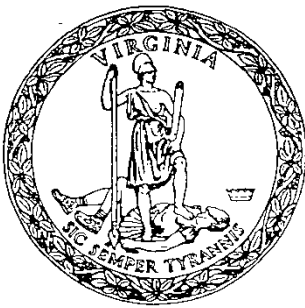


**REPORT OF THE**

**COMMISSION ON UPDATING VIRGINIA  
LAW TO REFLECT FEDERAL  
RECOGNITION OF VIRGINIA TRIBES**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



**COMMONWEALTH OF VIRGINIA  
RICHMOND  
PUBLISHED 2025**

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# COMMISSION ON UPDATING VIRGINIA LAW TO REFLECT FEDERAL RECOGNITION OF VIRGINIA TRIBES EXECUTIVE SUMMARY

The following executive summary serves as the 2024 Annual Report of the Commission on Updating Virginia Law to Reflect Federal Recognition of Virginia Tribes.

## **I. Background and Deliberations**

The Commission on Updating Virginia Law to Reflect Federal Recognition of Virginia Tribes (the Commission) is a 19-member body established in the legislative branch by statute that is charged with (i) performing a comprehensive review of Virginia law to assess ways in which it must be revised to reflect the government-to-government relationship the Commonwealth should maintain, by treaty and applicable federal law, with the sovereign, self-governing, federally recognized Tribal Nations located within the present-day external boundaries of the Commonwealth and (ii) annually reporting its findings and recommendations to the General Assembly and the Governor. In 2024, the Commission met three times and received testimony regarding several topics, including tribal sovereignty, state recognition, federal recognition, definitions of tribes and tribal members, and policies in other states as they relate to tribes.

### *Meeting Summary — July 1, 2024*

The Commission met in Richmond with Delegate Paul E. Krizek, chair, presiding. The meeting began with the election of Delegate Krizek as chairman and Senator David W. Marsden as vice-chairman and opening remarks by Chief Anne Richardson followed by presentations and discussion. The Commission also adopted a virtual meeting policy and discussed future meeting dates and potential topics for future discussion.

Morgan Faulkner of the Upper Mattaponi Tribe provided an introduction to the federally recognized tribes headquartered in Virginia and the areas where the federally recognized tribes are authorized to receive federal funds for providing services such as health care, affordable housing, and infrastructure improvements. Ms. Faulkner provided a brief history of tribal relations with the English crown, the Commonwealth, and the federal government and described the importance of federal recognition. She concluded by discussing the differences between federally recognized and state-recognized tribes, emphasizing the necessity for the Commission, and suggesting that statutes in other states may be helpful as a model for Virginia.

Andrew Block, Director of the State and Local Government Policy Clinic (the clinic) at the University of Virginia School of Law, provided an overview of the clinic and examples of its work. He explained that, through the clinic, law school students under the supervision of faculty provide pro bono nonpartisan legal and policy research to support state and local government officials in Virginia. Mr. Block provided numerous potential topics for Commission review, including definitions, membership on boards and commissions, grant eligibility, alignment with the federal Indian Child Welfare Act, tribal corporations, tribal consultation, tribal judicial systems, tribal sovereignty, environmental laws, and alignment with the Treaty of Middle Plantation. The Commission voted unanimously to engage with and accept pro bono research assistance from the clinic.

### *Meeting Summary — September 18, 2024*

The Commission met in Richmond with Delegate Krizek, chair, presiding. The meeting began with opening remarks by Delegate Krizek followed by presentations and discussion.

Mr. Block provided an overview of the work undertaken by the clinic to address various questions posed by the Commission at its July 1 meeting. He stated that, in addition to consulting experts to answer such questions, the clinic established a representative pool of states from different regions, historical situations, and political persuasions and then sorted such states into categories based on similarities regarding the issues of definitions, tribal sovereignty, and code structure.

