

Bill Proposals for 2026 Session

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Contents

1. *Motor Vehicle Sales & Use Tax Exemption (postponed)*
2. Extending Commission (by two more years)
3. Definitions & Tribal Sovereignty (same bill as last year)
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6. **VDEM & Emergency Planning**
7. **Consultations**
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1. MOTOR VEHICLE SALES & USE TAX EXEMPTION (POSTPONED)

2. EXTENDING TERM OF COMMISSION TO JULY 1, 2028

3. REINTRODUCING DEFINITIONS & TRIBAL SOVEREIGNTY BILL

BACKGROUND & REINTRODUCTION

No changes to the bill from last year:

- Definitions for "American Indian," "federally recognized tribe," and "Virginia recognized tribe"
- Sovereignty recognition

History:

- Passed in the House 99-0, Senate 39-0
- Governor's amendment not adopted
- Vetoed

Patrons:

- Chief Patron in House: Del. Paul Krizek
- Chief Patron in Senate: Sen. Ryan McDougle

DISCUSSION?

4. CONSERVATION EASEMENTS

BACKGROUND & PROPOSAL

Recap:

- Reviewed at last meeting.
- Concerns about sovereignty language and Dillon's rule (Open-Space Land Act)
- Agreement on goal of giving Tribes this ability to be holders
- Add cultural preservation language

Proposal:

- Follow Mr. Braun's proposed amendment, offered at last meeting, to the Virginia Conservation Easement Act.
- Incorporates cultural preservation language as a potential purpose for the Conservation Easement.

DISCUSSION?

5. IN-STATE TUITION

BACKGROUND

- **Recap from prior meetings**
- **Current draft:**
 - Provides in-state tuition to out-of-state members/citizens of federally recognized Virginia tribes for undergraduate degree programs (lines 55-56).
 - Permits (but does not require) schools to offer the above for graduate or professional degree programs (lines 75-76).

DISCUSSION?

6. VDEM & EMERGENCY PLANNING

BACKGROUND

- **Currently:**
 - VDEM and some tribes report a positive but informal relationship
 - Not all tribes currently have emergency planning capacity
- **Objective:** Codify a cooperative relationship without burdening tribes or threatening sovereignty
- Proposed draft has been reviewed by staff **VDEM and Virginia Emergency Management Association**. No problems reported.

PROPOSAL

Modify § 44-146.18, relating to Department of Emergency Management:

- Adds "federally recognized tribes" for each provision that requires VDEM to work with local governments and/or political subdivisions
- Lines 136-142 defines "federally recognized tribe" to include only those tribes that "entered into a contract or memorandum of understanding with the Department of Emergency Management Services for assistance provided under this section"

DISCUSSION?

7. CONSULTATIONS

BACKGROUND

A. Current Code

- i. Focus: Environmental, cultural, and historical permits and reviews
- ii. Ombudsman for Tribal Consultation: Facilitates communication between tribes and agencies, and helps agencies develop consultation policies
- iii. 4 covered agencies:
 - i. Department of Environmental Quality (DEQ)
 - ii. Department of Conservation and Recreation (DCR)
 - iii. Department of Historic Resources (DHR)
 - iv. Virginia Marine Resources Commission (VMRC)
- iv. Passed in 2024
 - i. House: 65 YES (51D, 14R) to 33 NO (1D, 32R)
 - ii. Senate: 23 YES (21D, 2R) to 16 NO (0D, 16R)

BACKGROUND

B. Current Actions/Projects

- i. Department of Environmental Quality (DEQ)
 - i. Environmental impact reports for major state projects (only highway and road construction)
 - ii. State Corporation Commission project reports (only electrical utility facilities)
 - iii. Environmental impact assessments for oil or gas well drilling operations in Tidewater
 - iv. Federal consistency determinations
 - v. Ground water withdrawal permits for >365 million gallons per year
- ii. Department of Conservation and Recreation (DCR)
 - i. Cave collection permits for excavation
 - ii. Impounding structures permits
- iii. Department of Historic Resources (DHR)
 - i. Designation of historic landmarks
 - ii. Permits to conduct field investigations
 - iii. Burial permits for relocation of human remains
- iv. Virginia Marine Resources Commission (VMRC)
 - i. Underwater recovery permits

BACKGROUND

C. Last Commission Meeting

- i. Recognized current code is starting point and agencies are still developing internal policies
- ii. Discussed adding agencies to code, including the Virginia Department of Transportation (VDOT), Department of Medical Assistance Services (DMAS), and Department of Social Services (DSS)

