

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 554

FISCAL NOTE

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WILLIAMS

[Introduced February 8, 2016;

Referred to the Committee on Finance.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §11-13DD-1, §11-13DD-2, §11-13DD-3, §11-13DD-4, §11-13DD-5 and
 3 §11-13DD-6, all relating to issuance of tax credits for land conservation.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
 2 article, designated §11-13DD-1, §11-13DD-2, §11-13DD-3, §11-13DD-4, §11-13DD-5 and
 3 §11-13DD-6, all to read as follows:

ARTICLE 13DD. LAND CONSERVATION TAX CREDIT.

§11-13DD-1. Short Title.

1 This article may be referred to as the “Land Conservation Tax Credit Act of 2016.”

§11-13DD-2. Purpose and Findings.

1 (a) The Legislature finds that the State of West Virginia’s significant natural resources;
 2 wildlife habitats; scenic areas; open spaces; agricultural and forested resources; outdoor
 3 recreational opportunities; land, air, and water quality; and historic, archeological, and cultural
 4 resources are of significant benefit to the state and the public.

5 (b) The Legislature finds that many of these significant areas within the State of West
 6 Virginia are found on lands which are privately owned.

7 (c) The Legislature desires to encourage private landowners to be stewards of lands which
 8 are important for protecting these characteristics.

9 (d) The Legislature finds that protection of these significant areas is of economic benefit
 10 to the State of West Virginia.

11 (e) The Legislature finds that protection of these areas encourages needed economic
 12 diversification for the State of West Virginia.

13 (f) The Legislature desires to complement existing land conservation programs under the
 14 Conservation and Preservation Easements Act as set forth in article twelve, chapter twenty of this
 15 code, the state’s voluntary farmland protection program as set forth in article twelve, chapter

16 eight-a of this code, and the Voluntary Rural and Outdoor Heritage Conservation Act as set forth
17 in article two-g, chapter five-b of this code, and not duplicate them and thereby preserve public
18 financial resources and leverage public expenditures.

19 (g) The Legislature desires to provide private landowners with incentives to encourage
20 protection of private lands which are important to protect and/or enhance significant natural
21 resources; wildlife habitats; scenic areas; open spaces; agricultural and forested resources;
22 outdoor recreational opportunities; land, air, and water quality; and historic, archeological, and
23 cultural resources.

§11-13DD-3. Definitions.

1 The following definitions apply to this article:

2 (1) “Bargain sale” means sale of real property, or an interest in real property, as that term
3 is defined in this section, for less than its fair market value where, for tax purposes the transaction
4 is treated as a part sale and part gift, pursuant to section 1011(b) of the federal Internal Revenue
5 Code.

6 (2) “Interest in real property” means any right in real property, including access thereto, or
7 improvements thereon, or water including, but not limited to, a fee simple, easement, conservation
8 easement pursuant to article twelve, chapter twenty of this code, partial interest, mineral right,
9 remainder or future interest, or other interest or right in real property.

10 (3) “Land” or “lands” means real property, with or without improvements thereon;
11 rights- of-way, water and riparian rights; easements; privileges and all other rights or interests of
12 any land or description in, relating to or connected with real property, but does not mean historical
13 buildings for purposes of “preservation easements” as that term is defined in subdivision (c),
14 section three, article twelve, chapter twenty of this code.

15 (4) “Public or private conservation agency” means any governmental body, or any private
16 not-for-profit charitable corporation or trust authorized to do business in the State of West Virginia
17 and organized and operated for natural resources, land conservation or historic preservation

18 purposes, and having tax-exempt status as a public charity or governmental organization under
19 the U.S. Internal Revenue Code of 1986, as amended, and having the power to acquire, hold and
20 maintain land and/or interests in land for those purposes.

§11-13DD-4. Tax credit available.

1 (a) There is allowed as a credit against the tax liability imposed by this chapter, an amount
2 equal to fifty percent of the fair market value of any interest in real property located in West Virginia
3 which is conveyed for the purpose of protecting and/or restoring natural, scenic or open-space
4 values of real property; assuring real property's availability for agricultural, forest, outdoor
5 recreational or open-space use; protecting and/or restoring natural resources and wildlife;
6 maintaining or enhancing land, air or water quality; and/or preserving the historical, archaeological
7 or cultural aspects of real property as an unconditional donation or bargain sale in perpetuity by
8 the landowner/taxpayer to a public or private conservation agency. The fair market value of
9 qualified donations or bargain sales made under this article shall be substantiated by a "qualified
10 appraisal" prepared by a "qualified appraiser," as those terms are defined under applicable federal
11 law and regulations governing charitable contributions.

12 (1) The total amount of the credit that may be claimed by a taxpayer in a given tax year
13 may not exceed \$1 million per donation or gift portion to be claimed in a bargain sale. If the value
14 of the donation or gift portion exceeds \$1 million, the taxpayer may not claim as credit under this
15 section any excess amount of the donation or gift portion in subsequent years. In any one tax
16 year, the credit used may not exceed the amount of individual or corporate income tax otherwise
17 due from the taxpayer claiming the credit. Any portion of the credit which is unused in any one tax
18 year may be carried forward for a maximum of five consecutive tax years following the tax year in
19 which the credit originated or until it is fully expended, whichever is earlier.

20 (2) Qualified donations or bargain sales under this article include the conveyance in
21 perpetuity of an interest in real property.

22 (3) Qualified donations or bargain sales under this article for the purpose of fulfilling open

23 space or density requirements to obtain subdivision or building permits as part of a regulatory
24 process are not qualified donations under this section.

