

22104657D

SENATE BILL NO. 31

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources
on January 18, 2022)

(Patron Prior to Substitute—Senator Marsden)

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

Be it enacted by the General Assembly of Virginia:

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

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

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

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

A. The Foundation shall be governed and administered by a Board of Trustees. The Board shall have a total membership of 19 members that shall consist of 17 citizen members and two ex officio voting members as follows: four citizen members, who may be members of the House of Delegates, to be appointed by the Speaker of the House of Delegates and, if such members are members of the House of Delegates, in accordance with the principles of proportional representation contained in the Rules of the House of Delegates; two citizen members, who may be members of the Senate, to be appointed by the Senate Committee on Rules; 11 nonlegislative citizen members, one from each congressional district, to be appointed by the Governor; and the Secretary of Natural and Historic Resources, or his designee, and the Secretary of Agriculture and Forestry, or his designee, to serve ex officio with voting privileges. Nonlegislative citizen members shall be appointed for four-year terms, except that initial appointments shall be made for terms of one to four years in a manner whereby no more than six members shall have terms that expire in the same year. Legislative members and the ex officio member shall serve terms coincident with their terms of office. Appointments to fill vacancies, other than by expiration of a term, shall be made for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments. All members may be reappointed. However, no Senate member shall serve more than two consecutive four-year terms, no House member shall serve more than four consecutive two-year terms and no nonlegislative citizen member shall serve more than two consecutive four-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment. Nonlegislative citizen members shall have experience or expertise, professional or personal, in one or more of the following areas: natural resource protection and conservation, construction and real estate development, natural habitat protection, environmental resource inventory and identification, forestry management, farming, farmland preservation, fish and wildlife management, historic preservation, and outdoor recreation. At least one of the nonlegislative citizen members shall be a farmer, *and at least one shall be a member of a state-recognized or federally recognized Virginia Indian Tribe*. Members of the Board shall post bond in the penalty of \$5,000 with the State Comptroller prior to entering upon the functions of office.

B. The Secretary of Natural and Historic Resources shall serve as the chairman of the Board of Trustees. The chairman shall serve until his successor is appointed. The members appointed as provided in subsection A shall elect a vice-chairman annually from among the members of the Board. A majority of the members of the Board serving at any one time shall constitute a quorum for the transaction of business. The board shall meet at the call of the chairman or whenever a majority of the members so request.

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

D. The chairman of the Board and any other person designated by the Board to handle the funds of

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

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

70 **§ 10.1-1018.1. Reporting.**

71 The chairman of the Board shall submit to the Governor and the General Assembly, including the
72 Chairmen of the House Committee on Appropriations, the House Committee on Agriculture, Chesapeake
73 and Natural Resources, the Senate Committee on Finance and Appropriations, and the Senate Committee
74 on Agriculture, Conservation and Natural Resources, and to the Director of the Department of Planning
75 and Budget an executive summary and report of the ~~interim~~ activity and work of the Board on or before
76 December 15 of each ~~even-numbered~~ year. The document shall report on the status of the Foundation
77 and its Fund, including (i) land conservation targeting tools developed for the Foundation; (ii)
78 descriptions of projects that received funding; (iii) a description of the geographic distribution of land
79 protected as provided in § 10.1-1021.1; (iv) expenditures from, interest earned by, and financial
80 obligations of the Fund; and (v) progress made toward recognized state and regional land conservation
81 goals, including what percentage of properties conserved were identified by ConserveVirginia, pursuant
82 to § 10.1-104.6:1, and ~~whether a summary of the identified~~ conservation values that were protected. *The*
83 *report shall also estimate the funds needed to achieve goals established by the Board for (a) natural*
84 *area protection, (b) open spaces and parks, (c) farmland preservation, (d) forest land preservation, (e)*
85 *historical and cultural sites, (f) meeting the needs of under-resourced communities, and (g) any other*
86 *goal determined by the Board.* The executive summary and report shall be submitted as provided in the
87 procedures of the Division of Legislative Automated Systems for the processing of legislative documents
88 and reports and shall be posted on the General Assembly's website.

89 **§ 10.1-1020. Virginia Land Conservation Fund; purposes of Foundation.**

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

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

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

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

119 B. The Fund shall consist of general fund moneys and gifts, endowments or grants from the United
120 States government, its agencies and instrumentalities, and funds from any other available sources, public
121 or private. Such moneys, gifts, endowments, grants or funds from other sources may be either restricted

or unrestricted. For the purposes of this chapter, "restricted funds" shall mean those funds received by the Board to which specific conditions apply; "restricted funds" shall include, but not be limited to, general obligation bond moneys and conditional gifts. "Unrestricted funds" shall mean those received by the Foundation to which no specific conditions apply; "unrestricted funds" shall include, but not be limited to, moneys appropriated to the Fund by the General Assembly to which no specific conditions are attached and unconditional gifts.

