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HOUSE BILL NO. 1470

Offered January 11, 2017

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A BILL to amend and reenact §§ 58.1-512 and 58.1-513 of the Code of Virginia, relating to land preservation tax credits; limitations.

Patrons—Ware, Aird, Hugo, Jones and Orrock

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-512 and 58.1-513 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-512. Land preservation tax credits for individuals and corporations.

A. 1. For taxable years beginning on or after January 1, 2000, there shall be allowed as a credit against the tax liability imposed by §§ 58.1-320 and 58.1-400, an amount equal to 50 percent of the fair market value of any 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 landowner/taxpayer to a public or private conservation agency eligible to hold such land and interests therein for conservation or preservation purposes. For such conveyances made on or after January 1, 2007, the tax credit shall be 40 percent of the fair market value of the land or interest in land so conveyed.

2. For taxable years beginning on and after January 1, 2017, the amount of credit issued under this article shall not exceed \$2 million for each conveyance of land or interest in land.

3. For purposes of the limitation set forth in subdivision 2, the credits allowed under this article with respect to donations of any other portion of a recorded parcel of land within the preceding 11 years shall be aggregated with the credit requested for the current conveyance. This subdivision shall not apply if (i) all owners of the parcel who have been allowed credit for a qualified donation are not affiliated with the person or entity seeking credit for the current donation of a different portion of the parcel and (ii) in the case of an individual seeking credit, the individual has not previously made a qualified donation for any portion of the parcel and is not an immediate family member of any such owners.

B. The fair market value of qualified donations made under this section shall be determined in accordance with § 58.1-512.1 and substantiated by a "qualified appraisal" prepared by a "qualified appraiser," as those terms are defined under applicable federal law and regulations governing charitable contributions. The value of the donated interest in land that qualifies for credit under this section, as determined according to appropriate federal law and regulations, shall be subject to the limits established by United States Internal Revenue Code § 170(e). In order to qualify for a tax credit under this section, the qualified appraisal shall be signed by the qualified appraiser, who must be licensed in the Commonwealth of Virginia as provided in § 54.1-2011, and a copy of the appraisal shall be submitted to the Department. In the event that any appraiser falsely or fraudulently overstates the value of the contributed property in an appraisal that the appraiser has signed, the Department may disallow further appraisals signed by the appraiser and shall refer the appraiser to the Real Estate Appraiser Board for appropriate disciplinary action pursuant to § 54.1-2013, which may include, but need not be limited to, revocation of the appraiser's license. Any appraisal that, upon audit by the Department, is determined to be false or fraudulent, may be disregarded by the Department in determining the fair market value of the property and the amount of tax credit to be allowed under this section.

C. 1. The amount of the credit that may be claimed by each taxpayer, including credit claimed by applying unused credits as provided under subsection C of § 58.1-513, shall not exceed \$50,000 for 2000 taxable years; \$75,000 for 2001 taxable years; \$100,000 for each of 2002 through 2008 taxable years; \$50,000 for each of 2009, 2010, and 2011 taxable years; \$100,000 for each of 2012, 2013, and 2014 taxable years; and \$20,000 for each of 2015 and 2016 taxable years; and \$50,000 for 2017 taxable years and for each taxable year thereafter. However, the amount of the credit that may be claimed by each taxpayer, including credit claimed by applying unused credits as provided in subsection C of § 58.1-513, shall not exceed \$100,000 for each taxable year for any fee simple donation of land conveyed to the Commonwealth on or after January 1, 2015, the amount of the credit claimed shall not exceed \$100,000 for each taxable year but before January 1, 2017, and shall not exceed \$50,000 for each taxable year for any fee simple donation of land conveyed to the Commonwealth on and after January 1, 2017, provided that no part of the charitable contributions deduction under § 170 of the

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59 Internal Revenue Code related to such fee simple donation is allowable by reason of a sale or exchange
60 of property. In addition, for each taxpayer, in any one taxable year the credit used may not exceed the
61 amount of individual, fiduciary or corporate income tax otherwise due. Any portion of the credit that is
62 unused in any one taxable year may be carried over for a maximum of 10 consecutive taxable years
63 following the taxable year in which the credit originated until fully expended. A credit shall not be
64 reduced by the amount of unused credit that could have been claimed in a prior year by the taxpayer
65 but was unclaimed. For taxpayers affected by the credit reduction for taxable years 2009, 2010, 2011,
66 and 2015 and thereafter, any portion of the credit that is unused in any one taxable year may be carried
67 over for a maximum of 13 consecutive taxable years following the taxable year in which the credit
68 originated until fully expended.

