

CHAPTER NO. 344

HOUSE BILL NO. 1530

By Representatives Kernell, Henri Brooks, Cooper, Dunn, Davis, Pinion, Maddox, Tindell, Armstrong, Fraley, Bone, Ferguson, Fitzhugh, Chumney, Larry Turner, Windle, Yokley, Brenda Turner, Hensley, Fowlkes

Substituted for: Senate Bill No. 704

By Senators Harper, Ketron, Cooper, McLeary, Bryson, Burks, Burchett, Kilby

AN ACT to amend Tennessee Code Annotated, Title 4, relative to the Tennessee commission of Indian affairs.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 4, Chapter 34, is amended by adding sections 2 through 9 of the act as a new part thereto.

SECTION 2.

(a) There is hereby created and established the Tennessee commission of Indian affairs.

(b) The commission shall be attached to the department of environment and conservation for administrative purposes only.

SECTION 3. The purposes of the commission are to:

(1) Deal fairly and effectively with Indian affairs;

(2) Research and find local, state and federal resources of funding and other assistance for the implementation or continuation of meaningful programs for Indian citizens of the state;

(3) Provide aid and protection for Indians as needs are demonstrated;

(4) Prevent undue hardships;

(5) Assist Indian communities in social and economic development;

(6) Promote recognition of, and the right of Indians to pursue cultural and religious traditions considered by them to be sacred and meaningful to Native Americans; and

(7) Communicate with Tennessee's Indian communities and solicit communications from such Indian communities.

SECTION 4. It is the duty of the commission to:

(1) Study, consider, accumulate, compile, assemble and disseminate information on any aspect of Indian affairs;

(2) Investigate relief needs of Indians of Tennessee and to provide technical assistance in the preparation of plans for the alleviation of such needs;

(3) Confer with appropriate officials of local, state and federal governments and agencies of these governments, and with such congressional commissions that may be concerned with Indian affairs;

(4) Encourage and implement coordination of applicable resources to meet the needs of Indians in Tennessee;

(5) Study the existing status of recognition of all Indian groups, tribes and communities presently existing in Tennessee;

(6) Establish appropriate procedures to provide for legal recognition by the state of presently unrecognized tribes, nations, groups, communities or individuals, and to provide for official state recognition by the commission of such;

(7) Cooperate with and secure the assistance of the local, state and federal governments or any agencies thereof in formulating any programs that the commission finds necessary or beneficial to Indians in Tennessee;

(8) Coordinate any programs regarding Indian affairs adopted or planned by the federal government to the end that the commission secure the full benefit of such programs;

(9) Review and comment on all proposed or pending state legislation and amendments to existing state legislation directly affecting Indians in Tennessee; and

(10) Conduct public hearings on matters relating to Indian affairs and to subpoena any information or documents deemed necessary by the commission.

SECTION 5.

(a) The Tennessee commission of Indian affairs shall consist of at least seven (7) members as follows:

(1) One (1) member from each of the four (4) metropolitan areas: Shelby, Davidson, Knox and Hamilton, and counties contiguous thereto;

(2) One (1) member from each of the three (3) grand divisions of the state; and

(3) One (1) member from each Native American Indian nation or tribe located within Tennessee, and recognized by the state per recognition guidelines established by the commission.

(b)

(1) The Tennessee Native American convention shall submit a list of not less than two (2) names for each position on the commission to be appointed.

(2) Accompanying each nominee's name submitted shall be a resume, including the nominee's educational background, work history, heritage, description of why the nominee would be a suitable

commissioner and the democratic process and results that led to the nomination.

(3) Preference in selection of at least five (5) Indian commissioners shall be given to Native American Indians, i.e., persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.

(4) Each member of the commission of Indian affairs shall be a resident of Tennessee.

(c) From the names submitted by the Tennessee Native American convention, the speaker of the senate shall appoint two (2) commissioners from two (2) areas, the speaker of the house shall appoint two (2) commissioners from two (2) areas and the governor shall appoint three (3) commissioners from three (3) areas. The governor shall appoint no more than two (2) commissioners from metropolitan areas, and each speaker shall appoint no more than one (1) member from metropolitan areas.

(d) If the speaker of the house does not make his appointments within ninety (90) calendar days, the appointments shall be made by the speaker of the senate. If the speaker of the senate does not make his appointments within ninety (90) calendar days, the appointments shall be made by the governor. If the governor does not make his appointments within ninety (90) calendar days, the appointments shall be made by the speaker of the house.

(e) Commissioners shall serve for four-year terms and shall continue in office until the expiration of their terms for which they were respectively appointed and until such time as their successors are appointed.

(f) Commissioners shall be at least eighteen (18) years of age upon their appointment and shall have been residents of Tennessee for at least one (1) year.

(g) To stagger the terms of the commission members, the speakers shall make the initial appointments from the list of nominees in the following manner:

(1) The initial terms of commissioners from the three (3) grand divisions shall end on October 30, 2003; and

(2) The initial terms of the commissioners from the four (4) metropolitan areas shall end on October 30, 2005.

(h) Any member appointed to fill a vacancy shall be appointed for the remainder of the term of the member causing the vacancy. The appointing authority of the vacancy shall rotate among the appointing authorities.

(i) The members of the commission shall elect a chair, a vice chair and a secretary from among its members. Officers shall serve terms of two (2) years.

(j) Commission members shall serve without compensation.

SECTION 6.

(a) Commission meetings shall be held at least quarterly.

(b) Commission meetings shall be held on Saturdays. The locations of commission meetings shall rotate among the cities of Memphis, Nashville, Chattanooga and Knoxville.

