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SENATE BILL NO. 744

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on January 23, 2008)

(Patron Prior to Substitute—Senator Hanger)

A BILL to amend and reenact § 58.1-512 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 58.1-512.2, relating to the Virginia Land Conservation Incentives Act of 1999.

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-512 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 58.1-512.2 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% 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 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 such conveyances made on or after January 1, 2007, the tax credit shall be 40% of the fair market value of the land or interest in land so conveyed.

B. The fair market value of qualified donations made under this section shall be determined in accordance with § 58.1-512.1 and 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 United States 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 each taxpayer, including credit claimed by applying unused credits as provided under subsection C of § 58.1-513, 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, for each taxpayer, 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 10 consecutive taxable years following the taxable year in which the credit originated until fully expended.

2. Qualified donations shall include the conveyance 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 restriction, provided that such less-than-fee interest qualifies as a charitable deduction under § 170 (h) of the United States Internal Revenue Code of 1986, as amended.

The Department of Conservation and Recreation shall compile an annual report on qualified donations of less-than-fee interests accepted by any public or private conservation agency in the respective calendar year and shall submit the report by December 1 of each year to the Chairmen of the House Committee on Appropriations, House Committee on Finance, and the Senate Committee on Finance. Qualified donations shall not include the conveyance of a fee interest, or a less-than-fee interest, in real property by a charitable organization that (i) meets the definition of "holder" in § 10.1-1009 and (ii) holds one or more conservation easements.

3. Any fee interest, or a less-than-fee interest, in real property that has been dedicated as open space within, or as part of, a residential subdivision or any other type of residential or commercial development; dedicated as open space in, or as part of, any real estate development plan; or dedicated for the purpose of fulfilling density requirements to obtain approvals for zoning, subdivision, site plan, or building permits shall not be a qualified donation under this article.

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

5. The preservation, agricultural preservation, historic preservation or similar use and purpose of such property shall be assured in perpetuity. In the case of conveyances of a fee interest to a charitable organization that is a "holder" as defined in § 10.1-1009, the credit shall not be allowed until the charitable organization agrees that subsequent conveyances of the fee interest in the property will be (i) subject to a previous conveyance in perpetuity of a conservation easement, as that term is defined in § 10.1-1009, or subject to the conveyance in perpetuity of an open-space easement, as that term is defined in § 10.1-1700, or (ii) conveyed to the Commonwealth of Virginia or to a federal conservation agency. No credit shall be allowed with respect to any subsequent conveyances by the charitable organization.

D. The issuance of tax credits under this article for donations made on and after January 1, 2007 2009, shall be in accordance with procedures, *guidelines*, and deadlines established by the Department and shall be administered under the following conditions:

1. The taxpayer shall apply for a credit after completing the donation by submitting a form or forms prescribed by the Department in consultation with the Department of Conservation and Recreation. If the application requests a credit of \$1 million or more, then a copy of the application shall also be filed with the Department of Conservation and Recreation by the taxpayer. The application shall include, but not be limited to:

- a. A description of the conservation purpose or purposes being served by the donation;
 - b. The fair market value of land being donated in the absence of any easement or other restriction;
 - c. The public benefit derived from the donation;
 - d. The extent to which water quality best management practices will be implemented on the property;
- and
- e. Whether the property is fully or partially forested and a forest management plan is included in the terms of the donation.

2. Applications for otherwise qualified donations of a less-than-fee interest shall be accompanied by an affidavit describing how the donated interest in land meets the requirements of § 170(h) of the United States Internal Revenue Code of 1986, as amended, and the regulations adopted thereunder. The application with accompanying affidavit shall be submitted to the Department of Taxation, with a copy also provided to the Department of Conservation and Recreation.

3. *No credit shall be allowed for the conveyance of a fee interest, or a less-than-fee interest, in real property made on or after January 1, 2009, unless, as provided in § 58.1-512.2, the property or interest conveyed has been (i) certified by a licensed reviewer to be in compliance with standards adopted by the Department and (ii) registered with the Department prior to any credit being claimed or transferred by a taxpayer.*

3 4. a. No credit in the amount of \$1 million or more shall be *registered or* issued with respect to a donation unless the conservation value of the donation has been verified by the Director of the Department of Conservation and Recreation, based on the criteria adopted by the Virginia Land Conservation Foundation for this purpose. Such criteria and subsequent amendments shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.), but the Virginia Land Conservation Foundation shall provide for adequate public participation, including adequate notice and opportunity to provide comments on the proposed criteria. The Director shall act on applications within 90 days of his receipt of a complete application and shall notify the taxpayer and the Department of Taxation of his action.

b. For purposes of determining whether a credit requires verification of the conservation value, the credits allowed under this article with respect to donations of any other portion of a recorded parcel of land within the preceding 11 years shall be aggregated with the credit claimed for the current donation. This subdivision shall not apply if (i) all owners of the parcel who have been allowed credit for a qualified donation are not affiliated with the person or entity seeking credit for the current donation of a different portion of the parcel and (ii) in the case of an individual seeking credit, the individual has not previously made a qualified donation for any portion of the parcel and is not an immediate family member of any such owners.

