

DEPARTMENT OF TAXATION

2011 Fiscal Impact Statement

1. **Patron** Harvey B. Morgan

3. **Committee** House Finance

4. **Title** Income tax; land preservation tax credit limits

2. **Bill Number** HB 1445

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. Summary/Purpose:

This bill would limit the total amount of Land Preservation Tax Credits issued to any taxpayer to \$10 million annually. If the aggregate amount of credits issued for any taxable year does not exceed the maximum annual cap of \$100 million, as adjusted for inflation, then this bill would allow the remaining amount to be prorated among taxpayers whose applications exceed the \$10 million limit.

This bill would be effective beginning with calendar year 2012.

6. Budget amendment necessary: No.

7. No Fiscal Impact (See Line 8.)

8. Fiscal implications:

Administrative Impact

TAX considers implementation of this bill as routine, and does not require additional funding.

Revenue Impact

This bill is expected to have no revenue impact. Under this bill, the amount of credit issued to a single taxpayer would be limited to \$10 million. Any amount that exceeds \$10 million would instead be allocated to one or more taxpayers with smaller credit amounts. If all taxpayers with smaller credit amounts have been approved for credits and the aggregate credit limit of \$100 million, as adjusted for inflation, has not been reached, then the credit amount would be prorated among taxpayers whose applications exceed the \$10 million limit.

Since the inception of the land preservation credit, only four credits have been issued in excess of \$10 million. Although this bill would affect the distribution of such credits, the

total amount of credits could still be claimed up to the aggregate credit limit of \$100 million, as adjusted for inflation, and, therefore, there would be no revenue impact.

9. Specific agency or political subdivisions affected:

Department of Taxation

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 aggregate 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 began to 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 2011, the cap is \$108,424,000.

Although the aggregate amount of the credit is subject to a cap, there is currently no cap on the amount that may be issued to each individual taxpayer.

The amount of the credit that may be claimed by each taxpayer is limited to \$50,000 for the 2009, 2010, and 2011 taxable years, and \$100,000 for the 2012 taxable year and for each taxable year thereafter. Any unused portion of a credit issued to a taxpayer may be carried forward for a maximum of 10 years. For taxpayers affected by the credit reduction for taxable years 2009, 2010, and 2011, any unused portion of a credit issued to a taxpayer may be carried forward for a maximum of 13 years.

For taxpayers to whom a credit has been transferred, any unused portion may be carried forward for a maximum of 11 years after the credit was originally issued. For taxpayers affected by the credit reduction for taxable years 2009, 2010, and 2011, any portion of a transferred credit may be carried forward for a maximum of 14 years after the credit was originally issued.

Proposal

This bill would limit the total amount of Land Preservation Tax Credits issued to any taxpayer to \$10 million annually. Because the tax credit is equal to 40% of the value of the land conveyed, the \$10 million maximum credit under this bill would be achieved with a \$25 million contribution.

If the maximum amount of credits allowed for any year has not been issued after all taxpayers applying have been approved for credits, then this bill would allow the remaining amount to be prorated among taxpayers whose applications exceed the \$10 million limit.

This bill would be effective beginning with calendar year 2012.

Similar Legislation

House Bill 1820 would limit the annual Land Preservation Tax Credit cap to \$100 million plus any disallowed credits and would allow TAX to require a second appraisal from a different appraiser to substantiate the fair market value of any donation of land.

House Bill 2263 would include waterfront land used for commercial fisheries as property eligible for the land preservation tax credit.

Senate Bill 979 would decrease the tax credit threshold at which the conservation value of a donation is required to be verified by DCR from \$1 million to \$500,000.

Senate Bill 1087 would require the use of a licensed transfer agent to transfer a land preservation tax credit to a taxpayer who is not an individual.

Senate Bill 1088 would allow a donor of land or any interest in land to request a refund of unused land preservation tax credits with the Tax Commissioner for 90 percent of the face value of the credits.

Senate Bill 1153 would provide that a land preservation tax credit shall not be reduced by the amount of unused credits that could have been claimed in a prior year by the taxpayer but were unclaimed.

Senate Bill 1232 would require the use of a licensed transfer agent to transfer a land preservation tax credit to a taxpayer who is not an individual and would allow TAX to require a second appraisal from a different appraiser to substantiate the fair market value of any donation of land.

cc : Secretary of Finance

Date: 1/20/2011 KLC
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