

DEPARTMENT OF TAXATION

2013 Fiscal Impact Statement

1. **Patron** Michael J. Weibert

2. **Bill Number** HB 1462

3. **Committee** House Finance

House of Origin:

 Introduced

 X **Substitute**

 Engrossed

4. **Title** Land Preservation Tax Credit; Assessments
of Additional Tax

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

The Department of Taxation ("the Department") understands that the Patron will offer a substitute for this bill. This fiscal impact statement is drafted based on the substitute version.

This bill would limit the time period during which the Department may change or adjust the fair market value of any donation that served as the basis upon which the Department issued Land Preservation Tax Credits to one year.

This bill would be applicable to tax credits issued by the Department on or after January 1, 2013.

6. **Budget amendment necessary:** Yes.
Item 273, Department of Taxation

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

7a. **Expenditure Impact:**

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2012-13	\$92,300	3	GF
2013-14	\$654,320	7	GF
2014-15	\$613,040	7	GF
2015-16	\$618,040	7	GF
2016-17	\$623,040	7	GF
2017-18	\$629,040	7	GF
2018-19	\$635,040	7	GF

8. **Fiscal implications:**

Administrative Costs

To meet the requirements of this bill and avoid issuing credits for donation amounts that have not been fully verified, the Department would incur significant administrative costs to hire additional staff to complete the work in the compressed period. Beginning in Fiscal

Year 2014, such costs would exceed \$600,000 annually. These costs would enable the Department to review all applications received within the specified time period.

The Department currently recovers the costs that it incurs as a result of administering the Land Preservation Tax Credit from the two percent fee that is imposed on transfers of Land Preservation Tax Credits. However, Virginia law limits the amount that may be recovered to 50 percent of the total revenue generated by the fee, and this amount must be allocated between the Department and the Department of Conservation and Recreation. The remaining 50 percent is transferred to the Virginia Land Conservation Fund for distribution to the organizations that are responsible for enforcing conservation easements.

The costs that the Department routinely incurs for administering the credit are already close to the amount of funding currently available. Additionally, the amount of funding created by the transfer fee depends on the amount and timing of transfers, factors that are often unpredictable, and the number of transfers has been decreasing in recent years. As a result, the additional administrative costs that would result from this bill would increase the Department's costs above the amount of available funding and would require an appropriation of General Fund revenues.

Revenue Impact

This bill would have no revenue impact. However, in the absence of either the substitute requested below or a budget amendment, the Department would not have enough resources to address all transactions in the limited amount of time provided under this bill.

9. Specific agency or political subdivisions affected:

Department of Taxation
Department of Conservation and Recreation

10. Technical amendment necessary: Yes.

To avoid a negative impact on the General Fund, the Department recommends that a substitute be introduced to amend *Va. Code* § 58.1-513 to dictate that the Virginia Land Conservation Fund may only receive a portion of the transfer fee funding to the extent that additional funding is available after the Department and DCR have recovered all of their Land Preservation Tax Credit administrative costs. This change would likely provide enough funding to cover the costs of this bill. Without this change, the Department of Taxation would incur administrative costs that would require an appropriation of General Fund revenues to support the statutory requirements of the Land Preservation Tax Credit program.

11. Other comments:

Current Law

The Land Preservation Tax Credit is equal to forty percent of the fair market value of land or an 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. Starting in calendar year 2008, the \$100 million cap must be indexed for inflation. For 2013, the cap is \$113,909,000. Taxpayers must apply to the Department of Taxation to receive Land Preservation Tax Credits and the credits are allocated on a first-come, first-served basis.

Any taxpayer holding a Land Preservation Tax Credit who is unable to use the credit may either carry the credit over to a subsequent year or transfer the unused credit for use by another taxpayer. The taxpayer transferring the credit must notify the Department of the transfer. There is a two percent fee on the value of the donated interest imposed for the transfer of credits. This fee is also applied when pass-through entities distribute the credit to members, managers, partners, shareholders or beneficiaries.

Proposed Legislation

This bill would limit the time period during which the Department may change or adjust the fair market value of any donation that served as the basis upon which the Department issued Land Preservation Tax Credits to one year. If the Tax Commissioner changes or adjusts the fair market value of the donation within this one-year period, the Department would be required to mail written notice within the one-year period by first-class mail to the last known address of each affected taxpayer.

Any affected taxpayer would have the right to appeal any change or adjustment to the fair market value of the donation. However, if the Department can show that the application for tax credits was falsely or fraudulently made with the intent to evade tax, the Tax Commissioner may change or adjust the fair market value of the donation subsequent to the expiration of the one-year period and may assess any additional tax or penalty using such adjusted fair market value.

This bill would be applicable to tax credits issued by the Department on or after January 1, 2013.

Similar Legislation

House Bill 1398 would require that, for any year that the Department has not received complete applications for enough Land Preservation Tax Credits to issue the maximum amount of credits allowed for that year, the remaining amount would be transferred to the Virginia Land Conservation Fund, the Civil War Site Preservation Fund, and the Virginia Farmland Preservation Fund.

House Bill 1694 would allow taxpayers to apply for Land Preservation Tax Credits prior to making a donation, provided the requested credit is \$1 million or more and the donation is verified by the Department of Conservation and Recreation.

House Bill 1800 would increase the amount of the Land Preservation Tax Credit from 40 percent to 60 percent for any land that is conveyed for the purpose of a public park, public recreational facility, or public trail access easement, or for other public uses as identified by the Department of Conservation and Recreation.

House Bill 2034 would repeal the Land Preservation Tax Credit.

House Bill 2253 would repeal the Land Preservation Tax Credit and would make other significant changes to Virginia's tax structure.

cc : Secretary of Finance

Date: 1/17/2013 KLC
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