69 2. Qualified donations shall include the conveyance of a fee interest in real property or the
70 conveyance in perpetuity of a less-than-fee interest in real property, such as a conservation restriction,
71 preservation restriction, agricultural preservation restriction, or watershed preservation restriction,
72 provided that such less-than-fee interest qualifies as a charitable deduction under § 170(h) of the United
73 States Internal Revenue Code of 1986, as amended.

74 The Department of Conservation and Recreation shall compile an annual report on qualified
75 donations of less-than-fee interests accepted by any public or private conservation agency in the
76 respective calendar year and shall submit the report by December 1 of each year to the Chairmen of the
77 House Committee on Appropriations, House Committee on Finance, and the Senate Committee on
78 Finance. In preparing such report, the Department of Conservation and Recreation shall consult and
79 coordinate with the Department of Taxation and the Departments of Forestry and Agriculture and
80 Consumer Services to provide an estimate of the number of acres of land currently being used for
81 "production agriculture and silviculture" as defined in § 3.2-300 that have been protected by qualified
82 donations of less-than-fee interests. This report shall include information, when available, on land
83 qualifying for credits being used for "production agriculture and silviculture" that have onsite operational
84 best management practices, which are designed to reduce the amount of nutrients and sediment entering
85 public waters. In addition, the report shall include information, when available, on riparian buffers, both
86 vegetated/forested buffers and no-plow buffers, required by deed restriction on land qualifying for credits
87 in order to protect water quality. This information shall be reported in summary fashion as appropriate
88 to preserve confidentiality of information. Qualified donations shall not include the conveyance of a fee
89 interest, or a less-than-fee interest, in real property by a charitable organization that (i) meets the
90 definition of "holder" in § 10.1-1009 and (ii) holds one or more conservation easements acquired
91 pursuant to the authority conferred on a "holder" by § 10.1-1010.

92 3. Any fee interest, or a less-than-fee interest, in real property that has been dedicated as open space
93 within, or as part of, a residential subdivision or any other type of residential or commercial
94 development; dedicated as open space in, or as part of, any real estate development plan; or dedicated
95 for the purpose of fulfilling density requirements to obtain approvals for zoning, subdivision, site plan,
96 or building permits shall not be a qualified donation under this article.

97 4. Qualified donations shall be eligible for the tax credit herein described if such donations are made
98 to the Commonwealth of Virginia, an instrumentality thereof, or a charitable organization described in
99 § 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, if such charitable
100 organization (i) meets the requirements of § 509(a)(2) or (ii) meets the requirements of § 509(a)(3) and
101 is controlled by an organization described in § 509(a)(2).

102 5. The preservation, agricultural preservation, historic preservation or similar use and purpose of such
103 property shall be assured in perpetuity. In the case of conveyances of a fee interest to a charitable
104 organization that is a "holder" as defined in § 10.1-1009, the credit shall not be allowed until the
105 charitable organization agrees that subsequent conveyances of the fee interest in the property will be (i)
106 subject to a previous conveyance in perpetuity of a conservation easement, as that term is defined in
107 § 10.1-1009, or subject to the conveyance in perpetuity of an open-space easement, as that term is
108 defined in § 10.1-1700, or (ii) conveyed to the Commonwealth of Virginia or to a federal conservation
109 agency. No credit shall be allowed with respect to any subsequent conveyances by the charitable
110 organization.

111 D. The issuance of tax credits under this article for donations made on and after January 1, 2007,
112 shall be in accordance with procedures and deadlines established by the Department and shall be
113 administered under the following conditions:

114 1. The taxpayer shall apply for a credit after completing the donation by submitting a form or forms
115 prescribed by the Department in consultation with the Department of Conservation and Recreation. If the
116 application requests a credit of \$1 million or more or if the donation meets the conditions of subdivision
117 3 c, then a copy of the application shall also be filed with the Department of Conservation and
118 Recreation by the taxpayer. The application shall include, but not be limited to:

- 119 a. A description of the conservation purpose or purposes being served by the donation;
120 b. The fair market value of land being donated in the absence of any easement or other restriction;

c. The public benefit derived from the donation;
 d. The extent to which water quality best management practices will be implemented on the property;
 and

e. Whether the property is fully or partially forested and a forest management plan is included in the terms of the donation.

