

DEPARTMENT OF TAXATION

2008 Fiscal Impact Statement

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| 1. Patron Emmett W. Hanger, Jr. | 2. Bill Number <u>SB 744</u> |
| 3. Committee Senate Finance | House of Origin:
<u> X </u> Introduced
<u> </u> Substitute
<u> </u> Engrossed |
| 4. Title Income Tax: Land Preservation Tax Credit | Second House:
<u> </u> In Committee
<u> </u> Substitute
<u> </u> Enrolled |

5. Summary/Purpose:

This bill would change the application process for the Land Preservation Tax Credit that was instituted in 2007 by requiring taxpayers to register the land or interest in land with TAX instead of filing an application with both TAX and the Department of Conservation and Recreation ("DCR"). The registration would be done before the taxpayer could claim or transfer the credit and would be required to include a written certification by a licensed reviewer that the land or interest in land is in compliance with pre-registration standards developed by TAX.

TAX would be required to develop pre-registration standards. TAX would also be authorized to license qualified applicants to perform the review for certification. In order to cover the direct expenses for the administration of the registration program, TAX would be allowed to levy and collect fees for licensure.

Finally, TAX would be required to implement a limited appeals process by which prospective credit claimants could seek to register with TAX notwithstanding the lack of a written certification from a licensed reviewer.

This bill would be effective for conveyance of land or interest in land made on or after January 1, 2009. The pre-registration standards and procedures for the registration process would be required to first be made publicly available no later than October 1, 2008.

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

6a. Expenditure Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2007-08	\$0	0	GF
2008-09	\$137,220	2	GF
2009-10	\$135,400	2	GF
2010-11	\$138,400	2	GF
2011-12	\$141,400	2	GF
2012-13	\$144,400	2	GF
2013-14	\$147,400	2	GF

7. Budget amendment necessary: Yes.

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8. Fiscal implications:

Administrative Costs

TAX would incur administrative costs of \$137,220 for FY 2009, \$135,400 for FY 2010, \$138,400 for FY 2011, \$141,400 for FY 2012, \$144,400 for FY 2013, and \$147,400 for FY 2014. These costs represent the fact that TAX would need to hire two additional full-time employees in order to administer the new registration responsibilities. In addition, TAX would need to create procedures and forms to be used for licensing reviewers.

Revenue Impact

This bill would have no revenue impact, as the amount of Land Preservation Tax Credits that may be granted each year is subject to a cap.

9. Specific agency or political subdivisions affected:

Department of Taxation
Department of Conservation and Recreation

10. Technical amendment necessary: No.

11. Other comments:

Background

Several changes were made to the Land Preservation Tax Credit during the 2006 Special Session of the General Assembly. The credit is now equal to forty percent of the fair market value of the qualified donation, which must be substantiated by a qualified appraisal prepared by a qualified appraiser. In addition, taxpayers making qualifying donations on or after January 1, 2007 must apply for the credit.

In order to apply for the Land Preservation Tax Credit, taxpayers are required to submit documentation to TAX and to the Department of Conservation and Recreation ("DCR").

For applications that request credits totaling less than \$1 million, the taxpayer must submit the Form LPC-1, Application for a Land Preservation Tax Credit, to both TAX and DCR. In addition, the taxpayer must submit a copy of the full appraisal, a copy of the recorded deed, and a copy of the completed and signed federal Form 8283, which is used to report non-cash charitable contributions, to TAX. DCR does not receive the supporting documentation in these cases. While DCR receives a copy of the LPC-1 for these applications, it is TAX who is solely responsible for issuing this level of credit.

If the taxpayer applies for a credit that is \$1 million or greater, however, there is a dual application process. The taxpayer must file his or her application with TAX and with DCR; and DCR must verify the conservation value before TAX may issue the Credit. In addition to the Form LPC-1, taxpayers requesting Credits for these amounts must complete Schedule B of the LPC-1 if the qualifying donation is a less-than-fee interest in land or Schedule C of the LPC-1 if it is a fee-simple interest in land. Taxpayers must also submit baseline documentation and a copy of the recorded deed to DCR. These additional forms are used to provide DCR with the information necessary to verify the conservation value.

Proposal

This bill would change the application process for the Land Preservation Tax Credit that was instituted in 2007 by requiring taxpayers to register the land or interest in land with TAX instead of filing an application with both TAX and the Department of Conservation and Recreation ("DCR"). The registration would be done before the taxpayer could claim or transfer the credit and would be required to include a written certification by a licensed reviewer that the land or interest in land is in compliance with pre-registration standards developed by TAX. Such a certification would not, however, preclude TAX from contesting a credit claim and disallowing credit in whole or in part.

TAX would be required to develop pre-registration standards that would incorporate requirements under the Open-Space Land Act, the Virginia Conservation Easement Act, and § 170 (h) of the Internal Revenue Code. In developing and updating the pre-registration standards, TAX would be required to consult with the Virginia Land Conservation Foundation and to provide for adequate public participation.

The pre-registration standards developed by TAX would also be required to incorporate the following guidelines:

- The donation must provide significant public benefit and have important conservation values.
- The donation must be made to an appropriate donee with a commitment to preserving in perpetuity the conservation values of the property that is the subject of the donation.
- If the donation is a partial interest, such as a conservation or open-space easement, the terms of the donation must provide an appropriate level of protection for the conservation values of the subject property.

- The appraisal estimating the value of any donation upon which credits are to be based must be in accordance with the provisions of § 58.1-512.1.

TAX would also be required to establish application procedures and qualifications required for those seeking to become licensed reviewers in order to provide the necessary certification services. The application procedures would require applicants to provide documentation establishing a minimum level of expertise in the evaluation of Land Preservation Tax Credit claims.

TAX would be authorized to license qualified applicants as licensed reviewers, and would be required to keep a current list of licensed reviewers on its website. In addition, TAX would be allowed to levy and collect fees for licensure that are sufficient to cover all direct expenses for the administration of the registration program.

The Tax Commissioner would be authorized to revoke or suspend the license of reviewers who repeatedly certify conveyances for which credits are subsequently disallowed in whole or in part. Licensed reviewers also would be subject to regular examination by TAX.

Any person or entity denied licensure by TAX or whose license was revoked or suspended would be entitled to a review of such action. Appeals from such actions would be required to be in accordance with the provisions of the Administrative Process Act.

Finally, TAX would be required to establish a limited appeals process by which prospective credit claimants repeatedly rejected by licensed reviewers may seek to register with TAX notwithstanding the lack of a written certification from a licensed reviewer.

This bill would be effective for conveyances of land or interest in land made on or after January 1, 2009. The pre-registration standards and procedures for the registration process would be required to first be made publicly available no later than October 1, 2008.

Similar Legislation

House Bill 1283 would eliminate Department of Conservation and Recreation verification of the conservation value of land donations that will result in \$1 million or more in Land Preservation Tax Credits. The bill would also establish a review and administrative appeal process in which proposed conveyances of donations would be reviewed by the Department of Taxation for purposes of determining whether the proposed donation would qualify for a Land Preservation Tax Credit.

Senate Bill 259 would eliminate Department of Conservation and Recreation verification of the conservation value of land donations resulting in \$1 million or more in tax credits if the grantee for the donation is the Virginia Outdoors Foundation.

Senate Bill 641 would provide that the Land Preservation Tax Credit would equal 60% of the fair market value of any land that is conveyed for the purpose of a public park, public recreational facility, or public trail access easement.

cc : Secretary of Finance

Date: 1/22/2008 AMS
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