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HOUSE BILL NO. 715  
AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the House Committee on/for \_\_\_\_\_  
on \_\_\_\_\_)  
(Patron Prior to Substitute--Delegate Krizek)

A BILL to amend and reenact §§ 5.1-7, 10.1-1003, 10.1-1188, 10.1-2206.1, 10.1-2214, 10.1-2305, 56-46.1, and 62.1-266 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 10.1-104.02, 10.1-1186.3:1, 10.1-2205.1, and 28.2-104.01, relating to consultation with federally recognized Tribal Nations; permits and reviews with potential impacts on environmental, cultural, and historic resources.

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 5.1-7, 10.1-1003, 10.1-1188, 10.1-2206.1, 10.1-2214, 10.1-2305, 56-46.1, and 62.1-266 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 10.1-104.02, 10.1-1186.3:1, 10.1-2205.1, and 28.2-104.01 as follows:**

**§ 5.1-7. Licensing of airports and landing areas.**

Except as provided in § 5.1-7.2, every person, before operating an airport or landing area or adding or extending a runway, shall first secure from the Department a license. The application therefor shall be made on the form prescribed and furnished by the Department and shall be accompanied by a fee not exceeding \$100.

Such license shall be issued for a period not to exceed seven years and shall be renewed every seven years. Before issuing such license, the Department shall require the holder of such license to furnish proof of financial responsibility prescribed in Chapter 8.2 (§ 5.1-88.7 et seq.).

It shall be unlawful for any person to operate any airport or landing area which is open to the general public for the landing or departure of any aircraft until a license therefor shall be issued by the Department.

26 Before issuing such license for the establishment of a new airport, the Department shall investigate  
27 the location of such airport or landing area with the relation to its proximity to and its runway orientation  
28 in relation to any other airport or landing area and shall provide for the safety of civil aircraft alighting  
29 thereon or departing therefrom. If the proposed airport or landing area shall be so situated as to endanger  
30 aircraft using the same or any other airport or landing area in close proximity, and if proper provisions  
31 have not been made in all other respects for the safety of aircraft alighting thereon or departing therefrom,  
32 the license shall not be granted. To be licensed, an airport required to be licensed under § 5.1-7.2 must  
33 meet this criterion and any applicable requirement provided for in regulation promulgated under this  
34 section, but no others.

35 The Board may, by regulation, adopt any other requirements for licensure that are related to the  
36 safety of civil aircraft using such airport or landing area. Any airport having a license issued prior to  
37 October 1, 1995, and not meeting one or more minimum standards as defined in Part III (24VAC5-20-120  
38 et seq.) of the Virginia Aviation Regulations, shall be exempt from having to comply with those  
39 noncomplying standards for as long as the airport remains an active public-use facility unless those  
40 noncomplying standards are caused by natural growth. Should such airport cease to be open to the public  
41 for one year, and subsequently reopen, it shall be required to comply with all applicable minimum  
42 standards for licensure.

43 In addition to the above safety requirements, before a license is initially issued, the Department  
44 shall consider the reviews and comments of appropriate state agencies coordinated by the Department of  
45 Environmental Quality, and shall cause a public hearing to be held concerning the economic, social and  
46 environmental effects of the location or runway orientation of the airport or landing area if the facility is  
47 listed in the Virginia Air Transportation System Plan; however, such coordinated review by the  
48 Department of Environmental Quality shall not exceed 90 days after the Department has requested review  
49 by the Department of Environmental Quality. The public hearing required by this section shall be  
50 conducted by the Department of Environmental Quality in the jurisdiction in which the airport or landing  
51 area is located, after publication of notice of the hearing in a newspaper of general circulation in such  
52 jurisdiction at least 10 days in advance of such hearing.

53 Any license issued shall describe the number of runways, the length and orientation of each runway  
54 and/or, if appropriate, the landing area.

55 If a runway is to be extended or new runways are to be added, a revised license shall be applied  
56 for from the Department. If the airport or landing area is listed in the Virginia Air Transportation System  
57 Plan, the Department shall consider the reviews and comments of appropriate state agencies, coordinated  
58 by the Department of Environmental Quality, and shall cause a public hearing to be held concerning the  
59 economic, social and environmental effects of such changes to the license. If the proposed license revision  
60 has tribal implications, as defined in § 10.1-104.02, the Department of Environmental Quality shall consult  
61 with Tribal Nations in the Commonwealth pursuant to the policies and procedures adopted by the  
62 Department of Environmental Quality pursuant to § 10.1-1186.3:1.

63 Whenever a public hearing is called for herein, if there has been a public hearing associated with  
64 the development of any environmental documents to comply with the receipt of federal funds, the  
65 Department and the Department of Environmental Quality may rely on such document or hearing in  
66 carrying out their respective duties set out in this section.

67 If an airport or landing area cannot meet the requirements for licensure that have been adopted by  
68 the Virginia Aviation Board, or having met those requirements cannot maintain compliance, the  
69 Department may issue conditional licenses to allow time for the airport or landing areas to take steps to  
70 meet those requirements or may revoke any license issued, if requirements for licensure are not met or  
71 cannot be met.

