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SENATE BILL NO. 353

Offered January 14, 2026

A *BILL to amend and reenact §§ 2.2-401.01, 10.1-104.02, 10.1-1186.3:1, 10.1-1322, 10.1-2205.1, 10.1-2302, 10.1-2305, 28.2-104.01, 33.2-258, 56-265.2:1, 62.1-44.38:1, and 62.1-248 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 33.2-257.2, relating to consultation with federally recognized tribes; permits and reviews with potential impacts on environmental, cultural, and historic resources.*

 Patron—McDougle

 Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-401.01, 10.1-104.02, 10.1-1186.3:1, 10.1-1322, 10.1-2205.1, 10.1-2302, 10.1-2305, 28.2-104.01, 33.2-258, 56-265.2:1, 62.1-44.38:1, and 62.1-248 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 33.2-257.2 as follows:

§ 2.2-401.01. Liaison to Virginia recognized 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~~ *recognized* tribes;
2. Designate an Ombudsman for Tribal Consultation pursuant to subsection B; and
3. Report annually on the status of *American* 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~~ *tribes*, an Ombudsman for Tribal Consultation (the Ombudsman). The Ombudsman shall:

1. Facilitate communication between federally recognized ~~Tribal Nations in the Commonwealth~~ *tribes* and relevant state agencies and local governments ~~for~~ *to ensure an opportunity for meaningful and timely* consultation on environmental, cultural, and historical permits and reviews;

2. Develop a list of localities in ongoing consultation with the federally recognized ~~Tribal Nations~~ *tribes* in which federally recognized ~~Tribal Nations in the Commonwealth~~ *tribes* shall be consulted regarding actions and projects pursuant to §§ 10.1-104.02, 10.1-1186.3:1, 10.1-2205.1, ~~and~~ 28.2-104.01, and 33.2-257.2;

3. Assist the Department of Environmental Quality, the Department of Conservation and Recreation, the Department of Historic Resources, ~~and~~ the Virginia Marine Resources Commission, ~~and the Department of Transportation~~ in developing policies and procedures to ensure meaningful, *timely*, and appropriate consultation with federally recognized ~~Tribal Nations in the Commonwealth~~ *tribes* regarding permits and reviews; ~~and~~

4. Make recommendations *on the basis of communications with federally recognized tribes* 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~~ *tribes*, (ii) *circumstances under which tribal consent should be required for issuance of certain permits*, and (iii) *additional agencies that should develop policies and procedures to ensure meaningful, timely, and appropriate consultation with federally recognized tribes*;

5. Provide training at least once a year to state agency personnel who have regular communication with ~~federally recognized tribes~~ *on issues of concern to the federally recognized tribes*. Such training shall endeavor to support:

a. *Effective communication and collaboration between state agencies and the federally recognized tribes;* and

b. *Positive government-to-government relations between the Commonwealth and the federally recognized tribes;* and

6. *Submit an annual report to the Secretary of the Commonwealth on the activities undertaken to implement this section, including any recommendations made to the Governor, and the issues that have arisen in that pursuit.*

C. The Secretary of the Commonwealth may establish a Virginia *American* Indian advisory board to assist the Secretary in reviewing applications seeking recognition as a Virginia ~~Indian~~ *recognized* 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

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the Secretary as follows: at least three of the members shall be members *or citizens* of Virginia recognized tribes to represent the Virginia American 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 American Indian tribes in Virginia 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 as a Virginia recognized tribe;

c. Appoint and establish a ~~workgroup~~ *work group* on tribal recognition composed of nonlegislative citizens at large who have knowledge of Virginia American Indian history and the current status of American Indian tribes in Virginia. Such ~~workgroup~~ *work group* (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 American Indian tribes in Virginia. No member of the ~~workgroup~~ *work group* shall be associated in any way with the applicant. Members of the ~~workgroup~~ *work group* 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 personal property for the purpose of aiding or facilitating the work of the board;

e. Make recommendations to the Secretary for full tribal recognition based on the findings of the ~~workgroup~~ *work group* and the board; and

f. Perform such other duties, functions, and activities as may be necessary to facilitate and implement the objectives of this subsection.

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

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

"American Indian" means a duly enrolled member or citizen of a federally recognized tribe or Virginia recognized tribe.

"Federally recognized tribe" means a Virginia recognized tribe that is recognized by the U.S. Secretary of the Interior to exist as a tribe under the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. § 5131).

"Virginia recognized tribe" means an American Indian tribe within the present-day external boundaries of the Commonwealth, regardless of federal recognition status, that is formally acknowledged by the Commonwealth to exist as a tribe as reported by the Secretary of the Commonwealth pursuant to this section.

