

SENATE BILL NO. 31

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources

on _____)

(Patron Prior to Substitute--Senator Marsden)

A BILL to amend and reenact §§ 2.2-1509.4, 10.1-1018, 10.1-1018.1, 10.1-1020, 10.1-1021, and 58.1-512 of the Code of Virginia, relating to the Virginia Land Conservation Foundation and Fund.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-1509.4, 10.1-1018, 10.1-1018.1, 10.1-1020, 10.1-1021, and 58.1-512 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-1509.4. Budget bill to include an appropriation for land preservation.

~~Each~~ For each fiscal year the Governor shall include in "The Budget Bill" submitted pursuant to subsection A of § 2.2-1509 or in his amendments to the general appropriation act in effect submitted pursuant to subsection E of § 2.2-1509 a recommended appropriation from the general fund ~~pursuant to subdivision D 4 e of § 58.1-512~~ of \$40 million to be allocated as follows: 80 percent of such amount to the Virginia Land Conservation Fund to be used in accordance with § 10.1-1020, with no less than 50 percent of such appropriation to be used for fee simple acquisitions with public access or acquisitions of easements with public access; 10 percent of such amount to the Virginia Battlefield Preservation Fund to be used in accordance with § 10.1-2202.4; and 10 percent of such amount to the Virginia Farmland Preservation Fund to be used in accordance with § 3.2-201.

§ 10.1-1018. Virginia Land Conservation Board of Trustees; membership; terms; vacancies; compensation and expenses.

A. The Foundation shall be governed and administered by a Board of Trustees. The Board shall have a total membership of 19 members that shall consist of 17 citizen members and two ex officio voting members as follows: four citizen members, who may be members of the House of Delegates, to be appointed by the Speaker of the House of Delegates and, if such members are members of the House of

27 Delegates, in accordance with the principles of proportional representation contained in the Rules of the
28 House of Delegates; two citizen members, who may be members of the Senate, to be appointed by the
29 Senate Committee on Rules; 11 nonlegislative citizen members, one from each congressional district, to
30 be appointed by the Governor; and the Secretary of Natural and Historic Resources, or his designee, and
31 the Secretary of Agriculture and Forestry, or his designee, to serve ex officio with voting privileges.
32 Nonlegislative citizen members shall be appointed for four-year terms, except that initial appointments
33 shall be made for terms of one to four years in a manner whereby no more than six members shall have
34 terms that expire in the same year. Legislative members and the ex officio member shall serve terms
35 coincident with their terms of office. Appointments to fill vacancies, other than by expiration of a term,
36 shall be made for the unexpired terms. Vacancies shall be filled in the same manner as the original
37 appointments. All members may be reappointed. However, no Senate member shall serve more than two
38 consecutive four-year terms, no House member shall serve more than four consecutive two-year terms
39 and no nonlegislative citizen member shall serve more than two consecutive four-year terms. The
40 remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in
41 determining the member's eligibility for reappointment. Nonlegislative citizen members shall have
42 experience or expertise, professional or personal, in one or more of the following areas: natural resource
43 protection and conservation, construction and real estate development, natural habitat protection,
44 environmental resource inventory and identification, forestry management, farming, farmland
45 preservation, fish and wildlife management, historic preservation, and outdoor recreation. At least one of
46 the nonlegislative citizen members shall be a farmer, and at least one shall be a member of a state-
47 recognized or federally recognized Virginia Indian Tribe. Members of the Board shall post bond in the
48 penalty of \$5,000 with the State Comptroller prior to entering upon the functions of office.

49 B. The Secretary of Natural and Historic Resources shall serve as the chairman of the Board of
50 Trustees. The chairman shall serve until his successor is appointed. The members appointed as provided
51 in subsection A shall elect a vice-chairman annually from among the members of the Board. A majority
52 of the members of the Board serving at any one time shall constitute a quorum for the transaction of

53 business. The board shall meet at the call of the chairman or whenever a majority of the members so
54 request.

55 C. Trustees of the Foundation shall receive no compensation for their services. All members shall
56 be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties on
57 behalf of the Foundation as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of expenses of
58 the members shall be provided by the Department of Conservation and Recreation.

59 D. The chairman of the Board and any other person designated by the Board to handle the funds
60 of the Foundation shall give bond, with corporate surety, in such penalty as is fixed by the Governor,
61 conditioned upon the faithful discharge of his duties. The premium on the bonds shall be paid from funds
62 available to the Foundation for such purpose.