72 Any party aggrieved by the granting or refusal to grant any such license shall have a right of appeal  
73 to the circuit court of the jurisdiction where the airport or landing area is to be located, which appeal shall  
74 be filed in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

75 All airports or landing areas that hold licenses or permits shall be issued new licenses, without  
76 charge, on or before October 1, 1995, describing the number, length and orientation of the runway or  
77 runways or, if appropriate, the landing area, which shall be valid for up to seven years. The length of the  
78 new license term may be staggered so that all licenses will not become renewable at the same time. If any  
79 airport landing area does not meet the current requirements for licensure, a new license may be issued.

80           **§ 10.1-104.02. Policies for consultation with federally recognized Tribal Nations.**

81           A. The Department shall develop policies and procedures, to the extent permitted by law, to ensure  
82 an opportunity for meaningful and culturally appropriate written consultation with potentially impacted  
83 federally recognized Tribal Nations in the Commonwealth regarding major permits with tribal  
84 implications issued by the Department. The Department shall designate an agency official who has the  
85 authority to define agency actions appropriate for consultation, evaluate the adequacy of consultation, and  
86 ensure that agency consultation practices are consistent. The definition of actions appropriate for  
87 consultation shall be developed in consultation with federally recognized Tribal Nations in the  
88 Commonwealth and shall include projects and actions that may have tribal implications. The policy shall  
89 define an appropriate means of notifying federally recognized Tribal Nations in the Commonwealth based  
90 on tribal preferences, ensure that sufficient information and time is provided for the Tribal Nations to  
91 develop informed opinions about the proposed action, and establish procedures for the Department to  
92 provide feedback to the Tribal Nations to explain how their input was considered. Should feedback from  
93 the Tribal Nations not be received by the deadline for state approval for a major permit, the consultation  
94 provisions of this section shall be deemed fulfilled.

95           B. For the purposes of this section, an action or project with "tribal implications" means: (i)  
96 environmental impact reports for major state projects, prepared pursuant to § 10.1-1188; (ii) State  
97 Corporation Commission project reports, prepared pursuant to § 56-46.1 and 20VAC5-302-25; (iii)  
98 Virginia Department of Aviation environmental reports prepared pursuant to § 5.1-7; (iv) Environmental  
99 Impact Assessments for Oil or Gas Well Drilling Operations in Tidewater Virginia, prepared pursuant to  
100 9VAC15-20; (v) Federal Consistency Determinations prepared pursuant to § 307 of the federal Coastal  
101 Zone Management Act of 1972 (14 U.S.C. § 1456); (vi) ground water withdrawal permits for ground  
102 water withdrawals greater than one million gallons per day, issued pursuant to § 62.1-266; (vii) the  
103 designation of historic districts, buildings, structures, or sites as historic landmarks pursuant to § 10.1-  
104 2206.1; (viii) Burial Permits for Relocation of Human Remains, issued pursuant to § 10.1-2305; (ix) Cave  
105 Collection Permits, issued pursuant to the Cave Protection Act (§ 10.1-1000 et seq.), for permit  
106 applications pertaining to the study, extraction, or removal of any archaeological or historic feature in a

107 cave; (x) local government notifications for new and existing impoundment structures or dams pursuant  
108 to 4VAC50-20-58; (xi) Virginia Regulated Impounding Structures Permits issued pursuant to 4VAC50-  
109 20-70 and 4VAC50-20-80; and (xii) Underwater Recovery Permits issued pursuant to § 10.1-2214.

110 **§ 10.1-1003. Permits for excavation and scientific investigation; how obtained; penalties.**

111 A. In addition to the written permission of the owner required by § 10.1-1004 a permit shall be  
112 obtained from the Department of Conservation and Recreation prior to excavating or removing any  
113 archaeological, paleontological, prehistoric, or historic feature of any cave. The Department shall issue a  
114 permit to excavate or remove such a feature if it finds, after consultation pursuant to § 10.1-104.02 with  
115 any federally recognized Tribal Nation in the Commonwealth for which the permit may have tribal  
116 implications and with the concurrence of the Director of the Department of Historic Resources, that it is  
117 in the best interest of the Commonwealth and that the applicant meets the criteria of this section. The  
118 permit shall be issued for a period of two years and may be renewed upon expiration. Such permit shall  
119 not be transferable; however, the provisions of this section shall not preclude any person from working  
120 under the direct supervision of the permittee.

121 B. All field investigations, explorations, or recovery operations undertaken under this section shall  
122 be carried out under the general supervision of the Department and in a manner to ensure that the  
123 maximum amount of historic, scientific, archaeologic, and educational information may be recovered and  
124 preserved in addition to the physical recovery of objects.

125 C. A person applying for a permit pursuant to this section shall:

126 1. Be a historic, scientific, or educational institution, or a professional or amateur historian,  
127 biologist, archaeologist or paleontologist, who is qualified and recognized in these areas of field  
128 investigations.

129 2. Provide a detailed statement to the Department giving the reasons and objectives for excavation  
130 or removal and the benefits expected to be obtained from the contemplated work.

131 3. Provide data and results of any completed excavation, study, or collection at the first of each  
132 calendar year.

133 4. Obtain the prior written permission of the owner if the site of the proposed excavation is on  
134 privately owned land.

135 5. Carry the permit while exercising the privileges granted.

136 D. Any person who fails to obtain a permit required by subsection A hereof shall be guilty of a  
137 Class 1 misdemeanor. Any violation of subsection C hereof shall be punished as a Class 3 misdemeanor,  
138 and the permit shall be revoked.

