

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 §§ 2.2-401.01, 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 §§ 2.2-401.01, 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:

§ 2.2-401.01. Liaison to Virginia Indian tribes; Virginia Indigenous People's Trust Fund.

A. The Secretary of the Commonwealth shall:

- 1. Serve as the Governor's liaison to the Virginia Indian tribes; ~~and~~
- 2. Designate an Ombudsman for Tribal Consultation pursuant to subsection B; and
- 3. Report annually on the status of Indian tribes in Virginia.

B. The Secretary of the Commonwealth shall designate, in consultation with and upon the advice of federally recognized Tribal Nations in the Commonwealth, an Ombudsman for Tribal Consultation (the Ombudsman). The Ombudsman shall:

- 1. Facilitate communication between federally recognized Tribal Nations in the Commonwealth and relevant state agencies and local governments for consultation on environmental, cultural, and historical permits and reviews;

27 2. Develop a list of localities in which federally recognized Tribal Nations in the Commonwealth
28 shall be consulted regarding actions and projects with tribal implications, as defined in § 10.1-104.02;

29 3. Assist the Department of Environmental Quality, the Department of Conservation and
30 Recreation, the Department of Historic Resources, and the Virginia Marine Resources Commission in
31 developing policies and procedures to ensure meaningful and culturally appropriate consultation with
32 federally recognized Tribal Nations in the Commonwealth regarding permits and reviews; and

33 4. Make recommendations to the Governor about (i) additional permits and reviews that, in the
34 opinion of the Ombudsman, should require consultation with federally recognized Tribal Nations in the
35 Commonwealth and (ii) circumstances under which Tribal consent should be required for issuance of
36 certain permits.

37 C. The Secretary of the Commonwealth may establish a Virginia Indian advisory board to assist
38 the Secretary in reviewing applications seeking recognition as a Virginia Indian tribe and to make
39 recommendations to the Secretary, the Governor, and the General Assembly on such applications and
40 other matters relating to recognition as follows:

41 1. The members of any such board shall be composed of no more than seven members to be
42 appointed by the Secretary as follows: at least three of the members shall be members of Virginia
43 recognized tribes to represent the Virginia Indian community, and one nonlegislative citizen member shall
44 represent the Commonwealth's scholarly community. The Librarian of Virginia, the Director of the
45 Department of Historic Resources, and the Superintendent of Public Instruction, or their designees, shall
46 serve ex officio with voting privileges. Nonlegislative citizen members of any such board shall be citizens
47 of the Commonwealth. Ex officio members shall serve terms coincident with their terms of office.
48 Nonlegislative citizen members shall be appointed for a term of two years. Appointments to fill vacancies,
49 other than by expiration of a term, shall be for the unexpired terms. All members may be reappointed. The
50 Secretary of the Commonwealth shall appoint a chairperson from among the members for a two-year term.
51 Members shall be reimbursed for reasonable and necessary expenses incurred in the performance of their
52 duties as provided in §§ 2.2-2813 and 2.2-2825.

53 2. Any such board shall have the following powers and duties:

- 54 a. Establish guidance for documentation required to meet the criteria for full recognition of the
 - 55 Virginia Indian tribes that is consistent with the principles and requirements of federal tribal recognition;
 - 56 b. Establish a process for accepting and reviewing all applications for full tribal recognition;
 - 57 c. Appoint and establish a workgroup on tribal recognition composed of nonlegislative citizens at
 - 58 large who have knowledge of Virginia Indian history and current status. Such workgroup (i) may be
 - 59 activated in any year in which an application for full tribal recognition has been submitted and in other
 - 60 years as deemed appropriate by any such board and (ii) shall include at a minimum a genealogist and at
 - 61 least two scholars with recognized familiarity with Virginia Indian tribes. No member of the workgroup
 - 62 shall be associated in any way with the applicant. Members of the workgroup shall be reimbursed for
 - 63 reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813
 - 64 and 2.2-2825;
 - 65 d. Solicit, accept, use, and dispose of gifts, grants, donations, bequests, or other funds or real or
 - 66 personal property for the purpose of aiding or facilitating the work of the board;
 - 67 e. Make recommendations to the Secretary for full tribal recognition based on the findings of the
 - 68 workgroup and the board; and
 - 69 f. Perform such other duties, functions, and activities as may be necessary to facilitate and
 - 70 implement the objectives of this subsection.
- 71 ~~C-D.~~ There is hereby created in the state treasury a special nonreverting fund to be known as the
- 72 Virginia Indigenous People's Trust Fund, referred to in this section as "the Fund." The Fund shall be
- 73 established on the books of the Comptroller. All funds appropriated for such purpose, any tax revenue
- 74 accruing to the Fund pursuant to § 58.1-4125, and any gifts, donations, grants, bequests, and other funds
- 75 received on its behalf shall be paid into the state treasury and credited to the Fund. Interest earned on
- 76 moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund,
- 77 including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain
- 78 in the Fund. After payment of the costs of administration of the Fund, moneys in the Fund shall be used
- 79 to make disbursements on a quarterly basis in equal amounts to each of the six Virginia Indian tribes
- 80 federally recognized under P.L. 115-121 of 2018. Expenditures and disbursements from the Fund shall be

