

# DEPARTMENT OF TAXATION

## 2019 Fiscal Impact Statement

1. **Patron** M. Keith Hodges

2. **Bill Number** HB 2482

3. **Committee** Passed House and Senate

**House of Origin:**

           **Introduced**

           **Substitute**

           **Engrossed**

4. **Title** Land Preservation Tax Credits; Operation of  
a Facility on Conveyed Land

**Second House:**

           **In Committee**

           **Substitute**

      X       **Enrolled**

### 5. **Summary/Purpose:**

This bill would provide that if Virginia or an instrumentality of Virginia operates a facility on a conveyance, including charging fees for the use of such facility, such operation does not disqualify such conveyance from eligibility for Land Preservation Tax Credits, so long as any fees are used for conservation or preservation purposes.

This bill would also provide that, if Virginia or an instrumentality of Virginia enters into an agreement with a third party to lease or manage a facility on a conveyance, the fact that such third party is operated primarily as a business with intent for profit does not disqualify the conveyance from eligibility for Land Preservation Tax Credits, so long as such agreement is for conservation or preservation purposes.

If enacted during the 2019 Regular Session of the General Assembly, this bill would become effective July 1, 2019.

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

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

### 8. **Fiscal implications:**

#### Administrative Costs

The Department of Conservation and Recreation ("DCR") and the Department of Taxation ("the Department") consider implementation of this bill as routine, and do not require additional funding.

#### Revenue Impact

This bill could expand the pool of applicants who qualify for the Land Preservation Tax Credit. The credit is currently subject to a \$75 million cap. The full \$75 million cap was met for Taxable Year 2017, but credit requests in other recent years have not met the

credit cap. Therefore, to the extent this bill would increase the amount of credits that could be issued and claimed, it could have a negative impact. However, it is uncertain how many additional credits would be claimed as a result of this bill and whether the cap would otherwise be met in future years.

**9. Specific agency or political subdivisions affected:**

Department of Taxation  
Department of Conservation and Recreation

**10. Technical amendment necessary: No.**

**11. Other comments:**

Federal Charitable Contributions Deduction

For federal income tax purposes, a taxpayer may claim a deduction for making a charitable contribution to a qualified organization. Such organizations include churches, war veterans' organizations, domestic fraternal societies, states, and most nonprofit charitable and educational organizations. Because Virginia generally conforms to federal itemized deductions, taxpayers may claim the federal charitable contributions deduction on their Virginia income tax return to the extent they qualify for such deduction.

Under a recent proposed Treasury regulation, individual income taxpayers who make charitable contributions that also qualify for state or local tax credits would have the value of their charitable deduction reduced by the value of the tax credit they received or expect to receive in exchange for their charitable contribution. The new proposed regulation provide an exception for *de minimis* tax credits that do not exceed 15 percent of either the taxpayer's payment or fair market value of the property transferred by the taxpayer. Corporate taxpayer are not affected by this new proposed IRS regulations, as a corporate taxpayer's charitable contributions would be considered a fully deductible business expenses.

Land Preservation Tax Credit

The Land Preservation Tax Credit is equal to 40 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. Taxpayers may claim the credit against the individual income tax and the corporate income tax. The amount of credits that may be claimed by each taxpayer is limited to \$20,000 for Taxable Year 2017, and \$50,000 for Taxable Year 2018 and thereafter. The credit is subject to an annual credit cap of \$75 million.

For purposes of the credit, qualified donations include conveyances of a fee interest in real property or the conveyance in perpetuity of a less-than-fee interest in real property, such as a conservation restriction, preservation restriction, agricultural preservation restriction, or watershed preservation restriction, provided that the less-than-fee interest

qualifies as a qualified conservation contribution for federal income tax purposes. A “qualified conservation contribution” is defined as a contribution:

- Of a qualified real property interest;
- To a qualified organization;
- Exclusively for conservation purposes.

#### Additional Guidance Regarding the Land Preservation Credit

DCR, through the Virginia Land Conservation Foundation, has promulgated guidance regarding the Land Preservation Tax Credit. The purpose of such guidance is to provide criteria for DCR’s review of certain conveyances of land for purposes of the credit.

For purposes of the credit, this guidance emphasizes that the donated land or conservation easement is required to be conveyed for at least one of the following eight conservation purposes:

- Agricultural use;
- Forestal use;
- Natural habitat and biological diversity;
- Historic preservation;
- Natural-resource based outdoor recreation or education;
- Watershed preservation;
- Preservation of scenic open space; and
- Conservation and open space lands designated by federal, state, or local governments.

In order for a conveyance to qualify as meeting the natural-resource based outdoor recreation or education conservation purpose, this guidance provides that the land is required to be primarily devoted to and used for natural-resource based recreation by, or education of, the general public. For purposes of this category, land primarily devoted to and used for natural resource based outdoor recreation or education means parks, trails, greenways or similar recreational areas, open for public use, except any use operated primarily as a business with intent for profit. Lands generally meets the criteria for this category if it is demonstrated that the conservation purpose of the land for natural-resource based outdoor recreation or education, such as lands identified in the Virginia Outdoors Plan.

Pursuant to DCR’s guidance, the following lands will not meet the conservation purpose for natural-resource based outdoor recreation or education:

- Lands where development (for example, buildings, roads, or parking lots) covers more than 15 percent of the land protected by the conservation easement (paved trails and boardwalks are excluded from this calculation).
- Lands used for commercial recreational or amusement places, such as athletic fields or stadiums, driving ranges, golf courses, private beaches or pools, marinas, motor speedways, drag strips, or amusement parks.

- Private membership clubs, including golf or country clubs, private beaches or pools, or lands available for use only for residents of an associated development or subdivision (that is, not the general public).

### Proposed Legislation

This bill would provide that if Virginia or an instrumentality of Virginia operates a facility on a conveyance, including charging fees for the use of such facility, such operation does not disqualify such conveyance from eligibility for Land Preservation Tax Credits, so long as any fees are used for conservation or preservation purposes.

This bill would also provide that, if Virginia or an instrumentality of Virginia enters into an agreement with a third party to lease or manage a facility on a conveyance, the fact that such third party is operated primarily as a business with intent for profit does not disqualify the conveyance from eligibility for Land Preservation Tax Credits, so long as such agreement is for conservation or preservation purposes.

If enacted during the 2019 Regular Session of the General Assembly, this bill would become effective July 1, 2019.

### Similar Bills

**House Bill 1816** would extend the amount of time a taxpayer has to apply for Land Preservation Tax Credits.

cc : Secretary of Finance

Date: 2/17/2019 JJS  
HB2482FER161