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## SENATE BILL NO. 1540

Offered January 20, 2017

A *BILL to amend and reenact §§ 58.1-339.2, 58.1-439.12:08, 58.1-439.12:11, and 58.1-512 of the Code of Virginia, relating to certain tax credits; aggregate caps.*

Patron—Sturtevant

Referred to Committee on Finance

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

**1. That §§ 58.1-339.2, 58.1-439.12:08, 58.1-439.12:11, and 58.1-512 of the Code of Virginia are amended and reenacted as follows:**

**§ 58.1-339.2. Historic rehabilitation tax credit.**

A. 1. Effective for taxable years beginning on and after January 1, 1997, any individual, trust or estate, or corporation incurring eligible expenses in the rehabilitation of a certified historic structure shall be entitled to a credit against the tax imposed by Articles 2 (§ 58.1-320 et seq.), 6 (§ 58.1-360 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3; Chapter 12 (§ 58.1-1200 et seq.); Article 1 (§ 58.1-2500 et seq.) of Chapter 25; and Article 2 (§ 58.1-2620 et seq.) of Chapter 26, in accordance with the following schedule:

Year	% of Eligible Expenses
1997	10%
1998	15%
1999	20%
2000 and thereafter	25%

If the amount of such credit exceeds the taxpayer's tax liability for such taxable year, the amount that exceeds the tax liability may be carried over for credit against the taxes of such taxpayer in the next ten 10 taxable years or until the full credit is used, whichever occurs first. Credits granted to a partnership or electing small business corporation (S corporation) shall be passed through to the partners or shareholders, respectively. Credits granted to a partnership or electing small business corporation (S corporation) shall be allocated among all partners or shareholders, respectively, either in proportion to their ownership interest in such entity or as the partners or shareholders mutually agree as provided in an executed document, the form of which shall be prescribed by the Director of the Department of Historic Resources.

2. For calendar years beginning on or after January 1, 2017, but prior to January 1, 2019, the maximum amount of credits that may be issued pursuant to this section in a calendar year shall not exceed \$80 million. For calendar years beginning on or after January 1, 2019, but prior to January 1, 2021, the maximum amount of credits that may be issued in a calendar year shall not exceed \$60 million. For calendar years beginning on or after January 1, 2021, but prior to January 1, 2023, the maximum amount of credits that may be issued in a calendar year shall not exceed \$40 million. For calendar years beginning on or after January 1, 2023, but prior to January 1, 2025, the maximum amount of credits that may be issued in a calendar year shall not exceed \$20 million. For calendar years beginning on or after January 1, 2025, but prior to January 1, 2027, the maximum amount of credits that may be issued in a calendar year shall not exceed \$10 million. No credits shall be issued for taxable years beginning on and after January 1, 2027.

B. Effective for taxable years beginning on and after January 1, 2000, any individual, trust, estate, or corporation resident in Virginia that incurs eligible expenses in the rehabilitation of a certified historic structure in any other state that has in effect a reciprocal historic structure rehabilitation tax credit program and agreement for residents of that state who rehabilitate historic structures in Virginia shall be entitled to a credit to the same extent as provided in subsection A and other applicable provisions of law; however, no eligible party shall receive any credit authorized under this subsection prior to taxable years beginning on and after January 1, 2002.

C. To claim the credit authorized under this section, the taxpayer shall apply to the Virginia Department of Historic Resources, which shall determine the amount of eligible rehabilitation expenses and issue a certificate thereof to the taxpayer. The taxpayer shall attach the certificate to the Virginia tax return on which the credit is claimed.

**D. When used in this section:**

"Certified historic structure" means a property listed individually on the Virginia Landmarks Register, or certified by the Director of the Virginia Department of Historic Resources as contributing to the historic significance of a historic district that is listed on the Virginia Landmarks Register or certified by

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SB1540

59 the Director of the Virginia Department of Historic Resources as meeting the criteria for listing on the  
60 Virginia Landmarks Register.

61 "Eligible rehabilitation expenses" means expenses incurred in the material rehabilitation of a certified  
62 historic structure and added to the property's capital account.