81 made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the
82 Secretary of the Commonwealth.

83 **§ 5.1-7. Licensing of airports and landing areas.**

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

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

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

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

103 The Board may, by regulation, adopt any other requirements for licensure that are related to the
104 safety of civil aircraft using such airport or landing area. Any airport having a license issued prior to
105 October 1, 1995, and not meeting one or more minimum standards as defined in Part III (24VAC5-20-120
106 et seq.) of the Virginia Aviation Regulations, shall be exempt from having to comply with those
107 noncomplying standards for as long as the airport remains an active public-use facility unless those

108 noncomplying standards are caused by natural growth. Should such airport cease to be open to the public
109 for one year, and subsequently reopen, it shall be required to comply with all applicable minimum
110 standards for licensure.

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

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

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

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

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

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

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

148 **§ 10.1-104.02. Policies for consultation with federally recognized Tribal Nations.**

149 A. The Department, with assistance from the Ombudsman for Tribal Consultation, shall develop
150 policies and procedures, to the extent permitted by law, to ensure an opportunity for meaningful and
151 culturally appropriate written consultation with potentially impacted federally recognized Tribal Nations
152 in the Commonwealth regarding major permits with tribal implications issued by the Department. The
153 Department shall designate an agency official who has the authority to define agency actions appropriate
154 for consultation, evaluate the adequacy of consultation, and ensure that agency consultation practices are
155 consistent. The definition of actions appropriate for consultation shall be developed in consultation with
156 federally recognized Tribal Nations in the Commonwealth and shall include projects and actions that may
157 have tribal implications. The policy shall define an appropriate means of notifying federally recognized
158 Tribal Nations in the Commonwealth based on tribal preferences, ensure that sufficient information and
159 time is provided for the Tribal Nations to develop informed opinions about the proposed action, and
160 establish procedures for the Department to provide feedback to the Tribal Nations to explain how their

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

163 B. For the purposes of this section, an action or project with "tribal implications" means: (i)
164 environmental impact reports for major state projects, prepared pursuant to § 10.1-1188; (ii) State
165 Corporation Commission project reports, prepared pursuant to § 56-46.1 and 20VAC5-302-25; (iii)
166 Virginia Department of Aviation environmental reports prepared pursuant to § 5.1-7; (iv) Environmental
167 Impact Assessments for Oil or Gas Well Drilling Operations in Tidewater Virginia, prepared pursuant to
168 9VAC15-20; (v) Federal Consistency Determinations prepared pursuant to § 307 of the federal Coastal
169 Zone Management Act of 1972 (14 U.S.C. § 1456); (vi) ground water withdrawal permits for ground
170 water withdrawals greater than one million gallons per day, issued pursuant to § 62.1-266; (vii) the
171 designation of historic districts, buildings, structures, or sites as historic landmarks pursuant to § 10.1-
172 2206.1; (viii) Burial Permits for Relocation of Human Remains, issued pursuant to § 10.1-2305; (ix) Cave
173 Collection Permits, issued pursuant to the Cave Protection Act (§ 10.1-1000 et seq.), for permit
174 applications pertaining to the study, extraction, or removal of any archaeological or historic feature in a
175 cave; (x) local government notifications for new and existing impoundment structures or dams pursuant
176 to 4VAC50-20-58; (xi) Virginia Regulated Impounding Structures Permits issued pursuant to 4VAC50-
177 20-70 and 4VAC50-20-80; and (xii) Underwater Recovery Permits issued pursuant to § 10.1-2214.

