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HOUSE BILL NO. 2193

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Agriculture, Chesapeake and Natural Resources
on February 4, 2015)

(Patron Prior to Substitute—Delegate Edmunds)

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

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-1509.4, 10.1-2202.4, 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 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 c of § 58.1-512 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 ~~Civil War Site~~ *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.

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

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

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

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

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

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

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

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

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

60 purchase.

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

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

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

91 **§ 58.1-512. Land preservation tax credits for individuals and corporations.**

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

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

116 C. 1. The amount of the credit that may be claimed by each taxpayer, including credit claimed by
117 applying unused credits as provided under subsection C of § 58.1-513, shall not exceed \$50,000 for
118 2000 taxable years, \$75,000 for 2001 taxable years, \$100,000 for each of 2002 through 2008 taxable
119 years, \$50,000 for each of 2009, 2010, and 2011 taxable years, and \$100,000 for 2012 taxable years and
120 for each taxable year thereafter. In addition, for each taxpayer, in any one taxable year the credit used
121 may not exceed the amount of individual, fiduciary or corporate income tax otherwise due. Any portion

of the credit that is unused in any one taxable year may be carried over for a maximum of 10 consecutive taxable years following the taxable year in which the credit originated until fully expended. A credit shall not be reduced by the amount of unused credit that could have been claimed in a prior year by the taxpayer but was unclaimed. For taxpayers affected by the credit reduction for taxable years 2009, 2010, and 2011, any portion of the credit that is unused in any one taxable year may be carried over for a maximum of 13 consecutive taxable years following the taxable year in which the credit originated until fully expended.

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

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

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

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

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

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

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

- a. A description of the conservation purpose or purposes being served by the donation;
- b. The fair market value of land being donated in the absence of any easement or other restriction;
- c. The public benefit derived from the donation;
- d. The extent to which water quality best management practices will be implemented on the property;

183 and

184 e. Whether the property is fully or partially forested and a forest management plan is included in the
185 terms of the donation.

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

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

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

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

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

238 b. Beginning with calendar year 2008, the \$100 million amount contained in subdivision 4 a shall be
239 increased by an amount equal to \$100 million multiplied by the percentage by which the consumer price
240 index for all-urban consumers published by the United States Department of Labor (CPI-U) for the
241 12-month period ending August 31 of the preceding year exceeds the CPI-U for the 12-month period
242 ending August 31, 2006.

243 c. Beginning with calendar year 2013, the maximum amount of credits that may be issued in a
244 calendar year shall not exceed \$100 million. Beginning with the submission due on or before December

20, 2013, and in each year thereafter, 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 equal to the difference between the amount calculated pursuant to subdivision b and \$100 million, but not more than \$20 million, to be allocated as follows: 80 percent 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 to the ~~Civil War Site~~ *Virginia Battlefield* Preservation Fund to be used in accordance with § 10.1-2202.4; and 10 percent to the Virginia Farmland Preservation Fund to be used in accordance with § 3.2-201.

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

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

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

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