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SENATE BILL NO. 1332

Offered January 11, 2023

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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 in the Commonwealth; permits and reviews with potential impacts on environmental, cultural, and historic resources.

Patrons—McClellan, Hanger and Morrissey; Delegates: Carr and Simonds

Referred to Committee on Agriculture, Conservation and Natural 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; Ombudsman for Tribal Consultation; 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;
2. Develop a list of localities in which federally recognized Tribal Nations in the Commonwealth shall be consulted regarding actions and projects pursuant to § 10.1-104.02;
3. Assist the Department of Environmental Quality, the Department of Conservation and Recreation, the Department of Historic Resources, and the Virginia Marine Resources Commission in developing policies and procedures to ensure meaningful and culturally appropriate consultation with federally recognized Tribal Nations in the Commonwealth regarding permits and reviews; and
4. Make recommendations to the Governor about (i) additional permits and reviews that, in the opinion of the Ombudsman, should require consultation with federally recognized Tribal Nations in the Commonwealth and (ii) circumstances under which tribal consent should be required for issuance of certain permits.

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

1. The members of any such board shall be composed of no more than seven members to be appointed by the Secretary as follows: at least three of the members shall be members of Virginia recognized tribes to represent the Virginia Indian community, and one nonlegislative citizen member shall represent the Commonwealth's scholarly community. The Librarian of Virginia, the Director of the Department of Historic Resources, and the Superintendent of Public Instruction, or their designees, shall serve ex officio with voting privileges. Nonlegislative citizen members of any such board shall be citizens of the Commonwealth. Ex officio members shall serve terms coincident with their terms of office. 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. All members may be reappointed. The Secretary of the Commonwealth shall appoint a chairperson from among the members for a two-year term. 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.

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

- a. Establish guidance for documentation required to meet the criteria for full recognition of the Virginia Indian tribes that is consistent with the principles and requirements of federal tribal recognition;

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- 59 b. Establish a process for accepting and reviewing all applications for full tribal recognition;
- 60 c. Appoint and establish a workgroup on tribal recognition composed of nonlegislative citizens at
- 61 large who have knowledge of Virginia Indian history and current status. Such workgroup (i) may be
- 62 activated in any year in which an application for full tribal recognition has been submitted and in other
- 63 years as deemed appropriate by any such board and (ii) shall include at a minimum a genealogist and at
- 64 least two scholars with recognized familiarity with Virginia Indian tribes. No member of the workgroup
- 65 shall be associated in any way with the applicant. Members of the workgroup shall be reimbursed for
- 66 reasonable and necessary expenses incurred in the performance of their duties as provided in
- 67 §§ 2.2-2813 and 2.2-2825;
- 68 d. Solicit, accept, use, and dispose of gifts, grants, donations, bequests, or other funds or real or
- 69 personal property for the purpose of aiding or facilitating the work of the board;
- 70 e. Make recommendations to the Secretary for full tribal recognition based on the findings of the
- 71 workgroup and the board; and
- 72 f. Perform such other duties, functions, and activities as may be necessary to facilitate and implement
- 73 the objectives of this subsection.

74 C. D. There is hereby created in the state treasury a special nonreverting fund to be known as the

75 Virginia Indigenous People's Trust Fund, referred to in this section as "the Fund." The Fund shall be

76 established on the books of the Comptroller. All funds appropriated for such purpose, any tax revenue

77 accruing to the Fund pursuant to § 58.1-4125, and any gifts, donations, grants, bequests, and other funds

78 received on its behalf shall be paid into the state treasury and credited to the Fund. Interest earned on

79 moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund,

80 including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall

81 remain in the Fund. After payment of the costs of administration of the Fund, moneys in the Fund shall

82 be used to make disbursements on a quarterly basis in equal amounts to each of the six Virginia Indian

83 tribes federally recognized under P.L. 115-121 of 2018. Expenditures and disbursements from the Fund

84 shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed

85 by the Secretary of the Commonwealth.

