

DEPARTMENT OF TAXATION

2013 Fiscal Impact Statement

1. **Patron** S. Chris Jones

2. **Bill Number** HB 2034

3. **Committee** House Finance

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

4. **Title** Repeal of Land Preservation Tax Credit

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would repeal the Land Preservation Tax Credit, effective January 1, 2014. Such repeal would have no impact on any tax credits issued prior to January 1, 2014, or on the administration of such credits.

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

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

8. **Fiscal implications:**

Administrative Costs

This bill would result in a reduction of the Department's administrative costs. However, the costs of administering the Land Preservation Tax Credit are recovered from the two percent fee that is imposed on transfers of Land Preservation Tax Credits. Accordingly, this bill would not reduce General Fund appropriations.

This bill provides that there would be no impact on the administration of Land Preservation Tax Credits issued prior to January 1, 2014. To the extent that the Department incurs any costs for administering the credit after the effective date of this bill, such costs would continue to be recovered from the Land Preservation Tax Credit transfer fee.

Revenue Impact

This bill would result in an unknown, but significant, General Fund revenue gain, beginning in Fiscal Year 2015.

The amount of Land Preservation Tax Credits issued varies significantly from the amount of credits claimed. For example, although the Land Preservation Tax Credit cap for Taxable Year 2013 is \$113,909,000, the official revenue forecast for Fiscal Year 2014 assumes that revenues will be reduced by approximately \$125 million as a result of the

Land Preservation Tax Credit. This is because the amount claimed each year includes both the amount of credit claimed for credits issued during the taxable year, as well as carryover amounts claimed from prior taxable years. The amount claimed does not include the amount of credits issued during the taxable year that could not be applied against the taxpayer's tax liability.

Based on historical patterns of credits used and carried over, eliminating the credit would have the following estimated impact in Fiscal Years 2015 through 2019:

| General Fund Revenue Impact | |
|------------------------------------|-------------------|
| Fiscal Year | Impact (millions) |
| 2015 | \$65.7 |
| 2016 | \$81.2 |
| 2017 | \$89.7 |
| 2018 | \$97.0 |
| 2019 | \$104.7 |

However, the repeal of the tax credit may cause taxpayers to accelerate their use of the credit by immediately transferring any credits that they cannot use. Currently, \$194,858,887 worth of credits is outstanding and available to be claimed on taxpayers' returns. While the revenue increase from repealing the credit will eventually equal the current law's annual cap, the timing of taxpayer utilization of credits carried over from prior years cannot be determined. Therefore, the fiscal impact is a General Fund revenue increase in an unknown amount.

9. Specific agency or political subdivisions affected:

Department of Taxation
Department of Conservation and Recreation

10. Technical amendment necessary: No.

11. Other comments:

Current Law

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 |

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.

Proposed Legislation

This bill would repeal the Land Preservation Tax Credit, effective January 1, 2014. Such repeal would have no impact on any tax credits issued prior to January 1, 2014, or on the administration of such credits.

This bill would also amend the disclosure provisions of Title 58.1 to clarify that a confidential tax document includes any document required to be filed under the former Land Preservation Tax Credit provisions of the Code. This provision would be effective January 1, 2014.

This bill would require the Tax Commissioner to develop guidelines establishing procedures for the transition of the repeal of the Land Preservation Tax Credit. Such guidelines would be exempt from the Administrative Process Act.

Similar Legislation

House Bill 1398 would require that, for any year that the Department has not received complete applications for enough Land Preservation Tax Credits to issue the maximum amount of credits allowed for that year, the remaining amount would be transferred to the Virginia Land Conservation Fund, the Civil War Site Preservation Fund, and the Virginia Farmland Preservation Fund.

House Bill 1462 would require the Department to assess additional taxes and penalties relation to Land Preservation Tax Credits within one year of the credit being claimed on an income tax return.

House Bill 1694 would allow taxpayers to apply for Land Preservation Tax Credits prior to making a donation, provided the requested credit is \$1 million or more and the donation is verified by the Department of Conservation and Recreation.

House Bill 1800 would increase the amount of the Land Preservation Tax Credit from 40 percent to 60 percent for any land that is conveyed for the purpose of a public park, public recreational facility, or public trail access easement, or for other public uses as identified by the Department of Conservation and Recreation.

House Bill 2253 would repeal the Land Preservation Tax Credit and would make other significant changes to Virginia's tax structure.

cc : Secretary of Finance

Date: 1/17/2013 KLC
HB2034F161