

House and Senate Finance Land Conservation Tax Credit Subcommittee
August 29, 2005

The House and Senate Finance Land Conservation Tax Credit Subcommittee held its second meeting on August 29 in Richmond in the General Assembly Building. During the first part of the meeting the subcommittee heard from three scheduled presenters. They were followed by a public hearing during which members of the public addressed the subcommittee.

Presentations

Robert H. Lamb, Esq., Wright & Talisman, Washington, DC --

Mr. Lamb has experience working with conservation easements having written several such easements currently held by conservation agencies. Mr. Lamb presented proposed changes to the Virginia Land Conservation Incentives Act of 1999 (the Act), which provides a tax credit for certain donations of conservation easements in the Commonwealth.

Mr. Lamb's first suggestion was to amend the Act to allow any tax credit to be inheritable. Making the tax credit inheritable would provide an additional incentive for potential donors of conservation easements. Mr. Lamb's next suggestion was that the Act be amended to require the Department of Taxation to allow tax credits for donations of conservation easements that were made using text or language provided by a state agency, notwithstanding any ruling by the Internal Revenue Service regarding the qualification of the easement for charitable deduction purposes. Mr. Lamb's final suggestion was that appraisers should be sanctioned if they substantially or fraudulently overstate the value of a conservation easement. The Act currently provides for sanctions if the value of a conservation easement is falsely or fraudulently overstated.

Joan E. Putney, Staff --

Next, Joan E. Putney, a senior attorney with the Division of Legislative Services, compared and contrasted features of conservation tax credits currently available in different states. Ms. Putney stated that California, Colorado, Connecticut, Delaware, Maryland, Mississippi, New Mexico, North Carolina, South Carolina, and Virginia allow state tax credits for donations of conservation easements. The tax credits are authorized for easements restricting land to open space, agricultural, natural resource, and water-related conservation uses. In addition, Delaware, Maryland, New Mexico, and Virginia authorize tax credits for conservation easements restricting land to historic preservation uses. Only California and Connecticut do not have a cap on their conservation tax credits. Only Colorado allows for a refundable tax credit, up to \$50,000. Colorado, Virginia, and South Carolina allow conservation tax credits to be sold or transferred. Transferability is unlimited in Virginia and South Carolina while Colorado permits a one-time transfer of the credit. With the exception of Mississippi, all states require that a government or a charitable/nonprofit entity hold the conservation easement.

Becky Covey, Staff --

Finally, Becky Covey, Legislative Fiscal Analyst for the Senate Finance Committee, spoke in regard to the use of conservation tax credits by charitable nonprofit organizations. Although charitable nonprofit organizations generally are not subject to Virginia income tax, these organizations can still benefit under the Act as they can sell or transfer earned credits to third parties. At this point it does not appear that charitable nonprofit organizations have participated in widespread transfers or sales of conservation tax credits. However, the Department of Taxation has received several inquiries about the potential for charitable nonprofit organizations to participate in the tax credit.

Ms. Covey stated that 90 percent of the conservation easements in Virginia are held by the Virginia Outdoors Foundation. The Foundation has accepted 36 easements from charitable nonprofit organizations.

Public Hearing

The following people spoke at the public hearing:

1. Rich Johnson, representing Ducks Unlimited
2. The Honorable W. Tayloe Murphy, Jr., Secretary of Natural Resources
3. The Honorable William P. Dickinson, Jr., Deputy Secretary of Agriculture and Forestry
4. Tom Foster of McCandlish Holton, P.C.
5. Peter Henderson of Virginia Eastern Shore Land Trust
6. Howard Dickerson
7. Jim Hefner
8. Brock Herzberg of the Virginia Farm Bureau
9. Christopher Miller of Piedmont Environmental Council
10. Mike Lane of the Izaak Walton League
11. Catherine Slusser, Deputy Director of the Department of Historic Resources
12. Philip Hocker
13. Nikki Rovner of The Nature Conservancy
14. Debi Osborne of Trust for Public Land
15. John McVicker

Next Meeting

The next meeting of the subcommittee will be on November 10th at 2:00 at the General Assembly Building in Richmond.

Handouts, including agendas, from the meeting and future meetings can be accessed on the Division of Legislative Services website at <http://dls.state.va.us/landconserv.htm>.