

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact §§ 58.1-512 and 58.1-513 of the Code of Virginia, relating to land
2 preservation tax credits.

3 **Be it enacted by the General Assembly of Virginia:**

4 **1. That §§ 58.1-512 and 58.1-513 of the Code of Virginia are amended and reenacted as follows:**

5 § 58.1-512. Land preservation tax credits for individuals and corporations.

6 A. For taxable years beginning on or after January 1, 2000, there shall be allowed as a credit
7 against the tax liability imposed by §§ 58.1-320 and 58.1-400, an amount equal to 50 percent of the fair
8 market value of any land or interest in land located in Virginia which is conveyed for the purpose of
9 agricultural and forestal use, open space, natural resource, and/or biodiversity conservation, or land,
10 agricultural, watershed and/or historic preservation, as an unconditional donation in perpetuity by the
11 landowner/taxpayer to a public or private conservation agency eligible to hold such land and interests
12 therein for conservation or preservation purposes.

13 B. The fair market value of qualified donations made under this section shall be substantiated by
14 a "qualified appraisal" prepared by a "qualified appraiser," as those terms are defined under applicable
15 federal law and regulations governing charitable contributions. The value of the donated interest in land
16 that qualifies for credit under this section, as determined according to appropriate federal law and
17 regulations, shall be subject to the limits established by U.S. Internal Revenue Code § 170 (e). In order
18 to qualify for a tax credit under this section, the qualified appraisal shall be signed by the qualified
19 appraiser, who must be licensed in the Commonwealth of Virginia as provided in § 54.1-2011, and a
20 copy of the appraisal shall be submitted to the Department. In the event that any appraiser falsely or
21 fraudulently overstates the value of the contributed property in an appraisal that the appraiser has signed,
22 the Department may disallow further appraisals signed by the appraiser and shall refer the appraiser to
23 the Real Estate Appraiser Board for appropriate disciplinary action pursuant to § 54.1-2013, which may
24 include, but need not be limited to, revocation of the appraiser's license. Any appraisal that, upon audit

25 by the Department, is determined to be false or fraudulent, may be disregarded by the Department in
26 determining the fair market value of the property and the amount of tax credit to be allowed under this
27 section.

28 C. 1. ~~The amount of the credit that may be claimed by a taxpayer shall not exceed \$50,000 for~~
29 ~~2000 taxable years, \$75,000 for 2001 taxable years, and \$100,000 for 2002 taxable years and thereafter.~~
30 ~~In addition, in~~ In any one taxable year the credit used may not exceed the amount of individual,
31 fiduciary or corporate income tax otherwise due. Any portion of the credit which is unused in any one
32 taxable year may be carried over for a maximum of five consecutive taxable years following the taxable
33 year in which the credit originated until fully expended.

34 2. Qualified donations shall include the conveyance in perpetuity of a fee interest in real property
35 or a less-than-fee interest in real property, such as a conservation restriction, preservation restriction,
36 agricultural preservation restriction, or watershed preservation restriction, provided that such less-than-
37 fee interest qualifies as a charitable deduction under § 170 (h) of the U.S. Internal Revenue Code of
38 1986, as amended. Qualified donations of a less-than-fee interest shall be eligible for the credit if a
39 statement, describing how the donated interest in land meets the requirements of § 170 (h) of the U.S.
40 Internal Revenue Code of 1986, as amended, and the regulations adopted thereunder, is submitted by the
41 taxpayer to the Department on a form that shall be developed by the Tax Commissioner in consultation
42 with the Secretary of Natural Resources. The statement shall include, but not be limited to, a description
43 of the conservation purpose or purposes being served by the qualified donation and the public benefit
44 derived from the donation. The Department shall provide a copy of the statement to the Department of
45 Conservation and Recreation, which shall compile an annual report on qualified donations.