178 **§ 10.1-1003. Permits for excavation and scientific investigation; how obtained; penalties.**

179 A. In addition to the written permission of the owner required by § 10.1-1004 a permit shall be
180 obtained from the Department of Conservation and Recreation prior to excavating or removing any
181 archaeological, paleontological, prehistoric, or historic feature of any cave. The Department shall issue a
182 permit to excavate or remove such a feature if it finds, after consultation pursuant to § 10.1-104.02 with
183 any federally recognized Tribal Nation in the Commonwealth for which the permit may have tribal
184 implications and with the concurrence of the Director of the Department of Historic Resources, that it is
185 in the best interest of the Commonwealth and that the applicant meets the criteria of this section. The
186 permit shall be issued for a period of two years and may be renewed upon expiration. Such permit shall

187 not be transferable; however, the provisions of this section shall not preclude any person from working
188 under the direct supervision of the permittee.

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

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

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

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

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

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

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

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

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

209 **§ 10.1-1186.3:1. Policies for consultation with federally recognized Tribal Nations.**

210 The Department, with assistance from the Ombudsman for Tribal Consultation, shall develop
211 policies and procedures, to the extent permitted by law, to ensure an opportunity for meaningful and
212 culturally appropriate written consultation with potentially impacted federally recognized Tribal Nations
213 in the Commonwealth regarding major permits with tribal implications, as defined in § 10.1-104.02, issued

214 by the Department. The Department shall designate an agency official who has the authority to define
215 agency actions appropriate for consultation, evaluate the adequacy of consultation, and ensure that agency
216 consultation practices are consistent. The definition of actions appropriate for consultation shall be
217 developed in consultation with federally recognized Tribal Nations in the Commonwealth and shall
218 include actions that may have tribal implications. The policy shall define an appropriate means of notifying
219 federally recognized Tribal Nations in the Commonwealth based on tribal preferences, ensure that
220 sufficient information and time is provided for the Tribal Nations in the Commonwealth to develop
221 informed opinions about the proposed action, and establish procedures for the Department to provide
222 feedback to the Tribal Nations in the Commonwealth to explain how their input was considered. Should
223 feedback from the Tribal Nations not be received by the deadline for state approval for a major permit,
224 the consultation provisions of this section shall be deemed fulfilled.

225 **§ 10.1-1188. State agencies to submit environmental impact reports on major projects.**

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

228 "Major state project" means the acquisition of an interest in land for any state facility construction,
229 or the construction of any facility or expansion of an existing facility which is hereafter undertaken by any
230 state agency, board, commission, authority or any branch of state government, including public institutions
231 of higher education, which costs \$500,000 or more. For the purposes of this chapter, authority shall not
232 include any industrial development authority created pursuant to the provisions of Chapter 49 (§ 15.2-
233 4900 et seq.) of Title 15.2 or Chapter 643, as amended, of the 1964 Acts of Assembly. Nor shall it include
234 the Virginia Port Authority created pursuant to the provisions of § 62.1-128, unless such project is a capital
235 project that costs in excess of \$5 million. Nor shall authority include any housing development or
236 redevelopment authority established pursuant to state law. For the purposes of this chapter, branch of state
237 government shall include any county, city or town of the Commonwealth only in connection with highway
238 construction, reconstruction, or improvement projects affecting highways or roads undertaken by the
239 county, city, or town on projects estimated to cost more than \$2 million. For projects undertaken by any
240 locality costing more than \$500,000 and less than \$2 million, the locality shall consult with the Department

241 of Historic Resources to consider and make reasonable efforts to avoid or minimize impacts to historic
242 resources if the project involves a new location or a new disturbance that extends outside the area or depth
243 of a prior disturbance, or otherwise has the potential to affect such resources adversely.

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

- 245 1. The environmental impact of the major state project, including the impact on wildlife habitat;
- 246 2. Any adverse environmental effects which cannot be avoided if the major state project is
247 undertaken;
- 248 3. Measures proposed to minimize the impact of the major state project;
- 249 4. Any alternatives to the proposed construction; ~~and~~
- 250 5. Any irreversible environmental changes which would be involved in the major state project; and
- 251 6. For environmental impact reports of major state projects that have tribal implications, as defined
252 in § 10.1-104.02, a record of consultation with any federally recognized Tribal Nation that may be
253 impacted by the major state project. The record of consultation shall include the information provided to
254 the Tribal Nation, any feedback or response received by the Tribal Nation, and a description of how the
255 impact was considered or incorporated into the major state project.

