

1 SB337
2 119953-5
3 By Senator Little (T)
4 RFD: Tourism and Marketing
5 First Read: 02-FEB-10

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 To add Article 44 to Chapter 9 of Title 41 of the
12 Code of Alabama 1975, to create the Creek War and War of 1812
13 Bicentennial Commission; to make legislative findings; to
14 provide definitions; to provide for the purpose, membership,
15 powers, duties, and operations of the commission; to provide
16 for expenses subject to available funds; and to provide for
17 termination of the commission.

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

19 Section 1. Article 44 is added to Chapter 9 of Title
20 41 of the Code of Alabama 1975, to read as follows:

21 Article 44.

22 §41-9-1060.

23 There is hereby created and established the Creek
24 War and War of 1812 Bicentennial Commission.

25 §41-9-1061.

26 The Legislature of Alabama makes the following
27 findings:

1 (1) Because the onset and subsequent activities of
2 the Creek War and the War of 1812 were seminal events for our
3 young nation, and especially for the area that would become
4 the State of Alabama, it is important for this state to
5 commemorate the historical activities and people of this era.

6 (2) At the onset of the War of 1812, the lands
7 comprising the future State of Alabama were a part of the
8 Mississippi territory, the Kingdom of Spain, and the Cherokee,
9 Chickasaw, Choctaw, and Creek Indian Nations. At the time of
10 the outbreak of the War of 1812, the Creek nation was on the
11 verge of civil conflict, which broke out in early 1813. When
12 the Creek National Council called on the United States for
13 assistance in fighting the Red Stick insurgents, the Creek
14 civil war quickly became an American-Creek war, and Red Stick
15 Creeks sought British assistance against their adversaries. In
16 the ensuing conflict, the United States and its Indian allies
17 won victories against Red Stick forces, conquered Spanish
18 territory, and twice defended the Alabama coastline against
19 British-led invasions.

20 (3) The Creek War and the War of 1812 were
21 distinguished by a number of significant battles. Battles,
22 campaigns, encampments, and expeditions took place in every
23 part of the state, with American armies from Georgia,
24 Tennessee, and the Mississippi territory converging on the
25 central part of the state. Naval activity also occurred in
26 Mobile Bay. These battles and troop movements exposed the
27 lands of the future State of Alabama to potential settlers.

1 (4) Among the most prominent battles were the Fort
2 Mims Massacre, an action by Red Stick insurgents that
3 galvanized American public opinion in support of a war against
4 the Creeks; the Battle of Horseshoe Bend, in which Andrew
5 Jackson's forces won a decisive victory against the Creeks,
6 thereby ending the Creek War and securing for Jackson the
7 status of national war hero and propelling him to fame; the
8 defeat of the British in their attempt to take Mobile Bay,
9 thereby delaying the British campaign to take New Orleans and
10 allowing time for American armies to prepare for defenses in
11 that city; and the final large-scale military action of the
12 War of 1812 that took place at Fort Bowyer, now called Fort
13 Morgan, more than a month after the Battle of New Orleans.

14 (5) As a result of the war, 22,000,000 acres were
15 ceded by the Creek Nation to the United States in the Treaty
16 of Fort Jackson. The majority of this land ultimately became
17 part of the Alabama territory and was later designated as the
18 State of Alabama. The subjugation of the Creek Indians
19 precipitated a land rush in the newly-ceded lands, leading to
20 the rapid expansion of settlement in Baldwin and Mobile
21 Counties and in the Tennessee Valley.

22 (6) Current Alabama counties which saw significant
23 action during the war years were: Autauga, Baldwin, Chambers,
24 Cherokee, Clarke, Clay, Coosa, Dallas, Elmore, Lee, Lowndes,
25 Macon, Madison, Marengo, Marshall, Mobile, Monroe, Montgomery,
26 Morgan, Perry, Randolph, Russell, St. Clair, Talladega,
27 Tallapoosa, Washington, and Wilcox.

1 (7) The importance of a bicentennial commemoration
2 has been recognized by other states and by the United States
3 Congress. Commemoration of the period offers an excellent
4 opportunity to enhance educational programs and engender
5 heritage tourism within Alabama. Therefore, it is in the
6 interest of the state to provide and support the appropriate
7 celebrations and commemorative activities to maximize public
8 education and appreciation of significant events in the
9 history of the period.

10 §41-9-1062.

11 For purposes of this article, the following words
12 shall have the following meanings:

13 (1) COMMEMORATION. A commemoration of the Creek War
14 and the War of 1812.

