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

3. Committee Senate Finance

4. Title Land preservation tax credits; second appraisal for applicants requesting credit of $1 million

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 allow the Tax Commissioner, for good cause, to require the preparation and submittal of a second qualified appraisal as a condition of issuing land preservation credits for any application that requests a credit of $2.5 million or more. If the fair market value indicated by the second appraisal is at least 85 percent but not more than 115 percent of the fair market value indicated by the first appraisal submitted by the donor, this bill would require TAX to issue the tax credits using the fair market value of the first appraisal. If the fair market value indicated by the second appraisal is less than 85 percent of the fair market value indicated by the first appraisal, this bill would require TAX to issue tax credits using the fair market value of the second appraisal. If the fair market value of the second appraisal is more than 115 percent of the fair market value of the first appraisal, TAX would issue tax credits based upon an average of the fair market value indicated by each appraisal.

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 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.

TAX will provide specific administrative costs on any legislation that is not "routine." Additionally, TAX will review all state tax legislation likely to be enacted prior to the passage by each house. If the aggregate number of routine bills likely to pass either house is unusually large, it is possible that additional resources will be required. If so, TAX will identify the costs at that time.

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. It is unknown whether the requirement that TAX issue credits and wait until audit to correct errors of up to 15 percent would further decrease revenues.

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.

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.

Proposed Legislation

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 allow the Tax Commissioner, for good cause, to require the preparation and submittal of a second qualified appraisal as a condition of issuing land preservation credits for any application that requests a credit of $2.5 million or more. TAX would be required to provide notification of a second appraisal to the donor within thirty days of the filing date of the completed application. The second appraisal would be prepared at TAX's expense by a qualified appraiser located in Virginia and chosen by the Tax Commissioner.

If the fair market value indicated by the second appraisal is less than 85 percent of the fair market value indicated by the first appraisal, this bill would require TAX to issue tax credits using the fair market value of the second appraisal. If the fair market value of the second appraisal is more than 115 percent of the fair market value of the first appraisal, TAX would issue tax credits based upon an average of the fair market value indicated by each appraisal.

If the fair market value indicated by the second appraisal is at least 85 percent but not more than 115 percent of the fair market value indicated by the first appraisal submitted by the donor, this bill would require TAX to issue the tax credits using the fair market value of the first appraisal. This would require TAX to issue credits in connection with appraisals that contain errors of up to 15 percent and subsequently audit the taxpayer in order to correct the error.

The donor would have the right to appeal any decision of TAX related to a second appraisal in accordance with the general TAX appeals process.

If a second qualified appraisal is required by TAX under this bill, the application would not be deemed complete for purposes of allocating the credit cap until the fair market value of the donation is determined.

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 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.

Senate Bill 1232 would provide that, if TAX requests a second qualified appraisal, a land preservation credit application would not be deemed complete until the fair market value of the donation has been determined.

cc : Secretary of Finance

Date: 2/11/2011 KLC
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