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SENATE BILL NO. 93

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Finance
on February 28, 2006)

(Patron Prior to Substitute—Senator Watkins)

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 land preservation tax credits.

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 amount equal to 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.

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.

C. 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 that results in the real property being devoted to open-space use, as that term is defined in § 58.1-3230, 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 U.S. Internal Revenue Code of 1986, as amended. Qualified donations of a less-than-fee interest shall be eligible for the credit if a statement, describing how the donated interest in land meets the requirements of § 170 (h) of the U.S. Internal Revenue Code of 1986, as amended, and the regulations adopted thereunder, is submitted by the taxpayer to the Department on a form that shall be developed by the Tax Commissioner in consultation with the Secretary of Natural Resources. The statement shall include, but not be limited to, a description of the conservation purpose or purposes being served by the qualified donation, the fair market value of the land in the absence of conservation, and the public benefit derived from the donation. The Department shall provide a copy of the statement to the Department of Conservation and Recreation, which shall compile an annual report on qualified donations.

3. Qualified donations shall not include the:

a. 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; or

b. conveyance of a fee interest, or a less-than-fee interest, in real property by a charitable

60 organization that (i) meets the definition of "holder" in § 10.1-1009 and (ii) holds one or more
61 conservation easements; or

62 c. donation or portion of a donation of an easement on, or other less-than-fee interest in, a historic
63 building or a functionally related complex of historic buildings, unless such building or building
64 complex is individually designated as a historic landmark pursuant to § 10.1-2206.1 for listing in the
65 Virginia Landmarks Register, and the easement or other interest imposed restrictions on all exterior
66 surfaces of the building or principal historic buildings, as determined by the Department of Historic
67 Resources, in the case of a complex of buildings.

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

73 45. The preservation, agricultural preservation, historic preservation or similar use and purpose of
74 such ~~property~~ less-than-fee interest shall be assured in perpetuity.

75 § 58.1-512.1. Required licensed engineer review for certain qualified appraisals.

76 Any qualified appraisal must include a letter from a licensed engineer that states that the highest
77 and best use determination for the property (i) meets the existing zoning codes, or a letter from the
78 appropriate locality that the proposed highest and best use would be acceptable to that political body;
79 (ii) is physically and geographically possible considering slopes, flood plains, and soil conditions; and
80 (iii) where the highest and best use for the property absent conservation is commercial or residential
81 development, that existing roads serving the property are sufficient to support that type of development.

82 § 58.1-513. Limitations; transfer of credit; gain or loss from tax credit.

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

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

96 C. Any taxpayer holding a credit under this article may transfer unused but otherwise allowable
97 credit for use by another taxpayer on Virginia income tax returns. A taxpayer who transfers any amount
98 of credit under this article shall file a notification of such transfer to the Department in accordance with
99 procedures and forms prescribed by the Tax Commissioner, *along with a fee of 1% of the value of the*
100 *donated interest, or \$5,000, whichever is less. Revenues generated by such fees shall be used by the*
101 *Department for implementation of this article.*

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

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

108 F. A pass-through tax entity, such as a partnership, limited liability company or Subchapter S
109 corporation, may appoint a tax matters representative, who shall be a general partner, member/manager
110 or shareholder, and register that representative with the Tax Commissioner. The Tax Commissioner shall
111 be entitled to deal with the tax matters representative as representative of the taxpayers to whom credits
112 have been allocated or transferred by the entity under this article with respect to those credits. In the
113 event a pass-through tax entity allocates or transfers tax credits arising under this article to its partners,
114 members or shareholders and the allocated or transferred credits shall be disallowed, in whole or in part,
115 such that an assessment of additional tax against a taxpayer shall be made, the Tax Commissioner shall
116 first make written demand for payment of any additional tax, together with interest and penalties, from
117 the tax matters representative. In the event such payment demand is not satisfied, the Tax Commissioner
118 shall proceed to collection against the taxpayers in accordance with the provisions of Chapter 18
119 (§ 58.1-1800 et seq.) of this title.

120 G. Any credit held by a taxpayer under this article shall pass to his estate upon his death and shall
121 be transferable from the estate to other taxpayers.