

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
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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 2025 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 2025, the Commission met four times and received testimony regarding several topics, including tribal sovereignty, conservation easements, the Federal Indian Child Welfare Act (ICWA), in-state tuition to Virginia institutions of higher education, tribal consultation, hunting and fishing rights, taxes, and policies in other states as they relate to tribes.

Meeting Summary — April 23, 2025

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

Andrew Block, Director of the State and Local Government Policy Clinic (the clinic) at the University of Virginia School of Law, provided a review of the actions of the Commission during the 2024 interim and an overview of potential topics that the Commission should focus on for the purposes of recommending legislation for the 2026 Regular Session of the General Assembly. Such topics included tribal consultation for state activities, incorporation of treaty rights into state law, the motor vehicle sales and use tax, ICWA, jurisdiction and law enforcement, and conservation and open space easements.

After discussion among the Commissioners related to the potential topics of focus, Delegate Krizek stated that polls would be e-mailed to the Commissioners that would facilitate prioritization of such topics for the remaining meetings of the Commission during the 2025 interim period.

Meeting Summary — July 7, 2025

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 three policy topics that the Commission requested at the April 23 meeting of the Commission: conservation easements, ICWA, and in-state tuition at Virginia public universities for tribal members.

Mr. Block stated that conservation easements, which are nonpossessory interests in real property for certain preservation purposes, are governed by the Conservation Easement Act and are held by "holders," a term defined in the Code of Virginia that generally includes private individuals or private groups. He stated that while tribes can partner with conservation easement holders when they own or purchase land, tribes lack the ability to hold a conservation easement and some tribal leaders would like for this to change. Mr. Block stated that open-space easements, while nearly identical to conservation easements in their purpose, differ in that open-space easements are governed by the Open-Space Land Act and are held by a "public bodies," a term defined in the Code of Virginia that does not include tribes. Options provided to the Commission on how to proceed with its potential recommendations included maintaining the status quo, including tribes in the definition of "holder" in the Conservation Easement Act, and including tribes in the definition of "public body" in the Open-Space Land Act.

Mr. Block provided an overview of ICWA, which is a law that prioritizes the placement of tribal children who are the subject of child welfare proceedings with tribal members. ICWA was passed by Congress in 1978 in response to the repeated and disparate government removal of tribal children from tribes and tribal reservations and applies to federally recognized tribes. Some states have largely incorporated the provisions of ICWA into state law, some states have provisions in state law that refer to ICWA in relevant statutes, and other states have not incorporated ICWA at all. The 18 states that have largely incorporated the provisions of ICWA into state law did so in response to a legal challenge regarding the constitutionality of ICWA. In 2023, the United States Supreme Court upheld the constitutionality of ICWA in the case *Haaland v. Brackeen*. Mr. Block stated that while the Juvenile and Domestic Relations Court statutes in the Code of Virginia contain virtually no mention of ICWA, the Supreme Court of Virginia provides training and has developed court forms to share information about ICWA requirements. Additionally, the Virginia Department of Social Services has an ICWA liaison position who works with tribal members, has a mandatory online ICWA training, and also has a Child and Family Service manual that explains the requirements of ICWA. Options provided to the Commission on how to proceed with its potential recommendations included maintaining the status quo, a full incorporation of the provisions of ICWA into state law, or a modest approach that might include (i) clarifying identification, jurisdiction, and full faith and credit in the juvenile code; (ii) including children of state recognized tribes; and (iii) making explicit references to ICWA in the juvenile code.

Christine Schulman, a research assistant with the clinic, provided the Commission with an overview of the in-state tuition at Virginia's public universities, previous efforts by the Virginia General Assembly to provide in-state tuition rates to non-Virginia students who are tribal members, and approaches taken by other states to address in-state tuition for members of tribes originating in those states. Ms. Schulman presented the Commission with a variety of potential avenues for providing in-state tuition to out-of-state tribal members, including tribal status (federally recognized tribes or state recognized tribes), certain connections to tribes (tribal enrollment or ancestry), tribal connection to the Commonwealth (tribes headquartered in Virginia or tribes with a historic connection to Virginia), and the different potential approaches to benefits (residency classifications to permit in-state tuition, scholarships, or fee waivers).