BACKGROUND

D. Research Since Last Meeting

- i. Talked with: Tribal Members of the Commission, Ombudsman (Kara Canaday), and Cultural Heritage Partners (Jessie Barrington)
- ii. Researched: Other states' consultation codes—training and reporting requirements, definitions of consultation, and specific processes (e.g. within x days)
- iii. Findings:
 - i. Agency heads want meaningful consultations
 - ii. Growing pains with “meaningfulness,” timeliness, and quality of consultations (e.g. 100-page packets)
 - iii. Recommendation of Ombudsman to add the Departments of Transportation, Medical Assistance Services, and Social Services
 - iv. Confusion about actions/projects that are not covered
 - v. Some tribes lack of capacity to engage in consultations

OVERVIEW

1. Improve the *meaningfulness* of consultations
 - a. **Strengthen language** in § 2.2-401.01(B) and agencies' policies
 - b. **Annual training** requirement of agency personnel through the Ombudsman
 - c. **Annual reporting** requirement for agencies and the Ombudsman
2. **Add Virginia Department of Transportation (VDOT)** to the code, starting with environmental permits for highway projects
3. **Add more Department of Environmental Quality (DEQ) consultations** to what's already in the code
4. **Miscellaneous improvements**

1A. STRENGTHEN LANGUAGE

§ 2.2-401.01(B)

"The Ombudsman shall:

- 1. Facilitate communication between federally recognized tribes and relevant state agencies and local governments **to ensure an opportunity for meaningful and timely** consultation on environmental, cultural, and historical permits and reviews; ...*
- 3. Assist the Department of Environmental Quality... and the Virginia Marine Resources Commission in developing policies and procedures to ensure meaningful, **timely**, and appropriate consultation with federally recognized tribes regarding permits and reviews;*
- 4. Make recommendations **based on 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 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;**"*

1A. STRENGTHEN LANGUAGE

Agencies' policies (§§ 10.1-104.02, 10.1-1186.3:1, 10.1-2205.1, 28.2-104.01)

*"A. ...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 tribe.** Should feedback from the federally recognized Tribal Nations in the Commonwealth not be received by the deadline established in the Department's policies and procedures, the consultation provisions of this section shall be deemed fulfilled."*

1B. TRAINING REQUIREMENT

§ 2.2-401.01(B)

"The Ombudsman shall: ...

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 to support:

- a. Effective communication and collaboration between state agencies and the federally recognized tribes; and**
- b. Positive government-to-government relations between this State and the federally recognized tribes;"**

Agencies' policies (§§ 10.1-104.02, 10.1-1186.3:1, 10.1-2205.1, 28.2-104.01)

"At least once a year, the Department shall coordinate with the Ombudsman 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."

1C. REPORTING REQUIREMENT

§ 2.2-401.01

"A. The Secretary of the Commonwealth shall:

- 1. Serve as the Governor's liaison to the Virginia Indian tribes; ... and*
- 3. Report annually on the status of Indian tribes in Virginia."*

"B. The Ombudsman shall: ...

6. Submit an annual report to the Secretary of the Commonwealth on the activities undertaken to implement this section and the issues that have arisen in that pursuit."

Agencies' policies (§§ 10.1-104.02, 10.1-1186.3:1, 10.1-2205.1, 28.2-104.01)

"The Department shall submit an annual report to the Secretary of the Commonwealth on activities undertaken to implement this section."

2-3. ADD VDOT & DEQ ACTIONS

Add Virginia Department of Transportation (VDOT), § 33.2-257.2

- a. Starting with one action: **Environmental permits for highway projects**, § 33.2-258

Add more Department of Environmental Quality (DEQ) consultations to what's already in the code, § 10.1-1186.3:1(B)

- a. Major construction projects, particularly gas pipelines, § 56-265.2:1
- b. Surface water withdrawal permits (>365 million gallons per year), § 62.1-248
- c. Virginia Pollutant Discharge Elimination System (VPDES) permits, 9VAC25-31-170
- d. Air emissions permits, § 10.1-1322
- e. Water supply planning, § 62.1-44.38:1

4. MISCELLANEOUS IMPROVEMENTS

Miscellaneous improvements:

- a. § 10.1-2305: Require tribal consent for burial permits

*“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 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 tribe, ~~the Department shall consult and seek consensus with such federally recognized tribe in the consideration and drafting of the permit document~~ **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.”*

4. MISCELLANEOUS IMPROVEMENTS

Miscellaneous improvements:

