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SENATE BILL NO. 403

Offered January 11, 2006

Prefiled January 11, 2006

A *BILL to amend and reenact §§ 58.1-512 and 58.1-513 of the Code of Virginia, and to amend the Code of Virginia by adding a section numbered 58.1-512.1, relating to the Virginia Land Conservation Incentives Act of 1999.*

Patron—Hanger

Referred to Committee on Finance

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 and that the Code of Virginia is amended by adding a section numbered 58.1-512.1, 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 *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 C 1.

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 that qualifies for credit under this section, as determined according to appropriate federal law and regulations, shall be subject to the limits established by 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.

In addition, no credit shall be allowed for the conveyance of a fee interest, or a less-than-fee interest, in real property made on or after January 1, 2007, unless, as provided in § 58.1-512.1, the property or interest conveyed has been (i) certified by a licensed reviewer to be in compliance with standards adopted by the Department pursuant to such section and (ii) registered with the Department prior to any credit being claimed or transferred by a taxpayer.

C. 1. The amount of the credit that may be claimed by a ~~taxpayer~~ *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, 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. ~~Qualified donations shall not include the conveyance of a fee interest, or a less-than-fee interest, in real property that has been dedicated for the purpose of fulfilling density requirements to obtain approvals for zoning, subdivision, site plan, or building permits.~~

3. *In addition, if credit under this article is allowed for a portion of a recorded parcel of land, no*

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59 credit shall be allowed for any other portion of such parcel until at least 15 years have elapsed from
60 the time of donation. This prohibition shall not apply if (i) all owners of the parcel who have been
61 allowed credit for a qualified donation are not affiliated with the person or entity seeking credit for a
62 different portion of the parcel and (ii) in the case of an individual seeking credit, the individual has not
63 previously made a qualified donation for any portion of the parcel and is not an immediate family
64 member of any such owners.

65 Pursuant to the criteria set forth in this subdivision, the Department shall establish and make
66 publicly available guidelines that describe the property and the circumstances under which donations of
67 such property shall not be qualified donations. The Department shall update the guidelines as necessary
68 as determined by the Tax Commissioner. Such guidelines shall be exempt from the Administrative
69 Process Act (§ 2.2-4000 et seq.).

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

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

77 § 58.1-512.1. Required registration and certifications of credits; standards of review; licensing of
78 credit reviewers.

79 A. No credit shall be allowed for the conveyance of a fee interest, or a less-than-fee interest, in real
80 property made on or after January 1, 2007, unless the property or interest conveyed has been registered
81 with the Department prior to any credit being claimed or transferred by a taxpayer. The Department
82 shall prescribe the procedures and forms for such registration process.

83 B. The registration described in subsection A shall require a written certification by a licensed
84 reviewer that the property, or interest therein, is in compliance with pre-registration standards
85 promulgated by the Department, which standards shall be based upon the guidelines set forth in
86 subsection C.

87 Pre-registration standards shall be updated by the Department as deemed necessary by the
88 Commissioner. A certification by a licensed reviewer that the property to be conveyed (or interest
89 therein) is in compliance with the Department's standards as required in this subsection shall not
90 preclude the Department from contesting a credit claim under this article and disallowing the credits in
91 whole or in part.

92 C. The Department shall promulgate pre-registration standards, including but not limited to
93 standards that incorporate the following guidelines:

94 1. Any donation upon which credits are to be based shall provide significant public benefit. The
95 property that is the subject of the donation shall have important conservation values; the donation shall
96 be made to an appropriate donee with a commitment to preserving in perpetuity the conservation values
97 of the property that is the subject of the donation; and if the donation is a partial interest such as a
98 conservation or open-space easement, the terms of the donation shall provide an appropriate level of
99 protection for the conservation values of the subject property. The Department's pre-registration
100 standards shall incorporate, as applicable (without limitation), requirements under the Open-Space Land
101 Act (§ 10.1-1700 et seq.), the Virginia Conservation Easement Act (§ 10.1-1009 et seq.), and § 170 (h)
102 of the Internal Revenue Code.

103 2. The appraisal estimating the value of any donation upon which credits are to be based must
104 employ proper methodology and be appropriately supported by market evidence. The Department's
105 pre-registration standards shall incorporate, as applicable (without limitation), requirements under U.S.
106 Internal Revenue Code § 170 (h), the Uniform Standards of Professional Appraisal Practice (USPAP),
107 and the United States Department of Justice, Uniform Appraisal Standards For Federal Land
108 Acquisitions.

109 D. The Department shall establish the application procedures and the qualifications required for
110 persons and entities seeking to provide the certification service described under this section, provided
111 that all qualifications shall be necessary to ensure either competence or integrity of licensed reviewers.
112 The application procedures shall require applicants to provide documentation establishing a minimum
113 level of expertise in the evaluation of land preservation tax credit claims. The Department is hereby
114 authorized to license qualified applicants as licensed reviewers for the purposes described in this
115 section. Any person or entity licensed by the Department shall only use the pre-registration standards
116 promulgated by the Department in its review of any property or property interest.

117 E. The Department may levy and collect fees for licensure that are sufficient to cover all direct
118 expenses for the administration of the registration program described in this section.

119 F. The Commissioner may revoke or suspend the license of reviewers who repeatedly certify
120 conveyances for which credits are subsequently disallowed in whole or in part by the Department.

Licensed reviewers also shall be subject to regular examination by the Department.

G. The Department shall keep a current list of licensed reviewers on its website.

H. Any person or entity who is denied licensure by the Department or whose license is revoked or suspended shall be entitled to a review of such action. Appeals from such actions shall be in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

I. The Department shall implement a limited fee-based appeal process by which prospective credit claimants repeatedly rejected by licensed reviewers may seek to register with the Department notwithstanding the lack of a written certification from a licensed reviewer.

J. Except as provided in subsection H, the pre-registration standards and procedures and forms described under this section shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.).

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

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

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

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

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

2. That the provisions of this act shall be applicable to any conveyance of property (or the conveyance of any interest in property) under the Virginia Land Conservation Incentives Act of 1999 that is made on or after July 1, 2006, except that (i) the amendments to subdivision C 1 of § 58.1-512 shall be applicable for taxable years beginning on or after January 1, 2006, and (ii) the provisions of § 58.1-512.1 shall be applicable to conveyances made on or after January 1, 2007.

3. That the pre-registration standards and procedures and forms for the registration process described under § 58.1-512.1 and the guidelines required under subdivision C 3 of § 58.1-512 pursuant to the provisions of this act shall first be made publicly available no later than October 1, 2006.