

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 2.2-1509.4, 10.1-2202.4, and 58.1-512 of the Code of Virginia, relating*  
 3 *to the purpose of the Civil War Site Preservation Fund.*

4 [H 2193]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**

7 **1. That §§ 2.2-1509.4, 10.1-2202.4, and 58.1-512 of the Code of Virginia are amended and**  
 8 **reenacted as follows:**

9 **§ 2.2-1509.4. Budget bill to include an appropriation for land preservation.**

10 Each year the Governor shall include in "The Budget Bill" submitted pursuant to subsection A of  
 11 § 2.2-1509 or in his amendments to the general appropriation act in effect submitted pursuant to  
 12 subsection E of § 2.2-1509 a recommended appropriation from the general fund pursuant to subdivision  
 13 D 4 c of § 58.1-512 to be allocated as follows: 80 percent of such amount to the Virginia Land  
 14 Conservation Fund to be used in accordance with § 10.1-1020, with no less than 50 percent of such  
 15 appropriation to be used for fee simple acquisitions with public access or acquisitions of easements with  
 16 public access; 10 percent of such amount to the ~~Civil War Site~~ *Virginia Battlefield* Preservation Fund to  
 17 be used in accordance with § 10.1-2202.4; and 10 percent of such amount to the Virginia Farmland  
 18 Preservation Fund to be used in accordance with § 3.2-201.

19 **§ 10.1-2202.4. Virginia Battlefield Preservation Fund established; eligibility; uses.**

20 A. There is hereby created in the state treasury a special nonreverting fund to be known as the ~~Civil~~  
 21 ~~War Site~~ *Virginia Battlefield* Preservation Fund, hereafter referred to as "the Fund." The Fund shall be  
 22 established on the books of the Comptroller. The Fund shall consist of general funds appropriated by the  
 23 General Assembly and funds received as gifts, endowments, or grants from the United States  
 24 government, its agencies and instrumentalities, and funds from any other available sources, public or  
 25 private, including gifts and bequeaths. All such funds shall be paid into the state treasury and credited to  
 26 the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any  
 27 moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert  
 28 to the general fund but shall remain in the Fund.

29 Moneys in the Fund shall be used by the Department solely for the purpose of making grants to  
 30 private nonprofit organizations, hereafter referred to as "organizations," to match federal and other  
 31 matching funds. All such grants shall be made solely for the fee simple purchase of, or purchase of  
 32 protective interests in, any Virginia ~~Civil War~~ *historic site battlefield property* listed in the following  
 33 reports: ~~"Report on the Nation's Civil War Battlefields," issued in 1993 or as amended or reissued~~  
 34 ~~pursuant to the Civil War Battlefield Protection Act of 2002 (P.L. 107-359) as amended or~~  
 35 ~~supplemented by new information by the National Park Service's American Battlefield Protection~~  
 36 ~~Program~~ *the Report on the Nation's Civil War Battlefields by the Civil War Sites Advisory Commission*  
 37 *(Civil War Sites Advisory Commission/National Park Service, 1993, as amended) or the Report to*  
 38 *Congress on the Historic Preservation of Revolutionary War and War of 1812 Sites in the United States*  
 39 *by the American Battlefield Protection Program of the National Park Service (U.S. Department of the*  
 40 *Interior/National Park Service, 2007, as amended or superseded).* Expenditures and disbursements from  
 41 the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written  
 42 request signed by the Director.

43 B. The Director shall establish, administer, manage, and make expenditures and allocations from the  
 44 Fund.

45 C. Organizations seeking grant funding from the Fund shall be required to provide at least \$1 in  
 46 matching funds for each \$1 received from the Fund for the proposed project. As used herein, the term  
 47 "matching funds" shall include both cash and the value of any contribution due to a bargain sale or the  
 48 donation of land or interest therein made by the landowner as part of the proposed project. No state  
 49 funds may be included in determining the amount of the match.

50 D. Eligible costs for which moneys from the Fund may be allocated include acquisition of land and  
 51 any improvements thereon (collectively referred to herein as "land") or permanent protective interests,  
 52 such as perpetual conservation easements, and costs associated with such acquisitions, including the cost  
 53 of appraisals, environmental reports, any survey, title searches and title insurance, and other closing  
 54 costs.

55 E. Grants from the Fund shall not exceed 50 percent of the appraised value of the land or permanent  
 56 protective interest therein.

57 F. Grants from the Fund may be awarded for prospective purchases or for acquisitions on which the  
58 applicant has closed. In the latter case the applicant shall demonstrate:

- 59 1. The closing occurred no more than 12 months prior to the date of application for the grant; and
- 60 2. An identifiable threat to the resource or compelling need for preservation existed at the time of the  
61 purchase.