2. Applications for otherwise qualified donations of a less-than-fee interest shall be accompanied by an affidavit describing how the donated interest in land meets the requirements of § 170(h) of the United States Internal Revenue Code of 1986, as amended, and the regulations adopted thereunder. The application with accompanying affidavit shall be submitted to the Department of Taxation, with a copy also provided to the Department of Conservation and Recreation.

3. a. No credit in the amount of \$1 million or more shall be issued with respect to a donation unless the conservation value of the donation has been verified by the Director of the Department of Conservation and Recreation, based on the criteria adopted by the Virginia Land Conservation Foundation for this purpose. Such criteria and subsequent amendments shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.), but the Virginia Land Conservation Foundation shall provide for adequate public participation, including adequate notice and opportunity to provide comments on the proposed criteria. The Director shall act on applications within 90 days of his receipt of a complete application and shall notify the taxpayer and the Department of Taxation of his action.

b. For purposes of determining whether a credit requires verification of the conservation value, the credits allowed under this article with respect to donations of any other portion of a recorded parcel of land within the preceding 11 years shall be aggregated with the credit claimed for the current donation. This subdivision shall not apply if (i) all owners of the parcel who have been allowed credit for a qualified donation are not affiliated with the person or entity seeking credit for the current donation of a different portion of the parcel and (ii) in the case of an individual seeking credit, the individual has not previously made a qualified donation for any portion of the parcel and is not an immediate family member of any such owners.

c. If (i) the real property that is the subject of the donation was partitioned from or part of another parcel of land and any other portion of such parcel, or any land partitioned from such parcel of land, has been allowed a tax credit under this article (or an application for tax credit is pending) within three years of such donation and (ii) the tax credit that would otherwise be allowed to the donor for such donation is at least \$250,000, then no credit under this article shall be issued with respect to such donation described in clause (i) unless the conservation value of the donation has been verified by the Director of the Department of Conservation and Recreation. The Director shall act on applications within 90 days of his receipt of a complete application and shall notify the taxpayer and the Department of Taxation of his action. Nothing in this subdivision shall be construed or interpreted (a) as allowing additional tax credit for any land or interest in land previously conveyed for which tax credit has already been allowed under this article or (b) affecting the validity of any tax credit allowed under this article for a prior conveyance of any land or interest in land.

4. a. Tax credits shall be issued on a calendar year basis, and in no case shall the Department issue more than the maximum allowed for the calendar year. The maximum amount of credits that may be issued in a calendar year shall be \$100 million plus any credits previously issued under this article but subsequently disallowed or invalidated by the Department. Credits previously issued but subsequently disallowed or invalidated shall be reissued in a subsequent calendar year. All credits shall be issued in the order that each complete application is filed. For filings by mail or a recognized commercial delivery service, the postmark or confirmation of shipment shall determine the date of filing. If within 30 days after an application for credits has been filed the Tax Commissioner provides written notice to the donor that he has determined that the preparation of a second qualified appraisal is warranted, the application shall not be deemed complete until the fair market value of the donation has been finally determined by the Tax Commissioner. The Tax Commissioner shall make a final determination within 180 days of notifying the donor, unless the donor has filed an appeal. The donor shall have the right to appeal any decision of the Department in accordance with the provisions of Chapter 18 (§ 58.1-1800 et seq.). If more than one complete application is filed at the same time, the credits with respect to those applications shall be issued in the order that the conveyances were recorded in the appropriate circuit court of the Commonwealth. In the event that 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 maximum \$100 million allowed is reached for the calendar year of the donation, such credit shall not be issued for that calendar year but shall be issued in the calendar year that the conservation value of the credit is verified by the Department of Conservation and Recreation.

No credit shall be allowed for any land or interest in land conveyed on or after July 1, 2015, unless a complete application for tax credit with regard to the conveyance has been filed with the Department by December 31 of the year following the calendar year of the conveyance. For filings by mail or a

182 recognized commercial delivery service, the postmark or confirmation of shipment shall determine the
183 date of filing. Solely for purposes of this condition, any application for which the Tax Commissioner
184 has given written notice to the donor that the preparation of a second qualified appraisal is warranted
185 shall be deemed timely filed, provided that the application was otherwise complete as of such filing
186 deadline.

