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SENATE BILL NO. 1139

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on February 2, 2005)

(Patron Prior to Substitute—Senator Hanger)

A BILL to amend and reenact §§ 58.1-512 and 58.1-513 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 §§ 58.1-512 and 58.1-513 of the Code of Virginia are amended and reenacted as follows:

§ 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 aggregate amount equal to ~~fifty~~ the lesser of \$600,000 or 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 maximum annual amount of credit that may be claimed under this article for such conveyances shall be as provided in subdivision B 1.* 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. 1. The aggregate amount of the credit that may be claimed by a ~~taxpayer~~ all taxpayers for any qualified donation, including credit claimed from 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, and \$100,000 for 2002 taxable years and thereafter. 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 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 obtain subdivision or building permits shall not be considered as qualified donations under this act.

3. 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 U.S. 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).

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

§ 58.1-513. Limitations; transfer of credit; gain or loss from tax credit.

A. Any taxpayer claiming a tax credit under this article shall not claim a credit under any similar Virginia law for costs related to the same project. To the extent a credit is taken in accordance with this article, no subtraction allowed for the gain on the sale of (i) land dedicated to open-space use or (ii) an easement dedicated to open-space use under subsection C of § 58.1-322 shall be allowed for three years following the year in which the credit is taken.

B. Any tax credits that arise under this article from the donation of land or an interest in land made by a pass-through tax entity such as a trust, estate, partnership, limited liability corporation or partnership, limited partnership, subchapter S corporation or other fiduciary shall be used either by such entity if it is the taxpayer on behalf of such entity or by the member, manager, partner, shareholder and/or beneficiary, as the case may be, in proportion to their interest in such entity in the event that income, deductions and tax liability pass through such entity to such member, manager, partner, shareholder and/or beneficiary or as set forth in the agreement of said entity. Such tax credits shall not be claimed by both the entity and the member, manager partner, shareholder and/or beneficiary for the same donation.

C. Any taxpayer holding a credit under this article may transfer unused but otherwise allowable credit for use by another taxpayer on Virginia income tax returns. A taxpayer who transfers any amount

60 of credit under this article shall file a notification of such transfer to the Department in accordance with
61 procedures and forms prescribed by the Tax Commissioner.

62 *For purposes of this article, the aggregate amount of unused but otherwise allowable credit that may*
63 *be transferred and claimed as credit by all taxpayers for any qualified donation means the (i) the lesser*
64 *of \$600,000 or 50 percent of the qualified donation minus (ii) the amount claimed as credit by the*
65 *taxpayer who made such qualified donation.*

66 D. To the extent included in and not otherwise subtracted from federal adjusted gross income
67 pursuant to § 58.1-322 or federal taxable income pursuant to § 58.1-402, there shall be subtracted any
68 amount of gain or income recognized by a taxpayer on the application of a tax credit under this article
69 against a Virginia income tax liability.

70 E. The transfer of the credit and its application against a tax liability shall not create gain or loss for
71 the transferor or the transferee of such credit.

72 F. A pass-through tax entity, such as a partnership, limited liability company or Subchapter S
73 corporation, may appoint a tax matters representative, who shall be a general partner, member/manager
74 or shareholder, and register that representative with the Tax Commissioner. The Tax Commissioner shall
75 be entitled to deal with the tax matters representative as representative of the taxpayers to whom credits
76 have been allocated or transferred by the entity under this article with respect to those credits. In the
77 event a pass-through tax entity allocates or transfers tax credits arising under this article to its partners,
78 members or shareholders and the allocated or transferred credits shall be disallowed, in whole or in part,
79 such that an assessment of additional tax against a taxpayer shall be made, the Tax Commissioner shall
80 first make written demand for payment of any additional tax, together with interest and penalties, from
81 the tax matters representative. In the event such payment demand is not satisfied, the Tax Commissioner
82 shall proceed to collection against the taxpayers in accordance with the provisions of Chapter 18
83 (§ 58.1-1800 et seq.) of this title.

84 **2. That the provisions of this act shall apply to any conveyance made pursuant to § 58.1-512 of**
85 **the Code of Virginia on or after July 1, 2005.**