

HOUSE BILL NO. 1183

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Finance

on January 29, 2024)

(Patron Prior to Substitute--Carr)

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

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-512 of the Code of Virginia is amended and reenacted as follows:

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

A. 1. For taxable years beginning on or after January 1, 2000, there shall be allowed as a credit against the tax liability imposed by §§ 58.1-320 and 58.1-400, an amount equal to 50 percent of the fair market value of any land or interest in land located in Virginia that 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/taxpayer to a public or private conservation agency eligible to hold such land and interests therein for conservation or preservation purposes. For such conveyances made on or after January 1, 2007, the tax credit shall be 40 percent of the fair market value of the land or interest in land so conveyed.

2. a. If the Commonwealth or an instrumentality thereof operates a facility on a conveyance, including charging fees for the use of such facility, such operation shall not disqualify the conveyance from eligibility for the tax credit, so long as any fees are used for conservation or preservation purposes.

b. If the Commonwealth or an instrumentality thereof 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 shall not disqualify the conveyance from eligibility for the tax credit, so long as such agreement is for conservation or preservation purposes.

B. The fair market value of qualified donations made under this section shall be determined in accordance with § 58.1-512.1 and substantiated by a "qualified appraisal" prepared by a "qualified

27 appraiser," as those terms are defined under applicable federal law and regulations governing charitable
28 contributions. The value of the donated interest in land that qualifies for credit under this section, as
29 determined according to appropriate federal law and regulations, shall be subject to the limits established
30 by United States Internal Revenue Code § 170(e). In order to qualify for a tax credit under this section,
31 the qualified appraisal shall be signed by the qualified appraiser, who must be licensed in the
32 Commonwealth of Virginia as provided in § 54.1-2011, and a copy of the appraisal shall be submitted to
33 the Department. In the event that any appraiser falsely or fraudulently overstates the value of the
34 contributed property in an appraisal that the appraiser has signed, the Department may disallow further
35 appraisals signed by the appraiser and shall refer the appraiser to the Real Estate Appraiser Board for
36 appropriate disciplinary action pursuant to § 54.1-2013, which may include, but need not be limited to,
37 revocation of the appraiser's license. Any appraisal that, upon audit by the Department, is determined to
38 be false or fraudulent, may be disregarded by the Department in determining the fair market value of the
39 property and the amount of tax credit to be allowed under this section.

40 C. 1. The amount of the credit that may be claimed by each taxpayer, including credit claimed by
41 applying unused credits as provided under subsection C of § 58.1-513, shall not exceed \$50,000 for 2000
42 taxable years; \$75,000 for 2001 taxable years; \$100,000 for each of 2002 through 2008 taxable years;
43 \$50,000 for each of 2009, 2010, and 2011 taxable years; \$100,000 for each of 2012, 2013, and 2014
44 taxable years; \$20,000 for each of 2015, 2016, and 2017 taxable years; and \$50,000 for 2018 taxable years
45 and for each taxable year thereafter. However, for any fee simple donation of land conveyed to the
46 Commonwealth on or after January 1, 2015, the amount of the credit claimed shall not exceed \$100,000
47 for each taxable year, provided that no part of the charitable contributions deduction under § 170 of the
48 Internal Revenue Code related to such fee simple donation is allowable by reason of a sale or exchange of
49 property. In addition, for each taxpayer, in any one taxable year the credit used may not exceed the amount
50 of individual, fiduciary or corporate income tax otherwise due. Any portion of the credit that is unused in
51 any one taxable year may be carried over for a maximum of 10 consecutive taxable years following the
52 taxable year in which the credit originated until fully expended. A credit shall not be reduced by the
53 amount of unused credit that could have been claimed in a prior year by the taxpayer but was unclaimed.

54 For taxpayers affected by the credit reduction for taxable years 2009, 2010, 2011, and 2015 and thereafter,
55 any portion of the credit that is unused in any one taxable year may be carried over for a maximum of 13
56 consecutive taxable years following the taxable year in which the credit originated until fully expended.

