DEPARTMENT OF TAXATION
2006 Fiscal Impact Statement

1. Patron John C. Watkins

2. Bill Number SB 93

House of Origin:
_____ **Introduced**
_____ **Substitute**
_____ **Engrossed**

Second House:
X **In Committee**
_____ **Substitute**
_____ **Enrolled**

3. Committee House Finance

4. Title Income Tax; Land Preservation Tax Credit

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 modify the factors to be considered in determining the fair market value of the land or interest in land that is donated.

This bill would restrict the tax credit to donations of land or interest in land that (i) meets guidelines of objective criteria established by the Virginia Land Conservation Foundation or (ii) the Secretary of Natural Resources has otherwise determined provides exceptional benefit to the Commonwealth in cases in which any land or interest therein does not meet the objective criteria established by the Virginia Land Conservation Foundation.

Finally, this 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.

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.)

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. Restricting the credit to certain types of land should reduce the amount of credits claimed in the future. Taking an historical perspective, 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.

9. Specific agency or political subdivisions affected:

Department of Taxation
Virginia Land Conservation Foundation
Secretary of Natural Resources

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. Also, credits could be used against the estate tax in addition to the individual and corporate income tax.

The fair market value of the land or interest in land would not be allowed to include the value of any structures or other improvements to the land. In addition, as under federal regulations, the fair market value could not exceed the value for the highest and best use for which the property is adaptable and needed or likely to be needed in the reasonably near future. The third enactment clause would make this limitation retroactive to the beginning of the program.

The appraisal estimating the value of any donation upon which credits are to be based would be required to employ proper methodology and be appropriately supported by market evidence. The Department of Taxation would be responsible for establishing and making publicly available guidelines that incorporate, as applicable (without limitation), requirements under § 170 (h) of the Internal Revenue Code and the Uniform Standards of Professional Appraisal Practice (USPAP).

If the taxpayer chose to contest the fair market value of a donation of property, the burden of proof would be on the taxpayer to show there is a reasonable probability that (i) the property is physically adaptable for the highest and best use that is proposed in the appraisal and (ii) there is a need or demand for such use in the reasonably near future.

This bill would also restrict the tax credit to donations of land or interest in land that meets guidelines of objective criteria established by the Virginia Land Conservation Foundation. In addition, in cases in which a donation did not meet those criteria, the credit would be allowed for land or an interest in land that the Secretary of Natural Resources otherwise determined provided exceptional benefit to the Commonwealth. If the Secretary of Natural Resources chose to make such a determination, he would first be required to provide written notice to the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations describing in detail such exceptional benefit. After 30 days from the date of such notice, the Secretary would be allowed to make the determination.

The objective criteria established by the Virginia Land Conservation Foundation would be required to describe (i) the objective characteristics of land that has important conservation values including but not limited to land that is located within the Chesapeake Bay watershed or that is devoted to open-space use; (ii) the objective attributes of a donee with a commitment to preserving the conservation values of land; and (iii) the terms of donations that are required for different types of land in order to provide an appropriate level of protection for the conservation values of land, including reasonable agricultural best management practices and appropriate forest management plans. Such criteria would be required to incorporate, as applicable (without limitation), requirements under the Open-Space Land Act, the Virginia Conservation Easement Act, and § 170 (h) of the Internal Revenue Code. Guidelines establishing these criteria would be required to be made publicly available by December 31, 2006.

Under this bill, land dedicated as open space within a residential or commercial development; as open space in any real estate development plan; or dedicated to fulfill density requirements to obtain approvals for zoning, subdivision, site plan, or building permits would not qualify for purposes of the tax credit. 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.

This bill would limit the transferability of the credit by permitting only one transfer of unused tax credits and prohibiting nonprofit organizations from ever transferring the credit. In addition, while it would allow any unused credit held by the decedent of the estate at the time of his death to be used as a credit against the estate tax, estates would be prohibited from transferring the credit.

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.

Finally, this bill would repeal the second enactment of Chapter 940 of the Acts of Assembly of 2005, which would not allow a donation or portion of a donation of an easement on or other interest in an historic building or a functionally related complex of historic buildings made on or after January 1, 2005, but before July 1, 2006, to qualify for a land preservation credit unless the building or complex of buildings was individually designated as an historic landmark pursuant to § 10.1-2206.1 for listing in the Virginia Landmarks Register and the easement or other interest imposes restrictions on all exterior surfaces of the building or buildings.

Except as noted above, the provisions of the 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. In addition, the provisions of the bill restricting the land or interests in land that may qualify for the credit would be effective for conveyances of property made on or after January 1, 2007. Finally, the provisions applicable to the use of the credit against the estate tax would be effective for the estates of persons who die on or after January 1, 2006.

Other Legislation

House Bill 450 would change the Land Preservation Tax Credit by eliminating the $100,000 annual credit limit, creating new requirements for qualified donations, requiring a licensed engineer review for certain qualified appraisals, codifying the second enactment of Chapter 940 of the Acts of Assembly of 2005, and creating a fee that taxpayers would be required to pay if they chose to transfer the credit. In addition, this bill would allow estates to transfer the credit.

cc : Secretary of Finance

Date: 02/20/2006 AMS
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