

Code of Virginia

Title 10.1. Conservation

Subtitle I. Activities Administered by the Department of Conservation and Recreation

Chapter 10.2. Virginia Land Conservation Foundation

## Chapter 10.2. Virginia Land Conservation Foundation.

### § 10.1-1017. Foundation created.

There is hereby created the Virginia Land Conservation Foundation, hereinafter referred to as the Foundation, a body politic and corporate to have such powers and duties as hereinafter provided.

1992, c. 426; 1999, cc. 900, 906.

### § 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). The Board shall have a total membership of 20 members that shall consist of 18 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; 12 nonlegislative citizen members, one from each of the 11 congressional districts and one member of a state-recognized or federally recognized Virginia Indian Tribe, 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 members 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. A

least one of the nonlegislative citizen members shall be a farmer. 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. 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 the Foundation shall give bond, with corporate surety, in such penalty as is fixed by the Governor, conditioned upon the faithful discharge of his duties. The premium on the bonds shall be paid from funds available to the Foundation for such purpose.

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

1992, c. 426; 1999, cc. 900, 906; 2000, cc. 21, 294, 494, 1053; 2003, c. 885; 2005, cc. 633, 758; 2006, c. 45; 2007, c. 45; 2008, c. 45; 2009, c. 45; 2010, c. 45; 2011, c. 45; 2012, c. 45; 2013, c. 45; 2014, c. 45; 2015, c. 45; 2016, c. 45; 2017, c. 45; 2018, c. 45; 2019, c. 45; 2020, c. 958; 2021, Sp. Sess. I, c. 401; 2022, c. 705; 2023, c. 222.

#### **§ 10.1-1018.1. Reporting.**

The chairman of the Board shall submit to the Governor and the General Assembly, including the Chairmen of the House Committee on Appropriations, the House Committee on Agriculture, Chesapeake and Natural Resources, the Senate Committee on Finance and Appropriations, and the Senate Committee on Agriculture, Conservation and Natural Resources, and to the Director of the Department of Planning and Budget an executive summary and report of the activity and work of the Board on or before December 15 of each year. The document shall report on the status of the Foundation and its Fund, including (i) land conservation targeting tools developed for the Foundation (ii) descriptions of projects that received funding; (iii) a description of the geographic distribution of land protected as provided in § 10.1-1021.1; (iv) expenditures from, interest earned by, and financial obligations of the Fund; and (v) progress made toward recognized state and regional land conservation goals, including what percentage of properties conserved were identified by ConserveVirginia, pursuant to § 10.1-104.6:1, and a summary of the conservation values that were protected. The report shall also estimate the funds needed to achieve goals established by the Board for (a) natural area protection, (b) open spaces and parks, (c) farmland preservation, (d) forest land preservation, (e) historical and cultural sites, (f) meeting the needs of under-resourced communities, and (g) any other goal determined by the Board. The executive summary and report shall be submitted as provided in the procedures of the

Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

2005, c. 633; 2021, Sp. Sess. I, c. 99; 2022, c. 705.

**§ 10.1-1019. Executive secretary; land management.**

A. The Director of the Department of Conservation and Recreation shall serve as executive secretary to the Foundation and shall be responsible for providing technical assistance and performing any administrative duties that the Foundation may direct.

B. The Department of Conservation and Recreation shall administer the Foundation's lands as if such lands were departmental lands, and the regulations established by the Director for the management and protection of departmental lands shall apply to real estate held by the Foundation. The Department's conservation officers commissioned under § 10.1-115 shall have jurisdiction on all of the Foundation's lands and waters.

1992, c. 426; 2000, c. 1053.

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

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

1. Acquiring fee simple title or other rights, including the purchase of development rights, to interests or privileges in property for the protection or preservation of ecological, cultural or historical resources, lands for recreational purposes, state forest lands, and lands for threatened or endangered species, fish and wildlife habitat, natural areas, agricultural and forestal lands and open space, and for conservation and restoration of homelands for state-recognized and federally recognized Virginia Indian Tribes; and
2. Providing grants to state agencies, including the Virginia Outdoors Foundation and state-recognized and federally recognized Virginia Indian Tribes, and matching grants to other public bodies and holders for acquiring fee simple title or other rights, including the purchase of development rights, to interests or privileges in real property for the protection or preservation of ecological, cultural or historical resources, lands for recreational purposes, and lands for threatened or endangered species, fish and wildlife habitat, natural areas, agricultural and forestal lands and open space. The Board shall establish criteria for making grants from the Fund, including procedures for determining the amount of each grant and the required match. The criteria shall include provisions for grants to localities for purchase of development rights programs.

