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SENATE BILL NO. 1139

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Finance
on February 15, 2005)

(Patron Prior to Substitute—Senator Hanger)

A BILL to amend and reenact §§ 58.1-511 and 58.1-512 of the Code of Virginia, relating to tax credits for land conveyed to a conservation agency for conservation or preservation purposes.

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-511 and 58.1-512 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-511. Definitions.

For the purposes of the article:

"Interest in real property" means any right in real property, including access thereto or improvements thereon, or water, including but not limited to a fee simple an open-space easement, including or conservation easement, provided such interest complies with the requirements of the U.S. Internal Revenue Code § 170 (h), partial interest, mineral right, remainder or future interest, or other interest or right in real property.

"Land" or "lands" means real property, with or without improvements thereon; rights-of-way, water and riparian rights; easements; privileges and all other rights or interests of any land or description in, relating to or connected with real property.

"Public or Private Conservation Agency" means any Virginia governmental body, or any private not-for-profit charitable corporation or trust authorized to do business in the Commonwealth and organized and operated for natural resources, land conservation or historic preservation purposes, and having tax-exempt status as a public charity under the U.S. Internal Revenue Code of 1986, as amended, and having the power to acquire, hold and maintain land and/or interests in land for such purposes.

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

A. For taxable years beginning on or after January 1, 2000, there shall be allowed as a credit against the tax liability imposed by §§ 58.1-320 and 58.1-400, an amount equal to fifty 50 percent of the fair market value of any land or interest in land located in Virginia which is conveyed for the purpose of agricultural and forestal use, open space, natural resource, and/or biodiversity conservation, or land, agricultural, watershed and/or historic preservation, as an unconditional donation in perpetuity by the landowner/taxpayer to a public or private conservation agency eligible to hold such land and interests therein for conservation or preservation purposes. The fair market value of qualified donations made under this section shall be substantiated by a "qualified appraisal" prepared by a "qualified appraiser," as those terms are defined under applicable federal law and regulations governing charitable contributions.

B. The fair market value of qualified donations made under this section shall be 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 shall be determined in accordance with U.S. 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.

BC. 1. The amount of the credit that may be claimed by a taxpayer shall not exceed \$50,000 for 2000 taxable years, \$75,000 for 2001 taxable years, and \$100,000 for 2002 taxable years and thereafter. In addition, 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 which is unused in any one taxable year may be carried over for a maximum of five consecutive taxable years following the taxable year in which the credit originated until fully expended.

2. Qualified donations shall include the conveyance in perpetuity of a fee interest in real property or 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 U.S. Internal Revenue Code of 1986, as amended. Dedications of land for open space for the purpose of fulfilling density requirements to

60 obtain *approvals for zoning, subdivision, site plan, or building permits* shall not be considered as
61 qualified donations under this act. *Qualified donations shall not include the conveyance of a fee interest,*
62 *or a less-than-fee interest, in real property that has been dedicated for the purpose of fulfilling density*
63 *requirements to obtain approvals for zoning, subdivision, site plan, or building permits.*

64 3. Qualified donations shall be eligible for the tax credit herein described if such donations are made
65 to the Commonwealth of Virginia, an instrumentality thereof, or a charitable organization described in
66 § 501 (c) (3) of the U.S. Internal Revenue Code of 1986, as amended, if such charitable organization (i)
67 meets the requirements of § 509 (a) (2) or (ii) meets the requirements of § 509 (a) (3) and is controlled
68 by an organization described in § 509 (a) (2).

69 4. The preservation, agricultural preservation, historic preservation or similar use and purpose of such
70 property shall be assured in perpetuity.