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SENATE BILL NO. 1266

Offered January 14, 2015

Prefiled January 14, 2015

A BILL to amend and reenact §§ 10.1-1009, 10.1-1010, and 10.1-1011 of the Code of Virginia, relating to conservation easements; private bottomland.

 Patron—Deeds

 Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-1009, 10.1-1010, and 10.1-1011 of the Code of Virginia are amended and reenacted as follows:

§ 10.1-1009. Definitions.

As used in this chapter, unless the context otherwise requires:

"Conservation easement" means a nonpossessory interest of a holder in real property, whether easement appurtenant or in gross, acquired through gift, purchase, devise, or bequest imposing limitations or affirmative obligations, the purposes of which include retaining or protecting natural or open-space values of real property, assuring its availability for agricultural, forestal, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural or archaeological aspects of real property.

"Holder" means a charitable corporation, charitable association, or charitable trust which has been declared exempt from taxation pursuant to 26 U.S.C. § 501(c)(3) and the primary purposes or powers of which include: (i) retaining or protecting the natural or open-space values of real property; (ii) assuring the availability of real property for agricultural, forestal, recreational, or open-space use; (iii) protecting natural resources; (iv) maintaining or enhancing air or water quality; or (v) preserving the historic, architectural or archaeological aspects of real property.

"Private bottomland" means real property in the beds of a bay, river, or creek that, having been conveyed by special grant, has been conclusively determined to lie in private ownership by a court of competent jurisdiction.

"Public body" means any entity defined in § 10.1-1700.

"Third party right of enforcement" means a right provided in a conservation easement to enforce any of its terms granted to a governmental body, charitable corporation, charitable association or charitable trust which, although eligible to be a holder, is not a holder.

§ 10.1-1010. Creation, acceptance and duration.

A. A holder may acquire a conservation easement by gift, purchase, devise or bequest.

B. No right or duty in favor of or against a holder and no right in favor of a person having a third-party right of enforcement arises under a conservation easement before its acceptance by the holder and a recordation of the acceptance.

C. A conservation easement shall be perpetual in duration unless the instrument creating it otherwise provides a specific time.

D. For all easements any easement, the holder shall (i) meet the criteria in § 10.1-1009 and (ii) either have had a principal office in the Commonwealth for at least five years, or be a national organization in existence for at least five years which that has an office in the Commonwealth and has registered and is in good standing with the State Corporation Commission. Until a holder has met these requirements, the holder may co-hold a conservation easement with another holder that meets the requirements.

~~D.~~ E. An interest in real property in existence at the time a conservation easement is created is not impaired by it unless the owner of the interest is a party to the conservation easement or consents to it in writing.

E. F. No conservation easement shall be valid and enforceable unless the limitations or obligations created thereby conform in all respects to the comprehensive plan at the time the easement is granted for the area in which the real property is located.

G. A conservation easement in private bottomland shall provide recreational access to the bottomland, the waterway above the bottomland, and the banks of the waterway to the ordinary high-water mark. The instrument creating such an easement also shall contain a disclaimer by the real property owner of any exclusive right of fishing or hunting on the real property subject to the easement.

F. H. This chapter does not affect the power of the court to modify or terminate a conservation easement in accordance with the principles of law and equity, or in any way limit the power of eminent domain as possessed by any public body. In any such proceeding the holder of the conservation

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59 easement shall be compensated for the value of the easement.

60 **§ 10.1-1011. Taxation.**

61 A. Where an easement held pursuant to this chapter or the Open-Space Land Act (§ 10.1-1700 et
62 seq.) by its terms is perpetual, neither the interest of the holder of a conservation easement nor a
63 third-party right of enforcement of such an easement shall be subject to state or local taxation nor shall
64 the owner of the fee be taxed for the interest of the holder of the easement.

65 B. Assessments of the fee interest in land that is subject to a perpetual conservation easement held
66 pursuant to this chapter or the Open-Space Land Act (§ 10.1-1700 et seq.) shall reflect the reduction in
67 the fair market value of the land that results from the inability of the owner of the fee to use such
68 property for uses terminated by the easement. To ensure that the owner of the fee is not taxed on the
69 value of the interest of the holder of the easement, the fair market value of such land (i) shall be based
70 only on uses of the land that are permitted under the terms of the easement and (ii) shall not include
71 any value attributable to the uses or potential uses of the land that have been terminated by the
72 easement.

73 C. Notwithstanding the provisions of subsection B, land which is (i) subject to a perpetual
74 conservation easement held pursuant to this chapter or the Open-Space Land Act (§ 10.1-1700 et seq.),
75 (ii) devoted to open-space use as defined in § 58.1-3230, and (iii) in any county, city or town which has
76 provided for land use assessment and taxation of any class of land within its jurisdiction pursuant to
77 § 58.1-3231 or § 58.1-3232, shall be assessed and taxed at the use value for open space, if the land
78 otherwise qualifies for such assessment at the time the easement is dedicated. If an easement is in
79 existence at the time the locality enacts land use assessment, the easement shall qualify for such
80 assessment. Once the land with the easement qualifies for land use assessment, it shall continue to
81 qualify so long as the locality has land use assessment.

82 *D. For purposes of this section, an easement in private bottomland held pursuant to this chapter or*
83 *the Open-Space Land Act (§ 10.1-1700 et seq.) that by its terms has a duration of 10 years or more*
84 *shall be considered perpetual.*