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SENATE BILL NO. 486

Offered January 13, 2016

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A *BILL to amend and reenact §§ 58.1-511 and 58.1-512 of the Code of Virginia, relating to land preservation tax credits; certain donations of land.*

Patron—Hanger

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-511 and 58.1-512 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-511. Definitions.

For the purposes of the article:

"Interest in real property" means any right in real property, including access thereto or improvements thereon, or water, including but not limited to an open-space easement or conservation easement, provided such interest complies with the requirements of the U.S. Internal Revenue Code § 170 (h), partial interest, mineral right, remainder or future interest, or other interest or right in real property.

"Land" or "lands" means real property, with or without improvements thereon; rights-of-way, water and riparian rights; easements; privileges and all other rights or interests of any land or description in, relating to or connected with real property.

"Public or Private Conservation Agency" means any Virginia governmental body, or any private not-for-profit charitable corporation or trust authorized to do business in the Commonwealth and organized and operated for natural resources, land conservation or historic preservation purposes, and having tax-exempt status as a public charity under the U.S. Internal Revenue Code of 1986, as amended, and having the power to acquire, hold and maintain land and/or interests in land for such purposes. A private not-for-profit charitable corporation that is not organized and operated for natural resource, land conservation, or historic preservation purposes but otherwise meets the requirements of this definition shall be considered a "public or private conservation agency" for purposes of this article in the case of a conveyance of a fee interest in real property, provided that such conveyance meets the requirements of subdivision C 5 b of § 58.1-512 and any other applicable requirements of this article.

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

A. 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.

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

59 years; \$50,000 for each of 2009, 2010, and 2011 taxable years; \$100,000 for each of 2012, 2013, and
60 2014 taxable years; \$20,000 for each of 2015 and 2016 taxable years; and \$50,000 for 2017 taxable
61 years and for each taxable year thereafter. However, for any fee simple donation of land conveyed to the
62 Commonwealth on or after January 1, 2015, the amount of the credit claimed shall not exceed \$100,000
63 for each taxable year, provided that no part of the charitable contributions deduction under § 170 of the
64 Internal Revenue Code related to such fee simple donation is allowable by reason of a sale or exchange
65 of property. In addition, for each taxpayer, in any one taxable year the credit used may not exceed the
66 amount of individual, fiduciary or corporate income tax otherwise due. Any portion of the credit that is
67 unused in any one taxable year may be carried over for a maximum of 10 consecutive taxable years
68 following the taxable year in which the credit originated until fully expended. A credit shall not be
69 reduced by the amount of unused credit that could have been claimed in a prior year by the taxpayer
70 but was unclaimed. For taxpayers affected by the credit reduction for taxable years 2009, 2010, 2011,
71 and 2015 and thereafter, any portion of the credit that is unused in any one taxable year may be carried
72 over for a maximum of 13 consecutive taxable years following the taxable year in which the credit
73 originated until fully expended.

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

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

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

102 4. Qualified donations shall be eligible for the tax credit herein described if such donations are made
103 to the Commonwealth of Virginia, an instrumentality thereof, or a charitable organization described in
104 § 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, if such charitable
105 organization (i) meets the requirements of § 509(a)(2) or (ii) meets the requirements of § 509(a)(3) and
106 is controlled by an organization described in § 509(a)(2).

107 5. The preservation, agricultural preservation, historic preservation or similar use and purpose of such
108 property shall be assured in perpetuity: *as follows:*

109 a. In the case of conveyances of a fee interest to a charitable organization that is a "holder," as
110 defined in ~~§ 10.1-1009~~, the credit shall not be allowed until the charitable organization agrees that
111 subsequent conveyances of the fee interest in the property will be (i) subject to a previous conveyance
112 in perpetuity of a conservation easement, ~~as that term is defined in § 10.1-1009~~, or subject to the
113 conveyance in perpetuity of an open-space easement, ~~as that term is defined in § 10.1-1700~~, or (ii)
114 conveyed to the Commonwealth of Virginia or to a federal conservation agency. No credit shall be
115 allowed with respect to any subsequent conveyances by the charitable organization; *or*

116 b. *In the case of conveyances of a fee interest to a charitable organization that is not "holder," the*
117 *credit shall not be allowed unless and until the land has been protected in perpetuity with a*
118 *conservation easement or an open-space easement that complies with all applicable requirements of this*
119 *article. No credit shall be allowed with respect to any subsequent conveyances by the charitable*
120 *organization.*

For purposes of this subdivision:

"Conservation easement" and "holder" shall have the same meanings as set forth in § 10.1-1009.

