

DEPARTMENT OF TAXATION

2017 Fiscal Impact Statement

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

3. **Committee** House Finance

4. **Title** Amendments to the Land Preservation Tax Credit

2. **Bill Number** HB 1470

House of Origin:

X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would make the following changes to the Land Preservation Tax Credit program:

- Limit the Land Preservation Tax Credit to \$2 million for each conveyance of land or an interest in land.
- Permanently extend the \$20,000 limitation on the amount of Land Preservation Tax Credits that a taxpayer may claim per taxable year.
- Reduce the limitation on the amount of credits that a taxpayer may claim for certain fee simple donations of land to the Commonwealth from \$100,000 to \$50,000 per taxable year.
- Reduce the annual cap on the Land Preservation Tax Credit from \$75 million to \$50 million.
- Increase the Land Preservation Tax Credit transfer fee from 2 percent to 2.5 percent of the value of a donated interest.

The effective date for the provision that would increase the credit transfer fee is not specified. All other provisions of this bill would be effective for taxable years beginning on or after January 1, 2017.

6. **Budget amendment necessary:** Yes.

Page 1, Revenue Estimates

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

7b. **Revenue Impact:**

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Fund</i>
2016-17	\$0	GF
2017-18	\$6.38 million	GF
2018-19	\$14.07 million	GF
2019-20	\$15.29 million	GF
2020-21	\$15.75 million	GF
2021-22	\$16.21 million	GF
2022-23	\$16.67 million	GF

8. Fiscal implications:

Administrative Costs

The Department of Taxation (“the Department”), Department of Conservation (“DCR”), and Virginia Land Conservation Foundation (“VLCF”) consider implementation of this bill as routine, and do not require additional funding.

Revenue Impact

This bill would have an overall estimated positive General Fund revenue impact of \$12.48 million in Fiscal Year 2018, \$14.07 million in Fiscal Year 2019, \$15.29 million in Fiscal Year 2020, \$15.75 million in Fiscal Year 2021, \$16.21 million in Fiscal Year 2022, and \$16.67 million in Fiscal Year 2023. However, because the positive \$6.1 million General Fund revenue impact of extending the \$20,000 limitation to Taxable Year 2017 is assumed in the Introduced Executive Budget, the net revenue impact of this bill in Fiscal Year 2018 would be \$6.38 million.

The provision of this bill that would impose a \$2 million limit on the credit for each conveyance of land or an interest in land would have a \$2.4 million positive General Fund revenue impact beginning in Fiscal Year 2018.

Reducing the annual credit cap from \$75 million to \$50 million would have a positive General Fund revenue impact of \$3.97 million in Fiscal Year 2018, \$5.56 million in Fiscal Year 2019, \$6.78 million in Fiscal Year 2020, \$7.24 million in Fiscal Year 2021, \$7.71 million in Fiscal Year 2022, and \$8.17 million in Fiscal Year 2023. The full impact of reducing the credit cap to \$50 million is approximately \$9.2 million per year, based on the average amount of credits issued in prior years. However, due to outstanding credit carryovers, the full impact of reducing the credit cap would not be realized immediately.

Because there are generally few fee simple donations of land to the Commonwealth, reducing the limitation on the amount of credits that a taxpayer may claim per taxable year for such donations from \$100,000 to \$50,000 would have an unknown, likely minimal, positive General Fund revenue impact beginning in Fiscal Year 2018.

Increasing the transfer fee from 2 percent to 2.5 percent of the value of a donated interest could generate additional non-General Fund revenues of \$500,000 beginning in Fiscal Year 2018. Such revenues would be used to pay the costs of administering the Land Preservation Tax Credit program, as well as provide funding to the Virginia Land Conservation Foundation. However, Item 3-6.04 of the Introduced Executive Budget would increase the transfer fee to three percent. If both this bill and Item 3-6.04 of the Introduced Executive Budget are enacted, it is likely that the budget provision would prevail. Pursuant to § 4-13.00 of the Budget Bill, Conflict with Other Laws, the provisions of the Budget Bill generally prevail over any conflicting provision of any other law, without regard to whether the law is enacted before or after the Budget. Therefore, if the provision in the Introduced Executive Budget prevails, this portion of this bill would have no impact.