57 2. Qualified donations shall include the conveyance of a fee interest in real property or the
58 conveyance in perpetuity of a less-than-fee interest in real property, such as a conservation restriction,
59 preservation restriction, agricultural preservation restriction, or watershed preservation restriction,
60 provided that such less-than-fee interest qualifies as a charitable deduction under § 170(h) of the United
61 States Internal Revenue Code of 1986, as amended.

62 The Department of Conservation and Recreation shall compile an annual report on qualified
63 donations of less-than-fee interests accepted by any public or private conservation agency in the respective
64 calendar year and shall submit the report by December 1 of each year to the Chairmen of the House
65 Committee on Appropriations, House Committee on Finance, and the Senate Committee on Finance and
66 Appropriations. In preparing such report, the Department of Conservation and Recreation shall consult
67 and coordinate with the Department of Taxation and the Departments of Forestry and Agriculture and
68 Consumer Services to provide an estimate of the number of acres of land currently being used for
69 "production agriculture and silviculture" as defined in § 3.2-300 that have been protected by qualified
70 donations of less-than-fee interests. This report shall include information, when available, on land
71 qualifying for credits being used for "production agriculture and silviculture" that have onsite operational
72 best management practices, which are designed to reduce the amount of nutrients and sediment entering
73 public waters. In addition, the report shall include information, when available, on riparian buffers, both
74 vegetated/forested buffers and no-plow buffers, required by deed restriction on land qualifying for credits
75 in order to protect water quality. This information shall be reported in summary fashion as appropriate to
76 preserve confidentiality of information. Qualified donations shall not include the conveyance of a fee
77 interest, or a less-than-fee interest, in real property by a charitable organization that (i) meets the definition
78 of "holder" in § 10.1-1009 and (ii) holds one or more conservation easements acquired pursuant to the
79 authority conferred on a "holder" by § 10.1-1010.

80 3. Any fee interest, or a less-than-fee interest, in real property that has been dedicated as open
81 space within, or as part of, a residential subdivision or any other type of residential or commercial
82 development; dedicated as open space in, or as part of, any real estate development plan; or dedicated for
83 the purpose of fulfilling density requirements to obtain approvals for zoning, subdivision, site plan, or
84 building permits shall not be a qualified donation under this article.

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

90 5. The preservation, agricultural preservation, historic preservation or similar use and purpose of
91 such property shall be assured in perpetuity. In the case of conveyances of a fee interest to a charitable
92 organization that is a "holder" as defined in § 10.1-1009, the credit shall not be allowed until the charitable
93 organization agrees that subsequent conveyances of the fee interest in the property will be (i) subject to a
94 previous conveyance in perpetuity of a conservation easement, as that term is defined in § 10.1-1009, or
95 subject to the conveyance in perpetuity of an open-space easement, as that term is defined in § 10.1-1700,
96 or (ii) conveyed to the Commonwealth of Virginia or to a federal conservation agency. No credit shall be
97 allowed with respect to any subsequent conveyances by the charitable organization.

98 D. The issuance of tax credits under this article for donations made on and after January 1, 2007,
99 shall be in accordance with procedures and deadlines established by the Department and shall be
100 administered under the following conditions:

101 1. The taxpayer shall apply for a credit after completing the donation by submitting a form or forms
102 prescribed by the Department in consultation with the Department of Conservation and Recreation. If the
103 application requests a credit of \$1 million or more or if the donation meets the conditions of subdivision
104 3 c, then a copy of the application shall also be filed with the Department of Conservation and Recreation
105 by the taxpayer. The application shall include, but not be limited to:

106 a. A description of the conservation purpose or purposes being served by the donation;

- 107 b. The fair market value of land being donated in the absence of any easement or other restriction;
- 108 c. The public benefit derived from the donation;
- 109 d. The extent to which water quality best management practices will be implemented on the
- 110 property; and
- 111 e. Whether the property is fully or partially forested and a forest management plan is included in
- 112 the terms of the donation.

113 2. Applications for otherwise qualified donations of a less-than-fee interest shall be accompanied
114 by an affidavit describing how the donated interest in land meets the requirements of § 170(h) of the
115 United States Internal Revenue Code of 1986, as amended, and the regulations adopted thereunder. The
116 application with accompanying affidavit shall be submitted to the Department of Taxation, with a copy
117 also provided to the Department of Conservation and Recreation.

