



State and Federal Recognition of Tribes in Virginia



Several different types of tribal status groups interact with or within the Commonwealth:



Tribes recognized by the Commonwealth that DO NOT have federal recognition



Tribes recognized by the Commonwealth that DO have federal recognition



Federally recognized tribes that are NOT state recognized by the Commonwealth, but may have consultation interests or own property in the Commonwealth



Tribes that are state recognized by another state and do not have federal recognition, but may have consultation interests or own property in the Commonwealth



Unrecognized groups that have neither state nor federal recognition, but are seeking one or both, and may have consultation interests or own property in the Commonwealth

Distinctions between state and federally recognized tribes

STATE RECOGNIZED TRIBES

- Typically incorporated as non-profits
- No sovereign immunity
- Do not have judicial or law enforcement powers
- Federal judicial decisions regarding tribal rights typically do not apply
- May have rights affirmed by a state, but it depends on the state's laws.

FEDERALLY RECOGNIZED TRIBES

- Self-governing tribal governments
- Have sovereign immunity
- Have legislative, judicial, taxation, and law enforcement powers
- Have inherent rights as interpreted through judicial decisions, treaties, and federal law regarding rights of tribal sovereign governments

Additional Distinctions

STATE RECOGNIZED TRIBES

- Have access to some federal grants, but are not authorized providers of federal services
- Have rights of consultation with federal agencies similar to any other stakeholder or interest group
- Receive some rights from federal legislation like the Indian Arts & Crafts Act, but Federal legislation on many rights of Indian tribes typically does not apply, or is applied differently

FEDERALLY RECOGNIZED TRIBES

- Authorized to access federal funding to provide federal services (including healthcare, emergency management, environmental regulation)
- Have enhanced rights of consultation with federal agencies
- Possess inherent rights recognized and protected by federal legislation including the Indian Child Welfare Act, the Indian Civil Rights Act, and the Indian Education Assistance Act

Under current Code of Virginia, regardless of federal status, Commonwealth state-recognized tribes are:

- Eligible as required tribal members of the Virginia Indian Advisory Board established by the Secretary of the Commonwealth (§ 2.2-401.01)
- Eligible for Virginia BIPOC Historic Preservation Fund (§ 10.1-2202.5)
- Eligible for Virginia Land Conservation Fund (§ 10.1-1020)
- Eligible as required tribal members of the Virginia Land Conservation Board of Trustees (§ 10.1-1018)
- Eligible for one excused absence per year to attend tribal pow wow, for students enrolled in public or private school (§ 22.1-254)

Under current Code of Virginia, regardless of federal status, Commonwealth state recognized tribes are:

Exempt

from hunting, trapping, and fishing licenses (§ 29.1-301)

Exempt

from Uniform Statewide Building Code for properties on Indian reservations when tribal council has enacted the Uniform Statewide Building Code (§ 36-105.5)

Exempt

from Department of General Services review of proposed acquisitions of real property when acquisition is approved by the Governor and annexed into an existing reservation (§ 2.2-1149)

Exempt

from motor vehicle tax if the car is registered to a member of the Mattaponi, Pamunkey, or Chickahominy tribes living on the tribal reservation (§ 58.1-2403)

Commonwealth's executive branch currently liaises with state recognized tribes regardless of federal status in terms of:

- Eligibility for some state grants, especially those for which non-profits are eligible
- Consultation from Department of Historic Resources on state and federal projects with the potential to affect historic resources of concern to individual tribes
- Consultation from other state agencies regarding natural resources issues
- Consultation from Library of Virginia on exhibits about tribal topics (e.g., Indigenous Perspectives exhibit)
- Some consultations and meetings with Governor and Governor's representatives.

Photo: Chickahominy Indians pay tribute to the Governor of Virginia in 1919





Virginia 250 Commission, Tribal Nations Leadership Advisory Council

- <https://va250.org/tribal-nations-leadership-advisory-council/>
- Includes members of both state and federally recognized tribes



Photo: Visitors at Colonial Williamsburg, featured on the VA 250 website

§ 2.2-401.01 of the Virginia Code, Obligations of the Secretary of the Commonwealth

**Governs key parts of
the Commonwealth's
relationship with
state and federally
recognized tribes.**



This Section **requires** the Secretary of the Commonwealth to:

Serve as the
Governor's
liaison with
Virginia
Indian tribes

Designate an
ombudsman
for tribal
consultation

Report
annually on
the status of
Indian tribes
in Virginia

Dr. Brad Hatch was a member of the Virginia Indian Advisory Board workgroup in 2022-2023. A Patawomeck Tribal Council member, Brad is making Patawomeck eel pots.



Kara Canady

**Ombudsman for
Tribal Consultation**

Member of the Chickahominy
Indian Tribe

Former special education teacher
in Hopewell Public Schools

Interim CEO of Virginia Tribal
Education Consortium

§ 2.2-401.01 **allows** the Secretary of the Commonwealth to establish a Virginia Indian Advisory Board to:

Assist the Secretary in reviewing the petitions of groups requesting to be recognized by the Commonwealth

Make recommendations to the Secretary, Governor, and the General Assembly on specific applications for state recognition and other matters relating to state recognition

Photo: Chief Anne with former Secretary Kay Coles James in February 2023



Virginia Indian Advisory Board Structure and Duties



The VIAB is empowered to establish guidance for the consideration of applications for state recognition that is “**consistent with the principles and requirements of federal tribal recognition.**”



Membership on the Board is designed to include significant representation from state recognized tribes, state agencies, and the scholarly community.