62 G. Any eligible organization making an acquisition of land or interest therein pursuant to this section  
63 shall grant to the ~~Department~~ Board or other holder a perpetual easement placing restrictions on the use  
64 or development of the land. In cases where the easement is granted to a holder other than the  
65 ~~Department~~ Board, all terms and conditions of the easement shall be reviewed by and found by the  
66 Department to (i) be consistent with the intent and purpose of the Virginia Conservation Easement Act  
67 (§ 10.1-1009 et seq.) and (ii) accomplish the perpetual preservation of the Civil War historie site  
68 battlefield property. Such other holder shall demonstrate to the Department that it has the capacity and  
69 expertise to manage and enforce the terms of the easement.

70 H. Nothing in this section shall preclude the subsequent transfer or assignment by a state agency or  
71 other owner or holder of any property interest acquired pursuant to this section to the United States  
72 government, its agencies and instrumentalities, subject to conservation provisions consistent with this  
73 section of America to be incorporated into a national park, national forest, national wildlife refuge, or  
74 other national conservation area in accordance with 16 U.S.C. §§ 1, 551, 742(a), or 1131, as amended  
75 and applicable. The Department, acting on behalf of the Board, shall facilitate transfers and  
76 assignments of any such interests held by the Board. The United States of America shall be considered a  
77 "public body" as that term is defined in the Virginia Open-Space Land Act (§ 10.1-1700 et seq.) for the  
78 purposes of any transfer or assignment to the United States of America of any easement granted under  
79 this section.

80 I. The Director shall establish, administer, manage, and make expenditures and allocations from the  
81 Fund and shall establish guidelines for applications, ~~priority~~ evaluation, and award of grants from  
82 the Fund in consultation with appropriate Civil War battlefield preservation interests. Consideration shall  
83 be given, but not limited to, the following: *In making grants, the Department shall give primary*  
84 *consideration to the significance of the battlefield and the location of the proposed project in relation to*  
85 *core and study areas degree to which the property falls within the core and study areas of the specific*  
86 *battlefield, as described in the relevant report of the American Battlefield Protection Program, as well*  
87 *as proximity to other protected lands; threat to and integrity of the features associated with the battle in*  
88 *question; and the financial and administrative capacity of the applicant to complete the project and to*  
89 *maintain and manage the property in a manner that is consistent with the public investment and public*  
90 *interests, such as education, recreation, research, heritage tourism promotion, or orderly community*  
91 *development.*

92 **§ 58.1-512. Land preservation tax credits for individuals and corporations.**

93 A. For taxable years beginning on or after January 1, 2000, there shall be allowed as a credit against  
94 the tax liability imposed by §§ 58.1-320 and 58.1-400, an amount equal to 50 percent of the fair market  
95 value of any land or interest in land located in Virginia which is conveyed for the purpose of  
96 agricultural and forestal use, open space, natural resource, and/or biodiversity conservation, or land,  
97 agricultural, watershed and/or historic preservation, as an unconditional donation by the  
98 landowner/taxpayer to a public or private conservation agency eligible to hold such land and interests  
99 therein for conservation or preservation purposes. For such conveyances made on or after January 1,  
100 2007, the tax credit shall be 40 percent of the fair market value of the land or interest in land so  
101 conveyed.

102 B. The fair market value of qualified donations made under this section shall be determined in  
103 accordance with § 58.1-512.1 and substantiated by a "qualified appraisal" prepared by a "qualified  
104 appraiser," as those terms are defined under applicable federal law and regulations governing charitable  
105 contributions. The value of the donated interest in land that qualifies for credit under this section, as  
106 determined according to appropriate federal law and regulations, shall be subject to the limits established  
107 by United States Internal Revenue Code § 170(e). In order to qualify for a tax credit under this section,  
108 the qualified appraisal shall be signed by the qualified appraiser, who must be licensed in the  
109 Commonwealth of Virginia as provided in § 54.1-2011, and a copy of the appraisal shall be submitted to  
110 the Department. In the event that any appraiser falsely or fraudulently overstates the value of the  
111 contributed property in an appraisal that the appraiser has signed, the Department may disallow further  
112 appraisals signed by the appraiser and shall refer the appraiser to the Real Estate Appraiser Board for  
113 appropriate disciplinary action pursuant to § 54.1-2013, which may include, but need not be limited to,  
114 revocation of the appraiser's license. Any appraisal that, upon audit by the Department, is determined to  
115 be false or fraudulent, may be disregarded by the Department in determining the fair market value of the  
116 property and the amount of tax credit to be allowed under this section.