118 3. a. No credit in the amount of \$1 million or more shall be issued with respect to a donation unless
119 the conservation value of the donation has been verified by the Director of the Department of Conservation
120 and Recreation, based on the criteria adopted by the Virginia Land Conservation Foundation for this
121 purpose. Such criteria and subsequent amendments shall be exempt from the Administrative Process Act
122 (§ 2.2-4000 et seq.), but the Virginia Land Conservation Foundation shall provide for adequate public
123 participation, including adequate notice and opportunity to provide comments on the proposed criteria.
124 The Director shall act on applications within 90 days of his receipt of a complete application and shall
125 notify the taxpayer and the Department of Taxation of his action.

126 b. For purposes of determining whether a credit requires verification of the conservation value, the
127 credits allowed under this article with respect to donations of any other portion of a recorded parcel of
128 land within the preceding 11 years shall be aggregated with the credit claimed for the current donation.
129 This subdivision shall not apply if (i) all owners of the parcel who have been allowed credit for a qualified
130 donation are not affiliated with the person or entity seeking credit for the current donation of a different
131 portion of the parcel and (ii) in the case of an individual seeking credit, the individual has not previously
132 made a qualified donation for any portion of the parcel and is not an immediate family member of any
133 such owners.

134 c. If (i) the real property that is the subject of the donation was partitioned from or part of another
135 parcel of land and any other portion of such parcel, or any land partitioned from such parcel of land, has
136 been allowed a tax credit under this article (or an application for tax credit is pending) within three years
137 of such donation and (ii) the tax credit that would otherwise be allowed to the donor for such donation is
138 at least \$250,000, then no credit under this article shall be issued with respect to such donation described
139 in clause (i) unless the conservation value of the donation has been verified by the Director of the
140 Department of Conservation and Recreation. The Director shall act on applications within 90 days of his
141 receipt of a complete application and shall notify the taxpayer and the Department of Taxation of his
142 action. Nothing in this subdivision shall be construed or interpreted (a) as allowing additional tax credit
143 for any land or interest in land previously conveyed for which tax credit has already been allowed under
144 this article or (b) affecting the validity of any tax credit allowed under this article for a prior conveyance
145 of any land or interest in land.

146 4. a. Tax credits shall be issued on a calendar year basis, and in no case shall the Department issue
147 more than the maximum allowed for the calendar year. The maximum amount of credits that may be
148 issued in a calendar year shall be \$100 million plus any credits previously issued under this article but
149 subsequently disallowed or invalidated by the Department. Credits previously issued but subsequently
150 disallowed or invalidated shall be reissued in a subsequent calendar year. All credits shall be issued in the
151 order that each complete application is filed. For filings by mail or a recognized commercial delivery
152 service, the postmark or confirmation of shipment shall determine the date of filing. If within 30 days after
153 an application for credits has been filed the Tax Commissioner provides written notice to the donor that
154 he has determined that the preparation of a second qualified appraisal is warranted, the application shall
155 not be deemed complete until the fair market value of the donation has been finally determined by the Tax
156 Commissioner. The Tax Commissioner shall make a final determination within 180 days of notifying the
157 donor, unless the donor has filed an appeal. The donor shall have the right to appeal any decision of the
158 Department in accordance with the provisions of Chapter 18 (§ 58.1-1800 et seq.). If more than one
159 complete application is filed at the same time, the credits with respect to those applications shall be issued
160 in the order that the conveyances were recorded in the appropriate circuit court of the Commonwealth. In

161 the event that a credit requires verification of the conservation value by the Department of Conservation
162 and Recreation and such verification has not been received at the time the maximum \$100 million allowed
163 is reached for the calendar year of the donation, such credit shall not be issued for that calendar year but
164 shall be issued in the calendar year that the conservation value of the credit is verified by the Department
165 of Conservation and Recreation.