86 **§ 5.1-7. Licensing of airports and landing areas.**

87 A. Except as provided in § 5.1-7.2, every person, before operating an airport or landing area or

88 adding or extending a runway, shall first secure from the Department a license. The application therefor

89 shall be made on the form prescribed and furnished by the Department and shall be accompanied by a

90 fee not exceeding \$100.

91 Such license shall be issued for a period not to exceed seven years and shall be renewed every seven

92 years. Before issuing such license, the Department shall require the holder of such license to furnish

93 proof of financial responsibility prescribed in Chapter 8.2 (§ 5.1-88.7 et seq.). *Prior to the Department*

94 *issuing or renewing such license, the Department of Environmental Quality shall consult with federally*

95 *recognized Tribal Nations in the Commonwealth pursuant to the policies and procedures adopted by the*

96 *Department of Environmental Quality pursuant to § 10.1-1186.3:1.*

97 It shall be unlawful for any person to operate any airport or landing area which that is open to the

98 general public for the landing or departure of any aircraft until a license therefor shall be issued by the

99 Department.

100 B. Before issuing such license for the establishment of a new airport, the Department shall

101 investigate the location of such airport or landing area with the relation to its proximity to and its

102 runway orientation in relation to any other airport or landing area and shall provide for the safety of

103 civil aircraft alighting thereon or departing therefrom. If the proposed airport or landing area shall be so

104 situated as to endanger aircraft using the same or any other airport or landing area in close proximity,

105 and if proper provisions have not been made in all other respects for the safety of aircraft alighting

106 thereon or departing therefrom, the license shall not be granted. To be licensed, an airport required to be

107 licensed under § 5.1-7.2 must meet this criterion and any applicable requirement provided for in

108 regulation promulgated under this section, but no others.

109 The Board may, by regulation, adopt any other requirements for licensure that are related to the

110 safety of civil aircraft using such airport or landing area. Any airport having a license issued prior to

111 October 1, 1995, and not meeting one or more minimum standards as defined in Part III

112 (24VAC5-20-120 et seq.) of the Virginia Aviation Regulations, shall be exempt from having to comply

113 with those noncomplying standards for as long as the airport remains an active public-use facility unless

114 those noncomplying standards are caused by natural growth. Should such airport cease to be open to the

115 public for one year, and subsequently reopen, it shall be required to comply with all applicable

116 minimum standards for licensure.

117 In addition to the above safety requirements, before a license is initially issued, the Department shall

118 consider the reviews and comments of appropriate state agencies coordinated by the Department of

119 Environmental Quality, and shall cause a public hearing to be held concerning the economic, social and

120 environmental effects of the location or runway orientation of the airport or landing area if the facility is

121 listed in the Virginia Air Transportation System Plan; however, such coordinated review by the
 122 Department of Environmental Quality shall not exceed 90 days after the Department has requested
 123 review by the Department of Environmental Quality. The public hearing required by this section shall be
 124 conducted by the Department of Environmental Quality in the jurisdiction in which the airport or
 125 landing area is located, after publication of notice of the hearing in a newspaper of general circulation in
 126 such jurisdiction at least 10 days in advance of such hearing.

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

129 C. If a runway is to be extended or new runways are to be added, a revised license shall be applied
 130 for from the Department. If the airport or landing area is listed in the Virginia Air Transportation
 131 System Plan, the Department shall consider the reviews and comments of appropriate state agencies,
 132 coordinated by the Department of Environmental Quality, and shall cause a public hearing to be held
 133 concerning the economic, social and environmental effects of such changes to the license.

