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HOUSE BILL NO. 2106**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on Rules
on February 6, 2015)

(Patron Prior to Substitute—Delegate Peace)

A *BILL* to amend the Code of Virginia by adding in Title 30 a chapter numbered 57, consisting of sections numbered 30-359 through 30-368, relating to the Joint Commission on Virginia Indian Recognition; report.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 30 a chapter numbered 57, consisting of sections numbered 30-359 through 30-368, as follows:

CHAPTER 57.**JOINT COMMISSION ON VIRGINIA INDIAN RECOGNITION.****§ 30-359. Joint Commission on Virginia Indian Recognition; purpose.**

The Joint Commission on Virginia Indian Recognition (the Commission) is established in the legislative branch of state government. The purpose of the Commission is to review applications and make recommendations to the General Assembly regarding applications of groups seeking recognition as Virginia Indian Tribes.

§ 30-360. Membership; terms; vacancies; chairman and vice-chairman.

The Commission shall consist of 14 members that include eight legislative members, three nonlegislative citizen members, and three ex officio members. Members shall be appointed as follows: five members of the House of Delegates to be appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates; three members of the Senate to be appointed by the Senate Committee on Rules; two nonlegislative citizen members, at least one of whom shall represent the Virginia Indian community, to be appointed by the Speaker of the House of Delegates; one nonlegislative citizen member who shall represent the Commonwealth's scholarly community, to be appointed by the Senate Committee on Rules; and the Librarian of Virginia, the Director of the Department of Historic Resources, and the Superintendent of Public Instruction, or their designees, to serve ex officio with voting privileges. Nonlegislative citizen members of the Commission shall be citizens of the Commonwealth.

Legislative members and ex officio members of the Commission shall serve terms coincident with their terms of office. However, legislative members shall recuse themselves from deliberations concerning an active application for full tribal recognition from groups within their districts. Nonlegislative citizen members shall be appointed for a term of two years. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. Legislative members and nonlegislative citizen members may be reappointed. However, no nonlegislative citizen member shall serve more than four consecutive two-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment. Vacancies shall be filled in the same manner as the original appointments.

The Commission shall elect a chairman and vice-chairman from among its membership, who shall be members of the General Assembly.

§ 30-361. Quorum; meetings; voting on recommendations.

A majority of the members shall constitute a quorum. The Commission shall meet at least once each year no earlier than September 1 or later than November 30 in order to review both preliminary and final submissions for tribal recognition. In the absence of any submissions, this meeting may be waived. Other meetings of the Commission shall be held at the call of the chairman or whenever the majority of the members so request.

No recommendation of the Commission shall be adopted if a majority of the voting House members or a majority of the voting Senate members appointed to the Commission (i) vote against the recommendation and (ii) vote for the recommendation to fail notwithstanding the majority vote of the Commission.

§ 30-362. Compensation; expenses.

Legislative members of the Commission shall receive such compensation as provided in § 30-19.12, and nonlegislative citizen members shall receive such compensation for the performance of their duties as provided in § 2.2-2813. All members shall be reimbursed for reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. However, all such compensation and expenses shall be paid from existing appropriations to the Commission or, if unfunded, shall be approved by the Joint Rules Committee.

Unless otherwise approved in writing by the chairman of the Commission and the respective Clerk,

60 nonlegislative citizen members shall only be reimbursed for travel originating and ending within the
61 Commonwealth for the purpose of attending meetings.

62 No legislative or nonlegislative member of the Commission or advisory panel member appointed
63 pursuant to subdivision A 3 of § 30-364 shall accept any gifts of any kind related to their service on the
64 Commission or an advisory panel.

65 **§ 30-363. Joint Commission on Virginia Indian Recognition Fund.**

66 There is hereby created in the state treasury a special nonreverting fund to be known as the Joint
67 Commission on Virginia Indian Recognition Fund, referred to in this section as "the Fund." The Fund
68 shall be established on the books of the Comptroller. All gifts, grants, donations, bequests, or other
69 funds from any source as may be received by the Commission for its work shall be paid into the state
70 treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and
71 be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each
72 fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall
73 be used solely for the purpose of enabling the Commission to perform its duties. Expenditures and
74 disbursements from the Fund shall be made by the State Treasurer on warrants issued by the
75 Comptroller upon written request signed by the chairman of the Commission.