63 E. The Board shall seek assistance in developing grant criteria and advice on grant priorities and
64 any other appropriate issues from a task force consisting of the following agency heads or their designees:
65 the Director of the Department of Conservation and Recreation, the Commissioner of Agriculture and
66 Consumer Services, the State Forester, the Director of the Department of Historic Resources, the Director
67 of the Department of Wildlife Resources and the Executive Director of the Virginia Outdoors Foundation.
68 The Board may request any other agency head to serve on or appoint a designee to serve on the task force.

69 **§ 10.1-1018.1. Reporting.**

70 The chairman of the Board shall submit to the Governor and the General Assembly, including the
71 Chairmen of the House Committee on Appropriations, the House Committee on Agriculture, Chesapeake
72 and Natural Resources, the Senate Committee on Finance and Appropriations, and the Senate Committee
73 on Agriculture, Conservation and Natural Resources, and to the Director of the Department of Planning
74 and Budget an executive summary and report of the ~~interim~~ activity and work of the Board on or before
75 December 15 of each ~~even-numbered~~ year. The document shall report on the status of the Foundation and
76 its Fund, including (i) land conservation targeting tools developed for the Foundation; (ii) descriptions of
77 projects that received funding; (iii) a description of the geographic distribution of land protected as
78 provided in § 10.1-1021.1; (iv) expenditures from, interest earned by, and financial obligations of the
79 Fund; and (v) progress made toward recognized state and regional land conservation goals, including what

80 percentage of properties conserved were identified by ConserveVirginia, pursuant to § 10.1-104.6:1, and
 81 ~~whether a summary of the identified~~ conservation values that were protected. The report shall also estimate
 82 the funds needed to achieve goals established by the Board for (a) natural area protection, (b) open spaces
 83 and parks, (c) farmland preservation, (d) forest land preservation, (e) historical and cultural sites, (f)
 84 meeting the needs of under-resourced communities, and (g) any other goal determined by the Board. The
 85 executive summary and report shall be submitted as provided in the procedures of the Division of
 86 Legislative Automated Systems for the processing of legislative documents and reports and shall be posted
 87 on the General Assembly's website.

88 **§ 10.1-1020. Virginia Land Conservation Fund; purposes of Foundation.**

89 A. The Foundation shall establish, administer, manage, including the creation of reserves, and
 90 make expenditures and allocations from a special, nonreverting fund in the state treasury to be known as
 91 the Virginia Land Conservation Fund, hereinafter referred to as the Fund. The Foundation shall establish
 92 and administer the Fund solely for the purposes of:

93 1. Acquiring fee simple title or other rights, including the purchase of development rights, to
 94 interests or privileges in property for the protection or preservation of ecological, cultural or historical
 95 resources, lands for recreational purposes, state forest lands, and lands for threatened or endangered
 96 species, fish and wildlife habitat, natural areas, agricultural and forestal lands and open space, and for
 97 conservation and restoration of homelands for state-recognized and federally recognized Virginia Indian
 98 Tribes; and

99 2. Providing grants to state agencies, including the Virginia Outdoors Foundation and state-
 100 recognized and federally recognized Virginia Indian Tribes, and matching grants to other public bodies
 101 and holders for acquiring fee simple title or other rights, including the purchase of development rights, to
 102 interests or privileges in real property for the protection or preservation of ecological, cultural or historical
 103 resources, lands for recreational purposes, and lands for threatened or endangered species, fish and wildlife
 104 habitat, natural areas, agricultural and forestal lands and open space. The Board shall establish criteria for
 105 making grants from the Fund, including procedures for determining the amount of each grant and the

106 required match. The criteria shall include provisions for grants to localities for purchase of development
107 rights programs.

108 Interests in land acquired as provided in subdivision 1 ~~of this subsection~~ may be held by the
109 Foundation ~~or transferred to~~, state agencies ~~or~~, state-recognized or federally recognized Virginia Indian
110 Tribes, other public bodies, and appropriate holders. Whenever a holder acquires any interest in land other
111 than a fee simple interest as a result of a grant or transfer from the Foundation, such interest shall be held
112 jointly by the holder and a public body if such holder is not accredited by the national Land Trust
113 Accreditation Commission or a similar set of standards and practices adopted by the Board. Whenever a
114 holder acquires a fee simple interest in land as a result of a grant or transfer from the Foundation, a public
115 body shall hold an open space easement in such land, or such fee simple interest shall be subject to a
116 reversionary interest held by the Board that is protective of the conservation purposes. The Board may
117 convey such reversionary interest to another appropriate public body or holder.