§ 10.1-104.02. Policies for consultation with federally recognized tribes.

A. For the purposes of this section, "federally recognized tribe" means the same as that term is defined in § 2.2-401.01.

B. The Department, with assistance from the Ombudsman for Tribal Consultation designated pursuant to § 2.2-401.01, shall develop policies and procedures, to the extent permitted by law, to ensure an opportunity for meaningful and appropriate written consultation with potentially impacted federally recognized ~~Tribal Nations in the Commonwealth~~ *tribes* regarding certain major actions or permits issued by the Department. The Department shall designate an agency official to evaluate the adequacy of consultation and ensure that agency consultation practices are consistent. Actions and permits appropriate for consultation shall include the projects and actions set forth in subsection B C. The policies shall define an appropriate means of

notifying federally recognized ~~Tribal Nations in the Commonwealth~~ tribes based on tribal preferences, ensure that sufficient information and time is provided for the federally recognized ~~Tribal Nations in the Commonwealth~~ tribes to fully engage in consultation regarding the proposed action, and establish procedures for the Department to provide feedback to the federally recognized ~~Tribal Nations in the Commonwealth~~ tribes to explain how their input was considered. *During a consultation, the burden is on the agency to show that it has made a good faith effort to elicit meaningful and timely feedback, including formal communication between agency employees and the federally recognized tribes.* Should feedback from the federally recognized ~~Tribal Nations in the Commonwealth~~ tribes not be received by the deadline established in the Department's policies and procedures, the consultation provisions of this section shall be deemed fulfilled.

~~B. C.~~ The following actions and projects in a locality identified by the Ombudsman for Tribal Consultation pursuant to subdivision B 2 of § 2.2-401.01 are subject to consultation as set forth in subsection A B: (i) cave collection permits, issued pursuant to the Cave Protection Act (§ 10.1-1000 et seq.), for permit applications pertaining to the study, extraction, or removal of any archaeological or historic feature in a cave in a locality identified by the Ombudsman for Tribal Consultation pursuant to subdivision B 2 of § 2.2-401.01 and; (ii) Virginia-regulated impounding structures permits issued pursuant to 4VAC50-20-70 and 4VAC50-20-80 in a locality identified by the Ombudsman for Tribal Consultation pursuant to subdivision B 2 of § 2.2-401.01; and (iii) local government notifications for new and existing impoundment structures or dams pursuant to 4VAC50-20-58.

D. At least once a year, the Department shall coordinate with the Ombudsman to provide training for state agency personnel who have regular communication with federally recognized tribes on issues of concern to the federally recognized tribes pursuant to § 2.2-401.01. The Department shall also submit an annual report to the Secretary of the Commonwealth on activities undertaken to implement this section.

§ 10.1-1186.3:1. Policies for consultation with federally recognized tribes.

A. For the purposes of this section, "federally recognized tribe" means the same as that term is defined in § 2.2-401.01.

B. The Department, with assistance from the Ombudsman for Tribal Consultation designated pursuant to § 2.2-401.01, shall develop policies and procedures, to the extent permitted by law, to ensure an opportunity for meaningful and appropriate written consultation with potentially impacted federally recognized ~~Tribal Nations in the Commonwealth~~ tribes regarding certain major actions or permits issued by the Department. The Department shall designate an agency official to evaluate the adequacy of consultation and ensure that agency consultation practices are consistent. Actions and permits appropriate for consultation shall include the projects and actions set forth in subsection B C. The policies shall define an appropriate means of notifying federally recognized ~~Tribal Nations in the Commonwealth~~ tribes based on tribal preferences, ensure that sufficient information and time is provided for the federally recognized ~~Tribal Nations in the Commonwealth~~ tribes to fully engage in consultation regarding the proposed action, and establish procedures for the Department to provide feedback to the federally recognized ~~Tribal Nations in the Commonwealth~~ tribes to explain how their input was considered. *During a consultation, the burden is on the agency to show that it has made a good faith effort to elicit meaningful and timely feedback, including formal communication between agency employees and the federally recognized tribes.* Should feedback from the federally recognized ~~Tribal Nations in the Commonwealth~~ tribes not be received by the deadline established in the Department's policies and procedures, the consultation provisions of this section shall be deemed fulfilled. For environmental impact reports for major state projects prepared pursuant to § 10.1-1188, the policies and procedures shall require the state project proponent to perform the required consultation.