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

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

267 **§ 10.1-2205.1. Policies for consultation with federally recognized Tribal Nations.**

268 The Department, with assistance from the Ombudsman for Tribal Consultation, shall develop
269 policies and procedures, to the extent permitted by law, to ensure an opportunity for meaningful and
270 culturally appropriate written consultation with federally recognized Tribal Nations in the Commonwealth
271 regarding major permits with tribal implications, as defined in § 10.1-104.02, issued by the Department.
272 The Department shall designate an agency official who has the authority to define agency actions
273 appropriate for consultation, evaluate the adequacy of consultation, and ensure that agency consultation
274 practices are consistent. The definition of actions appropriate for consultation shall be developed in
275 consultation with federally recognized Tribal Nations in the Commonwealth and shall include actions that
276 have tribal implications. The policy shall define an appropriate means of notifying federally recognized
277 Tribal Nations in the Commonwealth based on tribal preferences, ensure that sufficient information and
278 time is provided for the Tribal Nations in the Commonwealth to develop informed opinions about the
279 proposed action, and establish procedures for the Department to provide feedback to the Tribal Nations in
280 the Commonwealth to explain how their input was considered. Should feedback from the Tribal Nations
281 not be received by the deadline for state approval for a major permit, the consultation provisions of this
282 section shall be deemed fulfilled.

283 **§ 10.1-2206.1. Procedure for designating a historic district, building, structure, or site as a**
284 **historic landmark; National Register of Historic Places, National Historic Landmarks; historic**
285 **district defined.**

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

295 B. Prior to the designation or nomination of a historic district, the Department shall hold a public
296 hearing at the seat of government of the county, city, or town in which the proposed historic district is
297 located or within the proposed historic district. The public hearing shall be for the purpose of supplying
298 additional information to the Board and to the Director. The time and place of such hearing shall be
299 determined in consultation with a duly authorized representative of the local governing body, and shall be
300 scheduled at a time and place that will reasonably allow for the attendance of the affected property owners.
301 The Department shall publish notice of the public hearing once a week for two successive weeks in a
302 newspaper published or having general circulation in the county, city, or town. Such notice shall specify
303 the time and place of the public hearing at which persons affected may appear and present their views, not
304 less than six days nor more than twenty-one days after the second publication of the notice in such
305 newspaper. In addition to publishing the notice, the Department shall give written notice of the public
306 hearing at least five days before such hearing to the owner, owners, or the owner's agent, of each parcel
307 of real property to be included in the proposed historic district, and to the owners, or their agents, of all
308 abutting property and property immediately across the street or road from the included property. Notice
309 required to be given to owners by this subsection may be given concurrently with the notice required to
310 be given to the owners by subsection A. The Department shall make and maintain an appropriate record
311 of all public hearings held pursuant to this section.

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

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

320 E. For the purposes of this chapter, a historic district means a geographically definable area which
321 contains a significant concentration of historic buildings, structures or sites having a common historical,

322 architectural, archaeological, or cultural heritage, and which may contain local tax parcels having separate
323 owners. Contributing properties within a registered district are historic landmarks by definition.

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

326 **§ 10.1-2214. Underwater historic property; penalty.**

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

331 B. Underwater historic property shall be preserved and protected and shall be the exclusive
332 property of the Commonwealth. Preservation and protection of such property shall be the responsibility
333 of all state agencies including but not limited to the Department, the Virginia Institute of Marine Science,
334 and the Virginia Marine Resources Commission. Insofar as may be practicable, such property shall be
335 preserved, protected and displayed for the public benefit within the county or city within which it is found,
336 or within a museum operated by a state agency.