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

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

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

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

152 **§ 10.1-104.02. Policies for consultation with federally recognized Tribal Nations in the**
 153 **Commonwealth.**

154 A. *The Department, with assistance from the Ombudsman for Tribal Consultation, shall develop*
 155 *policies and procedures, to the extent permitted by law, to ensure an opportunity for meaningful and*
 156 *culturally appropriate written consultation with potentially impacted federally recognized Tribal Nations*
 157 *in the Commonwealth regarding certain major actions or permits issued by the Department. The*
 158 *Department shall designate an agency official to evaluate the adequacy of consultation and ensure that*
 159 *agency consultation practices are consistent. Actions and permits appropriate for consultation shall*
 160 *include the projects and actions set forth in subsection B. The policies shall define an appropriate*
 161 *means of notifying federally recognized Tribal Nations in the Commonwealth based on tribal*
 162 *preferences, ensure that sufficient information and time is provided for the federally recognized Tribal*
 163 *Nations in the Commonwealth to develop informed opinions about the proposed action, and establish*
 164 *procedures for the Department to provide feedback to the federally recognized Tribal Nations in the*
 165 *Commonwealth to explain how their input was considered. Should feedback from the federally*
 166 *recognized Tribal Nations in the Commonwealth not be received by the deadline for state approval for a*
 167 *major permit, the consultation provisions of this section shall be deemed fulfilled.*

168 B. *The following actions and projects are subject to consultation as set forth in subsection A: (i)*
 169 *cave collection permits, issued pursuant to the Cave Protection Act (§ 10.1-1000 et seq.), for permit*
 170 *applications pertaining to the study, extraction, or removal of any archaeological or historic feature in*
 171 *a cave and (ii) Virginia regulated impounding structures permits issued pursuant to 4VAC50-20-70 and*
 172 *4VAC50-20-80.*

173 **§ 10.1-1003. Permits for excavation and scientific investigation; how obtained; penalties.**

174 A. In addition to the written permission of the owner required by § 10.1-1004, a permit shall be
 175 obtained from the Department of ~~Conservation and Recreation~~ prior to excavating or removing any
 176 archaeological, paleontological, prehistoric, or historic feature of any cave. *Prior to issuing any such*
 177 *permit, the Department shall consult with any federally recognized Tribal Nation in the Commonwealth*
 178 *pursuant to § 10.1-104.02.* The Department shall issue a permit to excavate or remove such a feature if
 179 it finds, with the concurrence of the Director of the Department of Historic Resources, that it is in the
 180 best interest of the Commonwealth and that the applicant meets the criteria of this section. The permit
 181 shall be issued for a period of two years and may be renewed upon expiration. Such permit shall not be

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

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

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

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

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

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

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

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

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

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

203 **§ 10.1-1186.3:1. Policies for consultation with federally recognized Tribal Nations in the**
204 **Commonwealth.**

205 A. *The Department, with assistance from the Ombudsman for Tribal Consultation, shall develop*
206 *policies and procedures, to the extent permitted by law, to ensure an opportunity for meaningful and*
207 *culturally appropriate written consultation with potentially impacted federally recognized Tribal Nations*
208 *in the Commonwealth regarding certain major actions or permits issued by the Department. The*
209 *Department shall designate an agency official to evaluate the adequacy of consultation and ensure that*
210 *agency consultation practices are consistent. Actions and permits appropriate for consultation shall*
211 *include the projects and actions set forth in subsection B. The policies shall define an appropriate*
212 *means of notifying federally recognized Tribal Nations in the Commonwealth based on tribal*
213 *preferences, ensure that sufficient information and time is provided for the federally recognized Tribal*
214 *Nations in the Commonwealth to develop informed opinions about the proposed action, and establish*
215 *procedures for the Department to provide feedback to the federally recognized Tribal Nations in the*
216 *Commonwealth to explain how their input was considered. Should feedback from the federally*
217 *recognized Tribal Nations in the Commonwealth not be received by the deadline for state approval for a*
218 *major permit, the consultation provisions of this section shall be deemed fulfilled.*