117 C. 1. The amount of the credit that may be claimed by each taxpayer, including credit claimed by

118 applying unused credits as provided under subsection C of § 58.1-513, shall not exceed \$50,000 for  
 119 2000 taxable years, \$75,000 for 2001 taxable years, \$100,000 for each of 2002 through 2008 taxable  
 120 years, \$50,000 for each of 2009, 2010, and 2011 taxable years, and \$100,000 for 2012 taxable years and  
 121 for each taxable year thereafter. In addition, for each taxpayer, in any one taxable year the credit used  
 122 may not exceed the amount of individual, fiduciary or corporate income tax otherwise due. Any portion  
 123 of the credit that is unused in any one taxable year may be carried over for a maximum of 10  
 124 consecutive taxable years following the taxable year in which the credit originated until fully expended.  
 125 A credit shall not be reduced by the amount of unused credit that could have been claimed in a prior  
 126 year by the taxpayer but was unclaimed. For taxpayers affected by the credit reduction for taxable years  
 127 2009, 2010, and 2011, any portion of the credit that is unused in any one taxable year may be carried  
 128 over for a maximum of 13 consecutive taxable years following the taxable year in which the credit  
 129 originated until fully expended.

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

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

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

158 4. Qualified donations shall be eligible for the tax credit herein described if such donations are made  
 159 to the Commonwealth of Virginia, an instrumentality thereof, or a charitable organization described in  
 160 § 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, if such charitable  
 161 organization (i) meets the requirements of § 509(a)(2) or (ii) meets the requirements of § 509(a)(3) and  
 162 is controlled by an organization described in § 509(a)(2).

163 5. The preservation, agricultural preservation, historic preservation or similar use and purpose of such  
 164 property shall be assured in perpetuity. In the case of conveyances of a fee interest to a charitable  
 165 organization that is a "holder" as defined in § 10.1-1009, the credit shall not be allowed until the  
 166 charitable organization agrees that subsequent conveyances of the fee interest in the property will be (i)  
 167 subject to a previous conveyance in perpetuity of a conservation easement, as that term is defined in  
 168 § 10.1-1009, or subject to the conveyance in perpetuity of an open-space easement, as that term is  
 169 defined in § 10.1-1700, or (ii) conveyed to the Commonwealth of Virginia or to a federal conservation  
 170 agency. No credit shall be allowed with respect to any subsequent conveyances by the charitable  
 171 organization.

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

175 1. The taxpayer shall apply for a credit after completing the donation by submitting a form or forms  
 176 prescribed by the Department in consultation with the Department of Conservation and Recreation. If the  
 177 application requests a credit of \$1 million or more or if the donation meets the conditions of subdivision  
 178 3 c, then a copy of the application shall also be filed with the Department of Conservation and

179 Recreation by the taxpayer. The application shall include, but not be limited to:  
180 a. A description of the conservation purpose or purposes being served by the donation;  
181 b. The fair market value of land being donated in the absence of any easement or other restriction;  
182 c. The public benefit derived from the donation;  
183 d. The extent to which water quality best management practices will be implemented on the property;  
184 and  
185 e. Whether the property is fully or partially forested and a forest management plan is included in the  
186 terms of the donation.

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

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

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

208 c. If (i) the real property that is the subject of the donation was partitioned from or part of another  
209 parcel of land and any other portion of such parcel, or any land partitioned from such parcel of land,  
210 has been allowed a tax credit under this article (or an application for tax credit is pending) within three  
211 years of such donation and (ii) the tax credit that would otherwise be allowed to the donor for such  
212 donation is at least \$250,000, then no credit under this article shall be issued with respect to such  
213 donation described in clause (i) unless the conservation value of the donation has been verified by the  
214 Director of the Department of Conservation and Recreation. The Director shall act on applications within  
215 90 days of his receipt of a complete application and shall notify the taxpayer and the Department of  
216 Taxation of his action. Nothing in this subdivision shall be construed or interpreted (a) as allowing  
217 additional tax credit for any land or interest in land previously conveyed for which tax credit has already  
218 been allowed under this article or (b) affecting the validity of any tax credit allowed under this article  
219 for a prior conveyance of any land or interest in land.

