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## SENATE BILL NO. 616

Offered January 10, 2024

Prefiled January 10, 2024

*A BILL to amend and reenact §§ 2.2-1509.4, 3.2-102, as it is currently effective and as it shall become effective, 10.1-1105.1, 46.2-749.102, and 58.1-512 of the Code of Virginia; to amend the Code of Virginia by adding in Chapter 11 of Title 10.1 an article numbered 2.1, consisting of sections numbered 10.1-1119.2 through 10.1-1119.7; and to repeal Chapter 2 (§§ 3.2-200 through 3.2-205) of Title 3.2 of the Code of Virginia, relating to Department of Agriculture and Consumer Services; Department of Forestry; Office of Farmland Preservation transferred.*

Patron—Pillion

Referred to Committee on Agriculture, Conservation and Natural Resources

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

**1. That §§ 2.2-1509.4, 3.2-102, as it is currently effective and as it shall become effective, 10.1-1105.1, 46.2-749.102, and 58.1-512 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 11 of Title 10.1 an article numbered 2.1, consisting of sections numbered 10.1-1119.2 through 10.1-1119.7, 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 Virginia Battlefield Preservation Fund to be used in accordance with § 10.1-2202.4; and 10 percent of such amount to the Virginia Farmland and Forestland Preservation Fund to be used in accordance with § ~~3.2-204~~ 10.1-1119.3.

**§ 3.2-102. (Effective until July 1, 2024) General powers and duties of the Commissioner.**

A. The Commissioner shall be vested with the powers and duties set out in § 2.2-601, the powers and duties herein provided, and such other powers and duties as may be prescribed by law, including those prescribed in Title 59.1. He shall be the executive officer of the Board, and shall see that its orders are carried out. He shall see to the proper execution of laws relating to the Department. Unless the Governor expressly reserves such power to himself, the Commissioner shall promote, protect, and develop the agricultural interests of the Commonwealth. The Commissioner shall develop, implement, and maintain programs within the Department including those that promote the development and marketing of the Commonwealth's agricultural products in domestic and international markets, including promotions, market development and research, marketing assistance, market information, and product grading and certification; promote the creation of new agribusiness including new crops, biotechnology and new uses of agricultural products, and the expansion of existing agribusiness within the Commonwealth; develop, promote, and maintain consumer protection programs that protect the safety and quality of the Commonwealth's food supply through food and dairy inspection activities, industry and consumer education, and information on food safety; *work with other state agencies to preserve the Commonwealth's agricultural lands; ensure animal health and protect the Commonwealth's livestock industries through disease control and surveillance, maintaining animal health diagnostic laboratories, and encouraging the humane treatment and care of animals; protect public health and the environment through regulation and proper handling of pesticides, agricultural stewardship, and protection of endangered plant and insect species; protect crop and plant health and productivity; ensure consumer protection and fair trade practices in commerce; develop plans and emergency response protocols to protect the agriculture industry from bioterrorism, plant and animal diseases, and agricultural pests; assist as directed by the Governor in the Commonwealth's response to natural disasters; develop and implement programs and inspection activities to ensure that the Commonwealth's agricultural products move freely in trade domestically and internationally; and enter into agreements with federal, state, and local governments, land grant universities, and other organizations that include marketing, plant protection, pest control, pesticides, and meat and poultry inspection.*

B. In addition, the Commissioner shall:

1. Establish and maintain a farm-to-school website. The purpose of the website shall be to facilitate and promote the purchase of Virginia farm products by schools, universities, and other educational

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59 institutions under the jurisdiction of the State Department of Education. The website shall present such  
60 current information as the availability of Virginia farm products, including the types and amount of  
61 products, and the names of and contact information for farmers, farm organizations, and businesses  
62 marketing such products;

