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HOUSE BILL NO. 1157

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance and Appropriations
on March 4, 2024)

(Patron Prior to Substitute—Delegate Krizek)

A BILL to amend and reenact § 2.2-401.01 of the Code of Virginia, relating to consultation with federally recognized Tribal Nations in the Commonwealth; 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 of the Code of Virginia is amended and reenacted 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 permits and reviews that are necessary in the opinion of the Ombudsman;

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 appropriate consultation with federally recognized Tribal Nations in the Commonwealth regarding permits and reviews; and

4. Make recommendations to the Governor about permits and reviews that, in the opinion of the Ombudsman, should require consultation with federally recognized Tribal Nations in the Commonwealth.

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;

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

c. Appoint and establish a workgroup on tribal recognition composed of nonlegislative citizens at large who have knowledge of Virginia Indian history and current status. Such workgroup (i) may be activated in any year in which an application for full tribal recognition has been submitted and in other years as deemed appropriate by any such board and (ii) shall include at a minimum a genealogist and at least two scholars with recognized familiarity with Virginia Indian tribes. No member of the workgroup shall be associated in any way with the applicant. Members of the workgroup 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;

d. Solicit, accept, use, and dispose of gifts, grants, donations, bequests, or other funds or real or

60 personal property for the purpose of aiding or facilitating the work of the board;
61 e. Make recommendations to the Secretary for full tribal recognition based on the findings of the
62 workgroup and the board; and
63 f. Perform such other duties, functions, and activities as may be necessary to facilitate and implement
64 the objectives of this subsection.

65 ~~C.~~ *D.* There is hereby created in the state treasury a special nonreverting fund to be known as the
66 Virginia Indigenous People's Trust Fund, referred to in this section as "the Fund." The Fund shall be
67 established on the books of the Comptroller. All funds appropriated for such purpose, any tax revenue
68 accruing to the Fund pursuant to § 58.1-4125, and any gifts, donations, grants, bequests, and other funds
69 received on its behalf shall be paid into the state treasury and credited to the Fund. Interest earned on
70 moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund,
71 including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall
72 remain in the Fund. After payment of the costs of administration of the Fund, moneys in the Fund shall
73 be used to make disbursements on a quarterly basis in equal amounts to each of the six Virginia Indian
74 tribes federally recognized under P.L. 115-121 of 2018. Expenditures and disbursements from the Fund
75 shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed
76 by the Secretary of the Commonwealth.

77 **2. That by January 1, 2025, and in consultation with federally recognized Tribal Nations in the**
78 **Commonwealth, the Ombudsman for Tribal Consultation designated pursuant to § 2.2-401.01 of**
79 **the Code of Virginia, as amended by this act, shall develop a list of localities in which federally**
80 **recognized Tribal Nations in the Commonwealth shall be consulted pursuant to subdivision B 2 of**
81 **§ 2.2-401.01 of the Code of Virginia, as amended by this act, and report such list to the Governor**
82 **and the General Assembly.**