~~B. C.~~ The following actions and projects in a locality identified by the Ombudsman for Tribal Consultation pursuant to subdivision B 2 of § 2.2-401.01 are subject to consultation as set forth in subsection A B: (i) environmental impact reports for major state projects prepared pursuant to § 10.1-1188; (ii) State Corporation Commission project reports prepared pursuant to § 56-46.1, 56-265.2:1, and 20VAC5-302-25; (iii) environmental impact assessments for oil or gas well drilling operations in Tidewater Virginia prepared pursuant to 9VAC15-20; (iv) federal consistency determinations prepared pursuant to § 307 of the federal Coastal Zone Management Act of 1972 (16 U.S.C. § 1451 et seq.); and; (v) ground water withdrawal permits for ground water withdrawals greater than 365 million gallons per year issued pursuant to § 62.1-266; (vi) *surface water withdrawal permits for surface water withdrawals greater than 365 million gallons per year issued pursuant to § 62.1-248;* (vii) *Virginia Pollutant Discharge Elimination System permits issued pursuant to 9VAC25-31-170;* (viii) *air emissions permits issued pursuant to § 10.1-1322;* and (ix) *water supply plans prepared pursuant to § 62.1-44.38:1.*

D. At least once a year, the Department shall coordinate with the Ombudsman to provide training for state agency personnel who have regular communication with federally recognized tribes on issues of concern to the federally recognized tribes pursuant to § 2.2-401.01. The Department shall also submit an annual report to the Secretary of the Commonwealth on activities undertaken to implement this section.

§ 10.1-1322. Permits.

A. Pursuant to regulations adopted by the Board, permits may be issued, amended, revoked, or terminated and reissued by the Department and may be enforced under the provisions of this chapter in the same manner

as regulations and orders. *Prior to issuing any permit in a locality identified by the Ombudsman for Tribal Consultation pursuant to subdivision B 2 of § 2.2-401.01, the Department shall consult with federally recognized tribes pursuant to § 10.1-2205.1.* Failure to comply with any condition of a permit shall be considered a violation of this chapter and investigations and enforcement actions may be pursued in the same manner as is done with regulations of the Board and orders of the Department under the provisions of this chapter. To the extent allowed by federal law, any person holding a permit who is intending to upgrade the permitted facility by installing technology, control equipment, or other apparatus that the permittee demonstrates to the satisfaction of the Director will result in improved energy efficiency, will reduce the emissions of regulated air pollutants, and meets the requirements of Best Available Control Technology shall not be required to obtain a new, modified, or amended permit. The permit holder shall provide the demonstration anticipated by this subsection to the Department no later than 30 days prior to commencing construction. *For the purposes of this subsection, "federally recognized tribe" means the same as that term is defined in § 2.2-401.01.*

B. The Board by regulation may prescribe and provide for the payment and collection of annual permit program fees for air pollution sources. Annual permit program fees shall not be collected until (i) the federal Environmental Protection Agency approves the Board's operating permit program established pursuant to Title V of the federal Clean Air Act or (ii) the Governor determines that such fees are needed earlier to maintain primacy over the program. The annual fees shall be based on the actual emissions (as calculated or estimated) of each regulated pollutant, as defined in § 502 of the federal Clean Air Act, in tons per year, not to exceed 4,000 tons per year of each pollutant for each source. The annual permit program fees shall not exceed a base year amount of \$25 per ton using 1990 as the base year, and shall be adjusted annually by the Consumer Price Index as described in § 502 of the federal Clean Air Act. Permit program fees for air pollution sources who receive state operating permits in lieu of Title V operating permits shall be paid in the first year and thereafter shall be paid biennially. The fees shall approximate the direct and indirect costs of administering and enforcing the permit program, and of administering the small business stationary source technical and environmental compliance assistance program as required by the federal Clean Air Act. The Board shall promulgate regulations establishing permit application fee amounts not to exceed \$30,000 from applicants for a permit for a new major stationary source. The permit application fee amount paid shall be credited towards the amount of annual fees owed pursuant to this section during the first two years of the source's operation. The fees shall be exempt from statewide indirect costs charged and collected by the Department of Accounts.

C. When adopting regulations for permit program fees for air pollution sources, the Board shall take into account the permit fees charged in neighboring states and the importance of not placing existing or prospective industry in the Commonwealth at a competitive disadvantage.

D. On or before January 1 of every even-numbered year, the Department shall make an evaluation of the implementation of the permit fee program and provide this evaluation in writing to the Senate Committee on Agriculture, Conservation and Natural Resources, the Senate Committee on Finance and Appropriations, the House Committee on Appropriations, the House Committee on Agriculture, Chesapeake and Natural Resources, and the House Committee on Finance. This evaluation shall include a report on the total fees collected, the amount of general funds allocated to the Department, the Department's use of the fees and the general funds, the number of permit applications received, the number of permits issued, the progress in eliminating permit backlogs, and the timeliness of permit processing.

