

Date of Hearing: April 12, 2021

ASSEMBLY COMMITTEE ON REVENUE AND TAXATION
Autumn R. Burke, Chairwoman

AB 1219 (Berman) – As Introduced February 19, 2021

Majority vote. Tax levy. Fiscal committee.

SUBJECT: Income taxes: Natural Heritage Preservation Tax Credit Act of 2000

SUMMARY: Reinstates the Natural Heritage Preservation (NHP) tax credit for a contribution made on or after January 1, 2021, and before June 30, 2026. Specifically, **this bill:**

- 1) Reinstates, under the Personal Income Tax (PIT) Law and the Corporation Tax (CT) Law, the NHP tax credit in an amount equal to 55% of the fair market value of a qualified contribution made on or after January 1, 2021, and before June 30, 2026, by a taxpayer during the taxable year to the state, any local government, or any designated nonprofit organization.
- 2) Takes effect immediately as a tax levy.

EXISTING LAW:

- 1) Requires the Wildlife Conservation Board (WCB) to authorize and allocate specified funds for the purchase of property suitable for recreation and the preservation, protection, and restoration of wildlife habitat.
- 2) Requires the WCB to implement the NHP tax credit program (Program). Under the Program, upon the WCB's approval, a "donor" may contribute qualified property to a "donee" and receive a nonrefundable tax credit equal to 55% of the fair market value of any qualified contribution of property made between January 1, 2010, and June 30, 2020. Any unused credit may be carried over for eight years, or 15 years depending on when the contribution was made. This credit, however, sunset on June 30, 2020.
- 3) Defines a "donor" as a property owner that donates, or submits an application to donate, property under the Program. The term "property" is defined to include "any real property, and any perpetual interest therein, including land, conservation easements, and land containing water rights, as well as water rights."
- 4) Defines a "donee" as any of the following:
 - a) A department to which a donor has applied to donate property (a department, in turn, means the State Resources Agency or any entity created by statute within the Resources Agency and authorized to hold title to land);

- b) A local government that has filed a joint application with a donor requesting approval of a donation of property to that local government; or,
- c) A designated nonprofit organization.

FISCAL EFFECT: According to the Franchise Tax Board (FTB), "[b]ecause it is difficult to predict how many qualified donations and the amount of these donations each year, the revenue impact is unknown. It is estimated, however, that for every \$1 million generated, approximately \$70,000 would be claimed in each year the credit is generated. The remaining credits would be used in the following 15 years." Additionally, FTB states that "[e]ligible bond funds will be used to reimburse the [GF] so that the net impact on the [GF] is zero."

COMMENTS:

- 1) The author has provided the following statement in support of this bill:

As California's population continues to grow, we need more areas for public recreation. We also need lands to help protect biodiversity and ensure the State can become more resilient to the impacts of climate change. However, we are also facing uncertain fiscal times, where every dollar of previously approved bonds must be maximized. AB 1219 would reestablish a "financial tool" that is being used to save 45% on the purchase price of the land *if* the state or local agency chooses to use the tax credit program to acquire recreation or habitat lands AND *if* the landowner agrees. Effectively, this voluntary program allows California to acquire \$18 million of land for every \$10 million of limited resource funding, provides fair value to the landowner, and keeps the General Fund whole.

- 2) Supporters state "AB 1219 seeks to reestablish the Natural Heritage Preservation Tax Credit program, allowing the state, a local government, or a qualified non-profit to acquire conservation, park, or habitat land at just over half of the appraised value by structuring the acquisition so that the landowner can receive a state tax credit and use federal tax deductions. As California's population continues to grow, we need more areas for public recreation. We also need lands to help protect biodiversity and ensure that California can become more resilient to the impacts of climate change."

- 3) Committee Staff Comments:

- a) *Legislative history:* The Legislature enacted the Program to compensate landowners who donate land to the state for preservation purposes [SB 1647 (O'Connell), Chapter 113, Statutes of 2000]. The Program had a number of stated objectives, including accommodating economic development and resolving land use and water disputes in a manner beneficial to both the people of California and to California's environment. Initially, the aggregate amount of all credits was limited to \$100 million. In response to fiscal pressures on the GF, the Legislature suspended the awarding of tax credits in FY 2002-03 [AB 3009 (Committee on Budget), Chapter 1033, Statutes of 2002]. Following this suspension, the Legislature extended the tax credit through FY 2007-08, but provided that credits could be awarded between July 1, 2002, and June 30, 2005, only if the amount of all lost revenue resulting from the credits was reimbursed by transfer to the GF of moneys not from the GF [SB 1100 (Committee on Budget and Fiscal Review), Chapter 226, Statutes of 2004]. The Legislature then allowed bond funds (approved by