118 B. The Fund shall consist of general fund moneys and gifts, endowments or grants from the United
119 States government, its agencies and instrumentalities, and funds from any other available sources, public
120 or private. Such moneys, gifts, endowments, grants or funds from other sources may be either restricted
121 or unrestricted. For the purposes of this chapter, "restricted funds" shall mean those funds received by the
122 Board to which specific conditions apply; "restricted funds" shall include, but not be limited to, general
123 obligation bond moneys and conditional gifts. "Unrestricted funds" shall mean those received by the
124 Foundation to which no specific conditions apply; "unrestricted funds" shall include, but not be limited
125 to, moneys appropriated to the Fund by the General Assembly to which no specific conditions are attached
126 and unconditional gifts.

127 ~~Beginning July 1, 2019, the Foundation shall conduct a grant round each year to identify and rank~~
128 ~~projects for the subsequent fiscal year. Biennially in the odd-numbered years, the Foundation shall assume~~
129 ~~an amount of funding of the grant program as provided in the general appropriation act. Biennially in the~~
130 ~~even-numbered years, the Foundation shall assume the most recent amount of funding of the grant~~
131 ~~program as specified in the most recently enacted general appropriation act. On or before December 15 of~~
132 ~~each year, the chairman of the Board of Trustees shall provide copies of such project rankings to the~~

133 ~~Chairmen of the House Committee on Appropriations and the Senate Committee on Finance and~~
134 ~~Appropriations. At the beginning of each fiscal year, the Foundation shall finalize grant awards based on~~
135 ~~the funded level appropriated for that year, as provided in subsections C and D. Any ranked project that~~
136 ~~does not receive a proposed grant as a result of an insufficiency in appropriated funds shall be eligible to~~
137 ~~participate in a subsequent grant round.~~

138 C. In any fiscal year for which the Fund is appropriated less than \$10 million, and after an
139 allocation for administrative expenses has been made as provided in subsection G, the remaining
140 unrestricted funds in the Fund shall be allocated as follows:

141 1. Twenty-five percent shall be transferred to the Virginia Outdoors Foundation's Open-Space
142 Lands Preservation Trust Fund to be used as provided in § 10.1-1801.1; and

143 2. Seventy-five percent shall be divided equally among the following four grant uses: (i) natural
144 area protection; (ii) open spaces and parks, including but not limited to, land for public hunting, fishing
145 or wildlife watching; (iii) farmlands and forest preservation; and (iv) historic area preservation. Of the
146 amount allocated as provided in this subdivision, at least one third shall be used to secure easements to be
147 held or co-held by a public body.

148 D. In any fiscal year for which the Fund is appropriated \$10 million or more, and after an allocation
149 for administrative expenses has been made as provided in subsection G, the remaining unrestricted funds
150 in the Fund shall be allocated as follows:

151 1. Twenty-five percent shall be transferred to the Virginia Outdoors Foundation's Open-Space
152 Lands Preservation Trust Fund to be used as provided in § 10.1-1801.1; and

153 2. The remaining funds shall be divided equally among the following five grant uses: (i) natural
154 area protection; (ii) open spaces and parks, including but not limited to, land for public hunting, fishing,
155 or wildlife watching; (iii) farmland preservation; (iv) forestland conservation; and (v) historic area
156 preservation.

157 E. Any moneys remaining in the Fund at the end of a biennium shall remain in the Fund, and shall
158 not revert to the general fund. Interest earned on moneys received by the Fund other than bond proceeds
159 shall remain in the Fund and be credited to it. Any funds transferred to the Open-Space Lands Preservation

160 Trust Fund pursuant to this section and not disbursed or committed to a project by the end of the fiscal
161 year in which the funds were transferred shall be returned to the Virginia Land Conservation Fund and
162 shall be redistributed among the authorized grant uses during the next grant cycle.

163 F. A portion of the Fund, not to exceed ~~twenty~~ 20 percent of the annual balance of unrestricted
164 funds, may be used to develop properties purchased in fee simple, or through the purchase of development
165 rights, with the assets of the Fund for public use including, but not limited to, development of trails,
166 parking areas, infrastructure, and interpretive projects or to conduct environmental assessments or other
167 preliminary evaluations of properties prior to the acquisition of any property interest.