219 B. *The following actions and projects are subject to consultation as set forth in subsection A: (i)*
220 *environmental impact reports for major state projects prepared pursuant to § 10.1-1188; (ii) State*
221 *Corporation Commission project reports prepared pursuant to § 56-46.1 and 20VAC5-302-25; (iii)*
222 *Department of Aviation environmental reports prepared pursuant to § 5.1-7; (iv) environmental impact*
223 *assessments for oil or gas well drilling operations in Tidewater Virginia prepared pursuant to*
224 *9VAC15-20; (v) federal consistency determinations prepared pursuant to § 307 of the federal Coastal*
225 *Zone Management Act of 1972 (16 U.S.C. § 1451 et seq.); and (vi) ground water withdrawal permits for*
226 *ground water withdrawals greater than one million gallons per day issued pursuant to § 62.1-266.*

227 **§ 10.1-1188. State agencies to submit environmental impact reports on major projects.**

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

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

244 reasonable efforts to avoid or minimize impacts to historic resources if the project involves a new
 245 location or a new disturbance that extends outside the area or depth of a prior disturbance, or otherwise
 246 has the potential to affect such resources adversely.

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

- 248 1. The environmental impact of the major state project, including the impact on wildlife habitat;
- 249 2. Any adverse environmental effects ~~which~~ *that* cannot be avoided if the major state project is
 250 undertaken;
- 251 3. Measures proposed to minimize the impact of the major state project;
- 252 4. Any alternatives to the proposed construction; ~~and~~
- 253 5. Any irreversible environmental changes ~~which~~ *that* would be involved in the major state project;
 254 *and*

255 6. *If required, a record of consultation with any federally recognized Tribal Nation in the*
 256 *Commonwealth that may be impacted by the major state project pursuant to § 10.1-1186.3:1. The record*
 257 *of consultation shall include the information provided to the federally recognized Tribal Nation in the*
 258 *Commonwealth, any feedback or response received by the federally recognized Tribal Nation in the*
 259 *Commonwealth, and a description of how the impact was considered or incorporated into the major*
 260 *state project.*

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

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

272 **§ 10.1-2205.1. Policies for consultation with federally recognized Tribal Nations in the**
 273 **Commonwealth.**

274 A. *The Department, with assistance from the Ombudsman for Tribal Consultation, shall develop*
 275 *policies and procedures, to the extent permitted by law, to ensure an opportunity for meaningful and*
 276 *culturally appropriate written consultation with federally recognized Tribal Nations in the*
 277 *Commonwealth regarding certain major actions or permits issued by the Department. The Department*
 278 *shall designate an agency official to evaluate the adequacy of consultation and ensure that agency*
 279 *consultation practices are consistent. Actions and permits appropriate for consultation shall include the*
 280 *projects and actions set forth in subsection B. The policies shall define an appropriate means of*
 281 *notifying federally recognized Tribal Nations in the Commonwealth based on tribal preferences, ensure*
 282 *that sufficient information and time is provided for the federally recognized Tribal Nations in the*
 283 *Commonwealth to develop informed opinions about the proposed action, and establish procedures for*
 284 *the Department to provide feedback to the federally recognized Tribal Nations in the Commonwealth to*
 285 *explain how their input was considered. Should feedback from the federally recognized Tribal Nations in*
 286 *the Commonwealth not be received by the deadline for state approval for a major permit, the*
 287 *consultation provisions of this section shall be deemed fulfilled.*

288 B. *The following actions and projects are subject to consultation as set forth in subsection A: (i) the*
 289 *designation of historic districts, buildings, structures, or sites as historic landmarks pursuant to*
 290 *§ 10.1-2206.1; (ii) permits to conduct field investigations pursuant to § 10.1-2302; and (iii) burial*
 291 *permits for relocation of human remains issued pursuant to § 10.1-2305.*

292 **§ 10.1-2206.1. Procedure for designating a historic district, building, structure, or site as a**
 293 **historic landmark; National Register of Historic Places, National Historic Landmarks; historic**
 294 **district defined.**

