

DEPARTMENT OF TAXATION

2006 Fiscal Impact Statement

1. **Patron** R. Lee Ware, Jr.

3. **Committee** House Finance

4. **Title** Income Tax; Land Preservation Tax Credit

2. **Bill Number** HB 449

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. Summary/Purpose:

This bill would make several changes to the Land Preservation Tax Credit. First, the amount of the credit would be limited to the lesser of \$2.5 million or 50% of the fair market value of the donated land or interest in land. In certain circumstances, however, the \$2.5 million limitation would not apply. Next, the \$100,000 annual credit limitation would be removed. In addition, new requirements for qualified donations would be created. Finally, this bill would impose a fee that taxpayers would be required to pay if they chose to transfer the credit.

The effective date of this bill is not specified.

6. Fiscal Impact Estimates are: Preliminary. (See Line 8.)

7. Budget amendment necessary: No.

8. Fiscal implications:

TAX has not assigned any administrative costs to this bill because the changes required by a single bill such as this can be implemented as part of the annual changes to our systems and forms. As stand-alone legislation, TAX considers implementation of this bill as "routine," and does not require additional funding.

TAX will provide specific administrative costs on any legislation that is not "routine." Additionally, TAX will review all state tax legislation likely to be enacted prior to the passage by each house. If the aggregate number of routine bills likely to pass either house is unusually large, it is possible that additional resources will be required. If so, TAX will identify the costs at that time.

The revenue gain associated with the bill is unknown. If a \$2.5 million cap had been placed on the amount of the credit for the duration of this credit program, the total credits would have been reduced by 21.4%. If this percentage were applied to the forecasted level of annual credits, the cap would reduce those credits by \$16 million per year. Other

provisions of the bill, however, would allow taxpayers to avoid the \$2.5 million cap, so the total amount of the reduction would most likely be smaller.

9. Specific agency or political subdivisions affected:

Department of Taxation
Secretary of Natural Resources
Department of Conservation and Recreation
Department of Historic Resources

10. Technical amendment necessary: Yes.

In order to clarify that qualified donations must actually comply with federal requirements, the following technical amendment is recommended:

Page 2, Line 59 after for the credit if

Insert: they meet the requirements of § 170 (h) of the Internal Revenue Code of 1986, as amended, and the regulations adopted thereunder, and

In order to establish an effective date for this bill, the following technical amendment is recommended:

Page 3, Line 124, at the end of the line

Insert: 2. That the provisions of this act shall be applicable for taxable years beginning on or after January 1, 2007.

11. Other comments:

Current Law

Individuals and corporations can claim an income tax credit equal to 50% of the fair market value for qualified donations of real property and interests in real property located in Virginia to governmental and nonprofit organizations whose purpose is to conserve natural resources, save land, and preserve historical sites. The types of property that would qualify for this credit include conservation easements, any partial interest, mineral right, remainder or future interest, or other interest or right in real property as defined under the Internal Revenue Code. Any conveyance of real property under this credit must be permanent and irrevocable.

The maximum credit a taxpayer can claim in any taxable year is limited to the lesser of the total income tax imposed or \$100,000. The amount of credit earned in excess of tax imposed or annual limit can be carried forward to the five succeeding taxable years. In addition, a taxpayer that earns the Land Preservation Tax Credit for land donated on or after January 1, 2002, may transfer the credit to another corporate or individual taxpayer.

Proposal

This bill would make several changes to the Land Preservation Tax Credit. First, the amount of the credit would be limited to the lesser of \$2.5 million or 50% of the fair market

value of the donated land or interest in land. In certain circumstances, however, the \$2.5 million limitation would not apply and the taxpayer would be able to claim an amount up to 50% of the fair market value of the donated interest.

In order to avoid the \$2.5 million limitation, the taxpayer would have to submit to the Department two qualified appraisals from two different qualified appraisers. In addition, the Secretary of Natural Resources would have to determine that the qualified donation provided exceptional benefit to the Commonwealth by meeting standards adopted by the Virginia Land Conservation Foundation. Such determinations would be within the sole discretion of the Secretary.

Those taxpayers requesting such a determination from the Secretary would be required to pay a fee of \$5,000. The revenues generated by such fees would be deposited into the Virginia Land Conservation Fund and used to implement this bill and to administer the Fund.

This bill would also remove the \$100,000 annual credit limitation. The amount of credit that a taxpayer could claim in one year would continue to be limited by the amount of his tax liability, however. In addition, this bill would create a fee that taxpayers would be required to pay to the Tax Commissioner if they chose to transfer the credit. The amount of this fee would be 1% of the value of the donated interest or \$5,000, whichever is less. The Department would be required to use the revenue generated by these fees to implement this bill.

Finally, this bill would create several new requirements for qualified donations. First, qualified donations of a less-than-fee interest would be eligible for the credit if a statement were submitted to the Department describing how the donated interest meets the requirements of Internal Revenue Code ("IRC") § 170(h). This statement would be required to include a description of the conservation purpose or purposes served by the donation and the public benefit derived from such donation. An amendment is suggested to clarify that eligibility depends on the donation actually meeting the requirements of the IRC, not a mere statement declaring that it does so.

This statement would be submitted to the Department on a form developed by the Tax Commissioner in consultation with the Secretary of Natural Resources. A copy would be provided to the Department of Conservation and Recreation, which would be required to compile an annual report on qualified donations.

In addition, qualified donations would not be allowed to include:

- A conveyance of a fee interest, or a less-than-fee interest, in real property by a charitable organization that holds one or more conservation easements; and the primary purposes or powers of which include protecting natural resources and the natural and open-space values of land, making land available for agricultural, forestal, recreational, or open-space use, maintaining or enhancing air or water quality, or preserving the historic, architectural or archaeological aspects of land.
- A donation or portion of a donation of an easement on, or other less-than-fee interest in, a historic building or a functionally related complex of historic buildings, unless

such building or building complex is individually designated as a historic landmark by the Department of Historic Resources for listing in the Virginia Landmarks Register, and the easement or other interest imposed restrictions on all exterior surfaces of the building or principal historic buildings.

Other Legislation

House Bill 450 is similar to this bill, but it would not limit the total amount of the credit.

House Bill 553 would create additional requirements for determining the fair market value of donated land for the purposes of the Land Preservation Tax Credit by relating it to the assessed value of the property for purposes of the local property tax.

Senate Bill 93 would make numerous changes to the Land Preservation Tax Credit, including limiting the amount of the credit to the lesser of \$600,000 or 50% of the fair market value of the land or interest in land, modifying the method for determining the fair market value, limiting the types of land that would qualify, and allowing the credit to be used against the estate tax.

Senate Bill 403 would change the Land Preservation Tax Credit by limiting the aggregate amount of the credit to the lesser of \$600,000 or 50% of the fair market value of the donated land or interest in land and imposing new certification and registration requirements for conveyances of land.

cc : Secretary of Finance

Date: 01/30/2006 AMS
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