# DEPARTMENT OF TAXATION
# 2011 Fiscal Impact Statement

**1. Patron** R. Lee Ware, Jr.

**2. Bill Number** HB 1820

**House of Origin:**
_____ **Introduced**
_____ **Substitute**
_____ **Engrossed**

**Second House:**
_____ **In Committee**
_____ **Substitute**
__X__ **Enrolled**

**3. Committee** Passed by House and Senate

**4. Title** Land preservation tax credit; limits maximum amount that any taxpayer may receive.

**5. Summary/Purpose:**

This bill would provide that the maximum amount of land preservation tax credits that may be issued in any calendar year would be $100 million, adjusted for inflation, plus any credits that have been disallowed or invalidated by TAX.

This bill would also clarify that, if within 30 days after an application for tax credits has been filed the Tax Commissioner provides written notice to the donor that the preparation of a second qualified appraisal is warranted, the application would not be deemed complete until the fair market value of the donation has been finally determined by the Tax Commissioner.

The effective date of this bill is not specified.

**6. Budget amendment necessary:** No.

**7. Fiscal Impact Estimates are:** Preliminary. (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 would result in a minimal revenue loss. The amount of disallowed and invalidated credits varies annually, so it is difficult to determine the impact this would have on the maximum credit amount that would be permitted to be issued annually.

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

Department of Taxation

Department of Conservation and Recreation

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

**11. Other comments:**

<u>Land Preservation Tax Credit</u>

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.

The fair market value of qualified donations must be determined and substantiated by a "qualified appraisal" prepared by a "qualified appraiser" who is licensed in Virginia. To qualify for a tax credit, the qualified appraisal must be signed by the qualified appraiser and a copy of the appraisal must be submitted to TAX. Any appraisal that, upon audit by TAX, is determined to be false or fraudulent, may be disregarded by TAX in determining the fair market value of the property.

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. Since calendar year 2008, the $100 million cap has been increased for inflation. For 2011, the cap is $108,424,000.

Credits must 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 must be issued in the order that the conveyances were recorded in the appropriate Virginia circuit court. If 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 aggregate cap is reached for the calendar year, the credit shall be issued in the calendar year that the conservation value of the credit is verified.

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.

<u>Proposed Legislation</u>

This bill would provide that the maximum amount of land preservation tax credits that may be issued in any calendar year would be $100 million, adjusted for inflation, plus any credits that have been disallowed or invalidated by TAX.

This bill would also clarify that, if within 30 days after an application for tax credits has been filed the Tax Commissioner provides written notice to the donor that the preparation of a second qualified appraisal is warranted, the application would not be deemed complete until the fair market value of the donation has been finally determined by the Tax Commissioner. The Tax Commissioner would then be required to make a final determination within 180 days of notifying the donor, unless the donor files an appeal. The donor would have the right to appeal any decision in accordance with TAX's standard appeal process.

This bill specifies that nothing in the bill should be construed to limit any authority of TAX that existed prior to the enactment of the bill. Although TAX has requested another appraisal before issuing credits, in most cases the additional appraisal would be requested in the course of an audit, administrative appeal, or litigation after the credit has been issued. Since the proposed appraisal procedure is part of subdivision 4, relating to issuance of credits, it would have no impact on TAX's authority to audit credits after issuance under subdivision 6 or on procedures for administrative and judicial review of contested assessments.

The effective date of this bill is not specified.

Similar Legislation

**Senate Bill 1232** is identical to this bill.

**Senate Bill 979** would require DCR to include information about riparian buffers in its annual report to the General Assembly.

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

cc : Secretary of Finance

Date: 2/18/2011 KLC
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