Interests in land acquired as provided in subdivision 1 may be held by the Foundation, state agencies, state-recognized or federally recognized Virginia Indian Tribes, other public bodies, and appropriate holders. Whenever a holder acquires any interest in land other than a fee simple interest as a result of a grant or transfer from the Foundation, such interest shall be held jointly by the holder and a public body. Whenever a holder acquires a fee simple interest in land as a result of a grant or transfer from the Foundation, a public body shall hold an open space easement in such land.

B. The Fund shall consist of general fund moneys and gifts, endowments or grants from the United States government, its agencies and instrumentalities, and funds from any other available sources, public 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.

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 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.

1992, c. 426; 1999, cc. 900, 906; 2000, cc. 494, 1053; 2006, c. 227; 2007, cc. 77, 673; 2019, c. 539; 2022, c. 705.

### **§ 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 which the Foundation is created. In preparing this plan, the Foundation shall:

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

- (1) The ecological, outdoor recreational, historic, agricultural, and forestal value of the property;
- (2) An assessment of market values;
- (3) Consistency with local comprehensive plans;
- (4) Geographical balance of properties and interests in properties to be purchased;
- (5) Availability of public and private matching funds to assist in the purchase;
- (6) Imminent danger of loss of natural, outdoor, recreational, or historic attributes of a significant portion of the land;
- (7) Economic value to the locality and region attributable to the purchase;
- (8) Advisory opinions from local governments, state agencies, or others;
- (9) Whether the property has been identified by ConserveVirginia and whether the proposal seeks to preserve the conservation values identified by ConserveVirginia; and
- (10) Whether the property is in an area lacking outdoor recreation facilities;

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

c. Develop a needs assessment for future expenditures from the Fund. In developing the needs assessment, the Board of Trustees shall consider among others the properties identified in the following: (i) ConserveVirginia, (ii) Virginia Outdoors Plan, (iii) Virginia Natural Heritage Plan, (iv) Virginia Institute of Marine Science Inventory, (v) Virginia Joint Venture Board of the North American Waterfowl Management Plan, and (vi) Virginia Board of Historic Resources Inventory. In addition, the Board shall consider any information submitted by the Department of Agriculture and Consumer Services on farmland preservation priorities and any information submitted by the Department of Forestry on forest land initiatives and inventories; and

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

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

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

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

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

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

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

1992, c. 426; 1999, cc. 900, 906; 2000, c. 1053; 2005, c. 633; 2021, Sp. Sess. I, c. 99; 2022, c. 705.

**§ 10.1-1021.1. Geographic distribution of land protected.**

The Foundation shall seek to achieve a fair distribution of land protected throughout the Commonwealth, based upon the following:

1. The importance of conserving land in all regions of the Commonwealth;

2. The importance of protecting specific properties that can benefit all Virginia citizens; and

3. The importance of addressing the particular land conservation needs of areas of the state where Fund moneys are generated.

2000, c. 1053.

**§ 10.1-1021.2. Additional powers of the Foundation; requests for conservation easement dispute mediation.**

Any private owner of the fee interest in land that is subject to a perpetual conservation easement pursuant to Chapter 10.1 (§ 10.1-1009 et seq.), any holder of such an easement, or any holder of a thir

party right of enforcement of such an easement may submit a request, pursuant to guidelines adopted by the Foundation, that the Foundation utilize the process set forth in the Administrative Dispute Resolution Act, Chapter 41.1 (§ 2.2-4115 et seq.) of Title 2.2, to resolve a dispute that is not part of a dispute already in litigation and arises out of or relates to the interpretation or administration of a conservation easement made or entered into pursuant to Chapter 10.1 (§ 10.1-1009 et seq.).

