# DEPARTMENT OF TAXATION
# 2011 Fiscal Impact Statement

**1. Patron** R. Creigh Deeds

**2. Bill Number** SB 1232

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

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

**3. Committee** House Finance

**4. Title** Land preservation tax credits; changes to procedures.

**5. Summary/Purpose:**

This bill would 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. 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 would have no revenue impact.

**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.

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.

A taxpayer may transfer an unused but otherwise allowable credit to another taxpayer. Any taxpayer who makes such a transfer is required to file a notification of the transfer with TAX.

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.

Valuation Requirements

The fair market value of qualified donations must be substantiated by a "qualified appraisal" who is licensed in Virginia. 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. The appraisal must satisfy the criteria imposed by federal law to qualify for a charitable contribution deduction as well as the Uniform Standards of Professional Appraisal Practice (USPAP), as developed by the Appraisal Standards Board of the Appraisal Foundation, and the regulations of the Virginia Real Estate Appraisal Board.

The fair market value of any property cannot exceed the value for the highest and best use (i) that is consistent with existing zoning requirements; (ii) for which the property was adaptable and needed or likely to be needed in the reasonably near future in the immediate area in which the property is located; (iii) that considers factors such as slopes, flood plains, and soil conditions of the property; and (iv) for which existing roads serving the property are sufficient to support commercial or residential development in the event that is the highest and best use proposed for the property.

The value of any structures or other improvements to land must be determined in accordance with law. For any otherwise qualified donation of a less-than-fee interest, no more than 25 percent of the total credit allowed may be for reductions in value to any structures or other improvements to land.

If an appraised value is based on a hypothetical future change in use and ignores, or departs significantly from, a value based on a recent sale of the appraised property and comparable sales, then the affidavit accompanying the appraisal must clearly identify the improvements and other modifications necessary to adapt the actual physical condition of the property on the appraisal date to the hypothetical highest and best use on which the appraised value is based. The affidavit must also disclose the facts on which the appraiser based the conclusion that the hypothetical use is both likely to be needed in the near future and feasible, and shall also disclose and explain any assumptions used in determining the fair market value of the donation.

Proposed Legislation

This bill would 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.

This bill would also change the existing language to state that, if more than one complete application is received at the same time, the credits would be issued in the order that the conveyances were recorded.

The effective date of this bill is not specified.

Similar Legislation

**House Bill 1820** would allow TAX to require a second appraisal as a condition of issuing land preservation tax credits and would not allow an application to be deemed complete until the fair market value of the donation has been determined.

**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 credits that could have been claimed in a prior year by the taxpayer but were unclaimed.

cc : Secretary of Finance

Date: 2/10/2011 KLC
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