

DEPARTMENT OF TAXATION

2010 Fiscal Impact Statement

1. **Patron** Albert C. Pollard, Jr.

3. **Committee** Senate Finance

4. **Title** Land Preservation Tax Credit

2. **Bill Number** HB 141

House of Origin:

 Introduced

 Substitute

 Engrossed

Second House:

 X **In Committee**

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would modify the Land Preservation Tax Credit's restriction that prevents certain charitable organizations from qualifying for the credit. It would clarify that only organizations holding conservation easements acquired pursuant to the authority conferred to a "holder" under the Virginia Conservation Easement Act are prevented from qualifying for the credit. Therefore, organizations that hold certain types of conservation easements, but not as "holders" under Virginia statute, would qualify to earn the credit. Currently, any charitable organization that holds one or more conservation easements may not qualify for the credit.

This bill would be applicable to charitable organizations making donations on or after July 1, 2010.

6. **No Fiscal Impact.** (See Line 8.)

7. **Budget amendment necessary:** No.

8. **Fiscal implications:**

Administrative Costs

TAX has not assigned any administrative costs to this bill because the changes required by a single bill such as this can be implemented as part of the annual changes to our systems and forms. As stand-alone legislation, TAX considers implementation of this bill as "routine," and does not require additional funding.

Revenue Impact

Because the amount of credit that may be issued in a calendar year is capped and credits are effectively limited by that cap, this bill would have no revenue impact.

9. Specific agency or political subdivisions affected:

Department of Taxation
Department of Conservation and Recreation
Preservation Virginia

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 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.

Beginning in calendar year 2007, the amount of Land Preservation Tax Credits that may be issued in any one year is subject to a cap. For 2007, the cap amount was \$100 million. Starting in calendar year 2008, the \$100 million cap will 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. For 2009, the cap was \$106,647,000.

Qualified donations under the Land Preservation Tax Credit do not include the conveyance of a fee interest, or a less-than-fee interest, in real property by a charitable organization that (i) meets the definition of "holder" in *Va. Code* § 10.1-1009 and (ii) holds one or more conservation easements.

Virginia Conservation Easement Act

Virginia Code § 10.1-1010 of the Virginia Conservation Easement Act provides that a holder may acquire a conservation easement by gift, purchase, devise or bequest. The conservation easement must be perpetual in duration unless the instrument creating it otherwise provides for a specific time. The holder must meet the criteria in *Va. Code* § 10.1-1009 and either have had a principal office in the Commonwealth for at least five years, or be a national organization in existence for at least five years, which has an office in the Commonwealth and has registered and is in good standing with the State Corporation Commission. Until a holder has met these requirements, the holder may co-hold a conservation easement with another holder that meets the requirements.

Virginia Code § 10.1-1009 defines "conservation easement" as "a nonpossessory interest of a holder in real property, whether easement appurtenant or in gross, acquired through gift, purchase, devise, or bequest imposing limitations or affirmative obligations, the purposes of which include retaining or protecting natural or open-space values of real property, assuring its availability for agricultural, forestal, recreational, or open-space use,

protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural or archaeological aspects of real property."

Virginia Code § 10.1-1009 defines "holder" as "a charitable corporation, charitable association, or charitable trust which has been declared exempt from taxation pursuant to 26 U.S.C.A. § 501 (c) (3) and the primary purposes or powers of which include: (i) retaining or protecting the natural or open-space values of real property; (ii) assuring the availability of real property for agricultural, forestal, recreational, or open-space use; (iii) protecting natural resources; (iv) maintaining or enhancing air or water quality; or (v) preserving the historic, architectural or archaeological aspects of real property."

Proposal

This bill would modify the Land Preservation Tax Credit's restriction that prevents certain charitable organizations from qualifying for the credit. It would clarify that only organizations holding conservation easements acquired pursuant to the authority conferred to a "holder" under the Virginia Conservation Easement Act are prevented from qualifying for the credit. Therefore, organizations that hold certain types of conservation easements, but not as "holders" under Virginia statute, would qualify to earn the credit.

This bill would be applicable to charitable organizations making donations on or after July 1, 2010.

Similar Bills

House Bill 447 and **Senate Bill 264** would remove the \$10,000 cap on the 2 percent fee imposed on the transfer arising from the sale of Land Preservation Tax Credits and provide for distribution of the revenue to various entities.

Senate Bill 233 would extend the reduction in the amount of Land Preservation Credits that may be claimed on income tax returns from \$100,000 per taxpayer to \$50,000 per taxpayer effective for credits claimed for the taxable year beginning on January 1, 2011.

Senate Bill 341 would require the Department of Conservation and Recreation to provide an estimate of the number of acres of land currently being used for "production agriculture and silviculture" when creating its annual report on less-than-fee interests qualifying for the Land Preservation Tax Credit.

Senate Bill 661 would require certain taxpayers whose application for the Land Preservation Tax Credit involves a donation of land or interest in land to have the conservation value of the donation verified by the Department of Conservation and Recreation if such application would result in a credit of \$250,000 or more.

cc : Secretary of Finance
Date: 2/19/2010 JKM
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