- b. § 10.1-2302: Incorporate consultation language for field investigations permits under Department of Historic Resources (DHR)
- c. § 10.1-104.02(B)(iii): Add consultation action for local government notifications for new and existing impoundment structures or dams pursuant to 4VAC50-20-58 for Department of Conservation and Recreation (DCR), per Executive Order 82 (2021)
- d. Improve consistency of language through minor edits

APPENDIX: TABLE OF CODE SECTIONS

Code Section	Description
2.2-401.01	<i>Ombudsman for tribal consultation</i>
10.1-104.02	DCR policies for consultation
10.1-1186.3:1	DEQ policies for consultation
10.1-1322	DEQ - air emissions permits
10.1-2205.1	DHR policies for consultation
10.1-2302	DHR - permits to conduct field investigations
10.1-2305	DHR - burial permits
28.2-104.01	VMRC policies for consultation
33.2-TBD	VDOT policies for consultation
33.2-258	VDOT - environmental permits for highway projects
56-265.2:1	DEQ - construction of certain gas pipelines and related facilities
62.1-44.38:1	DEQ - water supply plans
62.1-248	DEQ - surface water withdrawal permits

DISCUSSION?

8. DMAS STATE PLAN CONSULTATION

BACKGROUND

- Prior Commission discussion of including DMAS in consultation statute.
- DMAS does not fit neatly into consultation structure.
- State Medicaid plan, however, has significant impact on Tribal health services delivery.
- Upper Mattaponi started delivering services in 2021; the Nansemond in 2023.
- DMAS changes policies for reimbursements beginning in 2024, negatively impacting payments to tribes.
- Nansemond files suit April 1, 2025
- For Upper Mattaponi:
 - \$227 patients lost Medicaid access
 - 55 employees laid off
- DMAS submits two new state plan amendments (SPAs) in May 2025 over the objection of the tribes
- Proposed bill is attempt to prevent these conflicts and harms in the future.

OPTION 1

§ 32.1-325. Board to submit plan for medical assistance services to U.S. Secretary of Health and Human Services pursuant to federal law; administration of plan; contracts with health care providers.

"B. In preparing the plan, the Board shall:

1. Work cooperatively with the State Board of Health to ensure that quality patient care is provided and that the health, safety, security, rights and welfare of patients are ensured. ...

7. Establish a Tribal Medicaid Advisory Group consisting of the Director or his designee, a representative from Indian Health Services, and a representative from each federally recognized tribe funded by IHS through a Title I or V of the Indian Self Determination and Education Assistance Act to work collaboratively on plan amendments, waivers, or policies affecting tribal health programs at least 60 days prior to submitting them for public notice and comment. The Tribal Medicaid Advisory Group shall work collaboratively on a tribal billing manual and shall meet in person at least on a quarterly basis. ...

H. The Department of Medical Assistance Services shall: ...

4. Recognize the right of any federally recognized tribe to participate as a provider in the state plan in accordance with the Social Security Act and the Center for Medicare and Medicaid Services regulations and policy. Consult with any federally recognized tribe participating in the state plan at least 60 days prior to taking any adverse action including suspension of payments or investigation regarding the participation of any federally recognized tribe in the state plan. Engage in ongoing consultation with federally recognized tribes to address the needs of the state and tribal governments."

OPTION 2

§ 32.1-325. Board to submit plan for medical assistance services to U.S. Secretary of Health and Human Services pursuant to federal law; administration of plan; contracts with health care providers.

"B. In preparing the plan, the Board shall:

1. Work cooperatively with the State Board of Health to ensure that quality patient care is provided and that the health, safety, security, rights and welfare of patients are ensured. ...

7. Work cooperatively with the federally recognized tribes who operate Indian health programs to ensure that (i) quality patient care is provided, (ii) the health, safety, security, rights, and welfare of patients are provided for, (iii) and that the unique relationship between the sovereignty of the federal government, Commonwealth, and tribes is respected."

DISCUSSION?

RECAP & FUTURE DISCUSSIONS

RECAP

1. Extending Commission
2. Definitions & Tribal Sovereignty
3. Conservation Easements
4. In-State Tuition
5. VDEM & Emergency Planning
6. Consultations
7. DMAS State Plan Consultation

FUTURE DISCUSSION ITEMS

- Expanding scope of Commission
 - To serve as a clearinghouse for all legislative issues facing federally recognized tribes
- Hunting & fishing license recognition
- Indian Child Welfare Act
- Motor vehicle sales & use tax exemption
- Further improvements/expansions to consultations code

THANK YOU