

DEPARTMENT OF TAXATION

2011 Fiscal Impact Statement

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

2. **Bill Number** HB 1820

3. **Committee** House Finance

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

4. **Title** Land preservation tax credits; second appraisal for applicants requesting credit of \$1 million

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would provide that the maximum amount of land preservation tax credits that may be issued in any calendar year would be \$100 million, adjusted for inflation, plus any credits that have been disallowed or invalidated by TAX.

This bill would allow the Tax Commissioner, for good cause, to make a written request for a second qualified appraisal for any application that requests a credit of \$1 million or more. If the fair market value indicated by the second appraisal is at least 85 percent but not more than 115 percent of the fair market value indicated by the first appraisal submitted by the donor, this bill would require TAX to issue the tax credits using the fair market value of the first appraisal. If the fair market value indicated by the second appraisal is less than 85 percent of the fair market value indicated by the first appraisal, this bill would require TAX to issue tax credits using the fair market value of the second appraisal. If the fair market value of the second appraisal is more than 115 percent of the fair market value of the first appraisal, TAX would issue tax credits based upon an average of the fair market value indicated by each appraisal.

This bill would also allow a transfer of an unused credit from the estate of a deceased taxpayer for use by another taxpayer on Virginia income tax returns.

The effective date of this bill would be taxable years and calendar years beginning on or after January 1, 2011.

6. **Budget amendment necessary:** No.

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

8. **Fiscal implications:**

Administrative Impact

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.

TAX will provide specific administrative costs on any legislation that is not “routine.” Additionally, TAX will review all state tax legislation likely to be enacted prior to the passage by each house. If the aggregate number of routine bills likely to pass either house is unusually large, it is possible that additional resources will be required. If so, TAX will identify the costs at that time.

Revenue Impact

This bill would result in a minimal revenue loss. The amount of disallowed and invalidated credits varies annually, so it is difficult to determine the impact this would have on the maximum credit amount that would be permitted to be issued annually. It is unknown whether the requirement that TAX issue credits and wait until audit to correct errors of up to 15 percent would further decrease revenues.

9. Specific agency or political subdivisions affected:

Department of Taxation
Department of Conservation and Recreation

10. Technical amendment necessary: Yes.

In order to clarify when the 30-day period for requesting a second appraisal begins, the following technical amendment is suggested:

Line 181, after filing date of the
Insert: complete

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.

The fair market value of qualified donations must be determined and substantiated by a “qualified appraisal” prepared by a “qualified appraiser” who is licensed in Virginia. To qualify for a tax credit, the qualified appraisal must be signed by the qualified appraiser and a copy of the appraisal must be submitted to TAX. Any appraisal that, upon audit by TAX, is determined to be false or fraudulent, may be disregarded by TAX in determining the fair market value of the property.

Beginning in calendar year 2007, the aggregate 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. Since calendar year 2008, the \$100 million cap has been increased for inflation. For 2011, the cap is \$108,424,000.

Credits must be issued in the order that each complete application is received. If more than one application is received at the same time, the credits with respect to those applications must be issued in the order that the conveyances were recorded in the appropriate Virginia circuit court. If a credit requires verification of the conservation value by the Department of Conservation and Recreation and such verification has not been received at the time the aggregate cap is reached for the calendar year, the credit shall be issued in the calendar year that the conservation value of the credit is verified.

The amount of the credit that may be claimed by each taxpayer is limited to \$50,000 for the 2009, 2010, and 2011 taxable years, and \$100,000 for the 2012 taxable year and for each taxable year thereafter. Any unused portion of a credit issued to a taxpayer may be carried forward for a maximum of 10 years. For taxpayers affected by the credit reduction for taxable years 2009, 2010, and 2011, 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, and 2011, any portion of a transferred credit may be carried forward for a maximum of 14 years after the credit was originally issued.

Public Document 05-170 (December 5, 2005) states that, because a taxpayer who wishes to transfer a credit must be the person to transfer the credit and file a notification with TAX, unused credit amounts cannot be transferred by a taxpayer's estate.

Proposed Legislation

This bill would provide that the maximum amount of land preservation tax credits that may be issued in any calendar year would be \$100 million, adjusted for inflation, plus any credits that have been disallowed or invalidated by TAX.