337 C. It shall be unlawful for any person, firm or corporation to conduct any type of recovery
338 operations involving the removal, destruction or disturbance of any underwater historic property without
339 first applying for and receiving a permit from the Virginia Marine Resources Commission to conduct such
340 operations pursuant to § 28.2-1203. If the Virginia Marine Resources Commission, after consultation
341 pursuant to § 28.2-104.01 with any federally recognized Tribal Nation in the Commonwealth for whom
342 the permit may have tribal implications, as defined in § 10.1-104.02, and with the concurrence of the
343 Department and in consultation with the Virginia Institute of Marine Science and other concerned state
344 agencies, finds that granting the permit is in the best interest of the Commonwealth, it shall grant the
345 applicant a permit. The permit shall provide that all objects recovered shall be the exclusive property of
346 the Commonwealth. The permit shall provide the applicant with a fair share of the objects recovered, or
347 in the discretion of the Department, a reasonable percentage of the cash value of the objects recovered to
348 be paid by the Department. Title to all objects recovered shall be retained by the Commonwealth unless

349 or until they are released to the applicant by the Department. All recovery operations undertaken pursuant
350 to a permit issued under this section shall be carried out under the general supervision of the Department
351 and in accordance with § 28.2-1203 and in such a manner that the maximum amount of historical,
352 scientific, archaeological and educational information may be recovered and preserved in addition to the
353 physical recovery of items. The Virginia Marine Resources Commission shall not grant a permit to
354 conduct operations at substantially the same location described and covered by a permit previously granted
355 if recovery operations are being actively pursued, unless the holder of the previously granted permit
356 concurs in the grant of another permit.

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

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

361 **§ 10.1-2305. Permit required for the archaeological excavation of human remains.**

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

366 B. Where unmarked burials are not part of a legally chartered cemetery, archaeological excavation
367 of such burials pursuant to a permit from the Director shall be exempt from the requirements of §§ 57-
368 38.1 and 57-39. However, such exemption shall not apply in the case of human burials within formally
369 chartered cemeteries that have been abandoned.

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

374 D. The Board shall promulgate regulations implementing this section that provide for appropriate
375 public notice prior to issuance of a permit, provide for appropriate treatment of excavated remains, the

376 scientific quality of the research conducted on the remains, and the appropriate disposition of the remains
377 upon completion of the research. Such regulations shall also require consultation pursuant to § 10.1-2205.1
378 with federally recognized Tribal Nations in the Commonwealth for whom the permit has tribal
379 implications, as defined in § 10.1-104.02. When a burial permit would result in the disturbance of a burial
380 site of an individual culturally affiliated with a particular federally recognized Tribal Nation in the
381 Commonwealth, the consent of the Tribal Nation is required before the permit may be issued. The
382 Department may carry out such excavations and research without a permit, provided that it has complied
383 with the substantive requirements of the regulations promulgated pursuant to this section.

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

387 F. For purposes of this section, "culturally affiliated" has the same definition as provided in the
388 federal Native American Graves Protection and Repatriation Act (25 U.S.C. § 3001 (2)) and its
389 regulations. If doubt exists as to cultural affiliation, the Tribal Nations potentially affiliated shall make the
390 determination.

391 **§ 28.2-104.01. Policies for consultation with federally recognized Tribal Nations.**

392 The Commission, with assistance from the Ombudsman for Tribal Consultation, shall develop
393 policies and procedures to ensure an opportunity for meaningful and culturally appropriate written
394 consultation with federally recognized Tribal Nations in the Commonwealth regarding permits issued and
395 reviews conducted by the Commission that may have tribal implications, as defined in § 10.1-104.02. The
396 Commission shall designate an agency official who has the authority to define agency actions appropriate
397 for consultation, evaluate the adequacy of consultation, and ensure that agency consultation practices are
398 consistent. The definition of actions appropriate for consultation shall be developed in consultation with
399 federally recognized Tribal Nations in the Commonwealth and shall include actions that may have tribal
400 implications. The policy shall define an appropriate means of notifying federally recognized Tribal
401 Nations in the Commonwealth based on tribal preferences, ensure that sufficient information and time is
402 provided for the Tribal Nations in the Commonwealth to develop informed opinions about the proposed

403 action, and establish procedures for the Commission to provide feedback to the Tribal Nations in the
404 Commonwealth to explain how their input was considered.

