

Department of Planning and Budget 2018 Fiscal Impact Statement

1. Bill Number: SB499

House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed
Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Carrico

3. Committee: Agriculture, Conservation and Natural Resources

4. Title: Agriculture easements; validity; termination.

5. Summary: This bill prohibits a restriction imposed by a conservation easement from being enforced against any occupied single-family dwelling structure, including any outbuilding, shed, barn, garage, or driveway, or the land lying immediately underneath any such structure, for the purposes of additions, repairs, or sale. In addition, the bill authorizes the owner of an interest in real property burdened by the easement to terminate such easement in the event of financial hardship. Such owner shall be liable to the Department of Taxation for the full amount of any land preservation tax credits claimed or transferred by the owner that are related to the easement and shall pay any legal fees associated with the termination of the easement. Until such payments are made, such conservation easement shall be considered perpetual in duration unless otherwise provided in the instrument creating it. Lastly, the bill specifies that the Department of Conservation and Recreation shall promulgate regulations to determine the conditions required for the holder of a conservation easement to terminate such easement as a result of financial hardship.

6. Budget Amendment Necessary: Yes, to Item 363 of HB30/SB30.

7. Fiscal Impact Estimates: Preliminary.

7a. Expenditure Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2018	\$0	n/a	n/a
2019	\$42,869	n/a	GF
2020	\$42,869	n/a	GF
2021	\$42,869	n/a	GF
2022	\$42,869	n/a	GF
2023	\$42,869	n/a	GF
2024	\$42,869	n/a	GF

7b. Revenue Impact: Indeterminate. See item 8.

8. Fiscal Implications: It is anticipated that this bill will have an expenditure impact on the Department of Conservation and Recreation (DCR). The bill requires DCR to promulgate regulations to determine the conditions required for the holder of a conservation easement to terminate such easement as a result of financial hardship. The bill does not define what

constitutes financial hardship. DCR does not have staff with expertise to make such determination or to develop and implement such regulations. As such, the agency believes it will need to hire a part-time position, estimated at a cost of \$42,869 annually, to administer the responsibilities assigned in this bill.

This bill provides that 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. Such owner would be required to pay to the Department of Taxation (TAX) the full amount of any Land Preservation Tax Credits furnished to the owner. Such owner would also be required to pay to the holder of the easement any legal fees associated with its termination. TAX does not anticipate additional administrative expenses as a result of this bill and considers its administration routine.

According to TAX, this bill may have an indeterminate positive general fund revenue impact beginning as early as FY 2019. The extent of the revenue impact is unknown because it is unclear how taxpayers will respond to the changes created by this bill. To qualify for a federal charitable contribution deduction and Virginia's Land Preservation Tax Credit (LPTC), one requirement is that the contribution of a conservation easement must generally be made in perpetuity. Because this bill would allow for the termination of a Virginia conservation easement in limited circumstances, this bill creates uncertainty as to whether the contribution of such easements will continue to be considered to have been made in perpetuity. The effect, if any, on future easement contributions and applications for credit under the LPTC program is unknown.

9. Specific Agency or Political Subdivisions Affected: Department of Conservation and Recreation; Department of Taxation.

10. Technical Amendment Necessary: No.

11. Other Comments: None.