295 A. In any county, city, or town where the Board proposes to designate a historic district, building,
 296 structure, object, or site as a historic landmark, or where the Director proposes to nominate property to
 297 the National Park Service for inclusion in the National Register of Historic Places or for designation as
 298 a National Historic Landmark, the Department shall give written notice of the proposal to the governing
 299 body and to the owner, owners, or the owner's agent, of property proposed to be so designated or
 300 nominated, and to the owners, or their agents, of all abutting property and property immediately across
 301 the street or road from the property. *The Department shall also consult with any federally recognized*
 302 *Tribal Nations in the Commonwealth pursuant to § 10.1-2205.1.*

303 B. Prior to the designation or nomination of a historic district, the Department shall hold a public
 304 hearing at the seat of government of the county, city, or town in which the proposed historic district is

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

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

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

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

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

334 **§ 10.1-2214. Underwater historic property; penalty.**

335 A. ~~Underwater~~ *For purposes of this section, "underwater historic property" means any submerged*
336 *shipwreck, vessel, cargo, tackle or underwater archaeological specimen, including any object found at*
337 *underwater refuse sites or submerged sites of former habitation, that has remained unclaimed on the*
338 *state-owned subaqueous bottom and has historic value as determined by the Department.*

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

345 C. It ~~shall be~~ *is* unlawful for any person, firm or corporation to conduct any type of recovery
346 operations involving the removal, destruction or disturbance of any underwater historic property without
347 first applying for and receiving a permit from the Virginia Marine Resources Commission to conduct
348 such operations pursuant to § 28.2-1203. If the Virginia Marine Resources Commission, *after*
349 *consultation with any federally recognized Tribal Nations in the Commonwealth pursuant to*
350 *§ 28.2-104.01, and with the concurrence of the Department and in consultation with the Virginia*
351 *Institute of Marine Science and other concerned state agencies, finds that granting the permit is in the*
352 *best interest of the Commonwealth, it shall grant the applicant a permit. The permit shall provide that all*
353 *objects recovered shall be the exclusive property of the Commonwealth. The permit shall provide the*
354 *applicant with a fair share of the objects recovered, or in the discretion of the Department, a reasonable*
355 *percentage of the cash value of the objects recovered to be paid by the Department. Title to all objects*
356 *recovered shall be retained by the Commonwealth unless or until they are released to the applicant by*
357 *the Department. All recovery operations undertaken pursuant to a permit issued under this section shall*
358 *be carried out under the general supervision of the Department and in accordance with § 28.2-1203 and*
359 *in such a manner that the maximum amount of historical, scientific, archaeological and educational*
360 *information may be recovered and preserved in addition to the physical recovery of items. The Virginia*
361 *Marine Resources Commission shall not grant a permit to conduct operations at substantially the same*
362 *location described and covered by a permit previously granted if recovery operations are being actively*
363 *pursued, unless the holder of the previously granted permit concurs in the grant of another permit.*

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

366 E. Any person violating the provisions of this section ~~shall be~~ *is* guilty of a Class 1 misdemeanor

367 and, in addition, shall forfeit to the Commonwealth any objects recovered.

368 **§ 10.1-2305. Permit required for the archaeological excavation of human remains.**

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

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

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

381 D. The Board shall promulgate regulations implementing this section that provide for appropriate
382 public notice prior to issuance of a permit, provide for appropriate treatment of excavated remains, the
383 scientific quality of the research conducted on the remains, and the appropriate disposition of the
384 remains upon completion of the research. *Such regulations shall also require consultation with any*
385 *federally recognized Tribal Nations in the Commonwealth pursuant to § 10.1-2205.1. When a burial*
386 *permit would result in the disturbance of a burial site of an individual that has a cultural affiliation*
387 *with a particular federally recognized Tribal Nation in the Commonwealth, the consent of the Tribal*
388 *Nation is required before the permit may be issued.* The Department may carry out such excavations and
389 research without a permit, provided that it has complied with the substantive requirements of the
390 regulations promulgated pursuant to this section.