15 (2) COMMISSION. The Creek War and War of 1812
16 Bicentennial Commission.

17 (3) COUNTIES. The counties of Autauga, Baldwin,
18 Chambers, Cherokee, Clarke, Clay, Coosa, Dallas, Elmore, Lee,
19 Lowndes, Macon, Madison, Marengo, Marshall, Mobile, Monroe,
20 Montgomery, Morgan, Perry, Randolph, Russell, St. Clair,
21 Talladega, Tallapoosa, Washington, and Wilcox.

22 (4) QUALIFIED RESIDENT. Any resident of the State of
23 Alabama with an interest in, support for, and expertise
24 appropriate to the commemoration.

25 §41-9-1063.

26 (a) The commission shall be composed of 29 members
27 to be appointed by the following:

1 (1) Ten members shall be qualified residents
2 appointed by a majority of the commissioners appointed
3 pursuant to subdivisions (3) to (16), inclusive, after
4 consideration of nominations submitted by the county
5 commissions of Autauga, Baldwin, Clarke, Elmore, Macon,
6 Madison, Mobile, Talladega, Tallapoosa, and Washington
7 Counties.

8 (2) Four members shall be qualified residents
9 appointed by a majority of the commissioners appointed
10 pursuant to subdivisions (3) to (16), inclusive, after
11 consideration of nominations submitted by the mayors of the
12 City of Alexander City, the City of Huntsville, the City of
13 Mobile, and the City of Montgomery.

14 (3) Two members shall be employees of and appointed
15 by the Alabama Historical Commission.

16 (4) One member shall be an employee of and appointed
17 by the Alabama Tourism Department.

18 (5) One member shall be an employee of and appointed
19 by the Alabama Department of Archives and History.

20 (6) One member shall be an employee of and appointed
21 by the Alabama Department of Indian Affairs.

22 (7) One member shall be an employee of, and
23 appointed by the Department of Conservation and Natural
24 Resources.

25 (8) One member shall be an employee of and appointed
26 by the Alabama Department of Education.

1 (9) One member shall be an employee of and appointed
2 by the Horseshoe Bend National Military Park.

3 (10) One member shall be appointed by the Alabama
4 Historical Commission.

5 (11) One member shall be appointed by the Poarch
6 Band of Creek Indians.

7 (12) One member shall be appointed by the Alabama
8 Archaeological Society.

9 (13) One member shall be appointed by the Alabama
10 Association of Historians.

11 (14) One member shall be appointed by the Historic
12 Chattahoochee Commission.

13 (15) One member shall be appointed by the Alabama
14 Black Heritage Council.

15 (16) One member shall be appointed by the Alabama
16 Humanities Foundation.

17 (b) Members of the commission shall be appointed to
18 reflect the racial, gender, geographic, urban/rural, and
19 economic diversity of the State of Alabama.

20 (c) The members of the commission shall be appointed
21 within 120 days after the effective date of this act. A person
22 appointed to the commission shall serve until written notice
23 is given to the chair by the appointing authority that the
24 appointment is no longer effective, or until the commission
25 determines that such appointment is no longer effective.

26 (d) Members shall be appointed for the life of the
27 commission.

1 (e) A vacancy on the commission shall not affect the
2 powers of the commission and shall be filled in the same
3 manner as the original appointment for any unexpired term;
4 except that a vacancy of a member appointed pursuant to
5 subdivision (1) or (2) of subsection (a) shall be filled by a
6 majority vote of the entire commission pursuant to subsection
7 (f).

8 (f) The commission shall act on an affirmative vote
9 of a majority of the members of the commission attending a
10 meeting of the commission for which notice was provided
11 pursuant to subsection (g). Members of the commission may
12 participate in any meeting of the commission by means of a
13 conference telephone or similar communications equipment by
14 means of which all persons participating at the meeting can
15 hear each other at the same time, and participation by such
16 means shall constitute presence in person at a meeting.

17 (g) Notice of the time, day, and place of all
18 meetings of the commission shall be given to all members of
19 the commission in person or by telephone, mail, e-mail, or
20 facsimile, by or at the direction of the chair or the vice
21 chair. If the notice is sent by mail, it shall be deposited in
22 the United States post office as first class mail or with a
23 private mail carrier for overnight delivery, postage prepaid
24 and addressed to the member at his or her address as it
25 appears on the records of the commission, at least five days
26 before the day of the meeting. If the notice is sent by any

1 other method or is delivered in person, the notice shall be
2 sent or delivered at least 48 hours before the meeting.

3 (h) The commission shall select a chair and a vice
4 chair from among the members of the commission.

