

DEPARTMENT OF TAXATION

2016 Fiscal Impact Statement

1. **Patron** Emmett W. Hanger, Jr.
3. **Committee** Senate Finance
4. **Title** Income Tax; Modify the Land Preservation Tax Credit

2. **Bill Number** SB 486
House of Origin:
 X **Introduced**
 Substitute
 Engrossed

Second House:
 In Committee
 Substitute
 Enrolled

5. Summary/Purpose:

This bill would allow the conveyance of a fee interest in real property to a private not-for-profit charitable corporation to qualify for the Land Preservation Tax Credit, even if such organization is not organized and operated for natural resource, land conservation, or historic preservation purposes. Such conveyance would only qualify if the land has been protected in perpetuity with a conservation easement or an open-space easement that qualifies for the credit.

The effective date of this bill is not specified.

6. **Budget amendment necessary:** No.
7. **Fiscal Impact Estimates are:** Preliminary. (See Line 8.)
8. **Fiscal implications:**

Administrative Costs

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 no impact on General Fund revenues. This bill could increase the number of charitable organizations that may receive a conveyance of land that qualifies for the Land Preservation Tax Credit and could, thereby, increase the number of credits claimed. This bill would also increase the amount of such credits, by allowing a credit for the full value of the land, rather than the value of the conservation easement placed on such property. However, this bill would have no revenue impact because the credit is currently subject to a \$75 million cap.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: Yes.

Under current law, the Land Preservation Tax Credit is allowed for certain unconditional donations ("qualified donations"). As drafted, the modified language refers to conveyances, rather than qualified donations. To make the modified provisions consistent with the existing statute, the Department suggests the following technical amendments:

Page 1, Line 29, after case of a
Strike: conveyance
Insert: qualified donation

Page 1, Line 29, after such
Strike: conveyance
Insert: donation

Page 2, Line 116, after case of
Strike: conveyances
Insert: the qualified donation

Page 2, Line 119, after subsequent
Strike: conveyances
Insert: qualified donations

For a conveyance of property to qualify for the credit, the preservation, agricultural preservation, historic preservation or similar use and purposes of such property must be assured in perpetuity. Under current law, this requirement applies to both fee interests and less-than-fee interests in real property. As drafted, this bill would modify such requirement, so that it would only apply to fee interests in real property. Therefore, the Department suggests the following technical amendment:

Page 2, Line 108, after perpetuity
Strike: as follows:
Unstrike: the period after perpetuity

11. Other comments:

Virginia 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 landowner or taxpayer to a public or private conservation agency eligible to hold such land or interest for conservation purposes. For purposes of the credit a "public or private

conservation agency” is any Virginia governmental body, or any private not-for-profit charitable corporation or trust that is:

- Authorized to do business in Virginia;
- A tax-exempt public charity for federal income tax purposes;
- Organized and operated for natural resources, land conservation, or historic preservation purposes; and
- Has the power to acquire, hold and maintain land and/or interest in land for conservation purposes.

For a conveyance of land or an interest in land to qualify for the credit, the preservation, agricultural preservation, historic preservation, or similar use and purpose of such property is required to be assured in perpetuity. For the conveyance of a fee interest to certain charitable organizations, the credit may not be allowed until such charitable organization agrees that subsequent conveyances of the fee interest in the property will be:

- Subject to a previous conveyance in perpetuity of a conservation easement or subject to the conveyance in perpetuity of an open-space easement; or
- Conveyed to Virginia or to a federal conservation agency.

No credit may be allowed with respect to any subsequent conveyances by such charitable organization.

These requirements apply if such conveyance is to a tax-exempt charitable organization that is primarily organized to:

- Retain or protect the natural or open-space values of real property;
- Assure the availability of real property for agricultural, forestal, recreational, or open-space use;
- Protect natural resources;
- Maintain or enhance air or water quality; or
- Preserve the historic, architectural, or archaeological aspects of real property.

To receive a Land Preservation Tax Credits, taxpayers are required apply for the credit after completing the donation by submitting forms prescribed by the Department in consultation with DCR. The application is required to include:

- A description of the conservation purpose or purposes being served by the donation;
- The fair market value of land being donated in the absence of any easement or other restriction;
- The public benefit derived from the donation;
- The extent to which water quality best management practices will be implemented on the property; and
- Whether the property is fully or partially forested and a forest management plan is included in the terms of the donation.