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

394 F. *For the purposes of this section, "cultural affiliation" has the same definition as provided in the*
395 *federal Native American Graves Protection and Repatriation Act (25 U.S.C. § 3001(2)) and its*
396 *regulations. If doubt exists as to cultural affiliation, the federally recognized Tribal Nations in the*
397 *Commonwealth with potential cultural affiliation shall make the determination.*

398 **§ 28.2-104.01. Policies for consultation with federally recognized Tribal Nations in the**
399 **Commonwealth.**

400 A. *The Commission, with assistance from the Ombudsman for Tribal Consultation, shall develop*
401 *policies and procedures to ensure an opportunity for meaningful and culturally appropriate written*
402 *consultation with federally recognized Tribal Nations in the Commonwealth regarding certain major*
403 *actions or permits issued by the Commission. The Commission shall designate an agency official to*
404 *evaluate the adequacy of consultation and ensure that agency consultation practices are consistent.*
405 *Actions and permits appropriate for consultation shall (i) be designated in consultation with federally*
406 *recognized Tribal Nations in the Commonwealth and (ii) include underwater recovery permits issued*
407 *pursuant to § 10.1-2214. The policies shall define an appropriate means of notifying federally*
408 *recognized Tribal Nations in the Commonwealth based on tribal preferences, ensure that sufficient*
409 *information and time is provided for the federally recognized Tribal Nations in the Commonwealth to*
410 *develop informed opinions about the proposed action, and establish procedures for the Commission to*
411 *provide feedback to the federally recognized Tribal Nations in the Commonwealth to explain how their*
412 *input was considered. Should feedback from the federally recognized Tribal Nations in the*
413 *Commonwealth not be received by the deadline for state approval for a major permit, the consultation*
414 *provisions of this section shall be deemed fulfilled.*

415 **§ 56-46.1. Commission to consider environmental, economic and improvements in service**
416 **reliability factors in approving construction of electrical utility facilities; approval required for**
417 **construction of certain electrical transmission lines; notice and hearings.**

418 A. Whenever the Commission is required to approve the construction of any electrical utility facility,
419 it shall give consideration to the effect of that facility on the environment and establish such conditions
420 as may be desirable or necessary to minimize adverse environmental impact. In order to avoid
421 duplication of governmental activities, any valid permit or approval required for an electric generating
422 plant and associated facilities issued or granted by a federal, state or local governmental entity charged
423 by law with responsibility for issuing permits or approvals regulating environmental impact and
424 mitigation of adverse environmental impact or for other specific public interest issues such as building
425 codes, transportation plans, and public safety, whether such permit or approval is granted prior to or
426 after the Commission's decision, shall be deemed to satisfy the requirements of this section with respect
427 to all matters that (i) are governed by the permit or approval or (ii) are within the authority of, and were

428 considered by, the governmental entity in issuing such permit or approval, and the Commission shall
429 impose no additional conditions with respect to such matters. Nothing in this section shall affect the
430 ability of the Commission to keep the record of a case open. Nothing in this section shall affect any
431 right to appeal such permits or approvals in accordance with applicable law. In the case of a proposed
432 facility located in a region that was designated as of July 1, 2001, as serious nonattainment for the
433 one-hour ozone standard as set forth in the federal Clean Air Act, the Commission shall not issue a
434 decision approving such proposed facility that is conditioned upon issuance of any environmental permit
435 or approval. In every proceeding under this subsection, the Commission shall receive and give
436 consideration to all reports that relate to the proposed facility by state agencies concerned with
437 environmental protection; and if requested by any county or municipality in which the facility is
438 proposed to be built, to local comprehensive plans that have been adopted pursuant to Article 3
439 (§ 15.2-2223 et seq.) of Chapter 22 of Title 15.2. Additionally, the Commission (a) shall consider the
440 effect of the proposed facility on economic development within the Commonwealth, including but not
441 limited to furtherance of the economic and job creation objectives of the Commonwealth Clean Energy
442 Policy set forth in § 45.2-1706.1, and (b) shall consider any improvements in service reliability that may
443 result from the construction of such facility.