25 (4) Qualified donations or bargain sales are eligible for the tax credit if the donations or
26 bargain sales are made to the State of West Virginia, an instrumentality thereof, or a charitable
27 organization described in Section 501(c) of the U.S. Internal Revenue Code of 1986 and which
28 meets the requirements of Section 170(h)(3) therein.

29 (5) Qualified donations or bargain sales under this article must be completed, including
30 recordation of the necessary legal instrument or instruments with the appropriate clerk of the
31 county commission effectuating the transactions before final award of a tax credit under this
32 article.

33 (6) The conservation, preservation, historic preservation or similar use and purpose of
34 interests in real property which are the subject of tax credits awarded pursuant to this section shall
35 be assured in perpetuity.

36 (7) A taxpayer claiming a tax credit under this section may transfer, for consideration, all
37 or a portion of any unexpended tax credit which may be available to another taxpayer for use by
38 the other taxpayer, as transferee, to apply as a credit against tax imposed by West Virginia law.
39 Notice of the transfer and the amount of the tax credits so transferred shall be filed with the
40 transferee's and transferor's tax returns, pursuant to rules that may be promulgated by the Tax
41 Commissioner.

42 (b) The credits shall be awarded as follows: sixty-five percent of the tax credits shall be
43 awarded by the West Virginia Outdoor Heritage Conservation Fund based on the conservation
44 criteria set forth in section nine, article two-g, chapter five-b of this code; and thirty-five percent of
45 the tax credits shall be awarded by the West Virginia Agricultural Land Protection Authority based
46 on the criteria for acquisition set forth in section fifteen, article twelve, chapter eight-a of this code.

47 (c) In the event that either of the awarding entities, namely the West Virginia Outdoor
48 Heritage Conservation Fund and the West Virginia Agricultural Land Protection Authority, are

49 unable to award their proportion of the tax credits available, those tax credits shall be distributed
50 to the other entity.

§11-13DD-5 Creation of fund; administration; applicability and limitations.

1 (a) There is created in the State Treasury, a special revenue account, which is an interest
2 bearing account, to be known as the Land Conservation Tax Credit Fund. The special revenue
3 account consists of any appropriations made by the Legislature, any gifts, grants, bequests,
4 transfers, appropriation or other donations from any source, and all interest or return on
5 investment accruing in the Land Conservation Tax Credit Fund. The amount of tax credits
6 provided by this article in a given taxable year may not exceed the amount of money in the Land
7 Conservation Tax Credit Fund.

8 (b) The tax credits provided by this article apply to transfers of land or interests therein in
9 taxable years beginning on or after January 1, 2017, and all taxable years after that: *Provided,*
10 That tax credits may not be provided under this article until the Land Conservation Tax Credit
11 Fund has an amount in the fund that will accelerate the conservation of significant areas of
12 economic and public benefit to the State of West Virginia, to be defined through rules considered
13 necessary to administer the tax incentives.

14 (c) Any taxpayer claiming a tax credit under this article may not claim a credit under any
15 similar West Virginia law for costs related to the same project.

16 (d) Any tax credits which arise under this article from the donation or bargain sale of land
17 or an interest in land made by a pass-through tax entity such as a trust, estate, partnership, limited
18 liability corporation or partnership, limited partnership, subchapter S corporation or other fiduciary
19 shall be used either by the entity in the event it is the taxpayer on behalf of the entity or by the
20 member, manager, partner, shareholder and/or beneficiary, as the case may be, in proportion to
21 their interest in the entity in the event that income, deductions and tax liability passes through the
22 entity to the member, manager, partner, shareholder and/or beneficiary. The tax credits may not
23 be claimed by both the entity and the member, manager, partner, shareholder and/or beneficiary

24 for the same donation.

25 (e) If a taxpayer is eligible to receive a tax credit under the terms of this article and there
26 is sufficient moneys in the Land Conservation Tax Credit Fund, as required by this section, then
27 the Tax Commissioner shall arrange for the transfer of the necessary tax credit from the Land
28 Conservation Tax Credit Fund to the eligible taxpayer.

29 (f) The Tax Commissioner, in consultation with the board of trustees of the West Virginia
30 Outdoor Heritage Conservation Fund and the board of directors of the West Virginia Agricultural
31 Land Protection Authority, may promulgate rules necessary to administer the tax incentives
32 provided in this article, in accordance with the provisions of article three, chapter twenty-nine-a of
33 this code.

34 (g) The Tax Commissioner shall annually prepare a report to the Legislature showing the
35 fiscal impact to the state of the credits claimed pursuant to this article.

36 (h) The West Virginia Outdoor Heritage Conservation Fund and the West Virginia
37 Agricultural Land Protection Authority shall, respectively, prepare annual reports to the
38 Legislature. The reports shall describe each transaction awarded a credit under this article, and
39 specify how the transactions fulfill the goals of this article and achieve public benefit. The reports
40 also shall describe how each transaction awarded a credit under this article furthers protection of
41 natural, scenic or open-space values of real property; assures real property's availability for
42 agricultural, forest, outdoor recreational or open-space use; protects natural resources and
43 wildlife; maintains or enhances land, air or water quality; and/or preserves the historical,
44 archaeological or cultural aspects of real property.

§11-13DD-6. Construction.

1 This article does not alter or amend any permit requirement, reporting requirement,
2 allocation procedure, or other requirement set forth in any other provision of West Virginia law.

NOTE: The purpose of this bill is to enact the Land Conservation Tax Credit Act of 2016.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.