139 E. The provisions of this section shall not apply to any person in any cave located on his own  
140 property.

141 **§ 10.1-1186.3:1. Policies for consultation with federally recognized Tribal Nations.**

142 The Department shall develop policies and procedures, to the extent permitted by law, to ensure  
143 an opportunity for meaningful and culturally appropriate written consultation with potentially impacted  
144 federally recognized Tribal Nations in the Commonwealth regarding major permits with tribal  
145 implications, as defined in § 10.1-104.02, issued by the Department. The Department shall designate an  
146 agency official who has the authority to define agency actions appropriate for consultation, evaluate the  
147 adequacy of consultation, and ensure that agency consultation practices are consistent. The definition of  
148 actions appropriate for consultation shall be developed in consultation with federally recognized Tribal  
149 Nations in the Commonwealth and shall include actions that may have tribal implications. The policy shall  
150 define an appropriate means of notifying federally recognized Tribal Nations in the Commonwealth based  
151 on tribal preferences, ensure that sufficient information and time is provided for the Tribal Nations in the  
152 Commonwealth to develop informed opinions about the proposed action, and establish procedures for the  
153 Department to provide feedback to the Tribal Nations in the Commonwealth to explain how their input  
154 was considered. Should feedback from the Tribal Nations not be received by the deadline for state  
155 approval for a major permit, the consultation provisions of this section shall be deemed fulfilled.

156 **§ 10.1-1188. State agencies to submit environmental impact reports on major projects.**

157 A. All state agencies, boards, authorities and commissions or any branch of the state government  
158 shall prepare and submit an environmental impact report to the Department on each major state project.

159 "Major state project" means the acquisition of an interest in land for any state facility construction,  
160 or the construction of any facility or expansion of an existing facility which is hereafter undertaken by any  
161 state agency, board, commission, authority or any branch of state government, including public institutions  
162 of higher education, which costs \$500,000 or more. For the purposes of this chapter, authority shall not  
163 include any industrial development authority created pursuant to the provisions of Chapter 49 (§ 15.2-  
164 4900 et seq.) of Title 15.2 or Chapter 643, as amended, of the 1964 Acts of Assembly. Nor shall it include  
165 the Virginia Port Authority created pursuant to the provisions of § 62.1-128, unless such project is a capital  
166 project that costs in excess of \$5 million. Nor shall authority include any housing development or  
167 redevelopment authority established pursuant to state law. For the purposes of this chapter, branch of state  
168 government shall include any county, city or town of the Commonwealth only in connection with highway  
169 construction, reconstruction, or improvement projects affecting highways or roads undertaken by the  
170 county, city, or town on projects estimated to cost more than \$2 million. For projects undertaken by any  
171 locality costing more than \$500,000 and less than \$2 million, the locality shall consult with the Department  
172 of Historic Resources to consider and make reasonable efforts to avoid or minimize impacts to historic  
173 resources if the project involves a new location or a new disturbance that extends outside the area or depth  
174 of a prior disturbance, or otherwise has the potential to affect such resources adversely.

175 Such environmental impact report shall include, but not be limited to, the following:

- 176 1. The environmental impact of the major state project, including the impact on wildlife habitat;
- 177 2. Any adverse environmental effects which cannot be avoided if the major state project is  
178 undertaken;
- 179 3. Measures proposed to minimize the impact of the major state project;
- 180 4. Any alternatives to the proposed construction; ~~and~~
- 181 5. Any irreversible environmental changes which would be involved in the major state project; and
- 182 6. For environmental impact reports of major state projects that have tribal implications, as defined  
183 in § 10.1-104.02, a record of consultation with any federally recognized Tribal Nation that may be  
184 impacted by the major state project. The record of consultation shall include the information provided to

185 the Tribal Nation, any feedback or response received by the Tribal Nation, and a description of how the  
186 impact was considered or incorporated into the major state project.

187 For the purposes of subdivision 4, the report shall contain all alternatives considered and the  
188 reasons why the alternatives were rejected. If a report does not set forth alternatives, it shall state why  
189 alternatives were not considered.

190 B. For purposes of this chapter, this subsection shall only apply to the review of highway and road  
191 construction projects or any part thereof. The Secretaries of Transportation and Natural and Historic  
192 Resources shall jointly establish procedures for review and comment by state natural and historic resource  
193 agencies of highway and road construction projects. Such procedures shall provide for review and  
194 comment on appropriate projects and categories of projects to address the environmental impact of the  
195 project, any adverse environmental effects which cannot be avoided if the project is undertaken, the  
196 measures proposed to minimize the impact of the project, any alternatives to the proposed construction,  
197 and any irreversible environmental changes which would be involved in the project.

198 **§ 10.1-2205.1. Policies for consultation with federally recognized Tribal Nations.**

199 The Department shall develop policies and procedures, to the extent permitted by law, to ensure  
200 an opportunity for meaningful and culturally appropriate written consultation with federally recognized  
201 Tribal Nations in the Commonwealth regarding major permits with tribal implications, as defined in §  
202 10.1-104.02, issued by the Department. The Department shall designate an agency official who has the  
203 authority to define agency actions appropriate for consultation, evaluate the adequacy of consultation, and  
204 ensure that agency consultation practices are consistent. The definition of actions appropriate for  
205 consultation shall be developed in consultation with federally recognized Tribal Nations in the  
206 Commonwealth and shall include actions that have tribal implications. The policy shall define an  
207 appropriate means of notifying federally recognized Tribal Nations in the Commonwealth based on tribal  
208 preferences, ensure that sufficient information and time is provided for the Tribal Nations in the  
209 Commonwealth to develop informed opinions about the proposed action, and establish procedures for the  
210 Department to provide feedback to the Tribal Nations in the Commonwealth to explain how their input



211 was considered. Should feedback from the Tribal Nations not be received by the deadline for state  
212 approval for a major permit, the consultation provisions of this section shall be deemed fulfilled.