5 (i) The commission shall hold an initial meeting
6 within 150 days after the effective date of this act.

7 (j) During the years 2010 and 2011, there shall be
8 no fewer than three meetings of the commission per year at the
9 call of the chair or a majority of the members of the
10 commission.

11 (k) During the years 2012 through 2015, there shall
12 be no fewer than two meetings of the commission per year at
13 the call of the chair or a majority of the members of the
14 commission.

15 §41-9-1064.

16 Subject to available funds, the commission shall do
17 all of the following:

18 (1) Plan, develop, execute, coordinate, and assist
19 in programs, observances, studies, and activities
20 commemorating the historic events associated with the Creek
21 War and War of 1812.

22 (2) Facilitate and encourage the commemoration
23 throughout the state.

24 (3) Lead in the establishment of a statewide
25 observance of the Creek War and War of 1812 by complementing,
26 cooperating with, and providing assistance to the programs and

1 activities of the various counties and organizations involved
2 in the commemoration.

3 (4) Encourage observances benefiting the diverse
4 population of the state by interacting with all of the natural
5 and cultural treasures of the state.

6 (5) In cooperation with the appropriate federal
7 agencies, and through archival and archaeological research,
8 the commission may work with the state archaeologist to update
9 and augment the inventory and assessments of the
10 archaeological and historic sites enumerated in the
11 state-developed and National Park Service American Battlefield
12 Protection Programs to also reflect historic sites that are
13 not associated with battles.

14 (6) Encourage and assist in the preparation of
15 printed books, electronic web pages, and associated
16 educational material.

17 (7) Encourage and welcome international involvement
18 in celebrations and observances and cooperate and coordinate
19 with the National War of 1812 Bicentennial Commission and
20 commissions in other states.

21 (8) Cooperate with and assist the Alabama Tourism
22 Department in developing maps and other material to encourage
23 heritage-related tourism during the commemoration period, with
24 such cooperation extended to counties and municipalities
25 through chambers of commerce, convention and visitors bureaus,
26 and similar agencies.

1 (9) Seek out and encourage national and regional
2 groups to hold events and living history gatherings.

3 (10) Coordinate with appropriate private, municipal,
4 county, regional, and federal agencies including the National
5 Park Service and the federal Department of Defense.

6 (11) Encourage agencies and groups throughout the
7 state to organize and participate in the commemoration.

8 (12) Encourage civic, patriotic, historical,
9 educational, religious, economic, tourism, and other
10 organizations throughout the state to expand the understanding
11 and appreciation of the significance of the Creek War and War
12 of 1812.

13 (13) Coordinate with the States of Mississippi,
14 Georgia, Louisiana, Tennessee, North Carolina, South Carolina,
15 and Florida to exchange information, present beneficial joint
16 programs, encourage tourism, and educate students and the
17 public.

18 (14) Provide a calendar of events to the Department
19 of Education and the Alabama Tourism Department no later than
20 six months prior to the commemoration.

21 (15) Work with the Department of Archives and
22 History and state colleges and universities to design,
23 develop, and provide, during the designated commemoration
24 period for the purpose of promoting education and tourism, a
25 website that shall include a calendar of statewide
26 commemoration festivities, an explanation of events preceding
27 and associated with the Creek War and War of 1812 in Alabama,

1 and a selection of documents and maps from the period in order
2 to make the wealth of historical resources of the state easily
3 accessible to the general public and schools.

4 (16) Collaborate with the Department of Archives and
5 History to design, develop, and provide an exhibit or exhibits
6 to interpret the events of the period for the educational and
7 informational benefit of the citizens and tourists of Alabama.

8 (17) Collaborate with the State Archaeologist to
9 update and enhance the inventory of significant archaeological
10 sites and structures associated with the commemorative period
11 and, upon completion of the list, execute surveys necessary
12 for the identification and potential preservation of the
13 sites.

14 (18) Cooperate with the Alabama Tourism Department,
15 state historians, regional and local agencies, and the State
16 Archaeologist to produce a Bicentennial Trail map to be
17 available for public distribution no later than January 1,
18 2012.

19 (19) Direct a state historian to compile for
20 distribution to appropriate state historic sites and Alabama
21 schools a pamphlet including the biographies of notable War of
22 1812-era Alabamians, including citizens, military figures,
23 political figures, Indian leaders, and namesakes for Alabama
24 counties.

25 (20) Ensure that commemorations provide a lasting
26 legacy and long-term public benefit leading to the protection
27 of the resources associated with the era.