E. To the extent allowed by federal law and regulations, priority for utilization of permit fees shall be given to cover the costs of processing permit applications in order to more efficiently issue permits.

F. Fees collected pursuant to this section shall not supplant or reduce in any way the general fund appropriation to the Department.

G. The permit fees shall apply to permit programs in existence on July 1, 1992, any additional permit programs that may be required by the federal government and administered by the Department, or any new permit program required by the Code of Virginia.

H. The permit program fee regulations promulgated pursuant to this section shall not become effective until July 1, 1993.

~~I. [Expired.]~~

§ 10.1-2205.1. Policies for consultation with federally recognized tribes

A. *For the purposes of this section, "federally recognized tribe" means the same as that term is defined in § 2.2-401.01.*

B. The Department, with assistance from the Ombudsman for Tribal Consultation designated pursuant to § 2.2-401.01, shall develop policies and procedures, to the extent permitted by law, to ensure an opportunity for meaningful and appropriate written consultation with federally recognized ~~Tribal Nations in the Commonwealth~~ *tribes* regarding certain major actions or permits issued by the Department. The Department shall designate an agency official to evaluate the adequacy of consultation and ensure that agency consultation practices are consistent. Actions and permits appropriate for consultation shall include the projects and actions set forth in subsection ~~B~~ C. The policies shall define an appropriate means of notifying

federally recognized ~~Tribal Nations in the Commonwealth~~ tribes based on tribal preferences, ensure that sufficient information and time is provided for the federally recognized ~~Tribal Nations in the Commonwealth~~ tribes to fully engage in consultation regarding ~~developing informed opinions about~~ the proposed action, and establish procedures for the Department to provide feedback to the federally recognized ~~Tribal Nations in the Commonwealth~~ tribes to explain how their input was considered. *During a consultation, the burden is on the agency to show that it has made a good faith effort to elicit meaningful and timely feedback, including formal communication between agency employees and the federally recognized tribes.* Should feedback from the federally recognized ~~Tribal Nations in the Commonwealth~~ tribes not be received by the deadline established in the Department's policies and procedures, the consultation provisions of this section shall be deemed fulfilled.

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

D. *At least once a year, the Department shall coordinate with the Ombudsman to provide training for state agency personnel who have regular communication with federally recognized tribes on issues of concern to the federally recognized tribes pursuant to § 2.2-401.01. The Department shall also submit an annual report to the Secretary of the Commonwealth on activities undertaken to implement this section.*

§ 10.1-2302. Permit required to conduct field investigations; ownership of objects of antiquity; penalties.

A. It is unlawful for any person to conduct any type of field investigation, exploration, or recovery operation involving the removal, destruction, or disturbance of any object of antiquity on state-controlled land, or on a state archaeological site or zone, without first receiving a permit from the Director. *Prior to issuing any permit in a locality identified by the Ombudsman for Tribal Consultation pursuant to subdivision B 2 of § 2.2-401.01, the Department shall consult with federally recognized tribes pursuant to § 10.1-2205.1. For the purposes of this subsection, "federally recognized tribe" means the same as that term is defined in § 2.2-401.01.*

B. The Director may issue a permit to conduct field investigations if the Director determines that (i) it is in the best interest of the Commonwealth and (ii) the applicant has identified a field supervisor who is a qualified professional archaeologist and who meets or exceeds the following standards:

1. Holds a graduate degree in archaeology, anthropology, or a closely related field;
2. Has at least one year of full-time professional experience or equivalent specialized training in archaeological research, administration, or management;
3. Has at least four months of supervised field and analytic experience in general North American archaeology;
4. Has at least one year of full-time experience at a supervisory level in the study of archaeological resources of the prehistoric or historic period;
5. Has demonstrated an ability to carry research to completion;
6. Has demonstrated the knowledge, skills, and experience to complete the type of investigations proposed; and

7. Has an active membership in or affiliation with a recognized professional archaeological organization, such as the Register of Professional Archaeologists, the Council of Virginia Archaeologists, or a similar organization or institution with an established code of professional ethics and conduct and documented grievance procedures.

In determining whether the field supervisor meets such standards, the Director may consider the performance of the field supervisor on any prior permitted field investigation, exploration, or recovery operation.

