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## SENATE BILL NO. 1088

Offered January 12, 2011

Prefiled January 11, 2011

A *BILL to amend and reenact §§ 3.2-201 and 58.1-513 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 3.2-201.1, relating to making a portion of the land preservation tax credit refundable.*

\_\_\_\_\_  
Patron—Hanger

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Referred to Committee on Finance

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 3.2-201 and 58.1-513 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 3.2-201.1 as follows:**

§ 3.2-201. Powers and duties of Office of Farmland Preservation.

A. The Office of Farmland Preservation shall have the following powers and duties:

1. To develop, in cooperation with the Department of Business Assistance, the Virginia Farm Bureau Federation, the American Farmland Trust, the Virginia Land Conservation Foundation, the Virginia Outdoors Foundation, the Virginia Association of Counties, and the Virginia Cooperative Extension: (i) model policies and practices that may be used as a guide to establish local purchase of development rights programs; (ii) criteria for the certification of local purchase of development rights programs as eligible to receive grants, loans or other funds from public sources; and (iii) methods and sources of revenue for allocating funds to localities to purchase agricultural conservation easements;

2. To create programs to educate the public about the importance of farmland preservation to the quality of life in the Commonwealth;

3. To provide technical, professional, and other assistance to farmers on matters related to farmland preservation;

4. To provide technical, professional, and other assistance to local governments interested in developing additional farmland preservation policies and programs. Such policies and programs shall include (i) use value assessment and taxation pursuant to §§ 58.1-3230 and 58.1-3231; (ii) transfer of development rights pursuant to Article 7.1 (§ 15.2-2316.1 et seq.) of Chapter 22 of Title 15.2; (iii) agricultural and forestal districts pursuant to Chapter 43 (§ 15.2-4300 et seq.) of Title 15.2; and (iv) establishment of local lease of development rights; and

5. To administer the Virginia Farm Link program established pursuant to § 3.2-202.

B. ~~State grants~~ *Moneys in the Local Purchase of Development Rights Matching Grant Fund established under § 3.2-201.1* shall be distributed *as grants* to local purchase of development rights programs under policies, procedures, and guidelines developed by the Office of Farmland Preservation. In general, for each \$1 in grant moneys awarded by the Office, the applicable local purchase of development rights program of the county or city shall be required to provide a \$1 match. However, as part of these policies, procedures, and guidelines developed by the Office, the Office shall include incentives that recognize and encourage counties and cities participating in use value taxation pursuant to Article 4 (§ 58.1-3229 et seq.) of Chapter 32 of Title 58.1.

§ 3.2-201.1. *Local Purchase of Development Rights Matching Grant Fund established.*

*There is hereby created in the state treasury a special fund to be known as the Local Purchase of Development Rights Matching Grant Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All amounts deposited to the Fund pursuant to subdivision C 3 of § 58.1-513 and such other funds as may be made available to the Fund from any other source, public or private, shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund.*

*Moneys in the Fund shall be used solely for the purposes of providing grants, on a matching basis, to local purchase of development rights programs that have been certified pursuant to this chapter.*

*The match made by the local purchase of development rights programs shall not be made in anything other than money. In addition, such match shall not be made from state or federal moneys received by the county or city (or by the purchase of development rights programs) for agriculture, preservation, conservation, or natural resource purposes.*

*The Fund shall be administered by the Coordinator of the Office of Farmland Preservation. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued*

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59 *by the Comptroller upon written request signed by the Commissioner of Agriculture and Consumer*  
60 *Services.*

61 § 58.1-513. Limitations; transfer of credit; gain or loss from tax credit.

62 A. Any taxpayer claiming a tax credit under this article shall not claim a credit under any similar  
63 Virginia law for costs related to the same project. To the extent a credit is taken in accordance with this  
64 article, no subtraction allowed for the gain on the sale of (i) land dedicated to open-space use or (ii) an  
65 easement dedicated to open-space use under subsection C of § 58.1-322 shall be allowed for three years  
66 following the year in which the credit is taken. Any building which serves as the basis, in whole or in  
67 part, of a tax credit under this article shall not serve as the basis of the tax credit allowed under  
68 § 58.1-339.2 for a period of five years following the donation on which the credit is based; and any  
69 building which serves as the basis for the tax credit allowed under § 58.1-339.2 shall not serve as the  
70 basis, in whole or in part, for a tax credit under this article for a period of five years following the  
71 completion of the rehabilitation project on which the credit is based.

72 B. Any tax credits that arise under this article from the donation of land or an interest in land made  
73 by a pass-through tax entity such as a trust, estate, partnership, limited liability company or partnership,  
74 limited partnership, subchapter S corporation or other fiduciary shall be used either by such entity if it is  
75 the taxpayer on behalf of such entity or by the member, manager, partner, shareholder or beneficiary, as  
76 the case may be, in proportion to their interest in such entity in the event that income, deductions and  
77 tax liability pass through such entity to such member, manager, partner, shareholder or beneficiary or as  
78 set forth in the agreement of said entity. Such tax credits shall not be claimed by both the entity and the  
79 member, manager, partner, shareholder or beneficiary for the same donation.