1 (21) Cooperate and coordinate with other state and
2 national archives, museums, and repositories holding pertinent
3 Alabama-associated artifacts, images, and documents to secure
4 loans and exhibits of the materials in Alabama during the
5 commemoration period.

6 (22) Cooperate and coordinate with the Department of
7 Transportation to mark and interpret the Old Federal Road
8 route.

9 (23) Cooperate and coordinate with the Alabama
10 Humanities Foundation to establish a speakers' bureau of
11 experts and publicize the experts to communities across the
12 state.

13 (24) Cooperate with the Department of Education, the
14 Department of Archives and History, state colleges and
15 universities, and the Alabama Humanities Foundation to
16 encourage and support the development of teaching materials
17 and teacher workshops related to the Creek War and War of 1812
18 in Alabama.

19 (25) Prepare a strategic plan and annual performance
20 plans for any activity carried out by the commission.

21 (26) Solicit, accept, use, and dispose of gifts or
22 donations of money, services, and real and personal property
23 related to its mission.

24 (27) Appoint an advisory committee as the commission
25 deems necessary.

1 (28) Authorize any member or employee of the
2 commission to take any action the commission is authorized to
3 undertake.

4 (29) Use the United States mails in the same manner
5 and under the same conditions as other agencies of the state
6 government.

7 (30) Use the printing and other state resources in
8 the same manner and under the same conditions as other
9 agencies of the state government.

10 (31) Make grants to communities, nonprofit
11 commemorative commissions, educational institutions and
12 organizations, and research and scholarly organizations to
13 develop programs and products to assist in researching,
14 publishing, marketing, and distributing information relating
15 to the commemoration.

16 (32) Secure supplies, services, and property.

17 (33) Make or enter into contracts, leases, or other
18 legal agreements not to extend beyond the termination date of
19 the commission.

20 (34) Secure directly from a state agency such
21 information as the commission considers to be necessary to
22 carry out its mission and, upon request of the chair of the
23 commission, the head of the agency shall provide information
24 to the commission.

25 (35) Perform any other duty or take any other action
26 necessary for the accomplishment of the foregoing authorized
27 activities that is not otherwise prohibited by law.

1 (36) Receive and expend any funds, including state
2 funds which are appropriated to the commission.

3 (37) Employ state employees.

4 Notwithstanding the above powers, the commission
5 shall have no authority to obligate state funds or to require
6 any unit of state or local government to expend or obligate
7 funds. Any provision of this article that shall make any power
8 or duty of the commission subject to availability of funding,
9 the provision shall be intended to make the exercise of such
10 power or duty contingent on the commission having received
11 grants, donations, or contract funds sufficient for such
12 purpose.

13 §41-9-1065.

14 (a) No later than September 30, 2015, the commission
15 shall submit a report to the Department of Examiners of Public
16 Accounts that includes all of the following:

17 (1) A summary of the activities of the commission.

18 (2) A final accounting of any funds received or
19 expended by the commission.

20 (3) The final disposition of any historically
21 significant items or other items acquired by the commission.

22 (b) The commission shall terminate upon submission
23 of the final report pursuant to subsection (a).

24 (c) No later than the date of termination of the
25 commission, the commission shall transfer any documents,
26 materials, books, manuscripts, miscellaneous printed matter,
27 memorabilia, relics, and exhibits and any materials donated to

1 the commission that relate to the Creek War and War of 1812 to
2 the Alabama Department of Archives and History, which may
3 de-accession any of these materials that do not conform with
4 its mission. Following the termination of the commission, the
5 Alabama Department of Archives and History may continue any of
6 the initiatives and purposes of the commission. Items produced
7 for sale by the commission shall be transferred to the Alabama
8 Historical Commission and the Alabama Department of Archives
9 and History for use at its retail outlets.

10 (d) Any funds held by the commission on the date of
11 termination shall be deposited into the State General Fund.

12 §41-9-1066.

13 (a) Except as provided in subsection (b), all
14 members of the commission shall serve without compensation.

15 (b) A member of the commission who is an official or
16 employee of the State of Alabama shall serve without
17 compensation and shall receive his or her compensation for his
18 or her employment or official duties.

19 (c) Subject to available funds, a member of the
20 commission shall be allowed travel expenses within the
21 guidelines established by the State of Alabama for state
22 employees and officials.

23 (d) Subject to available funds, the chair of the
24 commission, without regard to Merit System laws and
25 regulations, may appoint and terminate an executive director
26 and such other additional personnel as shall be necessary to
27 enable the commission to perform the duties of the commission.

