

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact § 58.1-512 of the Code of Virginia, relating to the Virginia Land
2 Conservation Incentives Act of 1999.

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

4 **1. That § 58.1-512 of the Code of Virginia is 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

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

Notwithstanding any other provision of law, the fair market value of a qualified donation shall not exceed the value for the highest and best use for which the property is adaptable and needed or likely to be needed in the reasonably near future. In any review or appeal before the Tax Commissioner or in any court of the Commonwealth in which the fair market value is being contested, the burden of proof shall be on the taxpayer to show there is a reasonable probability that (i) the property is physically adaptable for the highest and best use that is proposed in the appraisal and (ii) there is a need or demand for such use in the reasonably near future in the immediate area in which the property is located.

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

2. Qualified donations shall include the conveyance in perpetuity of a fee interest in real property or a less-than-fee interest in real property, such as a conservation restriction, preservation restriction, agricultural preservation restriction, or watershed preservation restriction, provided that such less-than-fee interest qualifies as a charitable deduction under § 170 (h) of the U.S. Internal Revenue Code of 1986, as amended. ~~Qualified donations shall not include the conveyance of a fee interest, or a less-than-fee interest, in real property that has been dedicated for the purpose of fulfilling density requirements to obtain approvals for zoning, subdivision, site plan, or building permits.~~

3. Any fee interest, or a less-than-fee interest, in real property that has been dedicated as open space within, or as part of, a residential subdivision or any other type of residential or commercial development; or dedicated as open space in, or as part of, any real estate development plan; or dedicated

for the purpose of fulfilling density requirements to obtain approvals for zoning, subdivision, site plan, or building permits shall not be a qualified donation under this article.

In addition, if credit under this article is allowed for a portion of a recorded parcel of land, no credit shall be allowed for any other portion of such parcel until at least 15 years have elapsed from the time of donation. This prohibition shall not apply if (i) all owners of the parcel who have been allowed credit for a qualified donation are not affiliated with the person or entity seeking credit for a different portion of the parcel, and (ii) in the case of an individual seeking credit, the individual has not previously made a qualified donation for any portion of the parcel and is not an immediate family member of any such owners.

Pursuant to the criteria set forth in this subdivision, the Department shall establish and make publicly available guidelines that describe the property and the circumstances under which donations of such property shall not be qualified donations. The Department shall update the guidelines as necessary as determined by the Tax Commissioner. Such guidelines shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.).

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

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

2. That the amendments to subsection C of § 58.1-512 of the Code of Virginia provided under this act shall be applicable to any conveyance of property (or the conveyance of any interest in property) under the Virginia Land Conservation Incentives Act of 1999 that is made on or after July 1, 2006.

76 **3. That the guidelines required under subdivision C 3 of § 58.1-512 of the Code of Virginia**
77 **pursuant to the provisions of this act shall first be made publicly available no later than October**
78 **1, 2006.**

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