405 **§ 56-46.1. Commission to consider environmental, economic and improvements in service**
406 **reliability factors in approving construction of electrical utility facilities; approval required for**
407 **construction of certain electrical transmission lines; notice and hearings.**

408 A. Whenever the Commission is required to approve the construction of any electrical utility
409 facility, it shall give consideration to the effect of that facility on the environment and establish such
410 conditions as may be desirable or necessary to minimize adverse environmental impact. In order to avoid
411 duplication of governmental activities, any valid permit or approval required for an electric generating
412 plant and associated facilities issued or granted by a federal, state or local governmental entity charged by
413 law with responsibility for issuing permits or approvals regulating environmental impact and mitigation
414 of adverse environmental impact or for other specific public interest issues such as building codes,
415 transportation plans, and public safety, whether such permit or approval is granted prior to or after the
416 Commission's decision, shall be deemed to satisfy the requirements of this section with respect to all
417 matters that (i) are governed by the permit or approval or (ii) are within the authority of, and were
418 considered by, the governmental entity in issuing such permit or approval, and the Commission shall
419 impose no additional conditions with respect to such matters. Nothing in this section shall affect the ability
420 of the Commission to keep the record of a case open. Nothing in this section shall affect any right to appeal
421 such permits or approvals in accordance with applicable law. In the case of a proposed facility located in
422 a region that was designated as of July 1, 2001, as serious nonattainment for the one-hour ozone standard
423 as set forth in the federal Clean Air Act, the Commission shall not issue a decision approving such
424 proposed facility that is conditioned upon issuance of any environmental permit or approval. In every
425 proceeding under this subsection, the Commission shall receive and give consideration to all reports that
426 relate to the proposed facility by state agencies concerned with environmental protection; and if requested
427 by any county or municipality in which the facility is proposed to be built, to local comprehensive plans
428 that have been adopted pursuant to Article 3 (§ 15.2-2223 et seq.) of Chapter 22 of Title 15.2. Additionally,
429 the Commission (a) shall consider the effect of the proposed facility on economic development within the

430 Commonwealth, including but not limited to furtherance of the economic and job creation objectives of
431 the Commonwealth Clean Energy Policy set forth in § 45.2-1706.1, and (b) shall consider any
432 improvements in service reliability that may result from the construction of such facility.

433 B. Subject to the provisions of subsection J, no electrical transmission line of 138 kilovolts or more
434 shall be constructed unless the State Corporation Commission shall, after at least 30 days' advance notice
435 by (i) publication in a newspaper or newspapers of general circulation in the counties and municipalities
436 through which the line is proposed to be built, (ii) written notice to the governing body of each such county
437 and municipality, and (iii) causing to be sent a copy of the notice by first class mail to all owners of
438 property within the route of the proposed line, as indicated on the map or sketch of the route filed with the
439 Commission, which requirement shall be satisfied by mailing the notice to such persons at such addresses
440 as are indicated in the land books maintained by the commissioner of revenue, director of finance or
441 treasurer of the county or municipality, approve such line. Such notices shall include a written description
442 of the proposed route the line is to follow, as well as a map or sketch of the route including a digital
443 geographic information system (GIS) map provided by the public utility showing the location of the
444 proposed route. The Commission shall make GIS maps provided under this subsection available to the
445 public on the Commission's website. Such notices shall be in addition to the advance notice to the chief
446 administrative officer of the county or municipality required pursuant to § 15.2-2202.

447 As a condition to approval the Commission shall determine that the line is needed and that the
448 corridor or route chosen for the line will avoid or reasonably minimize adverse impact to the greatest
449 extent reasonably practicable on the scenic assets, historic resources recorded with the Department of
450 Historic Resources, cultural resources identified by Tribal Nations, and environment of the area
451 concerned. To assist the Commission in this determination, as part of the application for Commission
452 approval of the line, the applicant shall summarize its efforts to avoid or reasonably minimize adverse
453 impact to the greatest extent reasonably practicable on the scenic assets, historic resources recorded with
454 the Department of Historic Resources, and environment of the area concerned. In making the
455 determinations about need, corridor or route, and method of installation, the Commission shall verify the
456 applicant's load flow modeling, contingency analyses, and reliability needs presented to justify the new

457 line and its proposed method of installation. If the local comprehensive plan of an affected county or
458 municipality designates corridors or routes for electric transmission lines and the line is proposed to be
459 constructed outside such corridors or routes, in any hearing the county or municipality may provide
460 adequate evidence that the existing planned corridors or routes designated in the plan can adequately serve
461 the needs of the company. Additionally, the Commission shall consider, upon the request of the governing
462 body of any county or municipality in which the line is proposed to be constructed, (a) the costs and
463 economic benefits likely to result from requiring the underground placement of the line and (b) any
464 potential impediments to timely construction of the line.