4 5. a. Tax credits shall be issued on a calendar year basis, and in no case shall the Department issue more than the maximum allowed for the calendar year. For donations made in calendar year 2007 the maximum allowed is \$100 million. The credits shall be issued in the order that each complete application is received *and registered pursuant to § 58.1-512.2*. If more than one application is received at the same time *and the properties or interests conveyed have been registered with the Department*, the credits with respect to those applications shall be issued in the order that the conveyances were recorded

in the appropriate circuit court of the Commonwealth. In the event that a credit requires verification of the conservation value by the Department of Conservation and Recreation and such verification has not been received at the time the maximum \$100 million allowed is reached for the calendar year of the donation, such credit shall not be issued for that calendar year but shall be issued in the calendar year that the conservation value of the credit is verified by the Department of Conservation and Recreation.

b. Beginning with calendar year 2008, the \$100 million amount contained in subdivision 4a 5 a shall be increased by an amount equal to \$100 million multiplied by the percentage by which the consumer price index for all-urban consumers published by the United States Department of Labor (CPI-U) for the 12-month period ending August 31 of the preceding year exceeds the CPI-U for the 12-month period ending August 31, 2006.

§ 6. a. Any taxpayer that has been issued a tax credit by the Department shall be allowed to use such credit for his or its taxable year that begins in the calendar year for which such credit was issued and for succeeding taxable years in accordance with the 10 consecutive taxable year carryforward provisions of this article.

b. Any taxpayer to whom a credit has been transferred may use such credit for the taxable year in which the transfer occurred and unused amounts may be carried forward to succeeding taxable years, but in no event may such transferred credit be used more than 11 years after it was originally issued by the Department or in any taxable year of such taxpayer that ended prior to the date of transfer.

6 7. Neither the verification of conservation value by the Department of Conservation and Recreation, the registration of a tax credit pursuant to § 58.1-512.2, nor the issuance of a credit by the Department of Taxation shall in any way be construed or interpreted as prohibiting the Department of Taxation or the Tax Commissioner from auditing any credit claimed pursuant to the provisions of this article or from assessing tax relating to the claiming of any credit under this article.

E. In any review or appeal before the Tax Commissioner or in any court in the Commonwealth the burden of proof shall be on the taxpayer to show that the fair market value and conservation value at the time of the qualified donation is consistent with this section and that all requirements of this article have been satisfied.

§ 58.1-512.2. Registration of properties with the Department.

A. No credit shall be allowed under this article for the conveyance of a fee interest, or a less-than-fee interest, in real property made on or after January 1, 2009, unless the property or interest conveyed has been (i) certified by a licensed reviewer to be in compliance with standards adopted by the Department and (ii) registered with the Department prior to any credit being claimed or transferred by a taxpayer.

B. The registration described in subsection A shall require a written certification by a licensed reviewer that the property, or interest therein, is in compliance with pre-registration standards promulgated by the Department, which standards shall be based upon the guidelines set forth in subsection C.

Pre-registration standards shall be updated by the Department as deemed necessary by the Tax Commissioner. A certification by a licensed reviewer that the property to be conveyed (or interest therein) is in compliance with the Department's standards as required in this subsection shall not preclude the Department from contesting a credit claim under this article and disallowing the credits in whole or in part.

C. The Department shall promulgate pre-registration standards, including but not limited to standards that incorporate the following guidelines:

1. Any donation upon which credits are to be based shall provide significant public benefit. The property that is the subject of the donation shall have important conservation values; the donation shall be made to an appropriate donee with a commitment to preserving in perpetuity the conservation values of the property that is the subject of the donation; and if the donation is a partial interest, such as a conservation or open-space easement, the terms of the donation shall provide an appropriate level of protection for the conservation values of the subject property. The Department's pre-registration standards shall incorporate, as applicable (without limitation), requirements under the Open-Space Land Act (§ 10.1-1700 et seq.), the Virginia Conservation Easement Act (§ 10.1-1009 et seq.), and § 170 (h) of the Internal Revenue Code.

2. The appraisal estimating the value of any donation upon which credits are to be based shall be in accordance with the provisions of § 58.1-512.1.

In developing and updating the pre-registration standards, the Department shall consult with the Virginia Land Conservation Foundation and shall provide for adequate public participation. In addition, for any donation for which the tax credit requested under this article is \$1 million or more the Department's pre-registration standards shall, as a condition for the issuance of any tax credit, require verification of the conservation value of such donation by the Director of the Department of Conservation and Recreation as provided in subdivision D 4 a of § 58.1-512.

183 D. The Department shall establish the application procedures and the qualifications required for
184 persons and entities seeking to provide the certification service described under this section, provided
185 that all qualifications shall be necessary to ensure either competence or integrity of licensed reviewers.
186 The application procedures shall require applicants to provide documentation establishing a minimum
187 level of expertise in the evaluation of land preservation tax credit claims. The Department is hereby
188 authorized to license qualified applicants as licensed reviewers for the purposes described in this
189 section. Any person or entity licensed by the Department shall only use the pre-registration standards
190 promulgated by the Department in its review of any property or property interest.

191 E. The Department may levy and collect fees for licensure that are sufficient to cover all direct
192 expenses for the administration of the registration program described in this section.

193 F. The Tax Commissioner may revoke or suspend the license of reviewers who repeatedly certify
194 conveyances for which credits are subsequently disallowed in whole or in part by the Department.
195 Licensed reviewers also shall be subject to regular examination by the Department.

196 G. The Department shall keep a current list of licensed reviewers on its website.

197 H. Any person or entity who is denied licensure by the Department or whose license is revoked or
198 suspended shall be entitled to a review of such action. Appeals from such actions shall be in accordance
199 with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

200 I. The Department shall establish a limited appeals process by which prospective credit claimants
201 repeatedly rejected by licensed reviewers may seek to register with the Department notwithstanding the
202 lack of a written certification from a licensed reviewer.

203 J. Except as provided in subsection H, the pre-registration standards and procedures described under
204 this section shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.).

205 **2. That the pre-registration standards and procedures for the registration process described under**
206 **§ 58.1-512.2 of the Code of Virginia pursuant to the provisions of this act shall first be made**
207 **publicly available no later than October 1, 2008.**