444 B. Subject to the provisions of subsection J, no electrical transmission line of 138 kilovolts or more
445 shall be constructed unless the State Corporation Commission shall, after at least 30 days' advance
446 notice by (i) publication in a newspaper or newspapers of general circulation in the counties and
447 municipalities through which the line is proposed to be built, (ii) written notice to the governing body of
448 each such county and municipality, and (iii) causing to be sent a copy of the notice by first class mail to
449 all owners of property within the route of the proposed line, as indicated on the map or sketch of the
450 route filed with the Commission, which requirement shall be satisfied by mailing the notice to such
451 persons at such addresses as are indicated in the land books maintained by the commissioner of revenue,
452 director of finance or treasurer of the county or municipality, approve such line. Such notices shall
453 include a written description of the proposed route the line is to follow, as well as a map or sketch of
454 the route including a digital geographic information system (GIS) map provided by the public utility
455 showing the location of the proposed route. The Commission shall make GIS maps provided under this
456 subsection available to the public on the Commission's website. Such notices shall be in addition to the
457 advance notice to the chief administrative officer of the county or municipality required pursuant to
458 § 15.2-2202.

459 As a condition to approval the Commission shall determine that the line is needed and that the
460 corridor or route chosen for the line will avoid or reasonably minimize adverse impact to the greatest
461 extent reasonably practicable on the scenic assets, historic resources recorded with the Department of
462 Historic Resources, *cultural resources identified by federally recognized Tribal Nations in the*
463 *Commonwealth*, and environment of the area concerned. To assist the Commission in this determination,
464 as part of the application for Commission approval of the line, the applicant shall summarize its efforts
465 to avoid or reasonably minimize adverse impact to the greatest extent reasonably practicable on the
466 scenic assets, historic resources recorded with the Department of Historic Resources, and environment of
467 the area concerned. In making the determinations about need, corridor or route, and method of
468 installation, the Commission shall verify the applicant's load flow modeling, contingency analyses, and
469 reliability needs presented to justify the new line and its proposed method of installation. If the local
470 comprehensive plan of an affected county or municipality designates corridors or routes for electric
471 transmission lines and the line is proposed to be constructed outside such corridors or routes, in any
472 hearing the county or municipality may provide adequate evidence that the existing planned corridors or
473 routes designated in the plan can adequately serve the needs of the company. Additionally, the
474 Commission shall consider, upon the request of the governing body of any county or municipality in
475 which the line is proposed to be constructed, (a) the costs and economic benefits likely to result from
476 requiring the underground placement of the line and (b) any potential impediments to timely
477 construction of the line.

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

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

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

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

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

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

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

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

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

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

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

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

526 G. The Commission shall enter into a memorandum of agreement with the Department of
 527 Environmental Quality regarding the coordination of their reviews of the environmental impact of
 528 electric generating plants and associated facilities. *If the proposed plants or associated facilities require*
 529 *consultation with any federally recognized Tribal Nations in the Commonwealth pursuant to the policies*
 530 *and procedures adopted by the Department of Environmental Quality pursuant to § 10.1-1186.3:1, such*
 531 *consultation information shall be included in the memorandum of agreement.*