187 b. Beginning with calendar year 2008, the \$100 million amount contained in subdivision 4 a shall be
188 increased by an amount equal to \$100 million multiplied by the percentage by which the consumer price
189 index for all-urban consumers published by the United States Department of Labor (CPI-U) for the
190 12-month period ending August 31 of the preceding year exceeds the CPI-U for the 12-month period
191 ending August 31, 2006.

192 c. Beginning with calendar year 2015 *and ending December 31, 2016*, the maximum amount of
193 credits that may be issued in a calendar year shall not exceed \$75 million. *Beginning with calendar year*
194 *2017, the maximum amount of credits that may be issued in a calendar year shall not exceed \$50*
195 *million*. In no case shall the Department issue any tax credit for a donation from any allocation or pool
196 of tax credits attributable to a calendar year prior to the year in which the complete tax credit
197 application for the donation was filed.

198 Beginning with the submission due on or before December 20, 2015, and in each year thereafter, the
199 Governor shall include in "The Budget Bill" submitted pursuant to subsection A of § 2.2-1509 or in his
200 amendments to the general appropriation act in effect submitted pursuant to subsection E of § 2.2-1509 a
201 recommended appropriation from the general fund equal to the difference between the amount calculated
202 pursuant to subdivision b and \$75 million *for calendar years 2015 and 2016 or \$50 million for calendar*
203 *year 2017 and each year thereafter*, but not more than \$20 million, to be allocated as follows: 80
204 percent to the Virginia Land Conservation Fund to be used in accordance with § 10.1-1020, with no less
205 than 50 percent of such appropriation to be used for fee simple acquisitions with public access or
206 acquisitions of easements with public access; 10 percent to the Virginia Battlefield Preservation Fund to
207 be used in accordance with § 10.1-2202.4; and 10 percent to the Virginia Farmland Preservation Fund to
208 be used in accordance with § 3.2-201.

209 5. a. Any taxpayer that has been issued a tax credit by the Department shall be allowed to use such
210 credit for his or its taxable year that begins in the calendar year for which such credit was issued and
211 for succeeding taxable years in accordance with the 10 consecutive taxable year carryforward provisions
212 of this article, except for any taxpayer affected by the credit limitation for taxable years 2009, 2010,
213 2011, and 2015 and taxable years thereafter. Such a taxpayer shall be allowed to use such credit for his
214 or its taxable year that begins in the calendar year for which such credit was issued and for succeeding
215 taxable years in accordance with the 13 consecutive taxable year carryforward provisions of this article.

216 b. Any taxpayer to whom a credit has been transferred may use such credit for the taxable year in
217 which the transfer occurred and unused amounts may be carried forward to succeeding taxable years, but
218 in no event may such transferred credit be used more than 11 years after it was originally issued by the
219 Department or in any taxable year of such taxpayer that ended prior to the date of transfer, except for
220 any taxpayer affected by the credit limitation for taxable years 2009, 2010, 2011, and 2015 and taxable
221 years thereafter. Such a taxpayer may use such credit for the taxable year in which the transfer occurred
222 and unused amounts may be carried forward to succeeding taxable years, but in no event may such
223 transferred credit be used more than 14 years after it was originally issued by the Department or in any
224 taxable year of such taxpayer that ended prior to the date of transfer.

225 6. Neither the verification of conservation value by the Department of Conservation and Recreation
226 nor the issuance of a credit by the Department of Taxation shall in any way be construed or interpreted
227 as prohibiting the Department of Taxation or the Tax Commissioner from auditing any credit claimed
228 pursuant to the provisions of this article or from assessing tax relating to the claiming of any credit
229 under this article.

230 E. In any review or appeal before the Tax Commissioner or in any court in the Commonwealth the
231 burden of proof shall be on the taxpayer to show that the fair market value and conservation value at
232 the time of the qualified donation is consistent with this section and that all requirements of this article
233 have been satisfied.