63 "Material rehabilitation" means improvements or reconstruction consistent with "The Secretary of the  
64 Interior's Standards for Rehabilitation," the cost of which amounts to at least ~~fifty~~ 50 percent of the  
65 assessed value of such building for local real estate tax purposes for the year prior to the initial  
66 expenditure of any rehabilitation expenses, unless the building is an owner-occupied building, in which  
67 case the cost shall amount to at least ~~twenty-five~~ 25 percent of the assessed value of such building for  
68 local real estate tax purposes for the year prior to the initial expenditure of any rehabilitation expenses.

69 "Owner-occupied building" means any building that is used as a personal residence by the owner.

70 E. The Director of the Department of Historic Resources shall establish by regulation the  
71 requirements needed for this program, including the fees to defray necessary expenses thereof, and,  
72 except as otherwise prohibited by this section, the extent to which the availability of the credit provided  
73 by this section is coextensive with the availability of the federal tax credit for the rehabilitation of  
74 certified historic resources.

75 F. Any gain or income under federal law from the allocation or application of a tax credit under this  
76 section shall not be (i) taxable gain or income for purposes of the tax imposed pursuant to Article 2  
77 (§ 58.1-320 et seq.), (ii) taxable gain or income for purposes of the tax imposed pursuant to Article 6  
78 (§ 58.1-360 et seq.), or (iii) taxable gain or income for purposes of the tax imposed pursuant to Article  
79 10 (§ 58.1-400 et seq.). However, nothing in this subsection shall be construed or interpreted as allowing  
80 a subtraction or deduction for such gain or income under federal law if the gain or income is otherwise  
81 excluded, deducted, or subtracted in computing the respective tax set forth under clauses (i) ~~through~~, (ii),  
82 and (iii).

83 G. *The aggregate amount of credits available under this section shall be as follows:*

84 1. *For taxable years beginning on or after January 1, 2017, but prior to January 1, 2019, the total*  
85 *amount of credits granted for each of calendar years 2017 and 2018 shall not exceed \$80 million;*

86 2. *For taxable years beginning on or after January 1, 2019, but prior to January 1, 2021, the total*  
87 *amount of credits granted for each of calendar years 2019 and 2020 shall not exceed \$60 million;*

88 3. *For taxable years beginning on or after January 1, 2021, but prior to January 1, 2023, the total*  
89 *amount of credits granted for each of calendar years 2021 and 2022 shall not exceed \$40 million;*

90 4. *For taxable years beginning on or after January 1, 2023, but prior to January 1, 2025, the total*  
91 *amount of credits granted for each of calendar years 2023 and 2024 shall not exceed \$20 million;*

92 5. *For taxable years beginning on or after January 1, 2025, but prior to January 1, 2027, the total*  
93 *amount of credits granted for each of calendar years 2025 and 2026 shall not exceed \$10 million; and*

94 6. *No credits shall be granted for taxable years beginning on and after January 1, 2027.*

95 *In no case shall the Department of Historic Resources issue more than the maximum amount of*  
96 *credits allowed for the calendar year. Credits shall be issued in the order that each completed*  
97 *application is approved pursuant to subsection C.*

98 **§ 58.1-439.12:08. Research and development expenses tax credit.**

99 A. As used in this section, unless the context requires a different meaning:

100 "Virginia base amount" means the base amount as defined in § 41(c) of the Internal Revenue Code,  
101 as amended, that is attributable to Virginia, determined by (i) substituting "Virginia qualified research  
102 and development expense" for "qualified research expense"; (ii) substituting "Virginia qualified research"  
103 for "qualified research"; and (iii) instead of "fixed base percentage," using:

104 1. The percentage that the Virginia qualified research and development expense for the three taxable  
105 years immediately preceding the current taxable year in which the expense is incurred is of the  
106 taxpayer's total gross receipts for such years; or

107 2. The percentage that the Virginia qualified research and development expense for the applicable  
108 number of taxable years immediately preceding the current taxable year in which the expense is incurred  
109 is of the taxpayer's total gross receipts for such years, for the taxpayer that has fewer than three but at  
110 least one prior taxable year.

111 "Virginia gross receipts" means the same as "gross receipts" as defined in § 58.1-3700.1.

112 "Virginia qualified research" means qualified research, as defined in § 41(d) of the Internal Revenue  
113 Code, as amended, that is conducted in the Commonwealth.

