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SENATE BILL NO. 1232

Offered January 12, 2011

Prefiled January 12, 2011

A BILL to amend and reenact §§ 58.1-512 and 58.1-513 of the Code of Virginia and to amend the Code of Virginia by adding in Article 20.1 of Chapter 3 of Title 58.1 a section numbered 58.1-513.1, relating to land preservation tax credits.

Patrons—Deeds and Hanger

Referred to Committee on Finance**Be it enacted by the General Assembly of Virginia:**

1. That §§ 58.1-512 and 58.1-513 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 20.1 of Chapter 3 of Title 58.1 a section numbered 58.1-513.1 as follows:

§ 58.1-512. Land preservation tax credits for individuals and corporations.

A. (Effective for taxable years beginning before January 1, 2011) 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.

A. (Effective for taxable years beginning on or after January 1, 2011) 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 percent 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 percent 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. *As provided in subdivision D 4 c, the Tax Commissioner may require a second qualified appraisal from a different qualified appraiser to substantiate the fair market value of any donation.* 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. (Effective for taxable years beginning before January 1, 2011) 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, \$100,000 for each of 2002 through 2008 taxable years, \$50,000 for each of 2009 and 2010 taxable years, and \$100,000 for 2011 taxable years and for each taxable year 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 that is unused in any one taxable year may be carried over for a maximum of 10 consecutive taxable years following the taxable

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59 year in which the credit originated until fully expended. For taxpayers affected by the credit reduction
60 for taxable years 2009 and 2010, any portion of the credit that is unused in any one taxable year may
61 be carried over for a maximum of 12 consecutive taxable years following the taxable year in which the
62 credit originated until fully expended.

63 C. 1. (Effective for taxable years beginning on or after January 1, 2011) The amount of the credit
64 that may be claimed by each taxpayer, including credit claimed by applying unused credits as provided
65 under subsection C of § 58.1-513, shall not exceed \$50,000 for 2000 taxable years, \$75,000 for 2001
66 taxable years, \$100,000 for each of 2002 through 2008 taxable years, \$50,000 for each of 2009, 2010,
67 and 2011 taxable years, and \$100,000 for 2012 taxable years and for each taxable year thereafter. In
68 addition, for each taxpayer, in any one taxable year the credit used may not exceed the amount of
69 individual, fiduciary or corporate income tax otherwise due. Any portion of the credit that is unused in
70 any one taxable year may be carried over for a maximum of 10 consecutive taxable years following the
71 taxable year in which the credit originated until fully expended. For taxpayers affected by the credit
72 reduction for taxable years 2009, 2010, and 2011, any portion of the credit that is unused in any one
73 taxable year may be carried over for a maximum of 13 consecutive taxable years following the taxable
74 year in which the credit originated until fully expended.

75 2. Qualified donations shall include the conveyance of a fee interest in real property or the
76 conveyance in perpetuity of a less-than-fee interest in real property, such as a conservation restriction,
77 preservation restriction, agricultural preservation restriction, or watershed preservation restriction,
78 provided that such less-than-fee interest qualifies as a charitable deduction under § 170(h) of the United
79 States Internal Revenue Code of 1986, as amended.

80 The Department of Conservation and Recreation shall compile an annual report on qualified
81 donations of less-than-fee interests accepted by any public or private conservation agency in the
82 respective calendar year and shall submit the report by December 1 of each year to the Chairmen of the
83 House Committee on Appropriations, House Committee on Finance, and the Senate Committee on
84 Finance. In preparing such report, the Department of Conservation and Recreation shall consult and
85 coordinate with the Department of Taxation and the Departments of Forestry and Agriculture and
86 Consumer Services to provide an estimate of the number of acres of land currently being used for
87 "production agriculture and silviculture" as defined in § 3.2-300 that have been protected by qualified
88 donations of less-than-fee interests. This report shall include information, when available, on land
89 qualifying for credits being used for "production agriculture and silviculture" that have onsite operational
90 best management practices, which are designed to reduce the amount of nutrients and sediment entering
91 public waters. This information shall be reported in summary fashion as appropriate to preserve
92 confidentiality of information. Qualified donations shall not include the conveyance of a fee interest, or
93 a less-than-fee interest, in real property by a charitable organization that (i) meets the definition of
94 "holder" in § 10.1-1009 and (ii) holds one or more conservation easements acquired pursuant to the
95 authority conferred on a "holder" by § 10.1-1010.

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

101 4. Qualified donations shall be eligible for the tax credit herein described if such donations are made
102 to the Commonwealth of Virginia, an instrumentality thereof, or a charitable organization described in
103 § 501(c) (3) of the United States Internal Revenue Code of 1986, as amended, if such charitable
104 organization (i) meets the requirements of § 509(a) (2) or (ii) meets the requirements of § 509(a) (3) and
105 is controlled by an organization described in § 509(a) (2).