213 **§ 10.1-2206.1. Procedure for designating a historic district, building, structure, or site as a**  
214 **historic landmark; National Register of Historic Places, National Historic Landmarks; historic**  
215 **district defined.**

216 A. In any county, city, or town where the Board proposes to designate a historic district, building,  
217 structure, object, or site as a historic landmark, or where the Director proposes to nominate property to the  
218 National Park Service for inclusion in the National Register of Historic Places or for designation as a  
219 National Historic Landmark, the Department shall give written notice of the proposal to the governing  
220 body and to the owner, owners, or the owner's agent, of property proposed to be so designated or  
221 nominated, and to the owners, or their agents, of all abutting property and property immediately across  
222 the street or road from the property. The Department shall also consult, pursuant to § 10.1-2205.1, with  
223 federally recognized Tribal Nations for whom the proposed action may have tribal implications, as defined  
224 in § 10.1-104.02, and Tribal Nations in the Commonwealth who wish to be consulted.

225 B. Prior to the designation or nomination of a historic district, the Department shall hold a public  
226 hearing at the seat of government of the county, city, or town in which the proposed historic district is  
227 located or within the proposed historic district. The public hearing shall be for the purpose of supplying  
228 additional information to the Board and to the Director. The time and place of such hearing shall be  
229 determined in consultation with a duly authorized representative of the local governing body, and shall be  
230 scheduled at a time and place that will reasonably allow for the attendance of the affected property owners.  
231 The Department shall publish notice of the public hearing once a week for two successive weeks in a  
232 newspaper published or having general circulation in the county, city, or town. Such notice shall specify  
233 the time and place of the public hearing at which persons affected may appear and present their views, not  
234 less than six days nor more than twenty-one days after the second publication of the notice in such  
235 newspaper. In addition to publishing the notice, the Department shall give written notice of the public  
236 hearing at least five days before such hearing to the owner, owners, or the owner's agent, of each parcel  
237 of real property to be included in the proposed historic district, and to the owners, or their agents, of all

238 abutting property and property immediately across the street or road from the included property. Notice  
239 required to be given to owners by this subsection may be given concurrently with the notice required to  
240 be given to the owners by subsection A. The Department shall make and maintain an appropriate record  
241 of all public hearings held pursuant to this section.

242 C. Any written notice required to be given by the Department to any person shall be deemed to  
243 comply with the requirements of this section if sent by first class mail to the last known address of such  
244 person as shown on the current real estate tax assessment books, provided that a representative of the  
245 Department shall make an affidavit that such mailings have been made.

246 D. The local governing body and property owners shall have thirty days from the date of the notice  
247 required by subsection A, or, in the case of a historic district, thirty days from the date of the public hearing  
248 required by subsection B to provide comments and recommendations, if any, to the Board and to the  
249 Director.

250 E. For the purposes of this chapter, a historic district means a geographically definable area which  
251 contains a significant concentration of historic buildings, structures or sites having a common historical,  
252 architectural, archaeological, or cultural heritage, and which may contain local tax parcels having separate  
253 owners. Contributing properties within a registered district are historic landmarks by definition.

254 F. All regulations promulgated by the Director pursuant to § 10.1-2202 and all regulations  
255 promulgated by the Board pursuant to § 10.1-2205 shall be consistent with the provisions of this section.

256 **§ 10.1-2214. Underwater historic property; penalty.**

257 A. "Underwater historic property" means any submerged shipwreck, vessel, cargo, tackle or  
258 underwater archaeological specimen, including any object found at underwater refuse sites or submerged  
259 sites of former habitation, that has remained unclaimed on the state-owned subaqueous bottom and has  
260 historic value as determined by the Department.

261 B. Underwater historic property shall be preserved and protected and shall be the exclusive  
262 property of the Commonwealth. Preservation and protection of such property shall be the responsibility  
263 of all state agencies including but not limited to the Department, the Virginia Institute of Marine Science,  
264 and the Virginia Marine Resources Commission. Insofar as may be practicable, such property shall be

265 preserved, protected and displayed for the public benefit within the county or city within which it is found,  
266 or within a museum operated by a state agency.