114 "Virginia qualified research and development expenses" means qualified research expenses, as  
115 defined in § 41(b) of the Internal Revenue Code, as amended, incurred for Virginia qualified research.

116 B. For taxable years beginning on or after January 1, 2011, but before January 1, 2022 2027, a  
117 taxpayer shall be allowed a credit against the tax levied pursuant to § 58.1-320 or 58.1-400 in an  
118 amount equal to (i) 15 percent of the first \$300,000 in Virginia qualified research and development  
119 expenses paid or incurred by the taxpayer during the taxable year or (ii) 20 percent of the first \$300,000  
120 in Virginia qualified research and development expenses paid or incurred by the taxpayer during the

taxable year if the Virginia qualified research was conducted in conjunction with a Virginia public or private college or university, to the extent the expenses exceed the Virginia base amount for the taxpayer.

C. 1. Effective for taxable years beginning on or after January 1, 2016, at the election of the taxpayer, the credit otherwise allowed under this section shall be computed under this subsection and shall equal 10 percent of the difference of (i) the Virginia qualified research and development expenses paid or incurred by the taxpayer during the taxable year and (ii) 50 percent of the average Virginia qualified research and development expenses paid or incurred by the taxpayer for the three taxable years immediately preceding the taxable year for which the credit is being determined. If the taxpayer did not pay or incur Virginia qualified research and development expenses in any one of the three taxable years immediately preceding the taxable year for which the credit is being determined, the tax credit shall equal five percent of the Virginia qualified research and development expenses paid or incurred by the taxpayer during the relevant taxable year.

2. The aggregate amount of credits allowed to each taxpayer under this subsection shall not exceed \$45,000 for the taxable year, except that the aggregate amount of credits allowed to each taxpayer shall not exceed \$60,000 for the taxable year if the Virginia qualified research was conducted in conjunction with a Virginia public or private college or university.

D. The aggregate amount of credits available under this section for each fiscal year of the Commonwealth shall be as follows:

1. For taxable years beginning on or after January 1, 2014, but prior to January 1, 2016, the total amount of credits granted for each of fiscal years 2015 and 2016 shall not exceed \$6 million;

2. For taxable years beginning on or after January 1, 2016, *but prior to January 1, 2019*, the total amount of credits granted for each of fiscal year of the Commonwealth ~~beginning with fiscal year years 2017 through 2019~~ shall not exceed \$7 million;

3. *For taxable years beginning on or after January 1, 2019, but prior to January 1, 2021, the total amount of credits granted for each of fiscal years 2020 and 2021 shall not exceed \$5 million;*

4. *For taxable years beginning on or after January 1, 2021, but prior to January 1, 2023, the total amount of credits granted for each of fiscal years 2022 and 2023 shall not exceed \$4 million;*

5. *For taxable years beginning on or after January 1, 2023, but prior to January 1, 2025, the total amount of credits granted for each of fiscal years 2024 and 2025 shall not exceed \$3 million;*

6. *For taxable years beginning on or after January 1, 2025, but prior to January 1, 2027, the total amount of credits granted for each of fiscal years 2026 and 2027 shall not exceed \$2 million; and*

7. *No credits shall be granted for fiscal years beginning on and after January 1, 2027.*

E. A taxpayer meeting the requirements of this section shall be eligible to receive a tax credit as provided herein. The Department shall develop and publish guidelines for applications and such guidelines shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.). Applications must be received by the Department no later than July 1 of the calendar year following the close of the taxable year in which the expenses were paid or incurred. In the event approved applications for the tax credits allowed under this section exceed the amount of credits specified in subsection D for the taxable year, the Department shall apportion the credits by dividing the amount of credits specified in subsection D by the total amount of tax credits approved, to determine the percentage of allowed tax credits each taxpayer shall receive. In the event that the total amount of approved tax credits under this section for all applications for any taxable year is less than the maximum amount of credits for the year as specified in subsection D, the Department shall allocate credits up to the maximum amount as specified in subsection D, on a pro rata basis, to taxpayers who are already approved for the tax credit for the taxable year, in the following amounts:

1. If the taxpayer computed the credit pursuant to subsection B, in an amount equal to 15 percent of the second \$300,000 in qualified research expenses during the taxable year or 20 percent of the second \$300,000 in qualified research expenses if the Virginia qualified research was conducted in conjunction with a public or private college or university located in the Commonwealth; or

2. If the taxpayer computed the credit under subdivision C 1, in an amount equal to the excess of the limitation set forth in subdivision C 2, up to an additional \$45,000 per taxpayer, or \$60,000 per taxpayer if the Virginia qualified research was conducted in conjunction with a public or private college or university located in the Commonwealth.

