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SENATE BILL NO. 499

Offered January 10, 2018

Prefiled January 9, 2018

A BILL to amend and reenact § 10.1-1010 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 10.1 of Title 10.1 a section numbered 10.1-1016.1 and by adding in Article 20.1 of Chapter 3 of Title 58.1 a section numbered 58.1-514, relating to agriculture easements; validity; termination.

 Patron—Carrico (By Request)

 Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That § 10.1-1010 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 10.1 of Title 10.1 a section numbered 10.1-1016.1 and by adding in Article 20.1 of Chapter 3 of Title 58.1 a section numbered 58.1-514 as follows:

§ 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. For all easements, 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 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. 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. 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.

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

G. *No restriction imposed by a conservation easement created on or after July 1, 2018, shall be valid and enforceable against any occupied single-family dwelling structure, including any outbuilding, shed, barn, garage, or driveway, or the land lying immediately underneath such structure, for the purposes of additions, repairs, or sale.*

§ 10.1-1016.1. Termination.

A conservation easement created on or after July 1, 2018, may be terminated by the owner of an interest in real property burdened by the easement in the event of financial hardship. Pursuant to § 58.1-514, such owner shall pay to the Department of Taxation the full amount of any land preservation tax credits furnished to the owner pursuant to Article 20.1 (§ 58.1-510 et seq.) of Chapter 3 of Title 58.1. Such owner shall pay to the holder any legal fees associated with the termination of the easement. For the purposes of this chapter, until such requirements are met and the easement is terminated, such conservation easement shall be considered perpetual in duration pursuant to subsection C of § 10.1-1010 unless otherwise provided in the instrument creating it.

§ 58.1-514. Termination of easement; repayment.

In the event that a conservation easement for which tax credits were granted pursuant to this article is terminated pursuant to § 10.1-1016.1, the taxpayer to whom credits were allocated shall be liable for any taxes not paid as a result of the use of the credits, plus interest as calculated pursuant to § 58.1-15. In the event that the credits were transferred to another taxpayer, the taxpayer to whom credits were originally allocated shall be liable to the Department for repayment of the credits transferred, plus interest as calculated pursuant to § 58.1-15. Any credits issued to the taxpayer that have not been claimed or transferred shall be void.

INTRODUCED

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59 2. That the Department of Conservation and Recreation shall promulgate regulations to determine
60 the conditions required for the holder of a conservation easement to terminate such easement as a
61 result of financial hardship.