C. The permit shall require that all objects of antiquity that are recovered from state-controlled land shall be the exclusive property of the Commonwealth. Title to some or all objects of antiquity that are discovered or removed from a state archaeological site not located on state-controlled land may be retained by the owner of such land. All objects of antiquity that are discovered or recovered on or from state-controlled land shall be retained by the Commonwealth, unless they are released to the applicant by the Director.

D. All field investigations, explorations, or recovery operations undertaken pursuant to a permit issued under this section shall be carried out under the general supervision of the Director and in a manner to ensure that the maximum amount of historic, scientific, archaeological, and educational information may be recovered and preserved in addition to the physical recovery of objects.

E. If the field investigation described in the application is likely to interfere with the activity of any state agency, no permit shall be issued unless the applicant has secured the written approval of such agency.

F. Any person who conducts any field investigation, exploration, or recovery operation without first obtaining a permit pursuant to subsection A is guilty of a Class 1 misdemeanor.

Any person who willfully misrepresents any information on an application for a permit pursuant to this section is guilty of a Class 1 misdemeanor.

Any person who willfully misrepresents the results, information, or data collected during a permitted field investigation, exploration, or recovery operation is guilty of a Class 1 misdemeanor.

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

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

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

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

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

E. Any interested party may appeal the Director's decision to issue a permit or to act directly to excavate human remains to the local circuit court. Such appeal must be filed within 14 days of the Director's decision.

F. For the purposes of this section, "cultural:

"Cultural affiliation" has means the same definition as provided as that term is defined in 25 U.S.C. § 3001(2) of the federal Native American Graves Protection and Repatriation Act (25 U.S.C. § 3001 et seq.) and its regulations. If doubt exists as to cultural affiliation, the federally recognized Tribal Nations in the Commonwealth tribes with potential cultural affiliation shall make the determination.

"Federally recognized tribe" means the same as that term is defined in § 2.2-401.01.

§ 28.2-104.01. Policies for consultation with federally recognized tribes.

A. For the purposes of this section, "federally recognized tribe" means the same as that term is defined in § 2.2-401.01.

B. The Commission, with assistance from the Ombudsman for Tribal Consultation designated pursuant to § 2.2-401.01, shall develop policies and procedures, to the extent permitted by law, to ensure an opportunity for meaningful and appropriate written consultation with federally recognized Tribal Nations in the Commonwealth tribes regarding certain major actions or permits issued by the Commission. The Commission shall designate an agency official to evaluate the adequacy of consultation and ensure that agency consultation practices are consistent. Actions and permits appropriate for consultation shall include underwater recovery permits issued pursuant to § 10.1-2214 in a locality identified by the Ombudsman for Tribal Consultation pursuant to subdivision B 2 of § 2.2-401.01. The policies shall define an appropriate means of notifying federally recognized Tribal Nations in the Commonwealth tribes based on tribal preferences, ensure that sufficient information and time is provided for the federally recognized Tribal Nations in the Commonwealth tribes to fully engage in consultation regarding the proposed action, and establish procedures for the Commission to provide feedback to the federally recognized Tribal Nations in the Commonwealth tribes to explain how their input was considered. During a consultation, the burden is on the agency to show that it has made a good faith effort to elicit meaningful and timely feedback, including formal communication between agency employees and the federally recognized tribes. Should feedback from the federally recognized Tribal Nations in the Commonwealth tribes not be received by the deadline established in the Commission's policies and procedures, the consultation provisions of this section shall be deemed fulfilled.

C. At least once a year, the Department shall coordinate with the Ombudsman to provide training for state agency personnel who have regular communication with federally recognized tribes on issues of concern to the federally recognized tribes pursuant to § 2.2-401.01. The Department shall also submit an annual report to the Secretary of the Commonwealth on activities undertaken to implement this section.

§ 33.2-257.2. Policies for consultation with federally recognized tribes in the Commonwealth.

A. For the purposes of this section, "federally recognized tribe" means the same as that term is defined in § 2.2-401.01.

B. The Department, with assistance from the Ombudsman for Tribal Consultation designated pursuant to

§ 2.2-401.01, shall develop policies and procedures, to the extent permitted by law, to ensure an opportunity for meaningful and appropriate written consultation with potentially impacted federally recognized tribes regarding certain major actions or permits issued by the Department. The Department shall designate an agency official to evaluate the adequacy of consultation and ensure that agency consultation practices are consistent. Actions and permits appropriate for consultation shall include environmental permits for highway projects issued pursuant to § 33.2-258 in a locality identified by the Ombudsman for Tribal Consultation pursuant to subdivision B 2 of § 2.2-401.01. The policies shall define an appropriate means of notifying federally recognized tribes based on tribal preferences, ensure that sufficient information and time is provided for the federally recognized tribes to fully engage in consultation regarding the proposed action, and establish procedures for the Department to provide feedback to the federally recognized tribes to explain how their input was considered. During a consultation, the burden is on the agency to show that it has made a good faith effort to elicit meaningful and timely feedback, including formal communication between agency employees and the federally recognized tribes. Should feedback from the federally recognized tribes not be received by the deadline established in the Department's policies and procedures, the consultation provisions of this section shall be deemed fulfilled.

