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SENATE BILL NO. 5019
AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by Delegates Watts
 on June 28, 2006)

(Patron Prior to Substitute—Senator Chichester)

A BILL to amend and reenact §§ 58.1-512, 58.1-513, 58.1-901, and 58.1-902 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 58.1-512.1, relating to taxes of the Commonwealth.

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-512, 58.1-513, 58.1-901, and 58.1-902 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~~ *There* shall be allowed as a credit against the tax liability imposed by §§ 58.1-320 and 58.1-400, *and in limited circumstances against the tax liability imposed pursuant to Chapter 9 (§ 58.1-900 et seq.), as provided in subsection G of § 58.1-513,* an amount equal to ~~50 percent~~ *a designated percentage* 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. *For taxable year 2006, the designated percentage shall be 50%. For taxable year 2007 and each taxable year thereafter, the designated percentage shall be 40%.*

For taxable year 2007 and each taxable year thereafter, the amount of such credit shall be the lesser of \$2.5 million or an amount equal to 40% of the fair market value of the donated land or interest in land located in the Chesapeake Bay Watershed. If the credit amount exceeds \$2.5 million, in addition to meeting the requirements of this section, the donation shall meet objective "exceptional benefit" criteria promulgated by the Department of Conservation and Recreation. The "exceptional benefit" criteria shall include, but not be limited to, qualification of donations located within the Chesapeake Bay Watershed. The Department of Conservation and Recreation shall issue "exceptional benefit" criteria no later than December 1, 2006, based upon comments made at public hearings to be held by the Department.

For taxable year 2007 and each taxable year thereafter, the credit allowed against such tax liability shall be the lesser of \$600,000 or 40% of the fair market value of the donated land or interest in land located outside the Chesapeake Bay Watershed.

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 § 54.1-2111, 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 § 54.1-2113, 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~~ *through 2006 taxable years, and \$200,000 for 2007 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~~ *10* 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 ~~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

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60 restriction, provided that such less-than-fee interest qualifies as a charitable deduction under § 170 (h) of
61 the U.S. Internal Revenue Code of 1986, as amended. *Qualified donations of a less-than-fee interest*
62 *shall be eligible for the credit if a statement, describing how the donated interest in land meets the*
63 *requirements of § 170 (h) of the U.S. Internal Revenue Code of 1986, as amended, and the regulations*
64 *adopted thereunder, is submitted by the taxpayer to the Department on a form that shall be developed*
65 *by the Tax Commissioner in consultation with the Secretary of Natural Resources. The statement shall*
66 *include, but not be limited to, a description of the conservation purpose or purposes being served by the*
67 *qualified donation, the fair market value of the land in the absence of conservation, and the public*
68 *benefit derived from the donation. The Department shall provide a copy of the statement to the*
69 *Department of Conservation and Recreation, which shall compile an annual report on qualified*
70 *donations.*

71 3. Qualified donations shall not include the:

72 a. ~~conveyance~~ Conveyance of a fee interest, or a less-than-fee interest, in real property that has been
73 dedicated for the purpose of fulfilling density requirements to obtain approvals for zoning, subdivision,
74 site plan, or building permits; or

75 b. Conveyance of a fee interest, or a less-than-fee interest, in real property by a charitable
76 organization that (i) meets the definition of "holder" in § 10.1-1009 and (ii) holds one or more
77 conservation easements; or

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

84 4. If a credit under this section is allowed for the donation of a portion of a recorded parcel of land,
85 no credit shall be allowed for any other portion of such parcel until at least 15 years have elapsed from
86 the time of such donation. This prohibition shall not apply if (i) all owners of the parcel who have been
87 allowed a credit for a qualified donation are not affiliated with the person or entity seeking the credit
88 for a different portion of the parcel and (ii) in the case of an individual seeking the credit, the
89 individual has not previously made a qualified donation for any portion of the parcel and is not an
90 immediate family member of any such owners.

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

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

98 7. A charitable organization described in § 501 (c) (3) of the U.S. Internal Revenue Code of 1986, as
99 amended, which receives a qualified donation of a fee interest in real property shall devote the property
100 to open-space use, as that term is defined in § 58.1-3230, and shall not transfer the property except (i)
101 to the Commonwealth or an instrumentality thereof, or (ii) subject to the conveyance in perpetuity of a
102 conservation easement, as that term is defined in § 10.1-1009, or an open-space easement, as that term
103 is defined in § 10.1-1700.

104 D. All tax credits based upon this section shall be registered with the Department of Taxation.
105 Beginning January 1, 2007, the aggregate amount of tax credits permitted to be registered with the
106 Department pursuant to this section for each taxable year shall not exceed \$ 110 million. Tax credits
107 registered pursuant to this section shall be registered on a first in time basis for the full amount of the
108 permissible credit. Any amount of a registered credit that exceeds the annual cap of \$ 110 million shall
109 automatically carry forward to the next taxable year. The Department shall (i) maintain a current log of
110 the number and amount of tax credit registrations, (ii) post the information on the Department's website
111 on a weekly basis, and (iii) provide such information to any person upon request.

112 § 58.1-512.1. Appraisal guidelines.