168 G. Up to \$250,000 per year of the interest generated by the Fund may be used for the Foundation's
169 administrative expenses, including, but not limited to, the expenses of the Board and its members,
170 development of the Foundation's strategic plan, development and maintenance of an inventory of
171 properties as provided in subdivision 1 b of § 10.1-1021, development of a needs assessment for future
172 expenditures as provided in subdivision 1 c of § 10.1-1021, and fulfillment of reporting requirements. All
173 such expenditures shall be subject to approval by the Board of Trustees.

174 H. The Comptroller shall maintain the restricted funds and the unrestricted funds in separate
175 accounts.

176 I. For the purposes of this section, "public body" shall have the meaning ascribed to it in § 10.1-
177 1700, and "holder" shall have the meaning ascribed to it in § 10.1-1009.

178 **§ 10.1-1021. Powers of the Foundation.**

179 In order to carry out its purposes, the Foundation shall have the following powers and duties:

180 1. To prepare a comprehensive plan that recognizes and seeks to implement all of the purposes for
181 which the Foundation is created. In preparing this plan, the Foundation shall:

182 a. Establish criteria for the expenditure of unrestricted moneys received by the Fund. In making
183 grants for the expenditure of such unrestricted moneys, the Board of Trustees shall consider the following
184 criteria, not all of which need to be met in order for a grant to be awarded:

- 185 (1) The ecological, outdoor recreational, historic, agricultural, and forestal value of the property;
- 186 (2) An assessment of market values;

- 187 (3) Consistency with local comprehensive plans;
- 188 (4) Geographical balance of properties and interests in properties to be purchased;
- 189 (5) Availability of public and private matching funds to assist in the purchase;
- 190 (6) Imminent danger of loss of natural, outdoor, recreational, or historic attributes of a significant
- 191 portion of the land;
- 192 (7) Economic value to the locality and region attributable to the purchase;
- 193 (8) Advisory opinions from local governments, state agencies, or others; ~~and~~
- 194 (9) Whether the property has been identified by ConserveVirginia and whether the proposal seeks
- 195 to preserve the conservation values identified by ConserveVirginia; and
- 196 (10) Whether the property is in an area lacking outdoor recreation facilities;
- 197 b. Develop an inventory of those properties in which the Commonwealth holds a legal interest for
- 198 the purpose set forth in subsection A of § 10.1-1020;
- 199 c. Develop a needs assessment for future expenditures from the Fund. In developing the needs
- 200 assessment, the Board of Trustees shall consider among others the properties identified in the following:
- 201 (i) ConserveVirginia, (ii) Virginia Outdoors Plan, (iii) Virginia Natural Heritage Plan, (iv) Virginia
- 202 Institute of Marine Science Inventory, (v) Virginia Joint Venture Board of the North American Waterfowl
- 203 Management Plan, and (vi) Virginia Board of Historic Resources Inventory. In addition, the Board shall
- 204 consider any information submitted by the Department of Agriculture and Consumer Services on farmland
- 205 preservation priorities and any information submitted by the Department of Forestry on forest land
- 206 initiatives and inventories; and
- 207 d. Maintain the inventory and needs assessment on an annual basis.
- 208 2. To expend directly or allocate the funds received by the Foundation to the appropriate state
- 209 agencies for the purpose of acquiring those properties or property interests selected by the Board of
- 210 Trustees. In the case of restricted funds the Board's powers shall be limited by the provisions of § 10.1-
- 211 1022.
- 212 3. To enter into contracts and agreements, as approved by the Attorney General, to accomplish the
- 213 purposes of the Foundation.

214 4. To receive and expend gifts, grants and donations from whatever source to further the purposes
215 set forth in subsection B of § 10.1-1020.

216 5. To sell, exchange or otherwise dispose of or invest as it deems proper the moneys, securities, or
217 other real or personal property or any interest therein given or bequeathed to it, unless such action is
218 restricted by the terms of a gift or bequest. However, the provisions of § 10.1-1704 shall apply to any
219 diversion from open-space use of any land given or bequeathed to the Foundation.

220 6. To conduct fund-raising events as deemed appropriate by the Board of Trustees.