"Open-space easement" shall have the same meaning as set forth in § 10.1-1700.

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

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

- a. A description of the conservation purpose or purposes being served by the donation;
 - 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

182 the Tax Commissioner. The Tax Commissioner shall make a final determination within 180 days of
183 notifying the donor, unless the donor has filed an appeal. The donor shall have the right to appeal any
184 decision of the Department in accordance with the provisions of Chapter 18 (§ 58.1-1800 et seq.). If
185 more than one complete application is filed at the same time, the credits with respect to those
186 applications shall be issued in the order that the conveyances were recorded in the appropriate circuit
187 court of the Commonwealth. In the event that a credit requires verification of the conservation value by
188 the Department of Conservation and Recreation and such verification has not been received at the time
189 the maximum \$100 million allowed is reached for the calendar year of the donation, such credit shall
190 not be issued for that calendar year but shall be issued in the calendar year that the conservation value
191 of the credit is verified by the Department of Conservation and Recreation.

192 No credit shall be allowed for any land or interest in land conveyed on or after July 1, 2015, unless
193 a complete application for tax credit with regard to the conveyance has been filed with the Department
194 by December 31 of the year following the calendar year of the conveyance. For filings by mail or a
195 recognized commercial delivery service, the postmark or confirmation of shipment shall determine the
196 date of filing. Solely for purposes of this condition, any application for which the Tax Commissioner
197 has given written notice to the donor that the preparation of a second qualified appraisal is warranted
198 shall be deemed timely filed, provided that the application was otherwise complete as of such filing
199 deadline.

200 b. Beginning with calendar year 2008, the \$100 million amount contained in subdivision 4 a shall be
201 increased by an amount equal to \$100 million multiplied by the percentage by which the consumer price
202 index for all-urban consumers published by the United States Department of Labor (CPI-U) for the
203 12-month period ending August 31 of the preceding year exceeds the CPI-U for the 12-month period
204 ending August 31, 2006.

205 c. Beginning with calendar year 2015, the maximum amount of credits that may be issued in a
206 calendar year shall not exceed \$75 million. In no case shall the Department issue any tax credit for a
207 donation from any allocation or pool of tax credits attributable to a calendar year prior to the year in
208 which the complete tax credit application for the donation was filed.

209 Beginning with the submission due on or before December 20, 2015, and in each year thereafter, the
210 Governor shall include in "The Budget Bill" submitted pursuant to subsection A of § 2.2-1509 or in his
211 amendments to the general appropriation act in effect submitted pursuant to subsection E of § 2.2-1509 a
212 recommended appropriation from the general fund equal to the difference between the amount calculated
213 pursuant to subdivision b and \$75 million, but not more than \$20 million, to be allocated as follows: 80
214 percent to the Virginia Land Conservation Fund to be used in accordance with § 10.1-1020, with no
215 less than 50 percent of such appropriation to be used for fee simple acquisitions with public access or
216 acquisitions of easements with public access; 10 percent to the Virginia Battlefield Preservation Fund to
217 be used in accordance with § 10.1-2202.4; and 10 percent to the Virginia Farmland Preservation Fund to
218 be used in accordance with § 3.2-201.

219 5. a. Any taxpayer that has been issued a tax credit by the Department shall be allowed to use such
220 credit for his or its taxable year that begins in the calendar year for which such credit was issued and
221 for succeeding taxable years in accordance with the 10 consecutive taxable year carryforward provisions
222 of this article, except for any taxpayer affected by the credit limitation for taxable years 2009, 2010,
223 2011, and 2015 and taxable years thereafter. Such a taxpayer shall be allowed to use such credit for his
224 or its taxable year that begins in the calendar year for which such credit was issued and for succeeding
225 taxable years in accordance with the 13 consecutive taxable year carryforward provisions of this article.

226 b. Any taxpayer to whom a credit has been transferred may use such credit for the taxable year in
227 which the transfer occurred and unused amounts may be carried forward to succeeding taxable years, but
228 in no event may such transferred credit be used more than 11 years after it was originally issued by the
229 Department or in any taxable year of such taxpayer that ended prior to the date of transfer, except for
230 any taxpayer affected by the credit limitation for taxable years 2009, 2010, 2011, and 2015 and taxable
231 years thereafter. Such a taxpayer may use such credit for the taxable year in which the transfer occurred
232 and unused amounts may be carried forward to succeeding taxable years, but in no event may such
233 transferred credit be used more than 14 years after it was originally issued by the Department or in any
234 taxable year of such taxpayer that ended prior to the date of transfer.

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

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