46 3. Qualified donations shall not include the:
47 a. conveyance of a fee interest, or a less-than-fee interest, in real property that has been dedicated
48 for the purpose of fulfilling density requirements to obtain approvals for zoning, subdivision, site plan,
49 or building permits; or

50 b. conveyance of a fee interest, or a less-than-fee interest, in real property by a charitable
 51 organization that (i) meets the definition of "holder" in § 10.1-1009, and (ii) holds one or more
 52 conservation easements; or

53 c. donation or portion of a donation of an easement on, or other less-than-fee interest in, a
 54 historic building or a functionally related complex of historic buildings, unless such building or building
 55 complex is individually designated as a historic landmark pursuant to § 10.1-2206.1 for listing in the
 56 Virginia Landmarks Register, and the easement or other interest imposed restrictions on all exterior
 57 surfaces of the building or principal historic buildings, as determined by the Department of Historic
 58 Resources, in the case of a complex of buildings.

59 34. Qualified donations shall be eligible for the tax credit herein described if such donations are
 60 made to the Commonwealth of Virginia, an instrumentality thereof, or a charitable organization
 61 described in § 501 (c) (3) of the U.S. Internal Revenue Code of 1986, as amended, if such charitable
 62 organization (i) meets the requirements of § 509 (a) (2) or (ii) meets the requirements of § 509 (a) (3)
 63 and is controlled by an organization described in § 509 (a) (2).

64 45. The preservation, agricultural preservation, historic preservation or similar use and purpose
 65 of such property shall be assured in perpetuity.

66 § 58.1-513. Limitations; transfer of credit; gain or loss from tax credit.

67 A. Any taxpayer claiming a tax credit under this article shall not claim a credit under any similar
 68 Virginia law for costs related to the same project. To the extent a credit is taken in accordance with this
 69 article, no subtraction allowed for the gain on the sale of (i) land dedicated to open-space use or (ii) an
 70 easement dedicated to open-space use under subsection C of § 58.1-322 shall be allowed for three years
 71 following the year in which the credit is taken.

72 B. Any tax credits that arise under this article from the donation of land or an interest in land
 73 made by a pass-through tax entity such as a trust, estate, partnership, limited liability company or
 74 partnership, limited partnership, subchapter S corporation or other fiduciary shall be used either by such
 75 entity if it is the taxpayer on behalf of such entity or by the member, manager, partner, shareholder or
 76 beneficiary, as the case may be, in proportion to their interest in such entity in the event that income,

77 deductions and tax liability pass through such entity to such member, manager, partner, shareholder or
78 beneficiary or as set forth in the agreement of said entity. Such tax credits shall not be claimed by both
79 the entity and the member, manager, partner, shareholder or beneficiary for the same donation.

80 C. Any taxpayer holding a credit under this article may transfer unused but otherwise allowable
81 credit for use by another taxpayer on Virginia income tax returns. A taxpayer who transfers any amount
82 of credit under this article shall file a notification of such transfer to the Department in accordance with
83 procedures and forms prescribed by the Tax Commissioner, along with a fee of 1% of the value of the
84 donated interest, or \$5,000, whichever is less. Revenues generated by such fees shall be used by the
85 Department for implementation of this article.

86 D. To the extent included in and not otherwise subtracted from federal adjusted gross income
87 pursuant to § 58.1-322 or federal taxable income pursuant to § 58.1-402, there shall be subtracted any
88 amount of gain or income recognized by a taxpayer on the application of a tax credit under this article
89 against a Virginia income tax liability.

90 E. The transfer of the credit and its application against a tax liability shall not create gain or loss
91 for the transferor or the transferee of such credit.

92 F. A pass-through tax entity, such as a partnership, limited liability company or Subchapter S
93 corporation, may appoint a tax matters representative, who shall be a general partner, member/manager
94 or shareholder, and register that representative with the Tax Commissioner. The Tax Commissioner
95 shall be entitled to deal with the tax matters representative as representative of the taxpayers to whom
96 credits have been allocated or transferred by the entity under this article with respect to those credits. In
97 the event a pass-through tax entity allocates or transfers tax credits arising under this article to its
98 partners, members or shareholders and the allocated or transferred credits shall be disallowed, in whole
99 or in part, such that an assessment of additional tax against a taxpayer shall be made, the Tax
100 Commissioner shall first make written demand for payment of any additional tax, together with interest
101 and penalties, from the tax matters representative. In the event such payment demand is not satisfied, the
102 Tax Commissioner shall proceed to collection against the taxpayers in accordance with the provisions of
103 Chapter 18 (§ 58.1-1800 et seq.) of this title.