220 4. a. Tax credits shall be issued on a calendar year basis, and in no case shall the Department issue  
221 more than the maximum allowed for the calendar year. The maximum amount of credits that may be  
222 issued in a calendar year shall be \$100 million plus any credits previously issued under this article but  
223 subsequently disallowed or invalidated by the Department. Credits previously issued but subsequently  
224 disallowed or invalidated shall be reissued in a subsequent calendar year. All credits shall be issued in  
225 the order that each complete application is received. If within 30 days after an application for credits has  
226 been filed the Tax Commissioner provides written notice to the donor that he has determined that the  
227 preparation of a second qualified appraisal is warranted, the application shall not be deemed complete  
228 until the fair market value of the donation has been finally determined by the Tax Commissioner. The  
229 Tax Commissioner shall make a final determination within 180 days of notifying the donor, unless the  
230 donor has filed an appeal. The donor shall have the right to appeal any decision of the Department in  
231 accordance with the provisions of Chapter 18 (§ 58.1-1800 et seq.). If more than one complete  
232 application is received at the same time, the credits with respect to those applications shall be issued in  
233 the order that the conveyances were recorded in the appropriate circuit court of the Commonwealth. In  
234 the event that a credit requires verification of the conservation value by the Department of Conservation  
235 and Recreation and such verification has not been received at the time the maximum \$100 million  
236 allowed is reached for the calendar year of the donation, such credit shall not be issued for that calendar  
237 year but shall be issued in the calendar year that the conservation value of the credit is verified by the  
238 Department of Conservation and Recreation.

239 b. Beginning with calendar year 2008, the \$100 million amount contained in subdivision 4 a shall be

240 increased by an amount equal to \$100 million multiplied by the percentage by which the consumer price  
241 index for all-urban consumers published by the United States Department of Labor (CPI-U) for the  
242 12-month period ending August 31 of the preceding year exceeds the CPI-U for the 12-month period  
243 ending August 31, 2006.

244 c. Beginning with calendar year 2013, the maximum amount of credits that may be issued in a  
245 calendar year shall not exceed \$100 million. Beginning with the submission due on or before December  
246 20, 2013, and in each year thereafter, the Governor shall include in "The Budget Bill" submitted  
247 pursuant to subsection A of § 2.2-1509 or in his amendments to the general appropriation act in effect  
248 submitted pursuant to subsection E of § 2.2-1509 a recommended appropriation from the general fund  
249 equal to the difference between the amount calculated pursuant to subdivision b and \$100 million, but  
250 not more than \$20 million, to be allocated as follows: 80 percent to the Virginia Land Conservation  
251 Fund to be used in accordance with § 10.1-1020, with no less than 50 percent of such appropriation to  
252 be used for fee simple acquisitions with public access or acquisitions of easements with public access;  
253 10 percent to the ~~Civil War Site~~ *Virginia Battlefield* Preservation Fund to be used in accordance with  
254 § 10.1-2202.4; and 10 percent to the Virginia Farmland Preservation Fund to be used in accordance with  
255 § 3.2-201.

256 5. a. Any taxpayer that has been issued a tax credit by the Department shall be allowed to use such  
257 credit for his or its taxable year that begins in the calendar year for which such credit was issued and  
258 for succeeding taxable years in accordance with the 10 consecutive taxable year carryforward provisions  
259 of this article, except for any taxpayer affected by the credit limitation for taxable years 2009, 2010, and  
260 2011. Such a taxpayer shall be allowed to use such credit for his or its taxable year that begins in the  
261 calendar year for which such credit was issued and for succeeding taxable years in accordance with the  
262 13 consecutive taxable year carryforward provisions of this article.

263 b. Any taxpayer to whom a credit has been transferred may use such credit for the taxable year in  
264 which the transfer occurred and unused amounts may be carried forward to succeeding taxable years, but  
265 in no event may such transferred credit be used more than 11 years after it was originally issued by the  
266 Department or in any taxable year of such taxpayer that ended prior to the date of transfer, except for  
267 any taxpayer affected by the credit limitation for taxable years 2009, 2010, and 2011. Such a taxpayer  
268 may use such credit for the taxable year in which the transfer occurred and unused amounts may be  
269 carried forward to succeeding taxable years, but in no event may such transferred credit be used more  
270 than 14 years after it was originally issued by the Department or in any taxable year of such taxpayer  
271 that ended prior to the date of transfer.

272 6. Neither the verification of conservation value by the Department of Conservation and Recreation  
273 nor the issuance of a credit by the Department of Taxation shall in any way be construed or interpreted  
274 as prohibiting the Department of Taxation or the Tax Commissioner from auditing any credit claimed  
275 pursuant to the provisions of this article or from assessing tax relating to the claiming of any credit  
276 under this article.

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