63 2. Establish and operate a nonprofit, nonstock corporation under Chapter 10 (§ 13.1-801 et seq.) of  
64 Title 13.1 as a public instrumentality exercising public and essential governmental functions to promote,  
65 develop, and sustain markets for licensed Virginia wineries and farm wineries, as defined in § 4.1-100.  
66 Such corporation shall provide wholesale wine distribution services for wineries and farm wineries  
67 licensed in accordance with § 4.1-206.1. The board of directors of such corporation shall be composed  
68 of the Commissioner and four members appointed by the Board, including one owner or manager of a  
69 winery or farm winery licensee that is not served by a wholesaler when the owner or manager is  
70 appointed to the board; one owner or manager of a winery or farm winery licensee that produces no  
71 more than 10,000 cases per year; and two owners or managers of wine wholesaler licensees. In making  
72 appointments to the board of directors, the Board shall consider nominations of winery and farm winery  
73 licensees submitted by the Virginia Wineries Association and wine wholesale licensees submitted by the  
74 Virginia Wine Wholesalers Association. The Commissioner shall require such corporation to report to  
75 him at least annually on its activities, including reporting the quantity of wine distributed for each  
76 winery and farm winery during the preceding year. The provisions of the Virginia Public Procurement  
77 Act shall not apply to the establishment of such corporation nor to the exercise of any of its powers  
78 granted under this section;

79 3. Promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) not  
80 inconsistent with the laws of Virginia necessary to carry out the provisions of Article 1.1:1 (§  
81 18.2-340.15 et seq.) of Chapter 8 of Title 18.2. Such regulations may include penalties for violations;  
82 and

83 4. Ensure that the Department compiles and publishes the annual report relating to foreign adversary  
84 ownership of agricultural land required under § 55.1-509.

85 **§ 3.2-102. (Effective July 1, 2024) General powers and duties of the Commissioner.**

86 A. The Commissioner shall be vested with the powers and duties set out in § 2.2-601, the powers  
87 and duties herein provided, and such other powers and duties as may be prescribed by law, including  
88 those prescribed in Title 59.1. He shall be the executive officer of the Board, and shall see that its  
89 orders are carried out. He shall see to the proper execution of laws relating to the Department. Unless  
90 the Governor expressly reserves such power to himself, the Commissioner shall promote, protect, and  
91 develop the agricultural interests of the Commonwealth. The Commissioner shall develop, implement,  
92 and maintain programs within the Department including those that promote the development and  
93 marketing of the Commonwealth's agricultural products in domestic and international markets, including  
94 promotions, market development and research, marketing assistance, market information, and product  
95 grading and certification; promote the creation of new agribusiness including new crops, biotechnology  
96 and new uses of agricultural products, and the expansion of existing agribusiness within the  
97 Commonwealth; develop, promote, and maintain consumer protection programs that protect the safety  
98 and quality of the Commonwealth's food supply through food and dairy inspection activities, industry  
99 and consumer education, and information on food safety; *work with other state agencies* to preserve the  
100 Commonwealth's agricultural lands; ensure animal health and protect the Commonwealth's livestock  
101 industries through disease control and surveillance, maintaining animal health diagnostic laboratories,  
102 and encouraging the humane treatment and care of animals; protect public health and the environment  
103 through regulation and proper handling of pesticides, agricultural stewardship, and protection of  
104 endangered plant and insect species; protect crop and plant health and productivity; ensure consumer  
105 protection and fair trade practices in commerce; develop plans and emergency response protocols to  
106 protect the agriculture industry from bioterrorism, plant and animal diseases, and agricultural pests; assist  
107 as directed by the Governor in the Commonwealth's response to natural disasters; develop and  
108 implement programs and inspection activities to ensure that the Commonwealth's agricultural products  
109 move freely in trade domestically and internationally; and enter into agreements with federal, state, and  
110 local governments, land grant universities, and other organizations that include marketing, plant  
111 protection, pest control, pesticides, and meat and poultry inspection.

112 B. In addition, the Commissioner shall:

113 1. Establish and maintain a farm-to-school website. The purpose of the website shall be to facilitate  
114 and promote the purchase of Virginia farm products by schools, universities, and other educational  
115 institutions under the jurisdiction of the State Department of Education. The website shall present such  
116 current information as the availability of Virginia farm products, including the types and amount of  
117 products, and the names of and contact information for farmers, farm organizations, and businesses  
118 marketing such products;