F. If the amount of the credit allowed exceeds the taxpayer's tax liability for the taxable year, the amount that exceeds the tax liability shall be refunded to the taxpayer, subject to the limitations set forth in the guidelines developed by the Department.

G. Any taxpayer who claims the tax credit for Virginia qualified research and development expenses pursuant to this section shall not use such expenses as the basis for claiming any other credit provided under the Code of Virginia.

H. Effective for taxable years beginning on or after January 1, 2016, no taxpayer with Virginia

182 qualified research and development expenses in excess of \$5 million for the taxable year shall claim  
183 both the credit allowed pursuant to this section and the credit allowed under § 58.1-439.12:11 for such  
184 year.

185 I. Credits granted to a partnership, limited liability company, or electing small business corporation  
186 (S corporation) shall be allocated to the individual partners, members, or shareholders, respectively, in  
187 proportion to their ownership interests in such entities or in accordance with a written agreement entered  
188 into by such individual partners, members, or shareholders, unless the partnership, limited liability  
189 company, or electing small business corporation (S corporation) elects for such credits not to be so  
190 allocated but to be received and claimed at the entity level by the partnership, limited liability company,  
191 or electing small business corporation (S corporation) pursuant to guidelines that shall be issued by the  
192 Department for purposes of such election.

193 J. The Department shall adopt guidelines to prescribe standards for determining when research and  
194 development is considered conducted in the Commonwealth for purposes of allowing the credit under  
195 this section. In adopting guidelines, the Department may consider (i) the location where the research and  
196 development is performed; (ii) the residence or business location of the taxpayer or taxpayers conducting  
197 the research and development; (iii) the location where supplies used in the research and development are  
198 consumed; and (iv) any other factors that the Department deems to be relevant.

199 K. The Tax Commissioner's annual report to the Governor on revenue collections by tax source shall  
200 include (i) the total number of applicants approved for tax credits pursuant to this section for the  
201 applicable tax year and (ii) the total amount of such tax credits approved for the applicable tax year.

202 L. The Department shall require taxpayers applying for the credit to provide information including (i)  
203 the number of full-time employees employed by the taxpayer in the Commonwealth during the taxable  
204 year for which the credit is sought; (ii) the taxpayer's sector or sectors according to the 2012 edition of  
205 the North American Industry Classification System (NAICS) as published by the United States Census  
206 Bureau; (iii) a brief description of the area, discipline, or field of Virginia qualified research performed  
207 by the taxpayer; (iv) the total gross receipts or anticipated total gross receipts of the taxpayer for the  
208 taxable year for which the credit is sought; and (v) whether the Virginia qualified research was  
209 conducted in conjunction with a Virginia public or private college or university. The Department shall  
210 aggregate and summarize the information collected and make it available to the Governor and any  
211 member of the General Assembly upon request, regardless of the number of taxpayers applying for the  
212 credit.

213 M. No tax credit shall be allowed pursuant to this section if the otherwise qualified research and  
214 development expenses are paid for or incurred by a taxpayer for research conducted in the  
215 Commonwealth on human cells or tissue derived from induced abortions or from stem cells obtained  
216 from human embryos. The foregoing provision shall not apply to research conducted using stem cells  
217 other than embryonic stem cells.

218 **§ 58.1-439.12:11. Major research and development expenses tax credit.**

219 A. As used in this section, unless the context requires a different meaning:

220 "Virginia qualified research" means qualified research, as defined in § 41(d) of the Internal Revenue  
221 Code, as amended, that is conducted in the Commonwealth.

222 "Virginia qualified research and development expenses" means qualified research expenses, as  
223 defined in § 41(b) of the Internal Revenue Code, as amended, incurred for Virginia qualified research.