267 C. It shall be unlawful for any person, firm or corporation to conduct any type of recovery  
268 operations involving the removal, destruction or disturbance of any underwater historic property without  
269 first applying for and receiving a permit from the Virginia Marine Resources Commission to conduct such  
270 operations pursuant to § 28.2-1203. If the Virginia Marine Resources Commission, after consultation  
271 pursuant to § 28.2-104.01 with any federally recognized Tribal Nation in the Commonwealth for whom  
272 the permit may have tribal implications, as defined in § 10.1-104.02, and with the concurrence of the  
273 Department and in consultation with the Virginia Institute of Marine Science and other concerned state  
274 agencies, finds that granting the permit is in the best interest of the Commonwealth, it shall grant the  
275 applicant a permit. The permit shall provide that all objects recovered shall be the exclusive property of  
276 the Commonwealth. The permit shall provide the applicant with a fair share of the objects recovered, or  
277 in the discretion of the Department, a reasonable percentage of the cash value of the objects recovered to  
278 be paid by the Department. Title to all objects recovered shall be retained by the Commonwealth unless  
279 or until they are released to the applicant by the Department. All recovery operations undertaken pursuant  
280 to a permit issued under this section shall be carried out under the general supervision of the Department  
281 and in accordance with § 28.2-1203 and in such a manner that the maximum amount of historical,  
282 scientific, archaeological and educational information may be recovered and preserved in addition to the  
283 physical recovery of items. The Virginia Marine Resources Commission shall not grant a permit to  
284 conduct operations at substantially the same location described and covered by a permit previously granted  
285 if recovery operations are being actively pursued, unless the holder of the previously granted permit  
286 concurs in the grant of another permit.

287 D. The Department may seek a permit pursuant to this section and § 28.2-1203 to preserve and  
288 protect or recover any underwater historic property.

289 E. Any person violating the provisions of this section shall be guilty of a Class 1 misdemeanor  
290 and, in addition, shall forfeit to the Commonwealth any objects recovered.

291 **§ 10.1-2305. Permit required for the archaeological excavation of human remains.**

292 A. It shall be unlawful for any person to conduct any type of archaeological field investigation  
293 involving the removal of human skeletal remains or associated artifacts from any unmarked human burial  
294 regardless of age of an archaeological site and regardless of ownership without first receiving a permit  
295 from the Director.

296 B. Where unmarked burials are not part of a legally chartered cemetery, archaeological excavation  
297 of such burials pursuant to a permit from the Director shall be exempt from the requirements of §§ 57-  
298 38.1 and 57-39. However, such exemption shall not apply in the case of human burials within formally  
299 chartered cemeteries that have been abandoned.

300 C. The Department shall be considered an interested party in court proceedings considering the  
301 abandonment of legally constituted cemeteries or family graveyards with historic significance. A permit  
302 from the Director is required if archaeological investigations are undertaken as a part of a court-approved  
303 removal of a cemetery.

304 D. The Board shall promulgate regulations implementing this section that provide for appropriate  
305 public notice prior to issuance of a permit, provide for appropriate treatment of excavated remains, the  
306 scientific quality of the research conducted on the remains, and the appropriate disposition of the remains  
307 upon completion of the research. Such regulations shall also require consultation pursuant to § 10.1-2205.1  
308 with federally recognized Tribal Nations in the Commonwealth for whom the permit has tribal  
309 implications, as defined in § 10.1-104.02. When a burial permit would result in the disturbance of a burial  
310 site of an individual culturally affiliated with a particular federally recognized Tribal Nation in the  
311 Commonwealth, the consent of the Tribal Nation is required before the permit may be issued. The  
312 Department may carry out such excavations and research without a permit, provided that it has complied  
313 with the substantive requirements of the regulations promulgated pursuant to this section.

314 E. Any interested party may appeal the Director's decision to issue a permit or to act directly to  
315 excavate human remains to the local circuit court. Such appeal must be filed within fourteen days of the  
316 Director's decision.

317 F. For purposes of this section, "culturally affiliated" has the same definition as provided in the  
318 federal Native American Graves Protection and Repatriation Act (25 U.S.C. § 3001 (2)) and its

319 regulations. If doubt exists as to cultural affiliation, the Tribal Nations potentially affiliated shall make the  
320 determination.

321 **§ 28.2-104.01. Policies for consultation with federally recognized Tribal Nations.**

322 The Commission shall develop policies and procedures to ensure an opportunity for meaningful  
323 and culturally appropriate written consultation with federally recognized Tribal Nations in the  
324 Commonwealth regarding permits issued and reviews conducted by the Commission that may have tribal  
325 implications, as defined in § 10.1-104.02. The Commission shall designate an agency official who has the  
326 authority to define agency actions appropriate for consultation, evaluate the adequacy of consultation, and  
327 ensure that agency consultation practices are consistent. The definition of actions appropriate for  
328 consultation shall be developed in consultation with federally recognized Tribal Nations in the  
329 Commonwealth and shall include actions that may have tribal implications. The policy shall define an  
330 appropriate means of notifying federally recognized Tribal Nations in the Commonwealth based on tribal  
331 preferences, ensure that sufficient information and time is provided for the Tribal Nations in the  
332 Commonwealth to develop informed opinions about the proposed action, and establish procedures for the  
333 Commission to provide feedback to the Tribal Nations in the Commonwealth to explain how their input  
334 was considered.