2015, c. 44.

**§ 10.1-1022. Expenditure of restricted funds.**

The Foundation shall expend restricted funds only in accordance with the applicable restrictions, or allocate such funds to the designated or otherwise appropriate state agency subject to such restriction. The state agency receiving restricted funds shall expend such funds only in accordance with the applicable restrictions. The Board of Trustees may make such recommendations as are appropriate to the agencies responsible for spending any restricted funds, and the agencies shall consider such recommendations prior to the expenditure of restricted funds received from the Foundation. State agencies and departments receiving funds directly for expenditure for a purpose for which the Foundation is created shall solicit and consider the advice of the Board with respect to the expenditure of such funds prior thereto. This section shall not affect the authority of the Foundation to exercise its discretion with regard to the expenditure or allocation of unrestricted funds received by the Foundation.

1992, c. 426.

**§ 10.1-1022.1. Expenditure of funds for natural area protection.**

A. No matching grant shall be made from the Fund to any holder or public body for purchasing an interest in land for the protection of a natural area unless:

1. The holder or public body has demonstrated the necessary commitment and financial capability to manage the property; and
2. The Department has, after reviewing the grant application as provided in subsection B, recommended that the grant be made.

B. Natural area grant applications shall be submitted to the Foundation, which shall forward the application to the Department. The application shall include a budget for the proposed purchase and the management of the property. The Department shall consider the following in making its recommendation on whether the grant should be made:

1. Whether the project will make a significant contribution to the protection of habitats for rare, threatened, or endangered plant or animal species, rare or state-significant natural communities, other ecological resources, or natural areas of Virginia;
2. Whether the area addresses a protection need identified in the Virginia Natural Heritage Plan;
3. The rarity of the elements targeted for conservation;
4. The size and viability of the site; and

5. Whether the holder or public body has the capability to protect the site from short-term and long-term stresses to the area.

C. Matching grant funds provided pursuant to this section shall be expended by the holder or public body within two years of receiving the funds, except that the Department may grant an extension of up to one year.

D. All property for which a matching grant is made pursuant to this section shall be dedicated as a natural area preserve as provided in § 10.1-213. Any such preserve that was purchased in fee simple by the holder or public body shall be open for public access for a reasonable amount of time each year, except as is necessary to protect sensitive resources or for management purposes, as determined by the holder or public body pursuant to an agreement with the Department.

1999, cc. 900, 906; 2001, cc. 164, 168.

**§ 10.1-1023. Certain expenditures prohibited.**

Moneys from the Fund shall not be expended for the acquisition of any property interest through eminent domain.

1992, c. 426.

**§ 10.1-1024. Gifts and bequests to Foundation.**

Gifts, devises and bequests of money, securities and other assets accepted by the Foundation, whether personal or real property, shall be deemed to be gifts to the Commonwealth, which shall be exempt from all state and local taxes and shall be regarded as property of the Commonwealth for the purposes of all tax laws.

1992, c. 426; 2000, c. 1053.

**§ 10.1-1025. Forms of accounts and records; audit of same.**

The accounts and records of the Foundation showing the receipt and disbursement of funds from whatever source derived shall be in such form as the Auditor of Public Accounts prescribes, provided that such accounts shall correspond as nearly as possible to the accounts and records for such matters maintained by similar enterprises. The accounts and records of the Foundation shall be subject to audit by the Auditor of Public Accounts or his legal representative as determined necessary by the Auditor of Public Accounts, and the costs of such audit services shall be borne by the Foundation. The Foundation's fiscal year shall be the same as the Commonwealth's.

1992, c. 426; 2018, cc. 57, 307.

**§ 10.1-1026. Cooperation of state agencies.**

All state officers, agencies, commissions, boards, departments, institutions and foundations shall cooperate with and assist the Foundation in carrying out its purpose and, to that end, may accept any gift or conveyance of real property or interest therein or other property in the name of the Commonwealth from the Foundation. Such property shall be held in possession or used as provided in the terms of the trust, contract or instrumentality by which it was conveyed.

2000, c. 1053.

12/16/20