119 2. Establish and operate a nonprofit, nonstock corporation under Chapter 10 (§ 13.1-801 et seq.) of  
120 Title 13.1 as a public instrumentality exercising public and essential governmental functions to promote,

develop, and sustain markets for licensed Virginia wineries and farm wineries, as defined in § 4.1-100. Such corporation shall provide wholesale wine distribution services for wineries and farm wineries licensed in accordance with § 4.1-206.1. The board of directors of such corporation shall be composed of the Commissioner and four members appointed by the Board, including one owner or manager of a winery or farm winery licensee that is not served by a wholesaler when the owner or manager is appointed to the board; one owner or manager of a winery or farm winery licensee that produces no more than 10,000 cases per year; and two owners or managers of wine wholesaler licensees. In making appointments to the board of directors, the Board shall consider nominations of winery and farm winery licensees submitted by the Virginia Wineries Association and wine wholesale licensees submitted by the Virginia Wine Wholesalers Association. The Commissioner shall require such corporation to report to him at least annually on its activities, including reporting the quantity of wine distributed for each winery and farm winery during the preceding year. The provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.) shall not apply to the establishment of such corporation nor to the exercise of any of its powers granted under this section;

3. Establish and operate a nonprofit, nonstock corporation under Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 as a public instrumentality exercising public and essential governmental functions to promote, develop, and sustain markets for Virginia breweries and limited breweries. Such corporation shall provide wholesale beer distribution services for Virginia breweries and limited breweries licensed in accordance with § 4.1-206.1. The board of directors of such corporation shall be composed of the Commissioner and four members appointed by the Board, (i) two of whom shall be an owner or manager of a Virginia beer wholesale licensee, (ii) one of whom shall be an owner or manager of a brewery or limited brewery licensee, and (iii) one of whom shall be an owner or manager of a brewery or limited brewery licensee that is not served by a wholesaler at the time such owner or manager is appointed to the board of directors. In making appointments to the board of directors, the Board shall consider nominations submitted by the Virginia Beer Wholesalers Association regarding members listed in clause (i) and nominations submitted by the Virginia Craft Brewers Guild regarding members listed in clauses (ii) and (iii). At least annually, such corporation shall be required to report to the Commissioner on its activities, including reporting the quantity of beer distributed for each brewery or limited brewery licensee during the preceding year. The Commissioner shall report such information to the General Assembly. The provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.) shall not apply to the establishment of such corporation nor to the exercise of any of its powers granted under this section;

4. Promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) not inconsistent with the laws of Virginia necessary to carry out the provisions of Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2. Such regulations may include penalties for violations; and

5. Ensure that the Department compiles and publishes the annual report relating to foreign adversary ownership of agricultural land required under § 55.1-509.

#### **§ 10.1-1105.1. Century forest and farm programs.**

A. The State Forester shall establish and administer a century forest program to honor families in the Commonwealth whose property has been in the same family for 100 years or more and includes at least 20 contiguous acres of managed forest. In order to be eligible for recognition under the program, a property shall (i) have been owned by the same family for at least 100 consecutive years; (ii) be lived on, or actually managed by, a descendant of the original owners; and (iii) have a documented history of timber harvests or forest management activities.

B. *The State Forester shall establish and administer a century farm program to honor farm families in the Commonwealth whose property has been in the same family for 100 years or more. In order to be eligible for recognition under the program, a farm shall (i) have been owned by the same family for at least 100 consecutive years; (ii) be lived on, or actually farmed, by a descendant of the original owners; and (iii) gross more than \$2,500 annually from the sale of farm products.*

#### *Article 2.1.*

#### *Office of Working Lands Preservation.*

#### **§ 10.1-1119.2. Office of Working Lands Preservation established.**

A. *The Office of Working Lands Preservation is established in the Department of Forestry under the supervision of the State Forester.*

B. *As used in this article, unless the context requires a different meaning:*

*"Fund" means the Virginia Farmland and Forestland Preservation Fund.*

*"Office" means the Office of Working Lands Preservation.*

#### **§ 10.1-1119.3. Powers and duties of the Office; Virginia Farmland and Forestland Preservation Fund.**

A. *The Office shall have the following powers and duties:*

1. *To develop, in cooperation with the Department of Small Business and Supplier Diversity, the*