In addition, donations of a less-than-fee interest are required to include an affidavit describing how the donated interest is a qualified conservation contribution for purposes of the federal charitable contribution deduction. The application and the affidavit are required to be submitted to the Department, with a copy also provided to the Department of Conservation and Recreation.

Donations to Non-Qualifying Organizations

Under current law, a taxpayer may claim a charitable contribution deduction for both federal and Virginia purposes for a conveyance to a private not-for-profit charitable corporation that is not organized and operated for natural resources, land conservation, or historic preservation purposes. However, the taxpayer may not claim the Land Preservation Tax Credit for such donation.

The private not-for-profit charitable corporation that receives the conveyance may subsequently fulfill the credit requirements and claim the credit. Such charitable corporations often qualify for the credit by placing a conservation easement or an open-space easement on the donated land. This may qualify for the credit as a donation of a less-than-fee simple interest in land by the charitable corporation.

Donations of Real Property Interests

A taxpayer that donates property may convey either a fee interest or a less-than-fee interest in such property. The donation of a fee interest is the conveyance of the full rights and title to the donated property. Any donation that does not convey the full rights and title to the donated property is considered to be the donation of a less-than-fee simple interest. Less-than-fee simple interests include, but are not limited to, conservation easements, open-space easements, leases, and use permits.

Federal Charitable Contribution Deduction

For federal tax purposes, a donor may deduct certain charitable contributions. The amount of the deduction is generally based on the value of the contribution. However, a donation may be reduced or disallowed if the donor makes a quid pro quo contribution. A contribution is considered a quid pro quo contribution if the donor receives property or services in return for such contribution. The value of the contribution is reduced by the value of the property or services received in return for such contribution. If the value of the property or services received in return for a contribution exceeds the value of the contribution, the deduction is disallowed.

Proposed Legislation

This bill would allow the conveyance of a fee interest in real property to a private not-for-profit charitable corporation to qualify for the Land Preservation Tax Credit, even if such organization is not organized and operated for natural resource, land conservation, or historic preservation purposes. To qualify for this exception, this bill would require that such organization:

- Be authorized to do business in Virginia;

- Have tax-exempt status as a public charity for federal income tax purposes; and
- Have the power to acquire, hold, and maintain land and/or interests in land for conservation purposes.

The conveyance of a fee interest in real property to such charitable organizations would qualify for the credit only if the land has been protected in perpetuity with a conservation easement or an open-space easement that qualifies for the credit. This requirement may cause such transactions to be reviewed by the Internal Revenue Service to determine whether they are quid pro quo contributions for purposes of the federal charitable contribution deduction.

No credit would be allowed with respect to any subsequent conveyances by such charitable organization.

These requirements would apply only if such conveyance is to a tax-exempt charitable organization that is not primarily organized to:

- Retain or protect the natural or open-space values of real property;
- Assure the availability of real property for agricultural, forestal, recreational, or open-space use;
- Protect natural resources;
- Maintain or enhance air or water quality; or
- Preserve the historic, architectural, or archaeological aspects of real property.

For purposes of determining whether these requirements have been met, "conservation easement" would mean a nonpossessory interest of a holder in real property, whether easement appurtenant or in gross, acquired through gift, purchase, devise, or bequest imposing limitations or affirmative obligations, the purposes of which include retaining or protecting natural or open-space values of real property, assuring its availability for agricultural, forestal, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural or archaeological aspects of real property.

"Open-space easement" would mean a nonpossessory interest of a public body in real property, whether easement appurtenant or in gross, acquired through gift, purchase, devise, or bequest imposing limitations or affirmative obligations, the purposes of which include retaining or protecting natural or open-space values of real property, assuring its availability for agricultural, forestal, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural or archaeological aspects of real property.

The effective date of this bill is not specified.

Other Bills

House Bill 1385 would eliminate the requirement that a taxpayer complete the conveyance of a donation of land or an interest in land prior to applying for the Land Preservation Tax Credit, and would make other modifications to the credit.

cc : Secretary of Finance

Date: 2/8/2016 MTH
SB486F161