106 5. The preservation, agricultural preservation, historic preservation or similar use and purpose of such
107 property shall be assured in perpetuity. In the case of conveyances of a fee interest to a charitable
108 organization that is a "holder" as defined in § 10.1-1009, the credit shall not be allowed until the
109 charitable organization agrees that subsequent conveyances of the fee interest in the property will be (i)
110 subject to a previous conveyance in perpetuity of a conservation easement, as that term is defined in
111 § 10.1-1009, or subject to the conveyance in perpetuity of an open-space easement, as that term is
112 defined in § 10.1-1700, or (ii) conveyed to the Commonwealth of Virginia or to a federal conservation
113 agency. No credit shall be allowed with respect to any subsequent conveyances by the charitable
114 organization.

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

118 1. The taxpayer shall apply for a credit after completing the donation by submitting a form or forms
119 prescribed by the Department in consultation with the Department of Conservation and Recreation. If the
120 application requests a credit of \$1 million or more or if the donation meets the conditions of subdivision

3 c, 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. a. No credit in the amount of \$1 million or more shall be 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.

c. If (i) the real property that is the subject of the donation was partitioned from or part of another parcel of land and any other portion of such parcel, or any land partitioned from such parcel of land, has been allowed a tax credit under this article (or an application for tax credit is pending) within three years of such donation and (ii) the tax credit that would otherwise be allowed to the donor for such donation is at least \$250,000, then no credit under this article shall be issued with respect to such donation described in clause (i) unless the conservation value of the donation has been verified by the Director of the Department of Conservation and Recreation. 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. Nothing in this subdivision shall be construed or interpreted (i) as allowing additional tax credit for any land or interest in land previously conveyed for which tax credit has already been allowed under this article or (ii) affecting the validity of any tax credit allowed under this article for a prior conveyance of any land or interest in land.

4. 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. If more than one application is received at the same time, 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 4 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.

c. As a condition of issuing any tax credit under this article, the Tax Commissioner may require the donor to provide a second qualified appraisal from a different qualified appraiser for any application that requests a credit of \$5 million or more. The requirement shall be made in writing and provided to the donor by first-class mail on or before the thirtieth day following the filing date of the application.

182 *The second appraisal shall be prepared at the Department of Taxation's expense. The Department of*
183 *Taxation shall register the donation for tax credits under this article on or before the sixtieth day*
184 *following the filing of the second appraisal, provided that the donor has met all other conditions of this*
185 *article for the issuance of tax credits. If the fair market value of the donation indicated by the second*
186 *appraisal is less than 85 percent of the fair market value of such donation indicated by the first*
187 *appraisal submitted by the donor, then the Department of Taxation shall register the donation in*
188 *accordance with either the fair market value indicated by the second appraisal or the fair market value*
189 *indicated by the first appraisal. In all other cases, the Department of Taxation shall register the*
190 *donation in accordance with the fair market value indicated by the first appraisal submitted by the*
191 *donor.*

192 *If the Department of Taxation registers the donation in accordance with the fair market value of the*
193 *second appraisal, the Department shall promptly provide written notice of the same to the donor. The*
194 *donor may appeal the use of the second appraisal in registering the donation to the Tax Commissioner*
195 *by filing a written notice of intent to appeal within 60 days of the Department's notice of registering the*
196 *donation in accordance with the fair market value of the second appraisal. The donor shall be required*
197 *to file the appeal within 90 days of the Department's notice. The appeal shall be in such form as the*
198 *Tax Commissioner may prescribe. The appeal shall fully set forth the grounds upon which the donor*
199 *relies and all facts relevant to the donor's contention. The Tax Commissioner shall issue a determination*
200 *to the donor within 90 days of the filing of the donor's appeal.*

201 5. (Effective for taxable years beginning before January 1, 2011) a. Any taxpayer that has been
202 issued a tax credit by the Department shall be allowed to use such credit for his or its taxable year that
203 begins in the calendar year for which such credit was issued and for succeeding taxable years in
204 accordance with the 10 consecutive taxable year carryforward provisions of this article, except for any
205 taxpayer affected by the credit limitation for taxable years 2009 and 2010. Such a taxpayer shall be
206 allowed to use such credit for his or its taxable year that begins in the calendar year for which such
207 credit was issued and for succeeding taxable years in accordance with the 12 consecutive taxable year
208 carryforward provisions of this article.

209 b. Any taxpayer to whom a credit has been transferred may use such credit for the taxable year in
210 which the transfer occurred and unused amounts may be carried forward to succeeding taxable years, but
211 in no event may such transferred credit be used more than 11 years after it was originally issued by the
212 Department or in any taxable year of such taxpayer that ended prior to the date of transfer, except for
213 any taxpayer affected by the credit limitation for taxable years 2009 and 2010. Such a taxpayer may use
214 such credit for the taxable year in which the transfer occurred and unused amounts may be carried
215 forward to succeeding taxable years, but in no event may such transferred credit be used more than 13
216 years after it was originally issued by the Department or in any taxable year of such taxpayer that ended
217 prior to the date of transfer.

