

VIRGINIA ACTS OF ASSEMBLY -- 1999 RECONVENED SESSION

CHAPTER 983

An Act to amend the Code of Virginia by adding in Chapter 3 of Title 58.1 an article numbered 20.1, consisting of sections numbered 58.1-510 through 58.1-513, relating to tax credits for the preservation of land.

[H 1752]

Approved April 7, 1999

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 3 of Title 58.1 an article numbered 20.1, consisting of sections numbered 58.1-510 through 58.1-513, as follows:

Article 20.1.

Virginia Land Conservation Incentives Act of 1999.

§ 58.1-510. Purpose.

The purpose of this act is to supplement existing land conservation programs to further encourage the preservation and sustainability of Virginia's unique natural resources, wildlife habitats, open spaces and forested resources.

§ 58.1-511. Definitions.

For the purposes of this article:

"Interest in real property" means any right in real property, including access thereto or improvements thereon, or water, including but not limited to a fee simple easement, including 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.

§ 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 fifty 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 in perpetuity by the landowner/taxpayer to a public or private conservation agency eligible to hold such land and interests therein for conservation or preservation purposes. The fair market value of qualified donations made under this section shall be substantiated by a "qualified appraisal" prepared by a "qualified appraiser," as those terms are defined under applicable federal law and regulations governing charitable contributions.

B. 1. The amount of the credit that may be claimed by a taxpayer shall not exceed \$50,000 for 2000 taxable years, \$75,000 for 2001 taxable years, and \$100,000 for 2002 taxable years and thereafter. In addition, 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 which is unused in any one taxable year may be carried over for a maximum of five consecutive taxable years following the taxable year in which the credit originated until fully expended.

2. Qualified donations shall include the conveyance in perpetuity of a fee interest in real property or a less-than-fee interest in real property, such as a conservation restriction, preservation restriction, agricultural preservation restriction, or watershed preservation restriction, provided that such less-than-fee interest qualifies as a charitable deduction under § 170 (h) of the U.S. Internal Revenue Code of 1986, as amended. Dedications of land for open space for the purpose of fulfilling density requirements to obtain subdivision or building permits shall not be considered as qualified donations under this act.

3. Qualified donations shall be eligible for the tax credit herein described if such donations are made to the Commonwealth of Virginia, an instrumentality thereof, or a charitable organization described in § 501 (c) (3) of the U.S. Internal Revenue Code of 1986, as amended, if such charitable

organization (i) meets the requirements of § 509 (a) (2) or (ii) meets the requirements of § 509 (a) (3) and is controlled by an organization described in § 509 (a) (2).

4. The preservation, agricultural preservation, historic preservation or similar use and purpose of such property shall be assured in perpetuity.

§ 58.1-513. Limitations.

A. Any taxpayer claiming a tax credit under this act shall not claim a credit under any similar Virginia law for costs related to the same project. To the extent a credit is taken in accordance with this article, no subtraction allowed for the gain on the sale of (i) land dedicated to open-space use or (ii) an easement dedicated to open-space use under subsection C of § 58.1-322 shall be allowed for three years following the year in which the credit is taken.

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

2. That the provisions of this act shall be effective for taxable years beginning on and after January 1, 2000, unless one or more of the events listed in subsection C of § 58.1-3524 has occurred prior to such date. If any one of these events occurs before January 1, 2000, this act shall not become effective for taxable years beginning on and after January 1, 2000, but shall instead become effective for taxable years beginning on and after January 1 of the first year thereafter when none of the events listed in subsection C of § 58.1-3524 have occurred during the immediately preceding calendar year.