182 Virginia Farm Bureau Federation, the American Farmland Trust, the Virginia Land Conservation  
183 Foundation, the Virginia Outdoors Foundation, the Virginia Association of Counties, and the Virginia  
184 Cooperative Extension, (i) model policies and practices that may be used as a guide to establish local  
185 purchase of development rights programs; (ii) criteria for the certification of local purchase of  
186 development rights programs as eligible to receive grants, loans, or other funds from public sources;  
187 and (iii) methods and sources of revenue for allocating funds to localities to purchase agricultural  
188 conservation easements;

189 2. To create programs to educate the public about the importance of farmland preservation to the  
190 quality of life in the Commonwealth;

191 3. To provide technical, professional, and other assistance to farmers on matters related to farmland  
192 preservation;

193 4. To provide technical, professional, and other assistance to local governments interested in  
194 developing additional farmland preservation policies and programs. Such policies and programs shall  
195 include (i) use value assessment and taxation pursuant to §§ 58.1-3230 and 58.1-3231; (ii) transfer of  
196 development rights pursuant to Article 7.1 (§ 15.2-2316.1 et seq.) of Chapter 22 of Title 15.2; (iii)  
197 agricultural and forestal districts pursuant to Chapter 43 (§ 15.2-4300 et seq.) of Title 15.2; and (iv)  
198 establishment of local lease of development rights; and

199 5. To administer the Virginia Farm Link Program established pursuant to § 10.1-1119.4.

200 B. State grants shall be distributed to local purchase of development rights programs under policies,  
201 procedures, and guidelines developed by the Office. In general, for each \$1 in grant moneys awarded by  
202 the Office, the applicable local purchase of development rights program of the county or city shall be  
203 required to provide a \$1 match. However, as part of these policies, procedures, and guidelines  
204 developed by the Office, the Office shall include incentives that recognize and encourage counties and  
205 cities participating in use value taxation pursuant to Article 4 (§ 58.1-3229 et seq.) of Chapter 32 of  
206 Title 58.1.

207 C. There is hereby created in the state treasury a special nonreverting fund to be known as the  
208 Virginia Farmland and Forestland Preservation Fund. The Fund shall be established on the books of  
209 the Comptroller. The Fund shall consist of all moneys appropriated to it by the General Assembly and  
210 such moneys as may be made available from any other source, public or private. All moneys shall be  
211 paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall  
212 remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon,  
213 at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys  
214 in the Fund shall be used solely for the purposes of carrying out the provisions of this article.  
215 Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued  
216 by the Comptroller upon written request signed by the State Forester.

217 **§ 10.1-1119.4. Virginia Farm Link Program.**

218 The Virginia Farm Link Program is hereby established in the Office to assist retiring farmers and  
219 individuals seeking to become active farmers in the transition of farm businesses and properties from  
220 retiring farmers to active farmers. Such assistance shall include (i) assistance in the preparation of  
221 business plans for the transition of business interests; (ii) assistance in the facilitation of transfers of  
222 existing properties and agricultural operations to interested buyers; (iii) information on innovative  
223 farming methods and techniques; and (iv) research assistance on agricultural, financial, marketing, and  
224 other matters.

225 **§ 10.1-1119.5. Reporting requirements.**

226 The State Forester shall submit a written report on the operation of the Office by December 1 of  
227 each year to the Chairmen of the House Committee on Agriculture, Chesapeake and Natural Resources  
228 and the Senate Committee on Agriculture, Conservation and Natural Resources. The provisions of this  
229 article shall not preclude local purchase of development rights programs established pursuant to the  
230 Open-Space Land Act (§ 10.1-1700 et seq.) from being eligible to receive grants, loans, or other funds  
231 from public sources.

232 **§ 10.1-1119.6. Review of capital projects and availability of working lands.**

233 In preparing its report on each major state project, as required in Article 2 (§ 10.1-1188 et seq.) of  
234 Chapter 11.1, or any land that is utilized for nonpoint source credits as authorized in § 62.1-44.19:20  
235 and impacts the availability of production farm and forest land, each state agency shall demonstrate  
236 that it has considered the impact that project would have on the availability of working farm and forest  
237 lands as required in § 10.1-1119.7, and has adequately considered alternatives and mitigating measures.  
238 The Department of Environmental Quality, in conducting its review of each major state project, shall  
239 ensure that such consideration has been demonstrated and shall incorporate its evaluation of the effects  
240 that project would have on the availability of working farm and forest lands in its comments to the State  
241 Forester and Governor. The procedures for review of highway and road construction projects  
242 established in accordance with subsection B of § 10.1-1188 shall include provisions requiring that the  
243 factors listed in § 10.1-1119.7 are considered as part of the review of each project.