C. At least once a year, the Department shall coordinate with the Ombudsman to provide training for state agency personnel who have regular communication with federally recognized tribes on issues of concern to the federally recognized tribes pursuant to § 2.2-401.01. The Department shall also submit an annual report to the Secretary of the Commonwealth on activities undertaken to implement this section.

§ 33.2-258. Environmental permits for highway projects; timely review.

A. For the purposes of this section, "federally recognized tribe" means the same as that term is defined in § 2.2-401.01.

B. Notwithstanding any other provision of state law or regulation, any state agency, board, or commission that issues a permit required for a highway construction project pursuant to Title 10.1, 28.2, 29.1, or 62.1 shall within 15 days of receipt of an individual permit application review the application for completeness and either accept the application or request additional specific information from the Department. Prior to issuing any permit in a locality identified by the Ombudsman for Tribal Consultation pursuant to subdivision B 2 of § 2.2-401.01, the Department shall consult with federally recognized tribes pursuant to § 33.2-257.2. Unless a shorter period is provided by law, regulation, or agreement, the state agency, board, or commission shall within 120 days of receipt of a complete application issue the permit, issue the permit with conditions, deny the permit, or decide whether a public meeting or hearing is required by law. If a public meeting or hearing is held, it shall be held within 45 days of the decision to conduct such a proceeding, and a final decision as to the permit shall be made within 90 days of completion of the public meeting or hearing. For coverage under general permits issued pursuant to Title 10.1, 28.2, 29.1, or 62.1, the state agency, board, or commission that issues such permits shall within 10 business days of receipt of an application from the Department for a highway construction project review the application for completeness and either accept the application or request additional specific information from the Department. Coverage under the general permit shall be approved, approved with conditions, or denied within 30 business days of receipt of a complete application.

§ 56-265.2:1. Approval by Commission required for construction of certain gas pipelines and related facilities; notice and hearing.

A. Whenever a certificate is required pursuant to § 56-265.2 for the construction of a pipeline for the transmission or distribution of manufactured or natural gas, the Commission shall consider the effect of the pipeline on the environment, public safety, and economic development in the Commonwealth, and may establish such reasonably practical conditions as may be necessary to minimize any adverse environmental or public safety impact. In such proceedings, the Commission shall receive and consider all reports by state agencies concerned with environmental protection; and, if requested by any county or municipality in which the pipeline is proposed to be constructed, local comprehensive plans that have been adopted pursuant to Article 3 (§ 15.2-2223 et seq.) of Chapter 22 of Title 15.2.

B. The Commission shall not approve construction of any such pipeline unless the public utility has provided 30 days' advance public notice of the proposed pipeline by (i) publishing a notice in a newspaper or newspapers of general circulation in each of the counties and municipalities through which the pipeline is proposed to be constructed, (ii) providing written notice to the governing body of each such county and municipality, (iii) causing to be sent a copy of the notice by first class mail to all owners of property within the route of the proposed pipeline, as indicated on the map or sketch of the route filed with the Commission, which requirement shall be satisfied by mailing the notice to such persons at such addresses as are indicated in the land books maintained by the commissioner of revenue, director of finance or treasurer of the county or municipality, and (iv) filing a copy of any plans, specifications, or maps of the proposed pipeline with the Commission, which plans, specifications, or maps shall be made available for public inspection at the Commission's business office, during normal business hours. Any notice required by this subsection shall include a written description of the proposed route the line is to follow, a map or sketch of the route, and information regarding the time period during which persons may request a public hearing under subsection C

431 of this section.

432 As a condition to approval, the Commission shall determine that the corridor or route chosen for the line
433 will avoid or minimize adverse impacts to the greatest extent reasonably practicable on cultural resources
434 identified by federally recognized tribes.