221 7. To do any and all lawful acts necessary or appropriate to carry out the purposes for which the
222 Foundation and Fund are established.

223 **§ 58.1-512. Land preservation tax credits for individuals and corporations.**

224 A. 1. For taxable years beginning on or after January 1, 2000, there shall be allowed as a credit
225 against the tax liability imposed by §§ 58.1-320 and 58.1-400, an amount equal to 50 percent of the fair
226 market value of any land or interest in land located in Virginia that is conveyed for the purpose of
227 agricultural and forestal use, open space, natural resource, and/or biodiversity conservation, or land,
228 agricultural, watershed and/or historic preservation, as an unconditional donation by the
229 landowner/taxpayer to a public or private conservation agency eligible to hold such land and interests
230 therein for conservation or preservation purposes. For such conveyances made on or after January 1, 2007,
231 the tax credit shall be 40 percent of the fair market value of the land or interest in land so conveyed.

232 2. a. If the Commonwealth or an instrumentality thereof operates a facility on a conveyance,
233 including charging fees for the use of such facility, such operation shall not disqualify the conveyance
234 from eligibility for the tax credit, so long as any fees are used for conservation or preservation purposes.

235 b. If the Commonwealth or an instrumentality thereof enters into an agreement with a third party
236 to lease or manage a facility on a conveyance, the fact that such third party is operated primarily as a
237 business with intent for profit shall not disqualify the conveyance from eligibility for the tax credit, so
238 long as such agreement is for conservation or preservation purposes.

239 B. The fair market value of qualified donations made under this section shall be determined in
240 accordance with § 58.1-512.1 and substantiated by a "qualified appraisal" prepared by a "qualified

241 appraiser," as those terms are defined under applicable federal law and regulations governing charitable
242 contributions. The value of the donated interest in land that qualifies for credit under this section, as
243 determined according to appropriate federal law and regulations, shall be subject to the limits established
244 by United States Internal Revenue Code § 170(e). In order to qualify for a tax credit under this section,
245 the qualified appraisal shall be signed by the qualified appraiser, who must be licensed in the
246 Commonwealth of Virginia as provided in § 54.1-2011, and a copy of the appraisal shall be submitted to
247 the Department. In the event that any appraiser falsely or fraudulently overstates the value of the
248 contributed property in an appraisal that the appraiser has signed, the Department may disallow further
249 appraisals signed by the appraiser and shall refer the appraiser to the Real Estate Appraiser Board for
250 appropriate disciplinary action pursuant to § 54.1-2013, which may include, but need not be limited to,
251 revocation of the appraiser's license. Any appraisal that, upon audit by the Department, is determined to
252 be false or fraudulent, may be disregarded by the Department in determining the fair market value of the
253 property and the amount of tax credit to be allowed under this section.

254 C. 1. The amount of the credit that may be claimed by each taxpayer, including credit claimed by
255 applying unused credits as provided under subsection C of § 58.1-513, shall not exceed \$50,000 for 2000
256 taxable years; \$75,000 for 2001 taxable years; \$100,000 for each of 2002 through 2008 taxable years;
257 \$50,000 for each of 2009, 2010, and 2011 taxable years; \$100,000 for each of 2012, 2013, and 2014
258 taxable years; \$20,000 for each of 2015, 2016, and 2017 taxable years; and \$50,000 for 2018 taxable years
259 and for each taxable year thereafter. However, for any fee simple donation of land conveyed to the
260 Commonwealth on or after January 1, 2015, the amount of the credit claimed shall not exceed \$100,000
261 for each taxable year, provided that no part of the charitable contributions deduction under § 170 of the
262 Internal Revenue Code related to such fee simple donation is allowable by reason of a sale or exchange of
263 property. In addition, for each taxpayer, in any one taxable year the credit used may not exceed the amount
264 of individual, fiduciary or corporate income tax otherwise due. Any portion of the credit that is unused in
265 any one taxable year may be carried over for a maximum of 10 consecutive taxable years following the
266 taxable year in which the credit originated until fully expended. A credit shall not be reduced by the
267 amount of unused credit that could have been claimed in a prior year by the taxpayer but was unclaimed.

268 For taxpayers affected by the credit reduction for taxable years 2009, 2010, 2011, and 2015 and thereafter,
269 any portion of the credit that is unused in any one taxable year may be carried over for a maximum of 13
270 consecutive taxable years following the taxable year in which the credit originated until fully expended.