224 B. For taxable years beginning on or after January 1, 2016, but before January 1, 2022 2027, a  
225 taxpayer with Virginia qualified research and development expenses for the taxable year in excess of \$5  
226 million shall be allowed a credit against the tax levied pursuant to § 58.1-320 or 58.1-400 in an amount  
227 equal to 10 percent of the difference between (i) the Virginia qualified research and development  
228 expenses paid or incurred by the taxpayer during the taxable year and (ii) 50 percent of the average  
229 Virginia qualified research and development expenses paid or incurred by the taxpayer for the three  
230 taxable years immediately preceding the taxable year for which the credit is being determined. If the  
231 taxpayer did not pay or incur Virginia qualified research and development expenses in any one of the  
232 three taxable years immediately preceding the taxable year for which the credit is being determined, the  
233 tax credit shall equal five percent of the Virginia qualified research and development expenses paid or  
234 incurred by the taxpayer during the relevant taxable year.

235 C. The aggregate amount of credits ~~granted~~ *available under this section* for each fiscal year of the  
236 Commonwealth ~~pursuant to this section shall not exceed \$20 million~~ *be as follows:*

237 1. *For the taxable year beginning on or after January 1, 2016, but prior to January 1, 2017, the*  
238 *total amount of credits granted for fiscal year 2017 shall not exceed \$20 million;*

239 2. *For taxable years beginning on or after January 1, 2017, but prior to January 1, 2019, the total*  
240 *amount of credits granted for each of fiscal years 2018 and 2019 shall not exceed \$16 million;*

241 3. *For taxable years beginning on or after January 1, 2019, but prior to January 1, 2021, the total*  
242 *amount of credits granted for each of fiscal years 2020 and 2021 shall not exceed \$12 million;*

243 4. *For taxable years beginning on or after January 1, 2021, but prior to January 1, 2023, the total*

amount of credits granted for each of fiscal years 2022 and 2023 shall not exceed \$9 million;

5. For taxable years beginning on or after January 1, 2023, but prior to January 1, 2025, the total amount of credits granted for each of fiscal years 2024 and 2025 shall not exceed \$6 million;

6. For taxable years beginning on or after January 1, 2025, but prior to January 1, 2027, the total amount of credits granted for each of fiscal years 2026 and 2027 shall not exceed \$3 million; and

7. No credits shall be granted for fiscal years beginning on and after January 1, 2027.

D. In the event approved applications for the tax credits allowed under this section exceed \$20 million for any taxable year, the Department shall apportion the credits by dividing \$20 million by the total amount of tax credits approved, to determine the percentage of allowed tax credits each taxpayer shall receive.

E. The amount of the credit claimed for the taxable year shall not exceed 75 percent of the total amount of tax imposed by this chapter upon the taxpayer for the taxable year. Any credit not usable for the taxable year for which the credit was first allowed may be carried over for credit against the income taxes of the taxpayer in the next 10 succeeding taxable years or until the total amount of the tax credit has been taken, whichever is sooner.

F. Any taxpayer who claims the tax credit for Virginia qualified research and development expenses pursuant to this section shall not use such expenses as the basis for claiming any other credit provided under the Code of Virginia.

G. Credits granted to a partnership, limited liability company, or electing small business corporation (S corporation) shall be allocated to the individual partners, members, or shareholders, respectively, in proportion to their ownership interests in such entities or in accordance with a written agreement entered into by such individual partners, members, or shareholders.

H. The Department shall develop and publish guidelines under this section including guidelines for applying for the tax credit. Such guidelines shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.). Applications for the tax credit must be received by the Department no later than July 1 of the calendar year following the close of the taxable year in which the expenses were paid or incurred.

The Department shall also adopt guidelines to prescribe standards for determining when research and development is considered conducted in the Commonwealth for purposes of allowing the credit under this section. In adopting guidelines, the Department may consider (i) the location where the research and development is performed; (ii) the residence or business location of the taxpayer or taxpayers conducting the research and development; (iii) the location where supplies used in the research and development are consumed; and (iv) any other factors that the Department deems to be relevant.