(c) Prior to a commission meeting, at least ten (10) days' notice shall be given in writing to all Native American organizations in Tennessee that have requested such notification. Notice shall be given by mail and by E-mail, if available. The commission shall also place notice of its meeting times and places on the website of the Tennessee commission of Indian affairs.

(d) The minutes of all commission meetings shall be placed on the website of the Tennessee commission of Indian affairs within one hundred (100) days of the meeting. Minutes of all prior commission meetings shall be accessible on the commission's website.

(e)

(1) Annual reports of the commission shall be approved within forty-five (45) days of their submission to the commission.

(2) Annual reports of the commission shall be placed on the website of the Tennessee commission of Indian affairs for public access within forty-five (45) days of their approval.

(3) All prior annual reports shall be accessible on the commission's website.

(f) Four (4) commissioners shall constitute a quorum for the conducting of business of the commission.

(g) Agendas for commission meetings shall be delivered to each member of the commission at least one (1) week prior to the commission meeting.

(h) Minutes of all commission meetings shall be mailed or E-mailed to all commission members.

(i) Roberts' Rules of Order shall govern meetings of the commission when not in conflict with specific bylaws or other rules as may be adopted by the board.

(j) Members of the commission are to serve without compensation and shall not be reimbursed for travel expenses.

(k) The commission is authorized to raise and expend funds for the purpose of carrying out the mission of the commission, however, the commission is to operate without dependence on state appropriations.

(l)

(1) Commission meetings shall not be adjourned until members of the public attending such meeting have had an opportunity to address the commission.

(2) A summary of comments made by members of the public attending such meetings shall be entered into the minutes of the commission.

(m) The chairperson shall appoint three (3) members of the commission to establish a rules commission. The rules commission shall develop procedural and operating rules for the commission. The commission shall approve of all proposed rules by a majority vote before such rules take effect.

SECTION 7. No member or employee of the Tennessee commission of Indian affairs shall, in such person's capacity as a member or employee of the commission, enter into any litigation without the approval of the commission by a majority vote of the commission. Such approval shall be part of the minutes of the meeting in which such approval is granted. Nothing in this act shall prohibit a member or employee of the commission from entering into any litigation in such person's individual capacity.

SECTION 8.

(a) Fiscal records shall be kept by the commissioner of environment and conservation and will be subject to audit as authorized by § 8-4-109 or a certified public accountant.

(b) The audit report will become a part of the annual report and will be submitted in accordance with the regulations governing preparation and submission of the annual report.

SECTION 9. The chair of the commission shall carry out the day-to-day responsibilities of the commission. The chair of the commission is to serve without compensation and shall not be reimbursed for travel expenses.

SECTION 10. Tennessee Code Annotated, Section 4-29-226(a), is amended by adding a new item thereto, as follows:

() Commission of Indian affairs, created by section 2 of this act;

SECTION 11.

(a) All programs and data administered by the Tennessee commission of Indian affairs prior to the effective date of this act shall be transferred to and administered by the Tennessee commission of Indian affairs created by this act.

(b) All offices, equipment, supplies, property, facilities, funds and other resources of any program under the Tennessee commission of Indian affairs shall be transferred to the Tennessee commission of Indian affairs created by this act.

(c)

(1) All contracts and leases entered into by the past Tennessee commission of Indian affairs with any entity, corporation, agency, enterprise, association or person, prior to the effective date of this act, shall continue in full force and effect as to all provisions in accordance with the terms and conditions of such contracts or leases in existence on the effective date of this act, to the same extent as if such contracts or leases had originally been entered into by and between such entity, corporation, agency, enterprise, association or person and the

Tennessee commission of Indian affairs created by this act, unless and until such contracts or leases expire or are duly amended, modified or terminated by the parties thereto.

(2) The provisions of subdivision (c)(1) shall not be implemented in any manner that violates the prohibition against the impairment of contract obligations as contained in the Constitution of Tennessee, Article I, § 20.

(3) All rules, regulations, policies, orders and decisions promulgated or issued by the Tennessee commission of Indian affairs prior to, and in effect on the effective date of this act shall remain in force and effect and shall be administered and enforced by the Tennessee commission of Indian affairs created by this act until duly amended, repealed, expired, modified or superseded.

(4) On the effective date of this act, all references to the existing Tennessee commission of Indian affairs contained in any forms, legal documents, notices and papers of any kind in the possession of or issued by the existing Tennessee commission of Indian affairs shall be deemed references to the Tennessee commission of Indian affairs created by this act, and any actions thereon may be brought or maintained in the name of the Tennessee commission of Indian affairs created by this act as the successor in interest and shall receive the same force and effect as if brought in the name of the predecessor commission.

(e) The transfer of the functions and activities of the past Tennessee commission of Indian affairs to the Tennessee commission of Indian affairs created by this act shall not, because of the transfer, result in any impairment, interruption or diminution of the regulatory rights and privileges of the Tennessee commission of Indian affairs.

SECTION 12. On and after the effective date of this act, the Tennessee commission of Indian affairs created by this act has the authority to receive, administer, allocate, disburse and supervise any grants and funds from whatever sources, including, but not limited to, the federal, state, county and municipal governments on a state, regional, county or any other basis, with respect to any programs or responsibilities outlined in this part or assigned to the commission by law, regulation or order.

SECTION 13. The Tennessee commission of Indian affairs created by this act has the authority, consistent with the statutes and regulations pertaining to the programs and functions transferred herein, to modify or rescind orders, rules and regulations, decisions or policies heretofore issued and to adopt, issue or promulgate new orders, rules and regulations, decisions or policies as may be necessary for the administration of the programs or functions herein transferred.

SECTION 14. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: May 27, 2003


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 13th day of June 2003


PHIL BREDEESEN, GOVERNOR