voters in separate propositions) to reimburse the GF for the tax credit's costs [AB 2722 (Laird), Chapter 715, Statutes of 2004]. The WCB awarded \$48.6 million in credits through 2006-07, but taxpayers only claimed \$23.4 million, for an average of \$4 million per year. In 2010, the Legislature again reauthorized the credit until 2015 and eliminated the \$100 million cap [AB 94 (Evans), Chapter 220, Statutes of 2009].

In 2014, SB 355 (Beall) was introduced to, in part, extend the program credit until June 30, 2020, and extend the carryforward provision from 8 to 15 years. SB 355 also contained provisions allowing for the sale of credits in order to immediately monetize the credits instead of claiming the credit over a 15-year period. The provisions allowing the sale of the credit to unrelated parties were removed for several reasons, including: (i) the fact that sellers generally received between 70% and 82% of the value of a credit¹; (ii) the seller then has to compensate a broker for facilitating the sale; and, (iii) the seller could face additional federal and state income tax liability resulting from the sale, which would further reduce the financial benefits of the sale². Additionally, allowing the sale of a credit would likely require additional administrative oversight and tracking to ensure that only one taxpayer uses the same dollar of credit. The NHP tax credit subsequently sunset on June 30, 2020.

- b) *Application process*: The Program provides state and local governments, as well as nonprofit organizations, with the ability to protect and preserve California's open space by compensating donors for 55% of the donated property's fair market value. To qualify for the credit, landowners must apply to the WCB for approval to donate a parcel of property and for certification that the property meets certain requirements. If the WCB approves the contribution, the landowner may claim a tax credit equal to 55% of the property's fair-market value, and may carry the credit forward to the succeeding eight years, or 15 years, depending on when the contribution was made. Taxpayers may alternatively choose to take a charitable contribution deduction instead of the NHP tax credit.
- c) *A different kind of credit*: The NHP tax credit operates differently from other tax credits. Specifically, this credit is funded by bond funds, private donations, and other specified moneys instead of foregone tax revenues that would normally flow to the GF. Unlike other tax credits, the WCB must approve the credit and reimburse the Natural Heritage Preservation Tax Credit Account in the GF within 60 days of FTB's notification that a taxpayer claimed a NHP tax credit. Because these credits have no impact on the GF, in 2009, the Legislature removed the \$100 million cap contained in the original act that established the NHP tax credit program.
- d) *How to improve the NHP credit?* Despite its long existence, the NHP tax credit is rarely used. According to FTB, applications have only been approved in a handful of years since the creation of the Program in 2000. The last time a credit was awarded was in 2015. The author's office and supporters have expressed an interest in making this credit more attractive by allowing the credit to be more easily monetized instead of having it be

¹ *State Conservation Tax Credits, Impact and Analysis*, a Report by the Conservation Resource Center, 2007, p.23.

² Office of Chief Counsel Internal Revenue Service Memorandum, Number 201147024, November 25, 2011, which states that a sale of a tax credit is a taxable event, under the federal income tax laws, and both the seller and the purchaser, if the tax credit is purchased for less than its face value, must recognize gain and pay federal income tax.

claimed over a 15-year period. Since funds that backfill the GF have to be secured prior to the transfer of the property, the simplest way to monetize the credit would be to make the credit refundable. Unlike a sale or transfer of the credit, if the credit were to be made refundable, the donor would receive the full value of the credit instead of selling for less than face value, broker fees would not be required, additional administrative work would likely be minimal, and there would be no additional pressure on the GF. It should also be noted that whether the credit is sold or made refundable, there may be federal tax liability incurred. The author's office is currently working on language to make the credit more efficient.

REGISTERED SUPPORT / OPPOSITION:**Support**

Big Sur Land Trust
California Council of Land Trusts
California Habitat Conservation Planning Coalition
California Waterfowl
Defenders of Wildlife
Endangered Habitats League
Mojave Desert Land Trust
The Nature Conservancy
Pacific Forest Trust
Peninsula Open Space Trust
Santa Clara Valley Open Space Authority
Trust for the Public Land
Wholly H2O

Opposition

None on file

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