271 2. Qualified donations shall include the conveyance of a fee interest in real property or the
272 conveyance in perpetuity of a less-than-fee interest in real property, such as a conservation restriction,
273 preservation restriction, agricultural preservation restriction, or watershed preservation restriction,
274 provided that such less-than-fee interest qualifies as a charitable deduction under § 170(h) of the United
275 States Internal Revenue Code of 1986, as amended.

276 The Department of Conservation and Recreation shall compile an annual report on qualified
277 donations of less-than-fee interests accepted by any public or private conservation agency in the respective
278 calendar year and shall submit the report by December 1 of each year to the Chairmen of the House
279 Committee on Appropriations, House Committee on Finance, and the Senate Committee on Finance and
280 Appropriations. In preparing such report, the Department of Conservation and Recreation shall consult
281 and coordinate with the Department of Taxation and the Departments of Forestry and Agriculture and
282 Consumer Services to provide an estimate of the number of acres of land currently being used for
283 "production agriculture and silviculture" as defined in § 3.2-300 that have been protected by qualified
284 donations of less-than-fee interests. This report shall include information, when available, on land
285 qualifying for credits being used for "production agriculture and silviculture" that have onsite operational
286 best management practices, which are designed to reduce the amount of nutrients and sediment entering
287 public waters. In addition, the report shall include information, when available, on riparian buffers, both
288 vegetated/forested buffers and no-plow buffers, required by deed restriction on land qualifying for credits
289 in order to protect water quality. This information shall be reported in summary fashion as appropriate to
290 preserve confidentiality of information. Qualified donations shall not include the conveyance of a fee
291 interest, or a less-than-fee interest, in real property by a charitable organization that (i) meets the definition
292 of "holder" in § 10.1-1009 and (ii) holds one or more conservation easements acquired pursuant to the
293 authority conferred on a "holder" by § 10.1-1010.

294 3. Any fee interest, or a less-than-fee interest, in real property that has been dedicated as open
295 space within, or as part of, a residential subdivision or any other type of residential or commercial
296 development; dedicated as open space in, or as part of, any real estate development plan; or dedicated for
297 the purpose of fulfilling density requirements to obtain approvals for zoning, subdivision, site plan, or
298 building permits shall not be a qualified donation under this article.

299 4. Qualified donations shall be eligible for the tax credit herein described if such donations are
300 made to the Commonwealth of Virginia, an instrumentality thereof, or a charitable organization described
301 in § 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, if such charitable
302 organization (i) meets the requirements of § 509(a)(2) or (ii) meets the requirements of § 509(a)(3) and is
303 controlled by an organization described in § 509(a)(2).

304 5. The preservation, agricultural preservation, historic preservation or similar use and purpose of
305 such property shall be assured in perpetuity. In the case of conveyances of a fee interest to a charitable
306 organization that is a "holder" as defined in § 10.1-1009, the credit shall not be allowed until the charitable
307 organization agrees that subsequent conveyances of the fee interest in the property will be (i) subject to a
308 previous conveyance in perpetuity of a conservation easement, as that term is defined in § 10.1-1009, or
309 subject to the conveyance in perpetuity of an open-space easement, as that term is defined in § 10.1-1700,
310 or (ii) conveyed to the Commonwealth of Virginia or to a federal conservation agency. No credit shall be
311 allowed with respect to any subsequent conveyances by the charitable organization.

312 D. The issuance of tax credits under this article for donations made on and after January 1, 2007,
313 shall be in accordance with procedures and deadlines established by the Department and shall be
314 administered under the following conditions:

315 1. The taxpayer shall apply for a credit after completing the donation by submitting a form or forms
316 prescribed by the Department in consultation with the Department of Conservation and Recreation. If the
317 application requests a credit of \$1 million or more or if the donation meets the conditions of subdivision
318 3 c, then a copy of the application shall also be filed with the Department of Conservation and Recreation
319 by the taxpayer. The application shall include, but not be limited to:

320 a. A description of the conservation purpose or purposes being served by the donation;

- 321 b. The fair market value of land being donated in the absence of any easement or other restriction;
- 322 c. The public benefit derived from the donation;
- 323 d. The extent to which water quality best management practices will be implemented on the
- 324 property; and
- 325 e. Whether the property is fully or partially forested and a forest management plan is included in
- 326 the terms of the donation.