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

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

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

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

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

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

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

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

487 1. That the applicant will make available to new electric generation facilities constructed after
488 January 9, 1991, qualifying facilities and other nonutilities, a minimum of one-fourth of the total
489 megawatts of the additional transmission capacity created by the proposed line, for the purpose of
490 wheeling to public utility purchasers the power generated by such qualifying facilities and other nonutility
491 facilities which are awarded a power purchase contract by a public utility purchaser in compliance with
492 applicable state law or regulations governing bidding or capacity acquisition programs for the purchase of
493 electric capacity from nonutility sources, provided that the obligation of the applicant will extend only to
494 those requests for wheeling service made within the 12 months following certification by the State
495 Corporation Commission of the transmission line and with effective dates for commencement of such
496 service within the 12 months following completion of the transmission line; and

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

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

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

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

519 H. An applicant that is required to obtain (i) a certificate of public convenience and necessity from
520 the Commission for any electric generating facility, electric transmission line, natural or manufactured
521 gas transmission line as defined in 49 Code of Federal Regulations § 192.3, or natural or manufactured
522 gas storage facility (hereafter, an energy facility) and (ii) an environmental permit for the energy facility
523 that is subject to issuance by any agency or board within the Secretariat of Natural and Historic Resources,
524 may request a pre-application planning and review process. In any such request to the Commission or the
525 Secretariat of Natural and Historic Resources, the applicant shall identify the proposed energy facility for
526 which it requests the pre-application planning and review process. The Commission, the Department of
527 Environmental Quality, the Marine Resources Commission, the Department of Wildlife Resources, the
528 Department of Historic Resources, the Department of Conservation and Recreation, federally recognized
529 Tribal Nations in the Commonwealth for whom the proposed facility may have tribal implications, as
530 defined in § 10.1-104.02, and other appropriate agencies of the Commonwealth shall participate in the
531 pre-application planning and review process. Participation in such process shall not limit the authority
532 otherwise provided by law to the Commission or other agencies or boards of the Commonwealth. The
533 Commission and other participating agencies of the Commonwealth may invite federal and local
534 governmental entities charged by law with responsibility for issuing permits or approvals to participate in
535 the pre-application planning and review process. Through the pre-application planning and review
536 process, the applicant, the Commission, and other agencies and boards shall identify the potential impacts
537 and approvals that may be required and shall develop a plan that will provide for an efficient and

538 coordinated review of the proposed energy facility. The plan shall include (a) a list of the permits or other
539 approvals likely to be required based on the information available, (b) a specific plan and preliminary
540 schedule for the different reviews, (c) a plan for coordinating those reviews and the related public
541 comment process, and (d) designation of points of contact, either within each agency or for the
542 Commonwealth as a whole, to facilitate this coordination. The plan shall be made readily available to the
543 public and shall be maintained on a dedicated website to provide current information on the status of each
544 component of the plan and each approval process including opportunities for public comment.

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

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

551 **§ 62.1-266. Ground water withdrawal permits.**

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

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

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

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

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

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

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

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

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

581 F. No application for a ground water withdrawal permit shall be considered complete unless the
582 applicant has provided the Executive Director of the Board with notification from the governing body of
583 the locality in which the withdrawal is to occur that the location and operation of the withdrawing facility
584 is in compliance with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2.
585 The provisions of this subsection shall not apply to any applicant exempt from compliance under Chapter
586 22 (§ 15.2-2200 et seq.) of Title 15.2.

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

590 H. The Board may adopt regulations to develop a general permit for the regulation of irrigation
591 withdrawals from the surficial aquifer greater than 300,000 gallons in any one month. Regulations adopted

592 pursuant to this subsection shall provide that withdrawals from the surficial aquifer may be permitted
593 under either a general permit developed pursuant to this subsection or another ground water withdrawal
594 permit.

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

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

608 **2. That by September 1, 2022, and in consultation with nationally recognized Tribal Nations located**
609 **in the Commonwealth, the Ombudsman for Tribal Consultation designated pursuant to § 2.2-401.01**
610 **of the Code of Virginia, as amended by this act, shall develop a list of localities in which federally**
611 **recognized Tribal Nations shall be consulted to effectuate the provisions of this act.**

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

617 #