435 C. If, within 45 days after publication and mailing of the notices required in subsection B of this section,
436 any interested party requests a public hearing, the Commission shall, as soon as reasonably practicable after
437 such request, hold such hearing or hearings at such place as may be designated by the Commission. If written
438 requests therefor are received from 20 or more interested parties, the Commission shall hold at least one
439 hearing in the area that would be affected by construction of the pipeline, for the purpose of receiving public
440 comment on the proposal. If any hearing is to be held in the area affected, the Commission shall direct that a
441 copy of the transcripts of any previous hearings held in the case be made available for public inspection at a
442 convenient location in the area for a reasonable time before such local hearing.

443 D. For the purposes of this section; ~~"interested:~~

444 "Environment" or "environmental" is deemed to include in meaning "historic."

445 "Federally recognized tribe" means the same as that term is defined in § 2.2-401.01.

446 "Interested parties" means the governing bodies of any counties or municipalities through which the
447 pipeline is to be constructed, and persons residing or owning property within one-half mile of such pipeline.
448 For the purposes of this section, ~~"environment" or "environmental" shall be deemed to include in meaning~~
449 ~~"historic."~~

450 E. If a significantly different route is determined more desirable after the giving of the notice required in
451 subsection B of this section, the Commission shall cause notice of the new route or routes to be published and
452 mailed in accordance with subsection B of this section. The Commission shall thereafter comply with the
453 provisions of this section to the full extent necessary to give *federally recognized tribes and* interested parties
454 in the newly affected areas the same protection afforded interested parties affected by the route described in
455 the original notice.

456 F. Approval of a pipeline pursuant to this section shall be deemed to satisfy and supersede the
457 requirements of § 15.2-2232 and local zoning ordinances with respect to such pipeline and related facilities;
458 however, the Commission shall not approve the construction of a natural gas compressor station in an area
459 zoned exclusively for residential use unless the public utility provides certification from the local governing
460 body that the natural gas compressor station is consistent with the zoning ordinance. The certification
461 required by this subsection shall be deemed to have been waived unless the local governing body informs the
462 Commission and the public utility of the natural gas compressor station's compliance or noncompliance
463 within 45 days of the public utility's written request.

464 G. *The Commission shall enter into a memorandum of agreement with the Department of Environmental*
465 *Quality regarding the coordination of their reviews of the environmental impact of gas pipelines and*
466 *associated facilities. If the proposed pipelines or associated facilities are in a locality identified by the*
467 *Ombudsman for Tribal Consultation pursuant to subdivision B 2 of § 2.2-401.01, such consultation*
468 *information shall be included in the memorandum of agreement.*

469 **§ 62.1-44.38:1. Comprehensive water supply planning process; state, regional, and local water**
470 **supply plans.**

471 A. The Board, with advice and guidance from the Commissioner of Health, local governments, public
472 service authorities, and other interested parties, shall establish a comprehensive water supply planning
473 process for the development of local, regional, and state water supply plans consistent with the provisions of
474 this chapter. This process shall be designed to (i) ensure that adequate and safe drinking water is available to
475 all citizens of the Commonwealth; (ii) encourage, promote, and protect all other beneficial uses of the
476 Commonwealth's water resources; (iii) encourage, promote, and develop incentives for alternative water
477 sources, including desalinization; and (iv) encourage the development of cross-jurisdictional water supply
478 projects.

479 B. The Board shall adopt regulations designating regional planning areas based primarily on river basins
480 as appropriate based on water supply sources. The Board shall consider existing interjurisdictional
481 arrangements in designating regional planning areas. The Board may, as appropriate, designate multiple
482 regional planning areas within a single river basin in order to enhance the manageability of planning within
483 such basin. The regulations shall identify the particular regional planning area in which each locality shall
484 participate and shall state which local stakeholder groups, including local governments, industrial and
485 agricultural water users, public water suppliers, developers and economic development organizations, and
486 conservation and environmental organizations, shall or may participate in coordinated water resource
487 planning. The regulations shall provide a mechanism for a locality to request a change of its designated
488 regional planning area to an adjoining planning area that is based on water supply source, river basin, or
489 existing or planned cross-jurisdictional relationship, which change shall be effective upon approval of the
490 Department, notwithstanding the provisions of Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2. *For*
491 *localities identified by the Ombudsman for Tribal Consultation pursuant to subdivision B 2 of § 2.2-401.01,*
492 *the Board shall ensure that the Department consults with any potentially impacted federally recognized tribe*

pursuant to the policies and procedures adopted by the Department pursuant to § 10.1-1186.3:1. Should feedback from potentially impacted federally recognized tribes not be received by the deadline established in the Department's policies and procedures, the consultation provisions of this section shall be deemed fulfilled. For the purposes of this subsection, "federally recognized tribe" means the same as that term is defined in § 2.2-401.01. The regulations shall further recognize the localities that include any portion of the service area of a water supply utility in the Commonwealth that uses the Potomac River as a water supply source as a distinct regional planning area. Such plan shall incorporate the provisions of the Metropolitan Washington Water Supply and Drought Awareness Response Plan: Potomac River System (2000), including provisions related to triggers, actions, and messages for the Potomac River drought evaluation region. Nothing in this subsection regarding the incorporation of such provisions shall be construed to limit the authority of the Governor during a declared drought emergency.