80 C. 1. Any taxpayer holding a credit under this article may transfer unused but otherwise allowable  
81 credit for use by another taxpayer on Virginia income tax returns. A taxpayer who transfers any amount  
82 of credit under this article shall file a notification of such transfer to the Department in accordance with  
83 procedures and forms prescribed by the Tax Commissioner.

84 2. A fee of two percent of the value of the donated interest shall be imposed upon any transfer  
85 arising from the sale by any taxpayer of credits under this article and upon the distribution of a portion  
86 of credits under this article to a member, manager, partner, shareholder or beneficiary pursuant to  
87 subsection B. Revenues generated by such fees first shall be used by the Department of Taxation and  
88 the Department of Conservation and Recreation for their costs in implementing this article but in no  
89 event shall such amount exceed 50 percent of the total revenue generated by the fee on an annual basis.  
90 The remainder of such revenues shall be transferred to the Virginia Land Conservation Fund for  
91 distribution to the public or private conservation agencies or organizations that are responsible for  
92 enforcing the conservation and preservation purposes of the donated interests. Distribution of such  
93 revenues shall be made annually by the Virginia Land Conservation Foundation proportionally based on  
94 a three-year average of the number of donated interests accepted by the public or private conservation  
95 agencies or organizations during the immediately preceding three-year period.

96 3. *For taxable years beginning on or after January 1, 2011, any donor of land or interest in land*  
97 *that has been issued a tax credit under this article for the donation may request a refund of a portion of*  
98 *the unused tax credit with the Tax Commissioner. The donor may be refunded no more than an*  
99 *aggregate of \$100,000 in tax credits issued under this article regardless of the number of qualified*  
100 *donations made. In addition, the total amount of tax credits issued under this article claimed by the*  
101 *donor plus the total amount of tax credits issued under this article refunded to the donor by the Tax*  
102 *Commissioner for the taxable year shall not exceed the maximum amount of credit that may be claimed*  
103 *for the year as provided in subdivision C 1 of § 58.1-512. The Tax Commissioner shall not refund any*  
104 *unused tax credit for a taxable year that follows the last taxable year for which the donor was allowed*  
105 *to claim the credit.*

106 *If the land or interest in land donated was partitioned from or part of another parcel of land and*  
107 *the Tax Commissioner has previously refunded unused tax credits for a prior donation made from such*  
108 *parcel, or made from any land partitioned from such parcel of land, the Tax Commissioner may refund*  
109 *unused tax credits relating to the current donation only if the donor (i) is not the same person that*  
110 *received a refund of unused tax credits for the prior donation, and (ii) is not an immediate family*  
111 *member of any individual, and is not affiliated with any person or entity, that received a refund of*  
112 *unused tax credits for the prior donation.*

113 *Tax credits shall be refunded by the Tax Commissioner on behalf of the Commonwealth for 90*  
114 *percent of face value. The remaining 10 percent shall not be refunded and shall be an administrative fee*  
115 *charged for issuing the refund. Tax credits shall be refunded within 90 days of the filing date of the*  
116 *income tax return on which the donor applies for the refund. Upon refunding a tax credit, the Tax*  
117 *Commissioner shall promptly provide a written certification to the Comptroller indicating the face value*  
118 *of the tax credits refunded. The Comptroller shall, as soon as practicable, deposit an amount equivalent*  
119 *to 10 percent of the face value of the tax credits into the Local Purchase of Development Rights*  
120 *Matching Grant Fund established under § 3.2-201.1.*

121 *No person who has transferred a tax credit issued under this article to another person or acquired a*  
122 *tax credit issued under this article from another person shall be eligible to request a refund of tax*  
123 *credits pursuant to this subdivision.*

124 D. To the extent included in and not otherwise subtracted from federal adjusted gross income  
125 pursuant to § 58.1-322 or federal taxable income pursuant to § 58.1-402, there shall be subtracted any  
126 amount of gain or income recognized by a taxpayer on the application of a tax credit under this article  
127 against a Virginia income tax liability.

128 E. The transfer of the credit and its application against a tax liability shall not create gain or loss for  
129 the transferor or the transferee of such credit.

130 F. A pass-through tax entity, such as a partnership, limited liability company or Subchapter S  
131 corporation, may appoint a tax matters representative, who shall be a general partner, member/manager  
132 or shareholder, and register that representative with the Tax Commissioner. The Tax Commissioner shall  
133 be entitled to deal with the tax matters representative as representative of the taxpayers to whom credits  
134 have been allocated or transferred by the entity under this article with respect to those credits. In the  
135 event a pass-through tax entity allocates or transfers tax credits arising under this article to its partners,  
136 members or shareholders and the allocated or transferred credits shall be disallowed, in whole or in part,  
137 such that an assessment of additional tax against a taxpayer shall be made, the Tax Commissioner shall  
138 first make written demand for payment of any additional tax, together with interest and penalties, from  
139 the tax matters representative. In the event such payment demand is not satisfied, the Tax Commissioner  
140 shall proceed to collection against the taxpayers in accordance with the provisions of Chapter 18  
141 (§ 58.1-1800 et seq.).