

DEPARTMENT OF TAXATION

2011 Fiscal Impact Statement

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| 1. Patron Emmett W. Hanger, Jr. | 2. Bill Number <u>SB 1088</u> |
| | House of Origin: |
| 3. Committee Senate Finance | <u> X </u> Introduced |
| | <u> </u> Substitute |
| | <u> </u> Engrossed |
| 4. Title Land preservation tax credits; refunded by
the Tax Commissioner | Second House: |
| | <u> </u> In Committee |
| | <u> </u> Substitute |
| | <u> </u> Enrolled |

5. Summary/Purpose:

This bill would allow any donor of land or interest in land that has been issued a land preservation tax credit to request a refund of unused land preservation tax credits in an amount equal to 90 percent of the face value of the credits. The remaining 10 percent of the face value would be an administrative fee charged for issuing the refund and would be deposited into the Local Purchase of Development Rights Matching Grant Fund.

A donor could be refunded no more than an aggregate of \$100,000 in land preservation tax credits, regardless of the number of qualified donations made. The total amount of tax credits claimed by the donor plus the amount refunded to the donor for the taxable year could not exceed the maximum amount of credit that may be claimed for the year.

No person who has transferred a land preservation tax credit to another person or acquired such a credit from another person would be eligible for a refund.

This bill would also establish the Local Purchase of Development Rights Matching Grant Fund, which would be used to provide grants, on a matching basis, to certified local purchase of development rights programs.

The portion of this bill allowing the refund of unused land preservation tax credits would be effective for taxable 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 considers implementation of this bill as routine, and does not require additional funding.

The Office of Farmland Preservation has indicated that it not require any additional funding as a result of this bill.

Revenue Impact

This bill would result in an unknown revenue loss.

Although this bill would not change the capped credit amount that can be claimed in a taxable year, permitting taxpayers to claim a refund may cause taxpayers to claim this credit earlier than they otherwise would. Taxpayers with small credit amounts and lower income levels would be the most likely to claim the refund because they would have less tax liability against which to claim the credit and would have less incentive to transfer the credits.

Taxpayers with higher income levels have more tax liability against which to claim the credits. Taxpayers with credit amounts in excess of \$1 million would not be able to claim the full amount of the credits over ten years without transferring some or all of the credits.

Since the refund is limited to \$100,000, these taxpayers would be likely to transfer credits, rather than claim the refund.

9. Specific agency or political subdivisions affected:

Department of Taxation
Office of Farmland Preservation

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 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.

The value of credits in the amount of \$1 million or more must be verified by the Department of Conservation and Recreation, based on the criteria adopted by the Virginia Land Conservation Foundation. Additionally, a copy of any application requesting a credit of \$1 million or more must be filed with the Department of Conservation and Recreation.

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.

Proposed Legislation

This bill would allow any donor of land or interest in land that has been issued a land preservation tax credit to request a refund of unused land preservation tax credits in an amount equal to 90 percent of the face value of the credits. The remaining 10 percent of the face value would be an administrative fee charged for issuing the refund and would be deposited into the Local Purchase of Development Rights Matching Grant Fund.

A donor could be refunded no more than an aggregate of \$100,000 in land preservation tax credits, regardless of the number of qualified donations made. The total amount of tax credits claimed by the donor plus the amount refunded to the donor for the taxable year could not exceed the maximum amount of credit that may be claimed for the year.

No person who has transferred a land preservation tax credit to another person or acquired such a credit from another person would be eligible for a refund. This means that no person who has sold or purchased a transferred credit would be permitted to claim a refund and that any person who claims a refund would not be permitted to later transfer a credit or purchase a transferred credit.

If the land or interest in land donated was partitioned from or part of another parcel of land and TAX previously refunded unused tax credits for a prior donation made from the parcel or from any land partitioned from such parcel, TAX would be permitted to refund unused tax credits relating to the current donation only if the donor (i) is not the same person that received a refund of unused tax credits from the prior donation, and (ii) is not an immediate family member of any individual, and is not affiliated with any person or entity, that received a refund of unused tax credits for the prior donation.

This bill would require that tax credits be refunded within 90 days of the filing date of the income tax return on which the donor applies for the refund. Upon refunding a tax credit, TAX would be required to provide a written certification to the Comptroller indicating the face value of the tax credits refunded. The Comptroller would then be required to deposit

an amount equivalent to 10 percent of the face value of the tax credits into the Local Purchase of Development Rights Fund.

This bill would establish the Local Purchase of Development Rights Matching Grant Fund, which would be used to provide grants, on a matching basis, to certified local purchase of development rights programs. The match made by the local purchase of development rights programs would be required to be provided in money. The match could not be made from state or federal money received by the county or city (or by the purchase of development rights programs) for agriculture, preservation, conservation, or natural resource purposes.

The Fund would be administered by the Coordinator of the Office of Farmland Preservation. Any money in the Fund would be distributed as grants to local purchase of development rights programs under policies, procedures, and guidelines developed by OFP.

The portion of this bill allowing the refund of unused land preservation tax credits would be effective for taxable years beginning on or after January 1, 2011. The effective date of the establishment of the Local Purchase of Development Rights Matching Grant Fund is not specified.

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 1820 would increase the annual Land Preservation Tax Credit cap to \$100 million, adjusted for inflation, plus any disallowed credits and would allow TAX to require a second appraisal from a different appraiser to substantiate the fair market value of any donation of land.

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 1153 would provide that a land preservation tax credit shall not be reduced by the amount of unused credits that could have been claimed in a prior year by the taxpayer but were unclaimed.

Senate Bill 1232 would require the use of a licensed transfer agent to transfer a land preservation tax credit to a taxpayer who is not an individual and would allow TAX to require a second appraisal from a different appraiser to substantiate the fair market value of any donation of land.

cc : Secretary of Finance

Date: 1/25/2011 KLC
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