532 H. An applicant that is required to obtain (i) a certificate of public convenience and necessity from
 533 the Commission for any electric generating facility, electric transmission line, natural or manufactured
 534 gas transmission line as defined in 49 Code of Federal Regulations § 192.3, or natural or manufactured
 535 gas storage facility (hereafter, an energy facility) and (ii) an environmental permit for the energy facility
 536 that is subject to issuance by any agency or board within the Secretariat of Natural and Historic
 537 Resources, may request a pre-application planning and review process. In any such request to the
 538 Commission or the Secretariat of Natural and Historic Resources, the applicant shall identify the
 539 proposed energy facility for which it requests the pre-application planning and review process. The
 540 Commission, the Department of Environmental Quality, the Marine Resources Commission, the
 541 Department of Wildlife Resources, the Department of Historic Resources, the Department of
 542 Conservation and Recreation, and other appropriate agencies of the Commonwealth shall participate in
 543 the pre-application planning and review process. Participation in such process shall not limit the
 544 authority otherwise provided by law to the Commission or other agencies or boards of the
 545 Commonwealth. The Commission and other participating agencies *and boards* of the Commonwealth
 546 may invite federal and local governmental entities charged by law with responsibility for issuing permits
 547 or approvals *and potentially impacted federally recognized Tribal Nations in the Commonwealth* to
 548 participate in the pre-application planning and review process. Through the pre-application planning and
 549 review process, the applicant, the Commission, ~~and other~~ *participating agencies and boards of the*
 550 *Commonwealth, and potentially impacted federally recognized Tribal Nations in the Commonwealth* shall

551 identify the potential impacts and approvals that may be required and shall develop a plan that will
552 provide for an efficient and coordinated review of the proposed energy facility. The plan shall include
553 (a) a list of the permits or other approvals likely to be required based on the information available, (b) a
554 specific plan and preliminary schedule for the different reviews, (c) a plan for coordinating those
555 reviews and the related public comment process, and (d) designation of points of contact, either within
556 each agency or for the Commonwealth as a whole, to facilitate this coordination. The plan shall be made
557 readily available to the public and shall be maintained on a dedicated website to provide current
558 information on the status of each component of the plan and each approval process including
559 opportunities for public comment.

560 I. The provisions of this section shall not apply to the construction and operation of a small
561 renewable energy project, as defined in § 10.1-1197.5, by a utility regulated pursuant to this title for
562 which the Department of Environmental Quality has issued a permit by rule pursuant to Article 5
563 (§ 10.1-1197.5 et seq.) of Chapter 11.1 of Title 10.1.

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

566 **§ 62.1-266. Ground water withdrawal permits.**

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

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

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

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

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

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

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

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

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

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

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

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

611 I. The Board shall promulgate regulations establishing criteria for determining whether the quantity
612 or quality of the ground water in a surficial aquifer is adequate to meet a proposed beneficial use. Such

613 regulations shall specify the information required to be submitted to the Department by a golf course or
614 any other person seeking a determination from the Department that either the quantity or quality of the
615 ground water in a surficial aquifer is not adequate to meet a proposed beneficial use. Such regulations
616 shall require the Department, within 30 days of receipt of a complete request, to make a determination
617 as to the adequacy of the quantity or quality of the ground water in a surficial aquifer.

618 *J. If the proposed permit will allow for ground water withdrawals greater than one million gallons*
619 *per day, the Board shall ensure that the Department consults with any potentially impacted federally*
620 *recognized Tribal Nations in the Commonwealth pursuant to the policies and procedures adopted by the*
621 *Department pursuant to § 10.1-1186.3:1. Should feedback from potentially impacted federally recognized*
622 *Tribal Nations in the Commonwealth not be received by the deadline for state approval for a major*
623 *permit, the consultation provisions of this section shall be deemed fulfilled.*

624 **2. That by September 1, 2023, and in consultation with federally recognized Tribal Nations in the**
625 **Commonwealth, the Ombudsman for Tribal Consultation designated pursuant to § 2.2-401.01 of**
626 **the Code of Virginia, as amended by this act, shall develop a list of localities in which federally**
627 **recognized Tribal Nations in the Commonwealth shall be consulted to effectuate the provisions of**
628 **this act.**

629 **3. That the Departments of Conservation and Recreation, Environmental Quality, and Historic**
630 **Resources and the Marine Resources Commission shall adopt regulations as necessary to carry out**
631 **the provisions of this act.**