

20102932D

## SENATE BILL NO. 604

Senate Amendments in [ ] - January 23, 2020

A *BILL to amend and reenact § 58.1-512 of the Code of Virginia, relating to land preservation tax credit; verification requirements.*

Patron Prior to Engrossment—Senator Stuart

Referred to Committee on Finance and Appropriations

**Be it enacted by the General Assembly of Virginia:****1. That § 58.1-512 of the Code of Virginia is 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 that 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. a. If the Commonwealth or an instrumentality thereof operates a facility on a conveyance, including charging fees for the use of such facility, such operation shall not disqualify the conveyance from eligibility for the tax credit, so long as any fees are used for conservation or preservation purposes.

b. If the Commonwealth or an instrumentality thereof enters into an agreement with a third party to lease or manage a facility on a conveyance, the fact that such third party is operated primarily as a business with intent for profit shall not disqualify the conveyance from eligibility for the tax credit, so long as such agreement is for conservation or preservation purposes.

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; \$20,000 for each of 2015, 2016, and 2017 taxable years; and \$50,000 for 2018 taxable years and for each taxable year thereafter. However, 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, provided that no part of the charitable contributions deduction under § 170 of the Internal Revenue Code related to such fee simple donation is allowable by reason of a sale or exchange of property. In addition, for each taxpayer, in any one taxable year the credit used may not exceed the amount of individual, fiduciary or corporate income tax otherwise due. Any portion of the credit that is unused in any one taxable year may be carried over for a maximum of 10 consecutive taxable years following the taxable year in which the credit originated until fully expended. A credit shall not be reduced by the amount of unused credit that could have been claimed in a prior year by the taxpayer but was unclaimed. For taxpayers affected by the credit reduction for taxable years 2009, 2010, 2011, and 2015 and thereafter, any portion of the credit that is unused in any one taxable

ENGROSSED

SB604E

59 year may be carried over for a maximum of 13 consecutive taxable years following the taxable year in  
60 which the credit originated until fully expended.

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

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

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

89 4. Qualified donations shall be eligible for the tax credit herein described if such donations are made  
90 to the Commonwealth of Virginia, an instrumentality thereof, or a charitable organization described in  
91 § 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, if such charitable  
92 organization (i) meets the requirements of § 509(a)(2) or (ii) meets the requirements of § 509(a)(3) and  
93 is controlled by an organization described in § 509(a)(2).

94 5. The preservation, agricultural preservation, historic preservation or similar use and purpose of such  
95 property shall be assured in perpetuity. In the case of conveyances of a fee interest to a charitable  
96 organization that is a "holder" as defined in § 10.1-1009, the credit shall not be allowed until the  
97 charitable organization agrees that subsequent conveyances of the fee interest in the property will be (i)  
98 subject to a previous conveyance in perpetuity of a conservation easement, as that term is defined in  
99 § 10.1-1009, or subject to the conveyance in perpetuity of an open-space easement, as that term is  
100 defined in § 10.1-1700, or (ii) conveyed to the Commonwealth of Virginia or to a federal conservation  
101 agency. No credit shall be allowed with respect to any subsequent conveyances by the charitable  
102 organization.

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

106 1. The taxpayer shall apply for a credit after completing the donation by submitting a form or forms  
107 prescribed by the Department in consultation with the Department of Conservation and Recreation. If the  
108 application requests a credit of [ ~~\$1 million~~ ] [ \$500,000 ] or more or if the donation meets the  
109 conditions of subdivision 3 c, then a copy of the application shall also be filed with the Department of  
110 Conservation and Recreation by the taxpayer. The application shall include, but not be limited to:

111 a. A description of the conservation purpose or purposes being served by the donation;  
112 b. The fair market value of land being donated in the absence of any easement or other restriction;  
113 c. The public benefit derived from the donation;  
114 d. The extent to which water quality best management practices will be implemented on the property;  
115 and

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

118 2. Applications for otherwise qualified donations of a less-than-fee interest shall be accompanied by  
119 an affidavit describing how the donated interest in land meets the requirements of § 170(h) of the United  
120 States Internal Revenue Code of 1986, as amended, and the regulations adopted thereunder. The

121 application with accompanying affidavit shall be submitted to the Department of Taxation, with a copy  
122 also provided to the Department of Conservation and Recreation.

123 3. a. No credit in the amount of ~~\$1 million~~ \$500,000 or more shall be issued with respect to a  
124 donation unless the conservation value of the donation has been verified by the Director of the  
125 Department of Conservation and Recreation, based on the criteria adopted by the Virginia Land  
126 Conservation Foundation for this purpose. Such criteria and subsequent amendments shall be exempt  
127 from the Administrative Process Act (§ 2.2-4000 et seq.), but the Virginia Land Conservation  
128 Foundation shall provide for adequate public participation, including adequate notice and opportunity to  
129 provide comments on the proposed criteria. The Director shall act on applications within 90 days of his  
130 receipt of a complete application and shall notify the taxpayer and the Department of Taxation of his  
131 action.

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

140 c. If (i) the real property that is the subject of the donation was partitioned from or part of another  
141 parcel of land and any other portion of such parcel, or any land partitioned from such parcel of land,  
142 has been allowed a tax credit under this article (or an application for tax credit is pending) within three  
143 years of such donation and (ii) the tax credit that would otherwise be allowed to the donor for such  
144 donation is at least \$250,000, then no credit under this article shall be issued with respect to such  
145 donation described in clause (i) unless the conservation value of the donation has been verified by the  
146 Director of the Department of Conservation and Recreation. The Director shall act on applications within  
147 90 days of his receipt of a complete application and shall notify the taxpayer and the Department of  
148 Taxation of his action. Nothing in this subdivision shall be construed or interpreted (a) as allowing  
149 additional tax credit for any land or interest in land previously conveyed for which tax credit has already  
150 been allowed under this article or (b) affecting the validity of any tax credit allowed under this article  
151 for a prior conveyance of any land or interest in land.

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

172 No credit shall be allowed for any land or interest in land conveyed unless (i) for a conveyance  
173 made before January 1, 2020, a complete application for tax credit with regard to the conveyance has  
174 been filed with the Department by December 31 of the third year following the calendar year of the  
175 conveyance or (ii) for a conveyance made on or after January 1, 2020, a complete application for tax  
176 credit with regard to the conveyance has been filed with the Department by December 31 of the second  
177 year following the calendar year of the conveyance. For filings by mail or a recognized commercial  
178 delivery service, the postmark or confirmation of shipment shall determine the date of filing. Solely for  
179 purposes of this condition, any application for which the Tax Commissioner has given written notice to  
180 the donor that the preparation of a second qualified appraisal is warranted shall be deemed timely filed,  
181 provided that the application was otherwise complete as of such filing deadline.

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

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

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

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

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

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

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