327 2. Applications for otherwise qualified donations of a less-than-fee interest shall be accompanied
328 by an affidavit describing how the donated interest in land meets the requirements of § 170(h) of the
329 United States Internal Revenue Code of 1986, as amended, and the regulations adopted thereunder. The
330 application with accompanying affidavit shall be submitted to the Department of Taxation, with a copy
331 also provided to the Department of Conservation and Recreation.

332 3. a. No credit in the amount of \$1 million or more shall be issued with respect to a donation unless
333 the conservation value of the donation has been verified by the Director of the Department of Conservation
334 and Recreation, based on the criteria adopted by the Virginia Land Conservation Foundation for this
335 purpose. Such criteria and subsequent amendments shall be exempt from the Administrative Process Act
336 (§ 2.2-4000 et seq.), but the Virginia Land Conservation Foundation shall provide for adequate public
337 participation, including adequate notice and opportunity to provide comments on the proposed criteria.
338 The Director shall act on applications within 90 days of his receipt of a complete application and shall
339 notify the taxpayer and the Department of Taxation of his action.

340 b. For purposes of determining whether a credit requires verification of the conservation value, the
341 credits allowed under this article with respect to donations of any other portion of a recorded parcel of
342 land within the preceding 11 years shall be aggregated with the credit claimed for the current donation.
343 This subdivision shall not apply if (i) all owners of the parcel who have been allowed credit for a qualified
344 donation are not affiliated with the person or entity seeking credit for the current donation of a different
345 portion of the parcel and (ii) in the case of an individual seeking credit, the individual has not previously
346 made a qualified donation for any portion of the parcel and is not an immediate family member of any
347 such owners.

348 c. If (i) the real property that is the subject of the donation was partitioned from or part of another
349 parcel of land and any other portion of such parcel, or any land partitioned from such parcel of land, has
350 been allowed a tax credit under this article (or an application for tax credit is pending) within three years
351 of such donation and (ii) the tax credit that would otherwise be allowed to the donor for such donation is
352 at least \$250,000, then no credit under this article shall be issued with respect to such donation described
353 in clause (i) unless the conservation value of the donation has been verified by the Director of the
354 Department of Conservation and Recreation. The Director shall act on applications within 90 days of his
355 receipt of a complete application and shall notify the taxpayer and the Department of Taxation of his
356 action. Nothing in this subdivision shall be construed or interpreted (a) as allowing additional tax credit
357 for any land or interest in land previously conveyed for which tax credit has already been allowed under
358 this article or (b) affecting the validity of any tax credit allowed under this article for a prior conveyance
359 of any land or interest in land.

360 4. a. Tax credits shall be issued on a calendar year basis, and in no case shall the Department issue
361 more than the maximum allowed for the calendar year. The maximum amount of credits that may be
362 issued in a calendar year shall be \$100 million plus any credits previously issued under this article but
363 subsequently disallowed or invalidated by the Department. Credits previously issued but subsequently
364 disallowed or invalidated shall be reissued in a subsequent calendar year. All credits shall be issued in the
365 order that each complete application is filed. For filings by mail or a recognized commercial delivery
366 service, the postmark or confirmation of shipment shall determine the date of filing. If within 30 days after
367 an application for credits has been filed the Tax Commissioner provides written notice to the donor that
368 he has determined that the preparation of a second qualified appraisal is warranted, the application shall
369 not be deemed complete until the fair market value of the donation has been finally determined by the Tax
370 Commissioner. The Tax Commissioner shall make a final determination within 180 days of notifying the
371 donor, unless the donor has filed an appeal. The donor shall have the right to appeal any decision of the
372 Department in accordance with the provisions of Chapter 18 (§ 58.1-1800 et seq.). If more than one
373 complete application is filed at the same time, the credits with respect to those applications shall be issued
374 in the order that the conveyances were recorded in the appropriate circuit court of the Commonwealth. In

375 the event that a credit requires verification of the conservation value by the Department of Conservation
376 and Recreation and such verification has not been received at the time the maximum \$100 million allowed
377 is reached for the calendar year of the donation, such credit shall not be issued for that calendar year but
378 shall be issued in the calendar year that the conservation value of the credit is verified by the Department
379 of Conservation and Recreation.

