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SENATE BILL NO. 907

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on January 28, 2009)

(Patron Prior to Substitute—Senator Stuart)

A BILL to amend and reenact § 64.1-57.3 of the Code of Virginia, relating to the power of personal representatives and trustees to donate open-space easements.

Be it enacted by the General Assembly of Virginia:

1. That § 64.1-57.3 of the Code of Virginia is amended and reenacted as follows:

§ 64.1-57.3. Power granted to personal representatives and trustees to donate conservation easements.

Personal representatives and trustees, whether heretofore or hereafter qualified or appointed, are hereby granted the power to donate a conservation easement as provided in the Virginia Conservation Easement Act (§ 10.1-1009 et seq.) or *an open-space easement as provided in the Open-Space Land Act* (§ 10.1-1700 et seq.) on any real property of their decedents and settlors, in order to obtain the benefit of the estate tax exclusion allowed under § 2031(c) of the United States Internal Revenue Code of 1986, as amended, provided they have the written consent of all of the heirs, beneficiaries and devisees whose interests are affected thereby. Upon petition of the personal representative or trustee, the circuit court may give consent on behalf of any unborn, unascertained or incapacitated heirs, beneficiaries or devisees whose interests are affected thereby after determining that (i) the donation of the conservation easement will not adversely affect such heirs, beneficiaries or devisees or (ii) it is more likely than not that such heirs, beneficiaries or devisees would consent if they were before the court and capable of giving consent. A guardian ad litem shall be appointed to represent the interests of any unborn, unascertained or incapacitated persons.