

DEPARTMENT OF TAXATION

2014 Fiscal Impact Statement

1. **Patron** Richard H. Stuart

3. **Committee** Senate Finance

4. **Title** Land Preservation Tax Credits; Qualified Mineral Interests

2. **Bill Number** SB 568

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would not allow Land Preservation Tax Credits for donations of an interest in land wherein the donor retains a qualified mineral interest. A “qualified mineral interest” would be defined as the right to any subsurface oil, gas, or other minerals and the right to access such minerals.

The effective date of this bill is not specified.

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

7. **Fiscal Impact Estimates are:** Not available. (See Line 8.)

8. **Fiscal implications:**

Administrative Cost

The Department of Taxation (“the Department”) considers implementation of this bill as routine, and does not require additional funding.

Revenue Impact

This bill would have an unknown General Fund revenue impact beginning in FY 2015. If enacted, this bill could discourage certain taxpayers from making donations of interests in land that they otherwise would have made. However, this bill could also increase the appraised value of certain donations. That is because certain taxpayers that would have donated an interest in land and retained a mineral interest prior to the enactment of this bill, could still decide to donate their interest without retaining a mineral interest. A donation that included all of the mineral interests would likely be appraised at a higher value than a donation without such interests, and the donor would be allocated more credits. Both the number of taxpayers that would decide not to donate interests and that would decide to donate interests if this bill is enacted is unknown.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

Current Law

Taxpayers are allowed Land Preservation Tax Credits 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.

For an interest in land to qualify for the Land Preservation Tax Credit, such interest must qualify as a qualified conservation contribution for federal purposes. A qualified conservation contribution is a contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes. A qualified real property interest may include a donation of a donor's entire interest aside from a qualified mineral interest. A qualified mineral interest is defined as the right to any subsurface oil, gas, or other minerals, and the right to access such minerals.

Under current law, the value of a donation of an interest in land is computed without regard to the value of a retained mineral interest. The value of such a donation is the fair market value of the surface rights in the property contributed.

Even if a donor of an interest in land does not retain a mineral interest, Virginia law may require that the landowner participate in a pooling order. The owner of a parcel of surface property may own the gas or oil underneath such property. However, a subsurface pool of gas or oil may extend underneath many parcels of surface property that are owned by many different landowners. Because a gas or oil well drains gas or oil from the entire pool and not just the portion directly underneath a given parcel of surface property, one landowner's gas or oil production efforts can infringe upon the property rights of other land owners.

To resolve this issue, landowners may pool their interests and agree to apportion the income and expenses that arise from the production of gas or oil. If all of the impacted landowners do not voluntarily consent to pool their interests, the Virginia Gas and Oil Board has legal authority to force pool the interests of all people owning the gas or oil in a given area. This prevents one landowner from preventing others from producing gas or oil. The affected landowners may then either agree to become a participating operator in the production operation, sell or lease their interest to a participating operator, or share in the operation of the well.

The Land Preservation Tax Credit is capped at \$100 million. 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.

Proposed Legislation

This bill would not allow Land Preservation Tax Credits for donations of an interest in land wherein the donor retains a qualified mineral interest. A “qualified mineral interest” would be defined as the right to any subsurface oil, gas, or other minerals and the right to access such minerals.

The effective date of this bill is not specified.

cc : Secretary of Finance

Date: 1/20/2014 MTH
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