335 **§ 56-46.1. Commission to consider environmental, economic and improvements in service**  
336 **reliability factors in approving construction of electrical utility facilities; approval required for**  
337 **construction of certain electrical transmission lines; notice and hearings.**

338 A. Whenever the Commission is required to approve the construction of any electrical utility  
339 facility, it shall give consideration to the effect of that facility on the environment and establish such  
340 conditions as may be desirable or necessary to minimize adverse environmental impact. In order to avoid  
341 duplication of governmental activities, any valid permit or approval required for an electric generating  
342 plant and associated facilities issued or granted by a federal, state or local governmental entity charged by  
343 law with responsibility for issuing permits or approvals regulating environmental impact and mitigation  
344 of adverse environmental impact or for other specific public interest issues such as building codes,  
345 transportation plans, and public safety, whether such permit or approval is granted prior to or after the

346 Commission's decision, shall be deemed to satisfy the requirements of this section with respect to all  
347 matters that (i) are governed by the permit or approval or (ii) are within the authority of, and were  
348 considered by, the governmental entity in issuing such permit or approval, and the Commission shall  
349 impose no additional conditions with respect to such matters. Nothing in this section shall affect the ability  
350 of the Commission to keep the record of a case open. Nothing in this section shall affect any right to appeal  
351 such permits or approvals in accordance with applicable law. In the case of a proposed facility located in  
352 a region that was designated as of July 1, 2001, as serious nonattainment for the one-hour ozone standard  
353 as set forth in the federal Clean Air Act, the Commission shall not issue a decision approving such  
354 proposed facility that is conditioned upon issuance of any environmental permit or approval. In every  
355 proceeding under this subsection, the Commission shall receive and give consideration to all reports that  
356 relate to the proposed facility by state agencies concerned with environmental protection; and if requested  
357 by any county or municipality in which the facility is proposed to be built, to local comprehensive plans  
358 that have been adopted pursuant to Article 3 (§ 15.2-2223 et seq.) of Chapter 22 of Title 15.2. Additionally,  
359 the Commission (a) shall consider the effect of the proposed facility on economic development within the  
360 Commonwealth, including but not limited to furtherance of the economic and job creation objectives of  
361 the Commonwealth Clean Energy Policy set forth in § 45.2-1706.1, and (b) shall consider any  
362 improvements in service reliability that may result from the construction of such facility.

363 B. Subject to the provisions of subsection J, no electrical transmission line of 138 kilovolts or more  
364 shall be constructed unless the State Corporation Commission shall, after at least 30 days' advance notice  
365 by (i) publication in a newspaper or newspapers of general circulation in the counties and municipalities  
366 through which the line is proposed to be built, (ii) written notice to the governing body of each such county  
367 and municipality, and (iii) causing to be sent a copy of the notice by first class mail to all owners of  
368 property within the route of the proposed line, as indicated on the map or sketch of the route filed with the  
369 Commission, which requirement shall be satisfied by mailing the notice to such persons at such addresses  
370 as are indicated in the land books maintained by the commissioner of revenue, director of finance or  
371 treasurer of the county or municipality, approve such line. Such notices shall include a written description  
372 of the proposed route the line is to follow, as well as a map or sketch of the route including a digital

373 geographic information system (GIS) map provided by the public utility showing the location of the  
374 proposed route. The Commission shall make GIS maps provided under this subsection available to the  
375 public on the Commission's website. Such notices shall be in addition to the advance notice to the chief  
376 administrative officer of the county or municipality required pursuant to § 15.2-2202.

377         As a condition to approval the Commission shall determine that the line is needed and that the  
378 corridor or route chosen for the line will avoid or reasonably minimize adverse impact to the greatest  
379 extent reasonably practicable on the scenic assets, historic resources recorded with the Department of  
380 Historic Resources, cultural resources identified by Tribal Nations, and environment of the area  
381 concerned. To assist the Commission in this determination, as part of the application for Commission  
382 approval of the line, the applicant shall summarize its efforts to avoid or reasonably minimize adverse  
383 impact to the greatest extent reasonably practicable on the scenic assets, historic resources recorded with  
384 the Department of Historic Resources, and environment of the area concerned. In making the  
385 determinations about need, corridor or route, and method of installation, the Commission shall verify the  
386 applicant's load flow modeling, contingency analyses, and reliability needs presented to justify the new  
387 line and its proposed method of installation. If the local comprehensive plan of an affected county or  
388 municipality designates corridors or routes for electric transmission lines and the line is proposed to be  
389 constructed outside such corridors or routes, in any hearing the county or municipality may provide  
390 adequate evidence that the existing planned corridors or routes designated in the plan can adequately serve  
391 the needs of the company. Additionally, the Commission shall consider, upon the request of the governing  
392 body of any county or municipality in which the line is proposed to be constructed, (a) the costs and  
393 economic benefits likely to result from requiring the underground placement of the line and (b) any  
394 potential impediments to timely construction of the line.

395         C. If, prior to such approval, any interested party shall request a public hearing, the Commission  
396 shall, as soon as reasonably practicable after such request, hold such hearing or hearings at such place as  
397 may be designated by the Commission. In any hearing the public service company shall provide adequate  
398 evidence that existing rights-of-way cannot adequately serve the needs of the company.

399 If, prior to such approval, written requests therefor are received from the governing body of any  
400 county or municipality through which the line is proposed to be built or from 20 or more interested parties,  
401 the Commission shall hold at least one hearing in the area that would be affected by construction of the  
402 line, for the purpose of receiving public comment on the proposal. If any hearing is to be held in the area  
403 affected, the Commission shall direct that a copy of the transcripts of any previous hearings held in the  
404 case be made available for public inspection at a convenient location in the area for a reasonable time  
405 before such local hearing.

406 D. As used in this section, unless the context requires a different meaning:

407 "Environment" or "environmental" shall be deemed to include in meaning "historic," as well as a  
408 consideration of the probable effects of the line on the health and safety of the persons in the area  
409 concerned.