I. No tax credit shall be allowed pursuant to this section, if the otherwise qualified research and development expenses are paid for or incurred by a taxpayer for research conducted in the Commonwealth on human cells or tissue derived from induced abortions or from stem cells obtained from human embryos. The foregoing provision shall not apply to research conducted using stem cells other than embryonic stem cells.

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

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

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

be false or fraudulent, may be disregarded by the Department in determining the fair market value of the property and the amount of tax credit to be allowed under this section.

C. 1. The amount of the credit that may be claimed by each taxpayer, including credit claimed by applying unused credits as provided under subsection C of § 58.1-513, shall not exceed \$50,000 for 2000 taxable years; \$75,000 for 2001 taxable years; \$100,000 for each of 2002 through 2008 taxable years; \$50,000 for each of 2009, 2010, and 2011 taxable years; \$100,000 for each of 2012, 2013, and 2014 taxable years; \$20,000 for each of 2015 and 2016 taxable years; and \$50,000 for 2017 taxable years and for each taxable year thereafter. However, for any fee simple donation of land conveyed to the Commonwealth on or after January 1, 2015, the amount of the credit claimed shall not exceed \$100,000 for each taxable year, provided that no part of the charitable contributions deduction under § 170 of the Internal Revenue Code related to such fee simple donation is allowable by reason of a sale or exchange of property. In addition, for each taxpayer, in any one taxable year the credit used 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, 2011, and 2015 and thereafter, 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;
- and
- e. Whether the property is fully or partially forested and a forest management plan is included in the terms of the donation.

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

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

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

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

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

more than one complete application is filed at the same time, the credits with respect to those applications shall be issued in the order that the conveyances were recorded in the appropriate circuit court of the Commonwealth. In the event that a credit requires verification of the conservation value by the Department of Conservation and Recreation and such verification has not been received at the time the maximum \$100 million allowed is reached for the calendar year of the donation, such credit shall not be issued for that calendar year but shall be issued in the calendar year that the conservation value of the credit is verified by the Department of Conservation and Recreation.

No credit shall be allowed for any land or interest in land conveyed on or after July 1, 2015, unless a complete application for tax credit with regard to the conveyance has been filed with the Department by December 31 of the year following the calendar year of the conveyance. For filings by mail or a recognized commercial delivery service, the postmark or confirmation of shipment shall determine the date of filing. Solely for purposes of this condition, any application for which the Tax Commissioner has given written notice to the donor that the preparation of a second qualified appraisal is warranted shall be deemed timely filed, provided that the application was otherwise complete as of such filing deadline.

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

c. ~~Beginning with~~ For calendar year years beginning on or after January 1, 2015, but prior to January 1, 2017, the maximum amount of credits that may be issued in a calendar year shall not exceed \$75 million. For calendar years beginning on or after January 1, 2017, but prior to January 1, 2019, the maximum amount of credits that may be issued in a calendar year shall not exceed \$60 million. For calendar years beginning on or after January 1, 2019, but prior to January 1, 2021, the maximum amount of credits that may be issued in a calendar year shall not exceed \$48 million. For calendar years beginning on or after January 1, 2021, but prior to January 1, 2023, the maximum amount of credits that may be issued in a calendar year shall not exceed \$36 million. For calendar years beginning on or after January 1, 2023, but prior to January 1, 2025, the maximum amount of credits that may be issued in a calendar year shall not exceed \$24 million. For calendar years beginning on or after January 1, 2025, but prior to January 1, 2027, the maximum amount of credits that may be issued in a calendar year shall not exceed \$12 million. In no case shall the Department issue any tax credit for a donation from any allocation or pool of tax credits attributable to a calendar year prior to the year in which the complete tax credit application for the donation was filed. No credits shall be issued pursuant to this chapter for calendar years beginning on and after January 1, 2027.

Beginning with the submission due on or before December 20, 2015, 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 \$75 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 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, 2011, and 2015 and taxable years thereafter. 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, 2011, and 2015 and taxable years thereafter. 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



490 nor the issuance of a credit by the Department of Taxation shall in any way be construed or interpreted  
491 as prohibiting the Department of Taxation or the Tax Commissioner from auditing any credit claimed  
492 pursuant to the provisions of this article or from assessing tax relating to the claiming of any credit  
493 under this article.

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