This bill would allow the Tax Commissioner, for good cause, to make a written request for a second qualified appraisal for any application that requests a credit of \$1 million or more. If the fair market value indicated by the second appraisal is less than 85 percent of the fair market value indicated by the first appraisal, this bill would require TAX to issue tax credits using the fair market value of the second appraisal. If the fair market value of the second appraisal is more than 115 percent of the fair market value of the first appraisal, TAX would issue tax credits based upon an average of the fair market value indicated by each appraisal.

If the fair market value indicated by the second appraisal is at least 85 percent but not more than 115 percent of the fair market value indicated by the first appraisal submitted by the donor, this bill would require TAX to issue the tax credits using the fair market value of the first appraisal. This would require TAX to issue credits in connection with appraisals that contain errors of up to 15 percent and subsequently audit the taxpayer in order to correct the error.

If a second qualified appraisal is required by TAX under this bill, the application would not be deemed complete for purposes of allocating the credit cap until the fair market value of the donation is determined.

TAX is the only agency entitled to request a second appraisal under this bill and TAX would be required to pay for any appraisals that it requests. However, any appraiser is to be selected jointly by TAX and the Chairman of the Real Estate Appraiser Board.

Although TAX has requested another appraisal before issuing credits, in most cases the additional appraisal would be requested in the course of an audit, administrative appeal, or litigation after the credit has been issued. Since the proposed appraisal procedure is part of subdivision 4, relating to issuance of credits, it would have no impact on TAX's authority to audit credits after issuance under subdivision 6 or on procedures for administrative and judicial review of contested assessments.

This bill would also allow a transfer of an unused credit from the estate of a deceased taxpayer for use by another taxpayer on Virginia income tax returns.

The effective date of this bill would be taxable years and calendar years beginning on or after January 1, 2011.

Similar Legislation

House Bill 1445 would limit the total amount of Land Preservation Tax Credits issued to any taxpayer to \$10 million annually.

House Bill 2263 would include waterfront land used for commercial fisheries as property eligible for the land preservation tax credit.

Senate Bill 979 would decrease the tax credit threshold at which the conservation value of a donation is required to be verified by DCR from \$1 million to \$500,000.

Senate Bill 1087 would require the use of a licensed transfer agent to transfer a land preservation tax credit to a taxpayer who is not an individual.

Senate Bill 1088 would allow a donor of land or any interest in land to request a refund of unused land preservation tax credits with the Tax Commissioner for 90 percent of the face value of the credits.

Senate Bill 1153 would provide that a land preservation tax 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.

Senate Bill 1232 would also allow TAX to require a second appraisal. The differences between the two bills with respect to second appraisals are summarized in the “Comparison of House Bill 1820 and Senate Bill 1232,” below. In addition, Senate Bill 1232 would also require the use of a licensed transfer agent to transfer a land preservation tax credit to a taxpayer who is not an individual.

Comparison of House Bill 1820 and Senate Bill 1232		
<i>Provision</i>	<i>House Bill 1820</i>	<i>Senate Bill 1232</i>
Threshold amount for appraisal request	\$1 million or more	\$5 million or more
When application is complete for purposes of credit allocation	Not complete until the fair market value of the donation is determined as required in subdivision 4(c)	Not specified
Deadline for TAX to request appraisal	On or before 30th day following filing date of application	On or before 30th day following filing date of application
Appraisal #2 < 85% of Appraisal #1	TAX shall issue tax credits based on the second appraisal	TAX shall issue credits based on either appraisal
Appraisal #2 > 85% but < 115% of Appraisal #1	TAX shall issue tax credits based on the first appraisal	TAX shall issue tax credits based on the first appraisal
If Appraisal #2 > 115% of Appraisal #1	TAX shall issue tax credits based on an average of the two appraisals	TAX shall issue tax credits based on the first appraisal
Notice Requirements	None specified	TAX must promptly notify taxpayer if basing the credit amount on the second appraisal
Requirements for Appeal	None specified	Taxpayer must provide notice of intent to appeal within 60 days and must file the appeal within 90 days of TAX's notice; TAX must issue a determination within 90 days of appeal

cc : Secretary of Finance

Date: 1/20/2011 KLC
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