9. Specific agency or political subdivisions affected:

Department of Taxation
Department of Conservation
Office of the Attorney General
Virginia Land Conservation Foundation

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 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. The credit is not currently subject to a limitation on the amount of credits a taxpayer may earn per conveyance. See the chart below for information regarding the amount of credits allocated to taxpayers in excess of \$2 million for Taxable Years 2012 through 2016:

Taxable Year	Aggregate Credits Allocated in Excess of \$2 Million	Taxpayers Allocated Credits in Excess of \$2 Million
2012	\$9,679,515	Fewer than 4
2013	\$9,631,418	Fewer than 4
2014	\$10,741,160	Fewer than 4
2015	\$10,671,600	4
2016 (preliminary)	\$7,708,000	Fewer than 4

The credit is subject to an annual credit cap of \$75 million. See the chart below for information regarding the amount of credits allocated to taxpayers for Taxable Years 2013 through 2016:

Taxable Year	Number of Conveyances	Amount of Credits Allocated	Annual Credit Cap
2012	224	\$60,068,308	\$111,054,000
2013	234	\$78,882,596	\$100 million
2014	136	\$46,584,627	\$100 million
2015	182	\$48,625,672	\$75 million
2016 (preliminary)	146	\$55,318,175	\$75 million

Under current law, the amount of the credits that may be claimed by each taxpayer per taxable year is generally limited as follows:

Taxable Year	Limitation on Credits Claimed
2000	\$50,000
2001	\$75,000
2002-2008	\$100,000
2009-2011	\$50,000
2012-2014	\$100,000
2015-2016	\$20,000
2017 and thereafter	\$50,000

However, a taxpayer that conveys a fee simple donation of land to the Commonwealth may claim up to \$100,000 of credits per taxable year, provided that no part of the federal charitable contributions deduction related to such fee simple donation is allowable by reason of a sale or exchange of the property.

Any unused portion of a credit issued to a taxpayer may generally be carried forward for a maximum of 10 years. For taxpayers affected by the credit reduction for Taxable Years 2009, 2010, 2011, and 2015 and thereafter, any unused portion of a credit issued to a taxpayer may be carried forward for a maximum of 13 years. 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, 2011, and 2015 and thereafter, any portion of a transferred credit may be carried forward for a maximum of 14 years after the credit was originally issued.

Any taxpayer with unused Land Preservation Tax Credits may transfer such unused credits to another taxpayer for use on their Virginia income tax return. A fee of 2 percent of the value of the donated interest is imposed on any transfer arising from the sale of credits. Of the transfer fees collected, \$600,000 are required to be transferred to the General Fund. An amount not to exceed 50 percent of collected transfer fees is then required to be allocated to the Department, DCR, and OAG for each agency's respective expenses related to this credit. The remaining collected transfer fees are required to be transferred to the VLCF.

Proposed Legislation

This bill would limit the Land Preservation Tax Credit to \$2 million for each conveyance of land or an interest in land. For purposes of applying the \$2 million limitation, this bill would require the aggregation of credits requested for the current conveyance with any Land Preservation Tax Credits granted for other conveyances from the same recorded parcel of land as the current conveyance within the preceding 11-year period. Aggregation of credits granted for conveyances from the same parcel of land would not be required if:

- All owners of the recorded parcel who have been allowed credits for a qualified donation are not affiliated with the person or entity seeking credits for the current donation of a different portion of the parcel of land; and
- In the case of an individual seeking credits, the individual has not previously made a qualified donation for any portion of the parcel of land and is not an immediate family member of any such owners.

This bill would permanently extend the \$20,000 limitation on the amount of Land Preservation Tax Credits that a taxpayer may claim per taxable year. This bill would reduce the annual limitation for credits claimed for certain fee simple donations of land to the Commonwealth from \$100,000 to \$50,000.

This bill would reduce the annual cap on the Land Preservation Tax Credit from \$75 million to \$50 million.

This bill would increase the Land Preservation Tax Credit transfer fee from 2 percent to 2.5 percent of the value of a donated interest.

The effective date for the provision that would increase the credit transfer fee is not specified. All other provisions of this bill would be effective for taxable years beginning on or after January 1, 2017.

Similar Bills

House Bill 2150 and **Senate Bill 963** would extend the \$20,000 limitation on the amount of Land Preservation Tax Credits that a taxpayer may claim per taxable year so that it will apply to Taxable Year 2017. Such limitation would then increase to \$50,000 for Taxable Year 2018 and thereafter.

Item 3-6.04 of the Introduced Executive Budget would increase the Land Preservation Tax Credit transfer fee from 2 percent to 3 percent of the value of a donated interest.

Senate Bill 1286 would allow a pass-through entity that is required to pay the pass-through entity withholding tax on behalf of any nonresident owners to claim the Land Preservation Tax Credit against such tax in lieu of distributing the credits to the nonresident owners. The 2 percent credit transfer fee would not apply to a pass-through entity that claims the credit against the pass-through entity withholding tax.

cc : Secretary of Finance

Date: 1/17/2017 MTH
HB1470F161