410 "Interested parties" shall include the governing bodies of any counties or municipalities through  
411 which the line is proposed to be built, and persons residing or owning property in each such county or  
412 municipality.

413 "Public utility" means a public utility as defined in § 56-265.1.

414 "Qualifying facilities" means a cogeneration or small power production facility which meets the  
415 criteria of 18 C.F.R. Part 292.

416 "Reasonably accommodate requests to wheel or transmit power" means:

417 1. That the applicant will make available to new electric generation facilities constructed after  
418 January 9, 1991, qualifying facilities and other nonutilities, a minimum of one-fourth of the total  
419 megawatts of the additional transmission capacity created by the proposed line, for the purpose of  
420 wheeling to public utility purchasers the power generated by such qualifying facilities and other nonutility  
421 facilities which are awarded a power purchase contract by a public utility purchaser in compliance with  
422 applicable state law or regulations governing bidding or capacity acquisition programs for the purchase of  
423 electric capacity from nonutility sources, provided that the obligation of the applicant will extend only to  
424 those requests for wheeling service made within the 12 months following certification by the State



425 Corporation Commission of the transmission line and with effective dates for commencement of such  
426 service within the 12 months following completion of the transmission line; and

427 2. That the wheeling service offered by the applicant, pursuant to subdivision D 1, will reasonably  
428 further the purposes of the Public Utilities Regulatory Policies Act of 1978 (P. L. 95-617), as demonstrated  
429 by submitting to the Commission, with its application for approval of the line, the cost methodologies,  
430 terms, conditions, and dispatch and interconnection requirements the applicant intends, subject to any  
431 applicable requirements of the Federal Energy Regulatory Commission, to include in its agreements for  
432 such wheeling service.

433 E. In the event that, at any time after the giving of the notice required in subsection B, it appears  
434 to the Commission that consideration of a route or routes significantly different from the route described  
435 in the notice is desirable, the Commission shall cause notice of the new route or routes to be published  
436 and mailed in accordance with subsection B. The Commission shall thereafter comply with the provisions  
437 of this section with respect to the new route or routes to the full extent necessary to give affected localities,  
438 federally recognized Tribal Nations in the Commonwealth, and interested parties in the newly affected  
439 areas the same protection afforded to affected localities and interested parties affected by the route  
440 described in the original notice.

441 F. Approval of a transmission line pursuant to this section shall be deemed to satisfy the  
442 requirements of § 15.2-2232 and local zoning ordinances with respect to such transmission line.

443 G. The Commission shall enter into a memorandum of agreement with the Department of  
444 Environmental Quality regarding the coordination of their reviews of the environmental impact of electric  
445 generating plants and associated facilities. If the proposed plants or associated facilities have tribal  
446 implications, as defined in § 10.1-104.02, the memorandum of agreement shall include consultation with  
447 such Tribal Nation in the Commonwealth pursuant to the policies and procedures adopted by the  
448 Department of Environmental Quality pursuant to §10.1-1186.3:1.

449 H. An applicant that is required to obtain (i) a certificate of public convenience and necessity from  
450 the Commission for any electric generating facility, electric transmission line, natural or manufactured  
451 gas transmission line as defined in 49 Code of Federal Regulations § 192.3, or natural or manufactured

452 gas storage facility (hereafter, an energy facility) and (ii) an environmental permit for the energy facility  
453 that is subject to issuance by any agency or board within the Secretariat of Natural and Historic Resources,  
454 may request a pre-application planning and review process. In any such request to the Commission or the  
455 Secretariat of Natural and Historic Resources, the applicant shall identify the proposed energy facility for  
456 which it requests the pre-application planning and review process. The Commission, the Department of  
457 Environmental Quality, the Marine Resources Commission, the Department of Wildlife Resources, the  
458 Department of Historic Resources, the Department of Conservation and Recreation, federally recognized  
459 Tribal Nations in the Commonwealth for whom the proposed facility may have tribal implications, as  
460 defined in § 10.1-104.02, and other appropriate agencies of the Commonwealth shall participate in the  
461 pre-application planning and review process. Participation in such process shall not limit the authority  
462 otherwise provided by law to the Commission or other agencies or boards of the Commonwealth. The  
463 Commission and other participating agencies of the Commonwealth may invite federal and local  
464 governmental entities charged by law with responsibility for issuing permits or approvals to participate in  
465 the pre-application planning and review process. Through the pre-application planning and review  
466 process, the applicant, the Commission, and other agencies and boards shall identify the potential impacts  
467 and approvals that may be required and shall develop a plan that will provide for an efficient and  
468 coordinated review of the proposed energy facility. The plan shall include (a) a list of the permits or other  
469 approvals likely to be required based on the information available, (b) a specific plan and preliminary  
470 schedule for the different reviews, (c) a plan for coordinating those reviews and the related public  
471 comment process, and (d) designation of points of contact, either within each agency or for the  
472 Commonwealth as a whole, to facilitate this coordination. The plan shall be made readily available to the  
473 public and shall be maintained on a dedicated website to provide current information on the status of each  
474 component of the plan and each approval process including opportunities for public comment.

475 I. The provisions of this section shall not apply to the construction and operation of a small  
476 renewable energy project, as defined in § 10.1-1197.5, by a utility regulated pursuant to this title for which  
477 the Department of Environmental Quality has issued a permit by rule pursuant to Article 5 (§ 10.1-1197.5  
478 et seq.) of Chapter 11.1 of Title 10.1.

