

DEPARTMENT OF TAXATION

2013 Fiscal Impact Statement

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

2. **Bill Number** HB 1398

3. **Committee** Passed House and Senate

House of Origin:

☐ Introduced

☐ Substitute

☐ Engrossed

4. **Title** Land Preservation Tax Credit; Unissued Tax Credits

Second House:

☐ In Committee

☐ Substitute

☒ Enrolled

5. **Summary/Purpose:**

This bill would limit the maximum amount of credits that may be issued in a calendar year to \$100 million.

This bill would require the Governor to recommend an annual appropriation from the General Fund in an amount equal to the difference between an indexed Land Preservation Tax Credit cap amount for the calendar year and \$100 million. Such appropriation would be distributed as follows: 80 percent to the Virginia Land Conservation Fund, 10 percent to the Civil War Site Preservation Fund, and 10 percent to the Virginia Farmland Preservation Fund. No less than 50 percent of the appropriation to the Virginia Land Conservation Fund would be required to be used for fee simple acquisitions with public access or acquisitions of easements with public access.

This bill would be effective beginning with the 2013 calendar year.

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

7. **Fiscal Impact Estimates are:** Unknown. (See Line 8.)

8. **Fiscal implications:**

Administrative Costs

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

Revenue Impact

This bill would have no impact on General Fund revenues.

While there is likely to be a reduction in the amount of credits issued each year as a result of this proposal, that reduction would not result in an equivalent increase in General Fund revenue as long as a significant portion of the credits claimed on tax returns each year is

attributable to credits issued in prior years and carried over to the current year. The amount of credits claimed on income tax returns differs significantly from the amounts issued that year because (i) donors and purchasers are often unable to use all of their credits immediately; and (ii) credits claimed on returns for a taxable year include unused credits carried over from prior years. Currently, the amount of credits issued in prior years but still being carried over greatly exceeds the amount of credits that the Department is authorized to issue each year.

Expenditure Impact

For the 2013 calendar year, the appropriation to be recommended under this bill would be \$13,909,000, to be distributed as follows: \$11,127,200 to the Virginia Land Conservation Fund (at least \$5,563,600 of which must be used for fee simple acquisitions with public access or acquisitions of easements with public access); \$1,390,900 to the Civil War Site Preservation Fund, and \$1,390,900 to the Virginia Farmland Preservation Fund.

A budget amendment is not necessary, as the first year in which an appropriation would be recommended by the Governor under the provisions of this bill would be during the 2014-2016 biennium. In years in which the Governor recommends such appropriations, budget amendments would be required to the budgets of the Department of Conservation and Recreation ("DCR"), the Department of Historic Resources, and the Department of Agriculture and Consumer Services ("VDACS").

In years in which the Governor recommends such appropriations, it is likely to reduce the amounts available for appropriation for other General Fund priorities because revenue is unlikely to increase by the same amount as the recommended appropriation.

9. Specific agency or political subdivisions affected:

Department of Taxation
Department of Conservation and Recreation (Virginia Land Conservation Foundation)
Department of Historic Resources (Civil War Site Preservation Fund)
Department of Agriculture and Consumer Services (Virginia Farmland Preservation Fund)

10. Technical amendment necessary: Yes.

Under current law, the Land Preservation Tax Credit cap is equal to an indexed amount plus the amount of credits that were previously issued, but subsequently disallowed or invalidated by the Department. The disallowed credit amounts are then reissued in a subsequent calendar year and current law permits the maximum amount of credits that may be issued in a calendar year to be increased by this amount.

This bill would not take any reissued credit amounts into account, either in the \$100 million credit cap or in the recommended appropriation amount. For example, under current law, if \$5 million worth of credits are issued but subsequently disallowed by the Department during 2013, the annual credit cap for the 2014 calendar year may be increased by \$5 million. Under this bill, the \$100 million credit cap would not be increased by \$5 million.

If the intent of the General Assembly is to preserve the provision related to the reissuance of credits, then the Department recommends the following technical amendment:

Line 172, after million

Insert: plus any credits previously issued under this article but subsequently disallowed or invalidated by the Department

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 an 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 must be indexed for inflation. For 2013, the cap is \$113,909,000. Below is a chart detailing the annual cap amount.

Year	CPI-U Amount Over 2006 Base Year	Cap Amount
2007	-	\$100,000,000
2008	2.29%	\$102,287,000
2009	6.6%	\$106,647,000
2010	6.8%	\$106,845,000
2011	8.4%	\$108,424,000
2012	11.05%	\$111,054,000
2013	13.91%	\$113,909,000

In 2011, the General Assembly passed legislation (Chapter 296, 2011 Acts of Assembly) that requires that any credits previously issued but subsequently disallowed or invalidated be reissued in a later calendar year. Under this law, the maximum amount of credits that may be issued for a calendar year is equal to the indexed cap amount plus any credits previously issued but subsequently disallowed or invalidated by the Department.