76 **§ 30-364. Powers and duties of the Commission.**

77 A. The Commission shall have the following powers and duties:

78 1. Establish guidance for documentation required to meet the criteria for full recognition of the
79 Virginia Indian Tribes that is consistent with the principles and requirements of federal tribal
80 recognition;

81 2. Establish a process for accepting and reviewing all applications for full tribal recognition;

82 3. Appoint and establish an advisory panel or panels on tribal recognition composed of
83 nonlegislative citizens at large who have knowledge of Virginia Indian history and current status. Such
84 panels (i) may be activated in any year in which an application for full tribal recognition has been
85 submitted and in other years as deemed appropriate by the Commission and (ii) shall include at a
86 minimum a certified genealogist and at least two scholars with recognized familiarity with Virginia
87 Indian Tribes, together with a working knowledge of Indian law. No member of an advisory panel shall
88 be associated in any way with the applying group. Members of the advisory panel shall receive such
89 compensation for the performance of their duties as provided in § 2.2-2813 and shall be reimbursed for
90 reasonable and necessary expenses incurred in the performance of their duties as provided in
91 §§ 2.2-2813 and 2.2-2825;

92 4. Solicit, accept, use, and dispose of gifts, grants, donations, bequests, or other funds or real or
93 personal property for the purpose of aiding or facilitating the work of the Commission. In accordance
94 with the appropriation act, the Commission may procure supplies, services, and property and make or
95 enter into contracts, leases, or other legal agreements as it may deem necessary to carry out its duties
96 as set forth in this chapter; however, no contract, lease, or other legal agreement shall be entered into
97 by the Commission that extends beyond July 1, 2018;

98 5. Ensure that all state and federal taxes have been collected and remitted to the Commonwealth or
99 the federal government, as appropriate, on any commerce conducted on tribal lands with non-Native
100 Americans;

101 6. Make recommendations to the General Assembly for full tribal recognition based on the findings
102 of an advisory panel and the Commission; and

103 7. Perform such other duties, functions, and activities as may be necessary to facilitate and
104 implement the objectives of this chapter.

105 B. The Commission shall develop the details for and implement a procedure based on the following
106 steps:

107 1. Future requests for recognition shall be handled through a two-stage process in which a group
108 seeking recognition first submits a summary proposal to the Commission for evaluation;

109 2. If the summary proposal appears to have merit, the Commission shall make that recommendation
110 to the General Assembly, which would, by resolution, authorize the recognition process to advance to a
111 full application for tribal recognition;

112 3. Following the authorization to proceed to full tribal recognition by the General Assembly, the
113 Commission shall establish an advisory panel pursuant to subdivision A 3 whose membership shall
114 include (i) state and federally recognized tribes, as appropriate, and (ii) an individual with significant
115 scholarly expertise to review applications for full tribal recognition; and

116 4. The group seeking recognition shall submit a full application with supporting documentation and
117 shall provide such additional documentation as requested by the advisory panel.

118 C. The advisory panel shall review the application and supporting documentation, hold public
119 meetings, and report its findings and recommendations to the Commission at its annual meeting.

120 D. A recommendation for full recognition as a Virginia Indian Tribe shall be accompanied by draft
121 legislation for review and consideration by the Commission for potential introduction to the General

Assembly.

E. The Commission shall make its recommendations to the General Assembly for (i) approval for full tribal recognition, (ii) continuation of the process provided in this section for an additional year to allow the applying group to submit new evidence, or (iii) conclusion of the process because the evidence did not support full tribal recognition.

§ 30-365. Criteria for tribal recognition.

The criteria for tribal recognition are as follows:

- 1. Demonstration that the group's members have retained specifically Indian identity through time;*
- 2. Demonstration of descent from a historical Indian group or groups that lived in Virginia's current boundaries at the time of that group's first contact with Europeans;*
- 3. Demonstration of the group's continued existence in Virginia from first contact with Europeans to the present;*
- 4. Provision of a complete genealogy of current group members traced as far back as possible;*
- 5. Evidence that the group has been socially distinct from other cultural groups, at least through the twentieth century and earlier, if possible, by organizing separate churches, schools, political organizations, or the like; and*
- 6. Evidence of contemporary formal organization with membership restricted to people genealogically descended from the historic tribes.*

§ 30-366. Staffing.

Administrative staff support shall be provided by the Office of the Clerk of the House of Delegates or the Office of the Clerk of the Senate as may be appropriate for the house in which the chairman of the Commission serves. The Division of Legislative Services shall provide legal, research, policy analysis, and other services as requested by the Commission.

§ 30-367. Chairman's executive summary of activity and work of the Commission.

The chairman shall submit to the General Assembly and the Governor an annual executive summary of the interim activity and work of the Commission no later than the first day of each regular session of the General Assembly. The executive summary shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

§ 30-368. Sunset.

This chapter shall expire on July 1, 2018.

2. That, for its first year of existence, if the Joint Commission on Virginia Indian Recognition (the Commission), as created by this act, is not funded by a separate appropriation in the appropriation act, the Commission may be funded from the operating budgets of the Clerk of the House of Delegates and the Clerk of the Senate upon the approval of the Joint Rules Committee. If the Commission is not funded by a separate appropriation in the appropriation act for any year thereafter, this chapter shall expire on July 1 of the fiscal year in which the Commission fails to receive such funding.