

DEPARTMENT OF TAXATION

2006 Fiscal Impact Statement

1. **Patron** Emmett W. Hanger, Jr.
2. **Bill Number** SB 403
House of Origin:
 X **Introduced**
 Substitute
 Engrossed
3. **Committee** Senate Finance
4. **Title** Income Tax; Land Preservation Tax Credit
- Second House:**
 In Committee
 Substitute
 Enrolled

5. Summary/Purpose:

This bill would make numerous changes to the Land Preservation tax credit. First, the aggregate amount of the credit would be limited to the lesser of \$600,000 or 50% of the fair market value of the donated land or interest in land. In addition, this bill would impose new certification and registration requirements for conveyances of land.

This bill also provides that no more than one donation could be made from the same parcel of land during a 15-year period, unless there was no affiliation between the persons or entities who already have been allowed credit with respect to the parcel and the persons or entities seeking credit.

With some exceptions, the provisions of this bill would be applicable to conveyances of property made on or after July 1, 2006.

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

6a. Expenditure Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2005-06	\$0	0	GF
2006-07	\$37,600	1	GF
2007-08	\$55,700	1	GF
2008-09	\$56,700	1	GF
2009-10	\$57,700	1	GF
2010-11	\$58,700	1	GF
2011-12	\$59,700	1	GF

7. **Budget amendment necessary:** Yes.
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8. Fiscal implications:

In order to implement the changes proposed by the bill, the Department would incur costs of \$37,600 for FY 2007, \$55,700 for FY 2008, \$56,700 for FY 2009, \$57,700 for FY 2010,

\$58,700 for FY 2011 and \$59,700 for FY 2012 for the compensation of an additional full-time employee to conduct the appraisal review process and to license appraisers.

If a \$600,000 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 44.8%. If this percentage were applied to the forecasted level of annual credits, the cap would reduce those credits by \$33.6 million per year. It is not known, however, how the certification and registration requirements might affect the credit program.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: No.

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

Under this bill, the aggregate amount of the credit would be limited to the lesser of \$600,000 or 50% of the fair market value of the donated land or interest in land. In addition, this bill would limit the total amount of credit that may be claimed per taxable year by each taxpayer, including transferees of the credit, to \$100,000.

For conveyances of land made on or after January 1, 2007, no credit or transfer of any credit would be allowed unless the property or the interest in property was first registered with the Department. This registration would be required to include a certification from a licensed reviewer that the property meets certain standards established by the Department. Such a certification would not preclude the Department from contesting or disallowing a credit, however.

The standards for certification would be required to incorporate the following guidelines:

- The donation of land or interest in land would have to provide significant public benefit and have important conservation values
- The donation would have to be made to an appropriate donee and have appropriate protections for the conservation value of the land.
- The requirements under the Open-Space Land Act, the Virginia Conservation Easement Act, and IRC § 170(H) would be incorporated.
- The standards regarding the appraisal estimating the value of the donation would be required to incorporate the requirements under IRC § 170(h), the Uniform Standards of Professional Appraisal Practice, and the United States Department of Justice, Uniform Appraisal Standards for Federal Land Acquisitions.

The Department would be responsible for developing an application procedure for reviewers and for approving the applicants; and the Department would be allowed to collect fees for the licensure process. Any person who was denied licensure by the Department would be entitled to a review of such action. The Department would be required to keep a current list of licensed reviewers on its website. The Tax Commissioner would be authorized to revoke or suspend the license of any reviewer who repeatedly certified conveyances for which the credits were subsequently disallowed in whole or in part by the Department.

For those who were repeatedly denied certification by licensed reviewers, this bill would require the Department to establish a limited fee-based appeal process in which such taxpayers could seek to register a conveyance despite the lack of certification.

The bill also provides that no more than one donation could be made from the same parcel of land during a 15-year period, unless there was no affiliation between the persons or entities who already have been allowed credit with respect to the parcel and the persons or entities seeking credit. The Department would be required to establish and publish guidelines describing the property and the circumstances under which donations of such property would not be qualified donations by October 1, 2006.

Finally, this bill would also limit the amount of the credit that could be transferred to the lesser of \$600,000 or 50% of the qualified donation less the amount of the credit claimed by the taxpayer who made the qualified donation.

Except as noted above, the provisions of this bill are applicable to conveyances of property made on or after July 1, 2006. The provisions limiting the amount of the credit that may be claimed per taxable year by each taxpayer would be effective for taxable years beginning on or after January 1, 2006.

Other Legislation

House Bill 449 would change the Land Preservation Tax Credit by eliminating the \$100,000 annual credit limit, creating new requirements for qualified donations, and creating a fee that taxpayers would be required to pay if they chose to transfer the credit; as well as limiting the total amount of the credit in most cases to the lesser of \$2.5 million or 50% of the fair market value of the donated land or interest in land.

House Bill 450 would change the Land Preservation Tax Credit by eliminating the \$100,000 annual credit limit, creating new requirements for qualified donations, and creating a fee that taxpayers would be required to pay if they chose to transfer the credit.

House Bill 533 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 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. In addition, this bill would modify the factors to be considered in determining the fair market value of the land or interest in land that is donated. The bill would also restrict the tax credit to donations of land or interest in land that (i) is located in the Chesapeake Bay watershed; (ii) is used for agricultural production for market for which reasonable agricultural best management practices are in place; (iii) is devoted to open-space use; or (iv) is covered by an individualized Forest Stewardship Plan. Finally, the bill would permit only one transfer of unused tax credits associated with donated property and would prohibit nonprofit organizations from transferring any tax credit, and it would allow as a credit against the estate tax any unused credit held by the decedent of the estate at the time of his death.

cc : Secretary of Finance

Date: 01/30/2006 AMS
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