218 5. (Effective for taxable years beginning on or after January 1, 2011) a. Any taxpayer that has been
219 issued a tax credit by the Department shall be allowed to use such credit for his or its taxable year that
220 begins in the calendar year for which such credit was issued and for succeeding taxable years in
221 accordance with the 10 consecutive taxable year carryforward provisions of this article, except for any
222 taxpayer affected by the credit limitation for taxable years 2009, 2010, and 2011. Such a taxpayer shall
223 be allowed to use such credit for his or its taxable year that begins in the calendar year for which such
224 credit was issued and for succeeding taxable years in accordance with the 13 consecutive taxable year
225 carryforward provisions of this article.

226 b. Any taxpayer to whom a credit has been transferred may use such credit for the taxable year in
227 which the transfer occurred and unused amounts may be carried forward to succeeding taxable years, but
228 in no event may such transferred credit be used more than 11 years after it was originally issued by the
229 Department or in any taxable year of such taxpayer that ended prior to the date of transfer, except for
230 any taxpayer affected by the credit limitation for taxable years 2009, 2010, and 2011. Such a taxpayer
231 may use such credit for the taxable year in which the transfer occurred and unused amounts may be
232 carried forward to succeeding taxable years, but in no event may such transferred credit be used more
233 than 14 years after it was originally issued by the Department or in any taxable year of such taxpayer
234 that ended prior to the date of transfer.

235 6. Neither the verification of conservation value by the Department of Conservation and Recreation
236 nor the issuance of a credit by the Department of Taxation shall in any way be construed or interpreted
237 as prohibiting the Department of Taxation or the Tax Commissioner from auditing any credit claimed
238 pursuant to the provisions of this article or from assessing tax relating to the claiming of any credit
239 under this article.

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

§ 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. Any building which serves as the basis, in whole or in part, of a tax credit under this article shall not serve as the basis of the tax credit allowed under § 58.1-339.2 for a period of five years following the donation on which the credit is based; and any building which serves as the basis for the tax credit allowed under § 58.1-339.2 shall not serve as the basis, in whole or in part, for a tax credit under this article for a period of five years following the completion of the rehabilitation project on which the credit is based.

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. 1. *Any Subject to the requirements of § 58.1-513.1, 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.

2. A fee of two percent of the value of the donated interest shall be imposed upon any transfer arising from the sale by any taxpayer of credits under this article and upon the distribution of a portion of credits under this article to a member, manager, partner, shareholder or beneficiary pursuant to subsection B. Revenues generated by such fees first shall be used by the Department of Taxation and the Department of Conservation and Recreation for their costs in implementing this article but in no event shall such amount exceed 50 percent of the total revenue generated by the fee on an annual basis. The remainder of such revenues shall be transferred to the Virginia Land Conservation Fund for distribution to the public or private conservation agencies or organizations that are responsible for enforcing the conservation and preservation purposes of the donated interests. Distribution of such revenues shall be made annually by the Virginia Land Conservation Foundation 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.

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.).

§ 58.1-513.1. *Transfer of tax credits to be conducted by a licensed transfer agent.*

A. *No tax credit under this article shall be transferred to other than an individual unless the transfer is conducted by a transfer agent holding a current license issued by the Department of Taxation. The Department shall maintain and publish a current registry of licensed transfer agents.*

B. *Licensed transfer agents shall not transfer a tax credit if the credit was determined based upon an appraisal that was not in compliance with the requirements of this article or with valuation standards established by the Department for determining the fair market value of a donation of land or any*

305 interest in land. The development of the valuation standards and updates to the standards shall be
306 exempt from the Administrative Process Act (§ 2.2-4000 et seq.).

307 C. Every licensed transfer agent shall give bond to the Commonwealth for the faithful performance
308 of the duties placed upon him by this section, in a penalty to be fixed by the Tax Commissioner, in
309 whose office the bond shall be filed.

310 D. The Department shall establish the application procedures and the qualifications required for
311 persons and entities seeking licensure under this section, provided that all qualifications shall be
312 necessary to ensure either competence or integrity of licensed transfer agents. The application
313 procedures shall require applicants to provide documentation establishing a minimum level of expertise
314 in the valuation of donations made pursuant to this article. The Department is hereby authorized to
315 license qualified applicants as licensed transfer agents for the purposes described in this section. Any
316 person or entity licensed by the Department shall use only the standards established by the Department
317 in its review of proposals to transfer land preservation tax credits.

318 E. If a licensed transfer agent transfers a land preservation tax credit, the transfer agent shall
319 promptly provide written notice of the same to the Tax Commissioner. Such notice shall not preclude the
320 Department from contesting a credit claim under this article and disallowing the credits in whole or in
321 part.

322 F. The Tax Commissioner may revoke or suspend the license of, or impose a monetary penalty upon,
323 any transfer agent who repeatedly transfers land preservation tax credits that are subsequently
324 disallowed in whole or in part by the Department.

325 G. Any person or entity (i) denied a license by the Department or whose license is revoked or
326 suspended or (ii) imposed with a monetary penalty shall be entitled to a review of such action. Appeals
327 from such actions shall be in accordance with the provisions of the Administrative Process Act
328 (§ 2.2-4000 et seq.).

329 H. The Department may levy and collect fees for licensure that are sufficient to cover all direct
330 expenses for the administration of the licensure program described in this section.