

**DEPARTMENT OF TAXATION
2011 Fiscal Impact Statement**

1. **Patron** R. Creigh Deeds

2. **Bill Number** SB 1232

3. **Committee** Senate Finance

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

4. **Title** Land preservation tax credits; changes to procedures.

Second House:

 In Committee

 Substitute

 Enrolled

5. Summary/Purpose:

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 \$5 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 submitted by the donor, this bill would allow TAX to issue the tax credits using the fair market value of either the first or the second appraisal. Otherwise, TAX would be required to use the fair market value indicated by the first appraisal.

This bill would also require the use of a TAX-licensed transfer agent to transfer a land preservation tax credit to a taxpayer who is not an individual and would allow TAX to revoke or suspend the license of, or impose a monetary penalty upon, any transfer agent who repeatedly transfers land preservation credits that are subsequently disallowed in whole or in part by TAX.

The effective date of this bill is not specified.

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

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

8. Fiscal implications:

Administrative Impact

TAX will not require an appropriation to implement this bill because the transfer fees collected by TAX when land preservation tax credits are transferred can be used to fund the expenses that TAX and DCR incur to administer the credit program. TAX would use these fees for the costs to establish a licensing system, as well as the fees authorized by this bill to fund the ongoing direct costs of administering the licensing system.

Revenue Impact

This bill would have no impact on the amount of land preservation credit claimed. Because the issuance of land preservation credits is restrained by an annual cap, any reductions in the value of credits due to the second appraisal will be offset by additional credits granted to other taxpayers, and the total revenue impact will remain the same.

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.

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.

A taxpayer may transfer an unused but otherwise allowable credit to another taxpayer. Any taxpayer who makes such a transfer is required to file a notification of the transfer with TAX.

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.

Valuation Requirements

The fair market value of qualified donations must be substantiated by a “qualified appraisal” who is licensed in Virginia. 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. The appraisal must satisfy the criteria imposed by federal law to qualify for a charitable contribution deduction as well as the Uniform Standards of Professional Appraisal Practice (USPAP), as developed by the Appraisal Standards Board of the Appraisal Foundation, and the regulations of the Virginia Real Estate Appraisal Board.

The fair market value of any property cannot exceed the value for the highest and best use (i) that is consistent with existing zoning requirements; (ii) for which the property was adaptable and needed or likely to be needed in the reasonably near future in the immediate area in which the property is located; (iii) that considers factors such as slopes, flood plains, and soil conditions of the property; and (iv) for which existing roads serving the property are sufficient to support commercial or residential development in the event that is the highest and best use proposed for the property.

The value of any structures or other improvements to land must be determined in accordance with law. For any otherwise qualified donation of a less-than-fee interest, no more than 25 percent of the total credit allowed may be for reductions in value to any structures or other improvements to land.

If an appraised value is based on a hypothetical future change in use and ignores, or departs significantly from, a value based on a recent sale of the appraised property and comparable sales, then the affidavit accompanying the appraisal must clearly identify the improvements and other modifications necessary to adapt the actual physical condition of the property on the appraisal date to the hypothetical highest and best use on which the appraised value is based. The affidavit must also disclose the facts on which the appraiser based the conclusion that the hypothetical use is both likely to be needed in the near future and feasible, and shall also disclose and explain any assumptions used in determining the fair market value of the donation.

Licensing of Transfer Agents

TAX does not currently license appraisers or transfer agents, nor does it require the use of a broker for purposes of credit transfers. The Department of Professional and Occupational Regulation (DPOR) is typically responsible for the certification and licensing of Virginia professionals.

Current Appeal Procedures

Under current law, a taxpayer may request an administrative appeal within 90 days of assessment. Within 45 days of issuance of a final determination by TAX, a taxpayer may request a reconsideration of final determination. A taxpayer may also contest assessments by filing a judicial appeal within three years of the assessment date or within one year from TAX's determination of an administrative appeal, whichever is later.

Proposed Legislation

Request of a Second Appraisal

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 \$5 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 submitted by the donor, this bill would allow TAX to issue the tax credits using the fair market value of either the first or the second appraisal. Otherwise, TAX would be required to use the fair market value indicated by the first appraisal.

If TAX registers a donation in accordance with the fair market value of the second appraisal, TAX would be required to provide prompt written notice to the donor. The donor would then be permitted to appeal by filing a written notice of intent to appeal within 60 days and filing an appeal within 90 days. An appeal would be required to set forth the grounds upon which the donor relies and all relevant facts.

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.

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.

Licensing of Transfer Agents

This bill 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. Upon transfer of a land

preservation credit, the licensed transfer agent must promptly provide notice to TAX. This notice would not preclude TAX from contesting a credit claim or disallowing credits.

TAX would be responsible for licensing transfer agents and would be required to maintain and publish a registry of licensed transfer agents. TAX would also establish application procedures for persons and entities seeking licensure and require applicants to provide documentation establishing a minimum level of expertise in the valuation of donations.

Licensed transfer agents would be required to give bond to TAX for the faithful performance of duties, in a penalty to be fixed by TAX.

This bill would allow TAX to revoke or suspend the license of, or impose a monetary penalty upon, any transfer agent who repeatedly transfers land preservation credits that are subsequently disallowed in whole or in part by TAX. Any person or entity denied a license or whose license is revoked or suspended or imposed with a monetary penalty would be entitled to a review of such action, in accordance with the provisions of the Administrative Procedure Act.

TAX would also be entitled to levy and collect fees for licensure that are sufficient to cover all direct expenses for the administration of the licensure program.

The effective date of this bill 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 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 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 credits that could have been claimed in a prior year by the taxpayer but were unclaimed.

Senate Bill 1087 is identical to the transfer agent provision of this bill.

House Bill 1820 would 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, House Bill 1820 would increase the annual Land Preservation Tax Credit cap to \$100 million,

adjusted for inflation, plus any disallowed credits, as well as allow the transfer of an unused credit from the estate of a deceased taxpayer.

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
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: 1/25/2011 KLC
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