380 No credit shall be allowed for any land or interest in land conveyed unless (i) for a conveyance
381 made before January 1, 2020, a complete application for tax credit with regard to the conveyance has been
382 filed with the Department by December 31 of the third year following the calendar year of the conveyance
383 or (ii) for a conveyance made on or after January 1, 2020, a complete application for tax credit with regard
384 to the conveyance has been filed with the Department by December 31 of the second year following the
385 calendar year of the conveyance. For filings by mail or a recognized commercial delivery service, the
386 postmark or confirmation of shipment shall determine the date of filing. Solely for purposes of this
387 condition, any application for which the Tax Commissioner has given written notice to the donor that the
388 preparation of a second qualified appraisal is warranted shall be deemed timely filed, provided that the
389 application was otherwise complete as of such filing deadline.

390 b. Beginning with calendar year 2008, the \$100 million amount contained in subdivision 4 a shall
391 be increased by an amount equal to \$100 million multiplied by the percentage by which the consumer
392 price index for all-urban consumers published by the United States Department of Labor (CPI-U) for the
393 12-month period ending August 31 of the preceding year exceeds the CPI-U for the 12-month period
394 ending August 31, 2006.

395 c. Beginning with calendar year 2015, the maximum amount of credits that may be issued in a
396 calendar year shall not exceed \$75 million. In no case shall the Department issue any tax credit for a
397 donation from any allocation or pool of tax credits attributable to a calendar year prior to the year in which
398 the complete tax credit application for the donation was filed.

399 ~~Beginning with the submission due on or before December 20, 2015, and in each year thereafter,~~
400 ~~the Governor shall include in "The Budget Bill" submitted pursuant to subsection A of § 2.2-1509 or in~~
401 ~~his amendments to the general appropriation act in effect submitted pursuant to subsection E of § 2.2-~~

402 ~~1509 a recommended appropriation from the general fund equal to the difference between the amount~~
403 ~~calculated pursuant to subdivision b and \$75 million, but not more than \$20 million, to be allocated as~~
404 ~~follows: 80 percent to the Virginia Land Conservation Fund to be used in accordance with § 10.1-1020,~~
405 ~~with no less than 50 percent of such appropriation to be used for fee simple acquisitions with public access~~
406 ~~or acquisitions of easements with public access; 10 percent to the Virginia Battlefield Preservation Fund~~
407 ~~to be used in accordance with § 10.1-2202.4; and 10 percent to the Virginia Farmland Preservation Fund~~
408 ~~to be used in accordance with § 3.2-201.~~

409 5. a. Any taxpayer that has been issued a tax credit by the Department shall be allowed to use such
410 credit for his or its taxable year that begins in the calendar year for which such credit was issued and for
411 succeeding taxable years in accordance with the 10 consecutive taxable year carryforward provisions of
412 this article, except for any taxpayer affected by the credit limitation for taxable years 2009, 2010, 2011,
413 and 2015 and taxable years thereafter. Such a taxpayer shall be allowed to use such credit for his or its
414 taxable year that begins in the calendar year for which such credit was issued and for succeeding taxable
415 years in accordance with the 13 consecutive taxable year carryforward provisions of this article.

416 b. Any taxpayer to whom a credit has been transferred may use such credit for the taxable year in
417 which the transfer occurred and unused amounts may be carried forward to succeeding taxable years, but
418 in no event may such transferred credit be used more than 11 years after it was originally issued by the
419 Department or in any taxable year of such taxpayer that ended prior to the date of transfer, except for any
420 taxpayer affected by the credit limitation for taxable years 2009, 2010, 2011, and 2015 and taxable years
421 thereafter. Such a taxpayer may use such credit for the taxable year in which the transfer occurred and
422 unused amounts may be carried forward to succeeding taxable years, but in no event may such transferred
423 credit be used more than 14 years after it was originally issued by the Department or in any taxable year
424 of such taxpayer that ended prior to the date of transfer.

425 6. Neither the verification of conservation value by the Department of Conservation and
426 Recreation nor the issuance of a credit by the Department of Taxation shall in any way be construed or
427 interpreted as prohibiting the Department of Taxation or the Tax Commissioner from auditing any credit

428 claimed pursuant to the provisions of this article or from assessing tax relating to the claiming of any
429 credit under this article.

430 E. In any review or appeal before the Tax Commissioner or in any court in the Commonwealth the
431 burden of proof shall be on the taxpayer to show that the fair market value and conservation value at the
432 time of the qualified donation is consistent with this section and that all requirements of this article have
433 been satisfied.

434 #