234 **§ 58.1-513. Limitations; transfer of credit; gain or loss from tax credit.**

235 A. Any taxpayer claiming a tax credit under this article shall not claim a credit under any similar
236 Virginia law for costs related to the same project. To the extent a credit is taken in accordance with this
237 article, no subtraction allowed for the gain on the sale of (i) land dedicated to open-space use or (ii) an
238 easement dedicated to open-space use under subsection C of § 58.1-322 shall be allowed for three years
239 following the year in which the credit is taken. Any building which serves as the basis, in whole or in
240 part, of a tax credit under this article shall not serve as the basis of the tax credit allowed under
241 § 58.1-339.2 for a period of five years following the donation on which the credit is based; and any
242 building which serves as the basis for the tax credit allowed under § 58.1-339.2 shall not serve as the
243 basis, in whole or in part, for a tax credit under this article for a period of five years following the

244 completion of the rehabilitation project on which the credit is based.

245 B. Any tax credits that arise under this article from the donation of land or an interest in land made
246 by a pass-through tax entity such as a trust, estate, partnership, limited liability company or partnership,
247 limited partnership, subchapter S corporation or other fiduciary shall be used either by such entity if it is
248 the taxpayer on behalf of such entity or by the member, manager, partner, shareholder or beneficiary, as
249 the case may be, in proportion to their interest in such entity in the event that income, deductions and
250 tax liability pass through such entity to such member, manager, partner, shareholder or beneficiary or as
251 set forth in the agreement of said entity. Such tax credits shall not be claimed by both the entity and the
252 member, manager, partner, shareholder or beneficiary for the same donation.

253 C. 1. Any taxpayer holding a credit under this article may transfer unused but otherwise allowable
254 credit for use by another taxpayer on Virginia income tax returns. A taxpayer who transfers any amount
255 of credit under this article shall file a notification of such transfer to the Department in accordance with
256 procedures and forms prescribed by the Tax Commissioner.

257 2. A fee of ~~two~~ 2.5 percent of the value of the donated interest shall be imposed upon any transfer
258 arising from the sale by any taxpayer of credits under this article and upon the distribution of a portion
259 of credits under this article to a member, manager, partner, shareholder or beneficiary pursuant to
260 subsection B. Revenues generated by such fees first shall be used by the Department of Taxation and
261 the Department of Conservation and Recreation for their costs in implementing this article but in no
262 event shall such amount exceed 50 percent of the total revenue generated by the fee on an annual basis.
263 The remainder of such revenues shall be transferred to the Virginia Land Conservation Fund for
264 distribution to the public or private conservation agencies or organizations, excluding federal
265 governmental entities, that are responsible for enforcing the conservation and preservation purposes of
266 the donated interests. Distribution of such revenues shall be made annually by the Virginia Land
267 Conservation Foundation proportionally based on a three-year average of the number of donated interests
268 accepted by the public or private conservation agencies or organizations, excluding federal governmental
269 entities, during the immediately preceding three-year period.

270 D. To the extent included in and not otherwise subtracted from federal adjusted gross income
271 pursuant to § 58.1-322 or federal taxable income pursuant to § 58.1-402, there shall be subtracted any
272 amount of gain or income recognized by a taxpayer on the application of a tax credit under this article
273 against a Virginia income tax liability.

274 E. The transfer of the credit and its application against a tax liability shall not create gain or loss for
275 the transferor or the transferee of such credit.

276 F. A pass-through tax entity, such as a partnership, limited liability company or Subchapter S
277 corporation, may appoint a tax matters representative, who shall be a general partner, member/manager
278 or shareholder, and register that representative with the Tax Commissioner. The Tax Commissioner shall
279 be entitled to deal with the tax matters representative as representative of the taxpayers to whom credits
280 have been allocated or transferred by the entity under this article with respect to those credits. In the
281 event a pass-through tax entity allocates or transfers tax credits arising under this article to its partners,
282 members or shareholders and the allocated or transferred credits shall be disallowed, in whole or in part,
283 such that an assessment of additional tax against a taxpayer shall be made, the Tax Commissioner shall
284 first make written demand for payment of any additional tax, together with interest and penalties, from
285 the tax matters representative. In the event such payment demand is not satisfied, the Tax Commissioner
286 shall proceed to collection against the taxpayers in accordance with the provisions of Chapter 18
287 (§ 58.1-1800 et seq.).