Any taxpayer holding a Land Preservation Tax Credit who is unable to use the credit may either carry the credit over to a subsequent year or transfer the unused credit for use by another taxpayer. The taxpayer transferring the credit must notify the Department of the transfer. There is a two percent fee on the value of the donated interest imposed for the transfer of credits. This fee is also applied when pass-through entities distribute the credit to members, managers, partners, shareholders or beneficiaries.

Revenues generated by the fee are used to recover the costs incurred by the Department and DCR for the administration of the Land Preservation Tax Credit. The amount of

revenues used to recover the costs incurred by the Department and DCR cannot exceed 50 percent of the annual revenue generated by the fee. The remainder of the amount generated by the fee is transferred to the Virginia Land Conservation Fund for annual distribution to the private agencies or organizations that are responsible for enforcing the conservation and preservation purposes of the donated interests.

Virginia Land Conservation Fund

The Virginia Land Conservation Fund is administered by the Virginia Land Conservation Foundation within DCR solely for the purposes of acquiring, and providing grants for acquiring, fee simple title or other rights to interest or privileges in real property for the protection or preservation of ecological, cultural, or historical resources, lands for recreational purposes, state forest lands, and lands for threatened or endangered species, fish and wildlife habitat, natural areas, agricultural and forestal lands, and open space.

Civil War Site Preservation Fund

The Civil War Site Preservation Fund is administered by the Department of Historic Resources solely for the purpose of making grants to private nonprofit organizations to match federal funds and other matching funds. All grants must be made solely for the fee simple purchase of, or purchase of protective interests in, any Virginia Civil War historic site listed in the "Report on the Nation's Civil War Battlefields" issued by the National Park Service's American Battlefield Protection Program.

Virginia Farmland Preservation Fund

The Virginia Farmland Preservation Fund is administered by the Office of Farmland Preservation within VDACS. Moneys in this fund may be used solely for the purposes of carrying out the provisions of Chapter 2 of Title 3.2 of the Virginia Code, related to the preservation of farm and forest lands.

Proposed Legislation

This bill would limit the maximum amount of credits that may be issued in a calendar year to \$100 million. For the 2013 calendar year, this would be a reduction from the current credit cap of \$113.9 million.

This bill would require the Governor to recommend an annual appropriation from the General Fund in an amount equal to the difference between an indexed Land Preservation Tax Credit cap amount for the calendar year and \$100 million. Such appropriation would be distributed as follows: 80 percent to the Virginia Land Conservation Fund, 10 percent to the Civil War Site Preservation Fund, and 10 percent to the Virginia Farmland Preservation Fund. No less than 50 percent of the appropriation to the Virginia Land Conservation Fund would be required to be used for fee simple acquisitions with public access or acquisitions of easements with public access.

Current law increases the indexed credit cap by the amount of reissued credits that were previously issued but subsequently disallowed or invalidated by the Department. This bill

would not take any reissued credit amounts into account, either in the \$100 million credit cap or in the recommended appropriation amount. If the intent of the General Assembly is to preserve this provision, then the Department recommends a technical amendment to clarify that the \$100 million cap may be increased by the amount of credits previously issued but subsequently disallowed or invalidated by the Department.

The amount of Land Preservation Tax Credits claimed on income tax returns in any given year may be significantly different from the statutory cap for that year. Virginia's General Fund revenue forecast contains an estimate of the credit's impact on each fiscal year's revenue collections as they are claimed on tax returns, and includes credits over a period of several years. The estimate of the negative revenue impact of Land Preservation Tax Credits in Fiscal Year 2013 is \$125 million, but has been as high as \$200 million. In Fiscal Year 2011, for example, the estimate was \$125 million but the actual amount claimed was \$141.6 million.

Because the amount of the appropriation under this bill would be based on the difference between the credit cap and the amount of credits issued, rather than the difference between the revenue forecast and the amount of credits claimed, the amount of the appropriation under this bill would not be based on any actual changes in the revenue forecast. Rather, the amount of the appropriation would be in addition to the estimate carried in the official revenue forecast. Any potential reduction in the amount of credits issued as a result of the application deadline created by this bill would not have an equivalent impact on General Fund revenues.

This bill would be effective beginning with the 2013 calendar year.

cc : Secretary of Finance

Date: 2/25/2013 KLC
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