1 The employment of an executive director shall be subject to
2 confirmation by the commission. The chair of the commission
3 may fix the compensation of the executive director and other
4 personnel without regard to the provisions of the law relating
5 to classification of positions, general schedule pay rates,
6 and any provisions of the state Merit System, but only upon
7 the approval of the commission.

8 (e) At the request of the commission and subject to
9 available funds, the head of any state agency may assign, on a
10 reimbursable or nonreimbursable basis, any of the personnel of
11 such agency to the commission to assist the commission in
12 carrying out the duties of the commission under this article.
13 The assignment of an employee shall be without loss of Merit
14 System status or privilege. Any city and any county may assign
15 personnel on similar terms and conditions. Notwithstanding the
16 foregoing sentences of this subsection, the commission shall
17 receive administrative support from the Alabama Historical
18 Commission on a nonreimbursable basis.

19 (f) The commission may accept and use voluntary and
20 uncompensated services as the commission determines necessary.

21 (g) Nothing in this article shall be construed to
22 require any state appropriations.

23 §41-9-1067.

24 (a) The commission and all contracts made by it
25 shall be exempt from all laws of the State of Alabama
26 requiring competitive bids in connection with contracts,

1 including, without limitation, Chapter 16 of Title 41 of the
2 Code of Alabama 1975.

3 (b) The commission shall not be subject to Article 3
4 of Chapter 15 of Title 9 of the Code of Alabama 1975,
5 regardless of the prior ownership of any property or interest
6 therein to be disposed of in any fashion by the commission.

7 (c) The commission shall not be subject to the Open
8 Meetings Act codified at Chapter 25A of Title 36 of the Code
9 of Alabama 1975 nor to any public record requirements of the
10 state, including without limitation, Chapter 12 of Title 36
11 and Chapter 13 of Title 41 of the Code of Alabama 1975.

12 (d) The commission shall not be subject to the
13 Alabama Administrative Procedure Act codified at Chapter 22 of
14 Title 41 of the Code of Alabama 1975.

15 (e) Members of the commission shall not be subject
16 to Chapter 25 of Title 36 merely because of their service on
17 the commission or because of the reimbursement of travel
18 expenses provided in Section 41-9-1066(c) of this act.
19 However, compensated employees of the commission shall be
20 subject to Chapter 25 of Title 36 of the Code of Alabama 1975,
21 so long as they are not employed in maintenance, clerical,
22 secretarial, or other similar positions.

23 (f) The commission shall be exempt from all state
24 and local taxes and assessments.

25 (g) Members and employees of the commission, absent
26 negligence, wantonness, recklessness, or deliberate
27 misconduct, shall be immune from civil liability and shall not

1 be liable for damages when performing their duties under this
2 article. The Attorney General shall represent members of the
3 commission and the employees of the commission in litigation
4 filed because of the performance of their duties under this
5 article.

6 (h) Subject to available funding, the commission
7 shall hire an independent certified public accounting firm to
8 examine its books and records and render a written audit
9 report annually.

10 (i) No part of the net earnings of the commission
11 remaining after payment of its expenses shall inure to the
12 benefit of any private entity or person.

13 (j) The commission, by resolution legally adopted to
14 conform to rules prescribed by the Board of Control of the
15 State of Alabama Employees' Retirement System, may elect to
16 have its employees become eligible to participate in the State
17 of Alabama Employees' Retirement System. The commission may
18 similarly agree that its employees shall be subject to state
19 insurance on the same basis as other state employees of the
20 Alabama Historical Commission.

21 (k) Notwithstanding any other provisions of this
22 act, the members of the commission, all employees, and any
23 contracts entered into by the commission shall reflect the
24 racial, gender, geographic, urban/rural, and economic
25 diversity of the state.

26 Section 2. If a court of competent jurisdiction
27 adjudges invalid or unconstitutional any clause, sentence,

1 paragraph, section, or part of this act, such judgment or
2 decree shall not affect, impair, invalidate, or nullify the
3 remainder of this act, but the effect of the decision shall be
4 confined to the clause, sentence, paragraph, section, or part
5 of this act adjudged to be invalid or unconstitutional.

6 Section 3. All laws or parts of laws which conflict
7 with this act are repealed.

8 Section 4. This act shall become effective
9 immediately following its passage and approval by the
10 Governor, or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate committee on Tourism and Marketing	02-FEB-10
Read for the second time and placed on the calen- dar with 1 substitute and	11-MAR-10
Read for the third time and passed as amended ...	14-APR-10

Yeas 27
Nays 0

McDowell Lee
Secretary