Delegate Krizek and Senator Ryan T. McDougle stated their intentions to refile the vetoed bills HB 2134 and SB 949 from the 2025 Regular Session of the General Assembly, respectively, in

the 2026 Regular Session. The identical bills establish definitions for "American Indian," "federally recognized tribe," and "Virginia recognized tribe" and amend various sections throughout the Code for the purpose of uniformity in terminology.

Meeting Summary — August 19, 2025

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

Mr. Block provided a review and update on three items discussed at the July 7 meeting. First, Mr. Block provided the Commission with a letter from Brett Glymph, Executive Director of the Virginia Outdoors Foundation, that asserted (i) that, with regard to conservation easements, adding Virginia Tribes to the definition of a public body is consistent with the purposes of the Open-Space Land Act; (ii) that federal and state tax benefits are available on equal terms for landowners who grant easements under the Conservation Easement Act or the Open-Space Land Act; and (iii) that adding "cultural preservation" to the purposes of an open space easement would be consistent with the Virginia Code. Second, he provided the results of a tribal survey regarding in-state tuition, which showed that of the five tribes that responded, such tribes expect to have approximately 21 out-of-state high school graduates per year. Such survey did not, however, ask whether such graduates would want to attend Virginia universities. Finally, Mr. Block provided an update on ICWA and stated that even though Virginia does not, like many others states, have ICWA provisions incorporated into state law, some stakeholders have expressed concern about implementation and have noted that the Uniform Law Commission is developing model state legislation on the subject.

Mr. Block stated that the Commission could recommend adding the Department of Transportation to the list of state agencies that are required to consult with Tribes regarding certain permits and reviews, as well as adding federally recognized tribes to the list of partners with whom the Department of Emergency Management (VDEM) is required to work. Ms. Schulman stated that the Commission could codify certain provisions into state law that stem from certain articles of the Treaty of Middle Plantation (1677), including utility tax exemptions, sales and use tax exemptions, property tax exemptions, watercraft tax exemptions, and expanded hunting and fishing license exemptions.

Meeting Summary — December 3, 2025

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

Emily Becker, Jackson Martingayle, and Andrew Lee, research assistants with the clinic, provided the Commission with a brief review of the motor vehicle sales and use tax exemption discussed at the August 19th meeting and stated that after consultation with the Tribes, the clinic recommended postponing legislation regarding such exemption. The research assistants stated that the clinic recommended (i) extending the term of the Commission to July 1, 2028; (ii) reintroducing the tribal sovereignty and tribal definition bills that are identical to HB 2134 (Krizek) and SB 949 (McDougle) from 2025 Regular Session of the General Assembly; (iii) adding federally recognized tribes to the entities that can be a conservation easement holder, as

well as incorporating cultural preservation language as a potential purpose for a conservation easement; (iv) providing in-state tuition to out-of-state members or citizens of federally recognized Virginia tribes for undergraduate degree programs and allowing schools to offer similar benefits for graduate or professional degree programs; (v) adding federally recognized tribes to each provision of § 44-146.18 of the Code of Virginia that requires VDEM to work with local governments and political subdivisions, but limiting "federally recognized tribes" to include only such tribes that enter into a contract or memorandum of understanding with VDEM for certain assistance pursuant to § 44-146.18; and (vi) making various changes to state agency tribal consultation policies.

II. Conclusion

The Commission made the following formal recommendations for the 2026 Regular Session of the General Assembly: (i) extend the term of the Commission to July 1, 2028; (ii) reintroduce tribal sovereignty and tribal definition bills that are identical to HB 2134 (Krizek) and SB 949 (McDougle) from 2025; (iii) add federally recognized tribes to the entities that can be a conservation easement holder, as well as incorporate cultural preservation language as a potential purpose for a conservation easement; (iv) provide in-state tuition to out-of-state members or citizens of federally recognized Virginia tribes for undergraduate degree programs; (v) add federally recognized tribes to each provision of § 44-146.18 that requires VDEM to work with local governments and political subdivisions, but limit "federally recognized tribes" to include only such tribes that enter into a contract or memorandum of understanding with VDEM for certain assistance pursuant to § 44-146.18; (vi) add various duties of the Ombudsman for Tribal consultation and require certain state agencies to engage in consultation with federally recognized tribes on certain issues; and (vii) establish a Tribal Medicaid Advisory Group.

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

Respectfully submitted,

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