**§ 10.1-1119.7. Characteristics to be considered in evaluating impacts on farm and forest lands.**

A. In preparing environmental impact reports in accordance with § 10.1-1119.6, state agencies shall consider the impact of the major state project on all farm and forest lands that:

1. Have soil classified as capability class I, II, III, or IV;
2. Have an exceptional combination of physical characteristics for the production of food, feed, fiber, forest products, forage, oilseed, and other agricultural crops with minimum inputs of fuel, fertilizer, pesticides, and labor, and without intolerable soil erosion;
3. Are valuable for production of specific high-value food and fiber crops, such as fruits, vegetables, and nursery crops and have a special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality or high yields of such crops when treated and managed according to acceptable farming methods;
4. Are of statewide or local importance for the production of food, feed, fiber, forest products, forage, or oilseed crops;
5. Have been recognized under a state program such as the Clean Water Farm Award Program or the Century Farm Program;
6. Are part of an agricultural or forestal district or are participating in a use value assessment and taxation program for real estate devoted to agricultural, horticultural, or forest use in accordance with the provisions of Article 4 (§ 58.1-3229 et seq.) of Chapter 32 of Title 58.1; or
7. Make a significant contribution to the local economy or the rural character of the area where the land is located.

B. The governing body of each locality, with the cooperation of the U.S. Department of Agriculture, may designate the important farmlands within its jurisdiction. In designating important farmlands the governing body shall demonstrate that adequate provision has been made for nonagricultural uses within its jurisdiction.

C. As used in this article, "farmland" includes all land defined as follows:

"Important farmland," other than prime or unique farmland, is land that is of statewide or local importance for the production of food, feed, fiber, forage, nursery, oilseed, or other agricultural crops, as determined by the appropriate state agency or local government agency, and that the U.S. Department of Agriculture determines should be considered as farmland for the purposes of this article;

"Prime farmland" is land that has the best combination of physical and chemical characteristics for producing food, feed, fiber, forage, oilseed, nursery, and other agricultural crops with minimum inputs of fuel, fertilizer, pesticides, and labor, and without intolerable soil erosion. Prime farmland includes land that possesses the above characteristics but is being used currently to produce livestock and timber. It does not include land already in or committed to urban development or water storage; and

"Unique farmland" is land other than prime farmland that is used for production of specific high-value food and fiber crops, as determined by the U.S. Department of Agriculture. It has the special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality or high yields of specific crops when treated and managed according to acceptable farming methods.

**§ 46.2-749.102. Special license plates; supporters of Virginia agriculture; fees.**

A. On receipt of an application and payment of the fee prescribed by this section, the Commissioner shall issue special license plates to supporters of Virginia agriculture.

B. The annual fee for plates issued pursuant to this section shall be \$25 in addition to the prescribed fee for state license plates. For each such \$25 fee collected in excess of 1,000 registrations pursuant to this section, \$15 shall be paid into the state treasury and credited to a special nonreverting fund known as the Virginia Agricultural Vitality Program Fund, established within the Department of Accounts. These funds shall be paid annually to the Office of Farm Land Working Lands Preservation and used to support the Virginia Agricultural Vitality Program within the Department of Forestry.

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

A. 1. 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 that 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.

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

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

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, 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. For conveyances made on and after January 1, 2017, the deadlines provided by clauses (i) and (ii) of this subdivision shall be extended for any number of days exceeding 90 during which an application for tax credit is being reviewed for verification of conservation value by the Department of Conservation and Recreation, if the application was otherwise complete at the time of the original 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 and Forestland Preservation Fund to be used in accordance with § ~~3.2-204~~ 10.1-1119.3.

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 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.

**2. That Chapter 2 (§§ 3.2-200 through 3.2-205) of Title 3.2 of the Code of Virginia is repealed.**