166 No credit shall be allowed for any land or interest in land conveyed unless (i) for a conveyance
167 made before January 1, 2020, a complete application for tax credit with regard to the conveyance has been
168 filed with the Department by December 31 of the third year following the calendar year of the conveyance
169 or (ii) for a conveyance made on or after January 1, 2020, a complete application for tax credit with regard
170 to the conveyance has been filed with the Department by December 31 of the second year following the
171 calendar year of the conveyance. For filings by mail or a recognized commercial delivery service, the
172 postmark or confirmation of shipment shall determine the date of filing. Solely for purposes of this
173 condition, any application for which the Tax Commissioner has given written notice to the donor that the
174 preparation of a second qualified appraisal is warranted shall be deemed timely filed, provided that the
175 application was otherwise complete as of such filing deadline. For conveyances made on and after January
176 1, 2017, the deadlines provided by clauses (i) and (ii) of this subdivision shall be extended for any number
177 of days exceeding 90 during which an application for tax credit is being reviewed for verification of
178 conservation value by the Department of Conservation and Recreation, if the application was otherwise
179 complete at the time of the original filing deadline.

180 b. Beginning with calendar year 2008, the \$100 million amount contained in subdivision 4 a shall
181 be increased by an amount equal to \$100 million multiplied by the percentage by which the consumer
182 price index for all-urban consumers published by the United States Department of Labor (CPI-U) for the
183 12-month period ending August 31 of the preceding year exceeds the CPI-U for the 12-month period
184 ending August 31, 2006.

185 c. Beginning with calendar year 2015, and ending with calendar year 2023, the maximum amount
186 of credits that may be issued in a calendar year shall not exceed \$75 million. Beginning with calendar year
187 2024, the maximum amount of credits that may be issued in a calendar year shall not exceed \$100 and the

188 \$100 million amount of credits shall be annually adjusted based on the total change in the CPI-U, as
189 published by the Bureau of Labor Statistics for the Department of Labor for the previous one-year
190 period. In no case shall the Department issue any tax credit for a donation from any allocation or pool of
191 tax credits attributable to a calendar year prior to the year in which the complete tax credit application for
192 the donation was filed.

193 Beginning with the submission due on or before December 20, 2015, and in each year thereafter,
194 the Governor shall include in "The Budget Bill" submitted pursuant to subsection A of § 2.2-1509 or in
195 his amendments to the general appropriation act in effect submitted pursuant to subsection E of § 2.2-
196 1509 a recommended appropriation from the general fund equal to the difference between the amount
197 calculated pursuant to subdivision b and \$75 million, but not more than \$20 million, to be allocated as
198 follows: 80 percent to the Virginia Land Conservation Fund to be used in accordance with § 10.1-1020,
199 with no less than 50 percent of such appropriation to be used for fee simple acquisitions with public access
200 or acquisitions of easements with public access; 10 percent to the Virginia Battlefield Preservation Fund
201 to be used in accordance with § 10.1-2202.4; and 10 percent to the Virginia Farmland Preservation Fund
202 to be used in accordance with § 3.2-201.

203 5. a. Any taxpayer that has been issued a tax credit by the Department shall be allowed to use such
204 credit for his or its taxable year that begins in the calendar year for which such credit was issued and for
205 succeeding taxable years in accordance with the 10 consecutive taxable year carryforward provisions of
206 this article, except for any taxpayer affected by the credit limitation for taxable years 2009, 2010, 2011,
207 and 2015 and taxable years thereafter. Such a taxpayer shall be allowed to use such credit for his or its
208 taxable year that begins in the calendar year for which such credit was issued and for succeeding taxable
209 years in accordance with the 13 consecutive taxable year carryforward provisions of this article.

210 b. Any taxpayer to whom a credit has been transferred may use such credit for the taxable year in
211 which the transfer occurred and unused amounts may be carried forward to succeeding taxable years, but
212 in no event may such transferred credit be used more than 11 years after it was originally issued by the
213 Department or in any taxable year of such taxpayer that ended prior to the date of transfer, except for any
214 taxpayer affected by the credit limitation for taxable years 2009, 2010, 2011, and 2015 and taxable years

