

# DEPARTMENT OF TAXATION

## 2010 Fiscal Impact Statement

1. **Patron** Mary Margaret Whipple

2. **Bill Number** SB 264

3. **Committee** House Finance

**House of Origin:**

       **Introduced**

       **Substitute**

       **Engrossed**

4. **Title** Land Preservation Tax Credit

**Second House:**

  X   **In Committee**

       **Substitute**

       **Enrolled**

### 5. **Summary/Purpose:**

This bill would remove the \$10,000 cap on the fee that is assessed when Land Preservation Tax Credits are transferred and limit the revenues used to recover the costs incurred by TAX and the Department of Conservation and Recreation for the administration of the credit to 50 percent of the total revenue generated by the fee on an annual basis.

In addition, this bill would provide that the remainder of the amount generated by the fee would be transferred to the Virginia Land Conservation Fund for distribution to the public or private agencies or organizations that are responsible for enforcing the conservation and preservation purposes of the donated interests. This bill would require the Virginia Land Conservation Foundation to distribute annually such revenues proportionally based on a three-year average of the number of donated interests accepted by the public or private conservation agencies or organizations during the immediately preceding three-year period.

Currently, the fee is 2 percent of the value of the donated interest or \$10,000, whichever is less.

This bill would be effective for sales or distributions of credits occurring on or after July 1, 2010.

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

7. **Budget amendment necessary:** Yes.

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This bill would require that the remaining revenue generated from the removal of the cap be transferred to the Virginia Land Conservation Fund for distribution to the public or private agencies or organizations that are responsible for enforcing the conservation and preservation purposes of the donated interests. Therefore, a budget amendment allocating the funds is needed.

## **8. Fiscal implications:**

### Administrative Costs

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.

### Revenue Impact

This bill would generate an additional \$2 million in revenue annually over the amount currently collected from the capped fee. This estimate is based on the amount of fees paid since the fee was first imposed and the amount that would have been paid had there been no cap. This bill would allow TAX and the Department of Conservation and Recreation a fee amount up to 50 percent of the revenue generated annually for administrative costs.

Currently, the fee with the cap generates sufficient revenue to cover the costs incurred by TAX and the Department of Conservation and Recreation for the administration of the Land Preservation Tax Credit. TAX expects that this bill would continue to provide sufficient revenue to TAX and the Department of Conservation and Recreation for administrative costs. The remaining revenue would be transferred to the Virginia Land Conservation Fund for distribution to the public or private agencies or organizations that are responsible for enforcing the conservation and preservation purposes of the donated interests.

## **9. Specific agency or political subdivisions affected:**

Department of Taxation  
Department of Conservation and Recreation

## **10. Technical amendment necessary: No.**

## **11. Other comments:**

### Land Preservation Tax Credit

The Land Preservation Tax Credit is equal to forty percent of the fair market value of 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 taxpayer to a public or private conservation agency.

Beginning in calendar year 2007, the amount of Land Preservation Tax Credits that may be issued in any one year is subject to a cap. For 2007, the cap amount was \$100 million. Starting in calendar year 2008, the \$100 million cap will 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. For 2009, the cap was \$106,647,000.

Any taxpayer holding a Land Preservation Tax Credit may transfer the unused credit for use by another taxpayer. The taxpayer transferring the credit must notify TAX of the transfer. There is a 2 percent fee on the value of the donated interest imposed for the transfer of credits. The transfer fee is capped at \$10,000. This fee is also applied when pass-through entities distribute the credit to members, managers, partners, shareholders or beneficiaries. Revenues generated by the fees are used to recover the costs incurred by TAX and the Department of Conservation and Recreation for the administration of the Land Preservation Tax Credit.

### Proposal

This bill would remove the \$10,000 cap on the fee that is assessed when Land Preservation Tax Credits are transferred and limit the revenues used to recover the costs incurred by TAX and the Department of Conservation and Recreation for the administration of the credit to 50 percent of the total revenue generated by the fee on an annual basis.

In addition, this bill would provide that the remainder of the amount generated by the fee would be transferred to the Virginia Land Conservation Fund for distribution to the public or private agencies or organizations that are responsible for enforcing the conservation and preservation purposes of the donated interests. This bill would require the Virginia Land Conservation Foundation to distribute annually such revenues proportionally based on a three-year average of the number of donated interests accepted by the public or private conservation agencies or organizations during the immediately preceding three-year period.

This bill would be effective for sales or distributions of credits occurring on or after July 1, 2010.

### Similar Bills

**House Bill 447** is identical to this bill.

**House Bill 141** would modify the Land Preservation Tax Credit's restriction preventing certain charitable organizations from qualifying for the credit to clarify that conservation easements must be acquired pursuant to the authority conferred on a "holder" as defined by law in order to prevent the organization from qualifying for the credit.

**Senate Bill 233** would extend the reduction in the amount of Land Preservation Credits that may be claimed on income tax returns from \$100,000 per taxpayer to \$50,000 per taxpayer effective for credits claimed for the taxable year beginning on January 1, 2011.

**Senate Bill 341** would require the Department of Conservation and Recreation to provide an estimate of the number of acres of land currently being used for "production agriculture

and silviculture" when creating its annual report on less-than-fee interests qualifying for the Land Preservation Tax Credit.

**Senate Bill 661** would require certain taxpayers whose application for the Land Preservation Tax Credit involves a donation of land or interest in land to have the conservation value of the donation verified by the Department of Conservation and Recreation if such application would result in a credit of \$250,000 or more.

cc : Secretary of Finance

Date: 2/22/2010 JKM  
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