Beginning July 1, 2019, the Foundation shall conduct a grant round each year to identify and rank projects for the subsequent fiscal year. Biennially in the odd-numbered years, the Foundation shall assume an amount of funding of the grant program as provided in the general appropriation act. Biennially in the even-numbered years, the Foundation shall assume the most recent amount of funding of the grant program as specified in the most recently enacted general appropriation act. On or before December 15 of each year, the chairman of the Board of Trustees shall provide copies of such project rankings to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance and Appropriations. At the beginning of each fiscal year, the Foundation shall finalize grant awards based on the funded level appropriated for that year, as provided in subsections C and D. Any ranked project that does not receive a proposed grant as a result of an insufficiency in appropriated funds shall be eligible to participate in a subsequent grant round.

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

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

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

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

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

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

E. Any moneys remaining in the Fund at the end of a biennium shall remain in the Fund, and shall not revert to the general fund. Interest earned on moneys received by the Fund other than bond proceeds shall remain in the Fund and be credited to it. Any funds transferred to the Open-Space Lands Preservation Trust Fund pursuant to this section and not disbursed or committed to a project by the end of the fiscal year in which the funds were transferred shall be returned to the Virginia Land Conservation Fund and shall be redistributed among the authorized grant uses during the next grant cycle.

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

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

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

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

§ 10.1-1021. Powers of the Foundation.

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

1. To prepare a comprehensive plan that recognizes and seeks to implement all of the purposes for

183 which the Foundation is created. In preparing this plan, the Foundation shall:

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

187 (1) The ecological, outdoor recreational, historic, agricultural, and forestal value of the property;

188 (2) An assessment of market values;

189 (3) Consistency with local comprehensive plans;

190 (4) Geographical balance of properties and interests in properties to be purchased;

191 (5) Availability of public and private matching funds to assist in the purchase;

192 (6) Imminent danger of loss of natural, outdoor, recreational, or historic attributes of a significant
193 portion of the land;

194 (7) Economic value to the locality and region attributable to the purchase;

195 (8) Advisory opinions from local governments, state agencies, or others; ~~and~~

196 (9) Whether the property has been identified by ConserveVirginia and whether the proposal seeks to
197 preserve the conservation values identified by ConserveVirginia; *and*

198 *(10) Whether the property is in an area lacking outdoor recreation facilities;*

199 b. Develop an inventory of those properties in which the Commonwealth holds a legal interest for
200 the purpose set forth in subsection A of § 10.1-1020;

201 c. Develop a needs assessment for future expenditures from the Fund. In developing the needs
202 assessment, the Board of Trustees shall consider among others the properties identified in the following:

203 (i) ConserveVirginia, (ii) Virginia Outdoors Plan, (iii) Virginia Natural Heritage Plan, (iv) Virginia
204 Institute of Marine Science Inventory, (v) Virginia Joint Venture Board of the North American
205 Waterfowl Management Plan, and (vi) Virginia Board of Historic Resources Inventory. In addition, the
206 Board shall consider any information submitted by the Department of Agriculture and Consumer
207 Services on farmland preservation priorities and any information submitted by the Department of
208 Forestry on forest land initiatives and inventories; and

209 d. Maintain the inventory and needs assessment on an annual basis.

210 2. To expend directly or allocate the funds received by the Foundation to the appropriate state
211 agencies for the purpose of acquiring those properties or property interests selected by the Board of
212 Trustees. In the case of restricted funds the Board's powers shall be limited by the provisions of
213 § 10.1-1022.

214 3. To enter into contracts and agreements, as approved by the Attorney General, to accomplish the
215 purposes of the Foundation.

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

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

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

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

225 **§ 58.1-512. Land preservation tax credits for individuals and corporations.**

226 A. 1. For taxable years beginning on or after January 1, 2000, there shall be allowed as a credit
227 against the tax liability imposed by §§ 58.1-320 and 58.1-400, an amount equal to 50 percent of the fair
228 market value of any land or interest in land located in Virginia that is conveyed for the purpose of
229 agricultural and forestal use, open space, natural resource, and/or biodiversity conservation, or land,
230 agricultural, watershed and/or historic preservation, as an unconditional donation by the
231 landowner/taxpayer to a public or private conservation agency eligible to hold such land and interests
232 therein for conservation or preservation purposes. For such conveyances made on or after January 1,
233 2007, the tax credit shall be 40 percent of the fair market value of the land or interest in land so
234 conveyed.

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

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

242 B. The fair market value of qualified donations made under this section shall be determined in
243 accordance with § 58.1-512.1 and substantiated by a "qualified appraisal" prepared by a "qualified
244 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, 2016, and 2017 taxable years; and \$50,000 for 2018 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 and Appropriations. 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 unless (i) for a conveyance made before January 1, 2020, a complete application for tax credit with regard to the conveyance has been filed with the Department by December 31 of the third year following the calendar year of the conveyance or (ii) for a conveyance made on or after January 1, 2020, a complete application for tax credit with regard to the conveyance has been filed with the Department by December 31 of the second 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 calendar year 2015, the maximum amount of credits that may be issued in a calendar year shall not exceed \$75 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.

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

429 taxable year of such taxpayer that ended prior to the date of transfer.

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

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