C. 1. Each locality in a regional planning area shall participate in cross-jurisdictional, coordinated water resource planning. Such local coordination shall accommodate existing regional groups that have already developed water supply plans, including planning district commissions, and other regional planning entities as appropriate.

2. Each locality in a regional planning area shall develop and submit, with the other localities in that planning area, a single jointly produced regional water supply plan to the Department of Environmental Quality (the Department). Such regional water supply plan shall (i) clearly identify the region's water supply risks and (ii) propose regional strategies to address those water supply risks.

3. Each regional water supply plan also shall comply with applicable criteria and guidelines developed by the Board. Such criteria and guidelines shall take into account existing local and regional water supply planning efforts and requirements imposed under other state or federal laws. The criteria and guidelines established by the Board shall not prohibit a town from entering into a regional water supply plan with an adjacent county in the same regional planning area.

4. This section is intended to inform any regional water resource planning being done in the Commonwealth pursuant to interstate compacts.

D. The Board and the Department shall prioritize the allocation of planning funds and other funds to localities that sufficiently participate in regional planning.

E. In accordance with subdivision B 2 of § 62.1-44.38, the Department shall facilitate regional planning and provide assistance to each regional planning area as needed.

§ 62.1-248. Permits.

A. Any permit issued by the Board shall include a flow requirement appropriate for the protection of beneficial instream uses. In determining the level of flow in need of protection, the Board shall consider, among other things, recreational and aesthetic factors and the potential for substantial and long-term adverse impact on fish and wildlife found in that particular surface water management area. Should this determination indicate a need to restrict water withdrawal, the Board shall consider, among other things, the availability of alternative water supplies, the feasibility of water storage or other mitigation measures, and the socioeconomic impacts of such restrictions on the potentially affected water users and on the citizens of the Commonwealth in general.

In its permit decision, the Board shall attempt to balance offstream and instream water uses so that the welfare of the citizens of the Commonwealth is maximized without imposing unreasonable burdens on any individual water user or water-using group. The decision to implement this balance may consist of approval of withdrawal without restriction, approval subject to conditions designed to protect instream uses from unacceptable adverse effects, or disapproval of the withdrawal.

Permit conditions may include, but are not limited to, the following: (i) maximum amounts which may be withdrawn, (ii) times of the day or year during which withdrawals may occur, and (iii) requirements for voluntary and mandatory conservation measures.

B. In considering whether to issue, modify, revoke, or deny a permit under this section, the Board shall consider:

1. The number of persons using a stream and the object, extent and necessity of their respective withdrawals or uses;
2. The nature and size of the stream;
3. The types of businesses or activities to which the various uses are related;
4. The importance and necessity of the uses claimed by permit applicants, or of the water uses of the area and the extent of any injury or detriment caused or expected to be caused to instream or offstream water uses;
5. The effects on beneficial uses; and
6. Any other relevant factors.

C. Permits shall be transferable among users, subject to approval by the Board.

D. In developing regulations governing the issuance of permits, the Board shall prioritize among types of users. Domestic and existing uses shall be given the highest priority in the issuance of permits for other beneficial uses. Included among existing uses shall be any projected use which has been relied upon in the development of an industrial project and for which a permit has been obtained by January 1, 1989, pursuant

555 to § 404 of the Clean Water Act.

556 *E. If the proposed permit will allow for surface water withdrawals greater than 365 million gallons per*
557 *year in a locality identified by the Ombudsman for Tribal Consultation pursuant to subdivision B 2 of*
558 *§ 2.2-401.01, the Board shall ensure that the Department consults with any potentially impacted federally*
559 *recognized tribe pursuant to the policies and procedures adopted by the Department pursuant to*
560 *§ 10.1-1186.3:1. Should feedback from potentially impacted federally recognized tribes not be received by*
561 *the deadline established in the Department's policies and procedures, the consultation provisions of this*
562 *section shall be deemed fulfilled. For the purposes of this subsection, "federally recognized tribe" means the*
563 *same as that term is defined in § 2.2-401.01.*