Mary Guardino, a law school student working with the clinic, provided an overview of Virginia law and laws in other states as they relate to the varying definitions of "tribe." Ms. Guardino stated that because Virginia has both federally recognized and state-recognized tribes that have different legal status and authority, and because the term "tribe" is not consistently defined throughout the Code of Virginia (the Code), the clinic's recommendation is that the Code be amended to include three separate terms and definitions relating to tribes: one term to define federally recognized tribes, one term to define state-recognized tribes, and another term to define all Virginia tribes.

Thomas Ross, a law school student working with the clinic, provided an overview of tribal sovereignty acknowledgements in the Code, stated that such acknowledgements are provided both explicitly and implicitly, and provided examples of such acknowledgements. He noted that although Virginia may recognize tribal sovereignty, tribal sovereignty is itself inherent when such tribes are recognized by federal law. He said that the clinic recommends that the Code be amended to provide some form of implicit and explicit recognition of sovereignty for federally recognized tribes and also suggested that in future years, the Commission may want to endorse legislation to enumerate certain powers that tribes have, such as the ability to create a court system. Mr. Ross clarified that such enumeration does not in any way limit tribal sovereignty. To this end, he said that the clinic recommends creating a chapter of the Code, either under Title 2.2 (Administration of Government) or Title 15.2 (Counties, Cities and Towns), to enumerate tribal definitions and powers and provide clarity for governmental stakeholders and the public. Such new chapter, Mr. Block suggested, could be utilized to further build out tribal authority in subsequent sessions of the General Assembly. He also suggested preserving, as appropriate, existing Code references to tribes or tribal members.

### *Meeting Summary — November 20, 2024*

The Commission met virtually with Delegate Krizek, chair, presiding. The meeting began with opening remarks by Delegate Krizek followed by presentations and discussion.

Marion Werkheiser, Founding Partner at Cultural Heritage Partners, provided an overview of the 11 state-recognized tribes in Virginia, seven of which are also federally recognized, and described the various distinctions between tribes with such recognition status. Ms. Werkheiser detailed the responsibilities of the Secretary of the Commonwealth as they relate to liaising with Virginia tribes, designating an ombudsman for tribal consultation, and reporting annually on the

status of tribes in Virginia. She also described the differences in the criteria and processes used to establish state recognition versus federal recognition of tribes. Ms. Werkheiser posited that there are several ambiguities in the Code as it relates to tribes, including the following: (i) the Code largely reflects only the presence of state-recognized tribes, as federal recognition happened so recently for Virginia's tribal nations; (ii) the application of rights for federally recognized and state-recognized tribes in the Code is associated with reservation status rather than being specific to recognition status; (iii) most of the Code does not acknowledge the presence of tribal governments within the Commonwealth when municipal or other government types are listed; and (iv) the Code uses a number of different terms to refer to tribes, and it is not always clear what specific tribal status the terms are referencing.

Mr. Block provided a review of the Commission's September 18 meeting and the research directive provided to the clinic by the Commission, an overview of the clinic's research process, and a presentation of the clinic's legislative proposals for the Commission's consideration.

Ms. Guardino stated that the clinic recommends that the Commission endorse the following changes to the Code: (a) adding a new part to Subtitle II of Title 2.2 (Administration of Government), to be titled State and Tribal Relations; (b) utilizing a new definition for the term "federally recognized tribe" that is limited to such tribes within the borders of Virginia; (iii) utilizing the term "Virginia recognized tribe" that includes tribes with federal recognition; and (iv) adopting a new definition for the term "American Indian" that means a duly enrolled member or citizen of a federally recognized tribe or Virginia recognized tribe.

Mr. Ross provided a brief background on tribal sovereignty, noted a few of the existing sovereignty acknowledgements in the Code, and read the clinic's proposed sovereignty statement that, if adopted by the General Assembly, would be more explicit than the existing sovereignty acknowledgements in the Code.

## **II. Conclusion**

The Commission did not make any formal recommendations for the 2025 Regular Session of the General Assembly.

Additional information about the Commission's activities is available through its website at <https://studies.viriniageneralassembly.gov/studies/628>.

Respectfully submitted,

Delegate Paul E. Krizek, Chairman

Senator David W. Marsden, Vice-Chairman

Senator Ryan T. McDougle

Senator Mark J. Peake

Senator Richard H. Stuart

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