113 Each appraisal estimating the fair market value of a donation upon which credits are to be based
114 shall employ proper methodology and be supported by market evidence. The Department of Taxation
115 shall establish and make publicly available guidelines that incorporate, as applicable and without
116 limitation, the requirements under § 170 (h) of the Internal Revenue Code of 1986, as amended, and the
117 Uniform Standards of Professional Appraisal Practice (USPAP). The guidelines shall include, but not be
118 limited to, a requirement that the valuation of a qualified donation be based on a highest and best use
119 analysis which shows a reasonable probability that (i) the property is physically adaptable for the
120 highest and best use that is proposed in the appraisal, considering factors such as slopes, flood plains,
121 and soil conditions; (ii) the highest and best use meets existing zoning requirements; (iii) there is a need

or demand for such use in the reasonably near future in the immediate area in which the property is located; and (iv) in the event that the highest and best use for the property absent conservation is commercial or residential development, existing roads serving the property are sufficient to support that type of development. The Department shall update the guidelines as necessary as determined by the Tax Commissioner. Such guidelines 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, *along with a fee of 1% of the value of the donated interest, or \$5,000, whichever is less. Revenues generated by such fees shall be used by the Department for implementation of this article.*

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.

G. Any unused credit held by a taxpayer under this article (i) shall pass to his estate upon his death and may be used by the estate as a credit against the tax liability imposed pursuant to Chapter 9 (§ 58.1-900 et seq.), provided the 10-year carry forward period described in subdivision C 1 of § 58.1-512 has not elapsed prior to the date of such taxpayer's death, and (ii) shall be transferable from the estate to other taxpayers.

§ 58.1-901. Definitions.

As used in this chapter, unless the context clearly shows otherwise, the term or phrase:

"Decedent" means a deceased person.

"Federal credit" means the maximum amount of the credit for state death taxes allowable by § 2011 of the United States Internal Revenue Code of 1954, as amended or renumbered, or successor provision, in respect to a decedent's taxable estate. The term "maximum amount" shall be construed as to take full advantage of such credit as the laws of the United States may allow. In no event, however, shall such amount be less than the federal credit allowable by § 2011 of the Internal Revenue Code as it existed on January 1, 1978.

"Gross estate" means "gross estate" as defined in § 2031 of the United States Internal Revenue Code of 1954, as amended or renumbered, or the successor provision of the laws of the United States.

"Interest in closely held business" means an "interest in a closely held business" as defined in § 6166 of the United States Internal Revenue Code of 1986, as amended or renumbered, or the successor

183 *provision of the laws of the United States.*

184 "Nonresident" means a decedent who was domiciled outside of the Commonwealth of Virginia at his
185 death.

186 "Personal representative" means the personal representative of the estate of the decedent, appointed,
187 qualified and acting within the Commonwealth, or, if there is no personal representative appointed,
188 qualified and acting within the Commonwealth, then any person in actual or constructive possession of
189 the Virginia gross estate of the decedent.

190 "Resident" means a decedent who was domiciled in the Commonwealth of Virginia at his death.

191 "State" means any state, territory or possession of the United States and the District of Columbia.

192 "Taxable estate" means "taxable estate" as defined in § 2051 of the United States Internal Revenue
193 Code of 1954, as amended or renumbered, or the successor provision of the laws of the United States.

194 "Value" means "value" as finally determined for federal estate tax purposes under the laws of the
195 United States relating to federal estate taxes.

196 "*Working farm*" means an interest in a closely held business that operates as an active trade or
197 business for agricultural purposes.

198 Any reference in this chapter to the laws of the United States relating to federal estate and gift taxes
199 means the provisions of the Internal Revenue Code of 1954, and amendments thereto, and other
200 provisions of the laws of the United States relating to federal estate and gift taxes, as the same may be
201 or become effective at any time or from time to time.

202 § 58.1-902. Tax on transfer of taxable estate of residents; amounts; credit; property of resident
203 defined.

204 A. *A1. For deaths occurring before January 1, 2006, a tax in the amount of the federal credit is*
205 *imposed on the transfer of the taxable estate of every resident, subject, where applicable, to the credit*
206 *provided for in subsection B.*

207 2. *For deaths occurring on or after January 1, 2006, a tax in the amount of the federal credit is*
208 *imposed on the transfer of the taxable estate of every resident whose gross estate exceeds \$10 million,*
209 *subject, where applicable, to the credit provided for in subsection B. However, no tax shall be imposed*
210 *on a gross estate if the majority of the assets of the total estate are an interest in a closely held*
211 *business or a working farm.*

212 B. If the real and tangible personal property of a resident is located outside of the Commonwealth
213 and is subject to a death tax imposed by another state for which a credit is allowed under § 2011 of the
214 Internal Revenue Code of 1954, as amended or renumbered, or the successor provision of the laws of
215 the United States relating to federal estate taxes, the amount of tax due under this section shall be
216 credited with the lesser of:

217 1. The amount of the death tax paid the other state and credited against the federal estate tax; or

218 2. An amount computed by multiplying the federal credit by a fraction, the numerator of which is the
219 value of that part of the gross estate over which another state or states have jurisdiction to the same
220 extent to which Virginia would exert jurisdiction under this chapter with respect to the residents of such
221 other state or states and the denominator of which is the value of the decedent's gross estate.

222 C. Property of a resident includes:

223 1. Real property situated in the Commonwealth of Virginia;

224 2. Tangible personal property having an actual situs in the Commonwealth of Virginia; and

225 3. Intangible personal property owned by the resident regardless of where it is located.

226 2. **That the amendments made to §§ 58.1-512, 58.1-512.1, and 58.1-513 pursuant to the provisions**
227 **of this act shall become effective on January 1, 2007, and the amendments made to §§ 58.1-901**
228 **and 58.1-902 pursuant to provisions of this act shall apply to the estates of individuals who die on**
229 **or after July 1, 2007.**