The Code directs the VIAB to establish a separate workgroup to consider applications for state recognition including a genealogist and at least two scholars with recognized familiarity with Virginia Indian tribes.



The goal of the VIAB is to provide expert advice to the Secretary, Governor, and General Assembly regarding the eligibility of groups who seek the status and rights associated with state recognition.



VIRGINIA INDIAN ADVISORY BOARD

- Demonstrate **descent** from a historic Indian group(s) living within the current boundaries of Virginia at the time of first contact
- Demonstrate group's retained specific Indian **tribal identity**
- **Trace group's existence in Virginia** from first contact to present
- Provide complete genealogy of current group members, as far back as possible
- Show that group has been a **cohesive Indian community** at least during 20th century, further back if possible
- Provide evidence of contemporary formal organization, with **membership restricted to people genealogically descended from historic tribe(s)**

FEDERAL RECOGNITION CRITERIA (2015)

- Has been identified as an **American Indian entity** continuously since 1900
- Comprises a **distinct community** and has existed as a community since 1900
- Has maintained political influence or authority over its members since 1900
- Has a governing document including its membership criteria
- **Membership consists of individuals who descend from a historical Indian tribe** or tribes that has functioned as a unified political entity
- Members are primarily not eligible for membership in other federally recognized Indian tribes
- Has not and members have not been subject to Congressional legislation terminating or forbidding a Federal relationship

State recognition criteria (VIAB)



Demonstrate descent from a historical Indian group(s) living within the current boundaries of Virginia at the time of first contact



Demonstrate group's retained specific Indian tribal identity



Trace group's existence in Virginia from first contact to present



Provide complete genealogy of current group members, as far back as possible



Show that group has been a cohesive Indian community at least during 20th century, further back if possible



Provide evidence of contemporary formal organization, with membership restricted to people genealogically descended from historic tribe(s)

Importance of VIAB recommendations on state recognition of tribes



Informed review of tribal petitions requires expertise in Virginia history, anthropology, and genealogical research.



Evaluation of tribal petitions is very time-intensive to fully consider the evidence in one petition.



State recognition confers benefits and rights from the Commonwealth and the federal government. Once extended, state recognition has never been revoked in Virginia.



State recognition can confer advantages such as minority-owned business status, ability to raise philanthropic funds, and advantages in pursuing federal recognition.



Unverified groups (unvetted groups or groups state recognized in other states) have sometimes used alleged tribal status for financial advantages.



Process in which experts provide recommendations to the General Assembly protects recognition decisions from political influence and provides substantial evidence to inform votes on tribal recognition legislation.

All current state-recognized tribes were recognized by the General Assembly after similar expert review processes

Mattaponi and Pamunkey:

Recognized continuously since 17th century due to ongoing possession of Indian reservations; reaffirmed by the Virginia Council on Indians in the 1980s.



Chickahominy, Eastern Chickahominy, Monacan, Nansemond, Rappahannock, Upper Mattaponi:

Acknowledged during the 1980s through Virginia Council on Indians process, which made recognition recommendations to the General Assembly after tribes submitted materials regarding their history and community.



Cheroenhaka Nottoway, Nottoway of Virginia, Patawomeck:

Acknowledged in 2010 through Virginia Council on Indians process, which made recognition recommendations to the General Assembly after tribes submitted materials regarding their history and community.



Federal acknowledgement criteria (2015)

Photo: Members of the Chickahominy, Eastern Chickahominy, Monacan, Nansemond, and Upper Mattaponi Tribes celebrate federal recognition with Virginia's Senators in 2018.

- A. Has been identified as an American Indian entity continuously since 1900
- B. Comprises a distinct community and has existed as a community since 1900
- C. Has maintained political influence or authority over its members since 1900
- D. Has a governing document including its membership criteria
- E. Membership consists of individuals who descend from a historical Indian tribe or tribes that has functioned as a unified political entity
- F. Members are primarily not eligible for membership in other federally recognized Indian tribes
- G. Has not and members have not been subject to Congressional legislation terminating or forbidding a Federal relationship

Current ambiguities in Code of Virginia

- Because federal recognition happened so recently for Virginia tribal nations, Code largely reflects only presence of state recognized tribes.
- Application of rights for state and federally recognized tribes in the Code is associated with reservation status rather than being specific to recognition status.
- Most of the Code does not acknowledge presence of tribal governments within the Commonwealth when municipal or other government types are listed.
- Code has a number of different terms used to refer to tribes: “Virginia recognized tribes,” “state-recognized tribes,” “Virginia Indian tribes,” “Indian tribe within the meaning of federal law” – and it is not always clear what specific tribal status these terms reference.