or
12 enforced pursuant to law.

13 SECTION 4. AND BE IT FURTHER ENACTED, That, except as otherwise
14 provided in this Act, all regulations, proposed regulations, standards and guidelines,
15 proposed standards and guidelines, orders and other directives, forms, plans,
16 memberships, special funds, appropriations, grants, loans, applications and commitments
17 for grants and loans, contracts, properties, investigations, administrative and judicial
18 proceedings, rights to sue and be sued, and all other duties and responsibilities associated
19 with these functions transferred by this Act shall continue in effect until completed,
20 withdrawn, canceled, modified, or otherwise changed pursuant to law.

21 SECTION 5. AND BE IT FURTHER ENACTED, That if any provision of this
22 Act or the application thereof to any person or circumstance is held invalid for any reason
23 in a court of competent jurisdiction, the invalidity does not affect other provisions or any
24 other application of this Act which can be given effect without the invalid provision or
25 application, and for this purpose the provisions of this Act are declared severable.

26 SECTION 6. AND BE IT FURTHER ENACTED, That all opportunities for
27 access by Commission on Indian Affairs members and staff to the programs and staff of
28 the Maryland Historical Trust shall continue without reduction, including opportunities
29 for Commission participation or comment in Trust activities involving Native Americans
30 or Native American cultural resources in Maryland.

31 SECTION 7. AND BE IT FURTHER ENACTED, That this Act shall take effect
32 July 1, 1996.