479 J. Approval under this section shall not be required for any transmission line for which a certificate  
480 of public convenience and necessity is not required pursuant to subdivision A of § 56-265.2.

481 **§ 62.1-266. Ground water withdrawal permits.**

482 A. The Board may issue any ground water withdrawal permit upon terms, conditions, and  
483 limitations necessary for the protection of the public welfare, safety, and health.

484 B. Applications for ground water withdrawal permits shall be in a form prescribed by the Board  
485 and shall contain such information, consistent with this chapter, as the Board deems necessary.

486 C. All ground water withdrawal permits issued by the Board under this chapter shall have a fixed  
487 term not to exceed 15 years. The term of a ground water withdrawal permit issued by the Board shall not  
488 be extended by modification beyond the maximum duration, and the permit shall expire at the end of the  
489 term unless a complete application for a new permit has been filed in a timely manner as required by the  
490 regulations of the Board, and the Board is unable, through no fault of the permittee, to issue a new permit  
491 before the expiration date of the previous permit.

492 D. Renewed ground water withdrawal permits shall be for a withdrawal amount that includes such  
493 savings as can be demonstrated to have been achieved through water conservation, provided that a  
494 beneficial use of the permitted ground water can be demonstrated for the following permit term.

495 E. Any permit issued by the Board under this chapter may, after notice and opportunity for a  
496 hearing, be amended or revoked on any of the following grounds or for good cause as may be provided  
497 by the regulations of the Board:

498 1. The permittee has violated any regulation or order of the Board pertaining to ground water, any  
499 condition of a ground water withdrawal permit, any provision of this chapter, or any order of a court,  
500 where such violation presents a hazard or potential hazard to human health or the environment or is  
501 representative of a pattern of serious or repeated violations that, in the opinion of the Board, demonstrates  
502 the permittee's disregard for or inability to comply with applicable laws, regulations, or requirements;

503 2. The permittee has failed to disclose fully all relevant material facts or has misrepresented a  
504 material fact in applying for a permit, or in any other report or document required under this chapter or  
505 under the ground water withdrawal regulations of the Board;

506 3. The activity for which the permit was issued endangers human health or the environment and  
507 can be regulated to acceptable levels by amendment or revocation of the permit; or

508 4. There exists a material change in the basis on which the permit was issued that requires either a  
509 temporary or a permanent reduction or elimination of the withdrawal controlled by the permit necessary  
510 to protect human health or the environment.

511 F. No application for a ground water withdrawal permit shall be considered complete unless the  
512 applicant has provided the Executive Director of the Board with notification from the governing body of  
513 the locality in which the withdrawal is to occur that the location and operation of the withdrawing facility  
514 is in compliance with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2.  
515 The provisions of this subsection shall not apply to any applicant exempt from compliance under Chapter  
516 22 (§ 15.2-2200 et seq.) of Title 15.2.

517 G. A ground water withdrawal permit shall authorize withdrawal of a specific amount of ground  
518 water through a single well or system of wells, including a backup well or wells, or such other means as  
519 the withdrawer specifies.

520 H. The Board may adopt regulations to develop a general permit for the regulation of irrigation  
521 withdrawals from the surficial aquifer greater than 300,000 gallons in any one month. Regulations adopted  
522 pursuant to this subsection shall provide that withdrawals from the surficial aquifer may be permitted  
523 under either a general permit developed pursuant to this subsection or another ground water withdrawal  
524 permit.

525 I. The Board shall promulgate regulations establishing criteria for determining whether the  
526 quantity or quality of the ground water in a surficial aquifer is adequate to meet a proposed beneficial use.  
527 Such regulations shall specify the information required to be submitted to the Department by a golf course  
528 or any other person seeking a determination from the Department that either the quantity or quality of the  
529 ground water in a surficial aquifer is not adequate to meet a proposed beneficial use. Such regulations  
530 shall require the Department, within 30 days of receipt of a complete request, to make a determination as  
531 to the adequacy of the quantity or quality of the ground water in a surficial aquifer.

532 J. If the proposed permit will allow for groundwater withdrawals greater than one million gallons  
533 per day, the Board shall ensure that the Department consults with any potentially impacted federally  
534 recognized Tribal Nation pursuant to the policies and procedures adopted by the Department of  
535 Environmental Quality pursuant to § 10.1-1186.3:1. Should feedback from the Tribal Nations not be  
536 received by the deadline for state approval for a major permit, the consultation provisions of this section  
537 shall be deemed fulfilled.

538 **2. That by September 1, 2022, and in consultation with nationally recognized Tribal Nations located**  
539 **in the Commonwealth, the Secretary of Natural and Historic Resources shall develop a list of**  
540 **localities in which federally recognized Tribal Nations shall be consulted to effectuate the provisions**  
541 **of this act.**

542 **3. That the Department of Environmental Quality shall update its regulations regarding (i)**  
543 **environmental impact assessments for oil or gas well drilling operations in Tidewater Virginia, (ii)**  
544 **local government notifications for new and existing impoundment structures or dams, and (iii)**  
545 **permits for construction or alteration of Virginia regulated impounding structures to require**  
546 **consultation as set forth in § 10.1-1186.3:1 of the Code of Virginia, as created by this act.**

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