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HOUSE BILL NO. 1291

Offered January 11, 2006

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A BILL to amend and reenact §§ 10.1-2202, 10.1-2204, 10.1-2205, 10.1-2206.1, and 10.1-2206.2 of the Code of Virginia, relating to usage of the word "landmark."

 Patron—Saxman

 Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-2202, 10.1-2204, 10.1-2205, 10.1-2206.1, and 10.1-2206.2 of the Code of Virginia are amended and reenacted as follows:

§ 10.1-2202. Powers and duties of the Director.

In addition to the powers and duties conferred upon the Director elsewhere and in order to encourage, stimulate, and support the identification, evaluation, protection, preservation, and rehabilitation of the Commonwealth's significant historic, architectural, archaeological, and cultural resources; in order to establish and maintain a permanent record of those resources; and in order to foster a greater appreciation of these resources among the citizens of the Commonwealth, the Director shall have the following powers and duties which may be delegated by the Director:

1. To employ such personnel as may be required to carry out those duties conferred by law;
2. To make and enter into all contracts and agreements necessary or incidental to the performance of his duties and the execution of his powers, including but not limited to contracts with private nonprofit organizations, the United States, other state agencies and political subdivisions of the Commonwealth;
3. To apply for and accept bequests, grants and gifts of real and personal property as well as endowments, funds, and grants from the United States government, its agencies and instrumentalities, and any other source. The Director shall have the authority to comply with such conditions and execute such agreements as may be necessary, convenient or desirable;
4. To perform acts necessary or convenient to carry out the duties conferred by law;
5. To promulgate regulations, in accordance with the Virginia Administrative Process Act (§ 2.2-4000 et seq.) and not inconsistent with the National Historic Preservation Act (P.L. 89-665) and its attendant regulations, as are necessary to carry out all responsibilities incumbent upon the State Historic Preservation Officer, including at a minimum criteria and procedures for submitting nominations of properties to the National Park Service for inclusion in the National Register of Historic Places or for designation as National Historic Landmarks;
6. To conduct a broad survey and to maintain an inventory of buildings, structures, districts, objects, and sites of historic, architectural, archaeological, or cultural interest which constitute the tangible remains of the Commonwealth's cultural, political, economic, military, or social history;
7. To publish lists of properties, *including buildings, structures, districts, objects, and sites*, designated as landmarks by the Board, to inspect designated properties from time to time, and periodically publish a complete register of designated properties setting forth appropriate information concerning those properties;
8. With the consent of the landowners, to provide appropriately designed markers for designated buildings, structures, districts, objects and sites;
9. To acquire and to administer designated landmarks ~~and sites~~, or easements or interests therein;
10. To aid and to encourage counties, cities and towns to establish historic zoning districts for designated landmarks and to adopt regulations for the preservation of historical, architectural, ~~or~~ archaeological, *or cultural* values;
11. To provide technical advice and assistance to individuals, groups and governments conducting historic preservation programs and regularly to seek advice from the same on the effectiveness of Department programs;
12. To prepare and place, in cooperation with the Department of Transportation, highway historical markers approved by the Board of Historic Resources on or along the highway or street closest to the location which is intended to be identified by the marker;
13. To develop a procedure for the certification of historic districts and structures within the historic districts for federal income tax purposes;
14. To aid and to encourage counties, cities, and towns in the establishment of educational programs and materials for school use on the importance of Virginia's historic, architectural, archaeological, and cultural resources;

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59 15. To conduct a program of archaeological research with the assistance of the State Archaeologist
60 which includes excavation of significant sites, acquisition and maintenance of artifact collections for the
61 purposes of study and display, and dissemination of data and information derived from the study of sites
62 and collections;

63 16. To manage and administer the Historic Resources Fund as provided in § 10.1-2202.1; and

64 17. (For contingent expiration - see Editor's note) To manage and administer the Virginia Historic
65 Preservation and Museum Assistance Grant Program and Fund as provided in §§ 10.1-2208.1 and
66 10.1-2208.2.

67 § 10.1-2204. Duties of Board of Historic Resources.

68 A. The Board of Historic Resources shall:

69 1. Designate historic landmarks, *including* buildings, structures, districts, objects and sites which
70 constitute the principal historical, architectural ~~and~~ , archaeological ~~sites~~ , *and cultural resources* which
71 are of local, statewide or national significance and withdraw designation either upon a determination by
72 the Board that the property has failed to retain those characteristics for which it was designated or upon
73 presentation of new or additional information proving to the satisfaction of the Board that the
74 designation had been based on error of fact;

75 2. Establish and endorse appropriate historic preservation practices for the care and management of
76 designated landmarks;

77 3. Approve the proposed text and authorize the manufacture of highway historical markers;

78 4. Acquire by purchase or gift designated landmarks ~~and sites~~, or easements or interests therein

79 5. Review the programs and services of the Department of Historic Resources, including annual plans
80 and make recommendations to the Director and the Governor concerning the effectiveness of those
81 programs and services;

82 6. In cooperation with the Department, and through public lectures, writings, and other educational
83 activities, promote awareness of the importance of historic resources and the benefits of their
84 preservation and use; and

85 7. Apply for gifts, grants and bequests for deposit in the Historic Resources Fund to promote the
86 missions of the Board and the Department.

87 B. For the purposes of this chapter, designation by the Board of Historic Resources shall mean an act
88 of official recognition designed (i) to educate the public to the significance of the designated resource
89 and (ii) to encourage local governments and property owners to take the designated property's historic,
90 architectural, archaeological, and cultural significance into account in their planning, the local
91 government comprehensive plan, and their decision making. Such designation, itself, shall not regulate
92 the action of local governments or property owners with regard to the designated property.

93 § 10.1-2205. Board shall promulgate regulations; penalty.

94 The Board shall promulgate regulations necessary to carry out its powers and duties, including at a
95 minimum criteria and procedures for the designation of historic landmarks ~~and historic districts~~,
96 *including buildings, structures, districts, objects, and sites*. Such regulations shall be not inconsistent
97 with the National Historic Preservation Act (P.L. 89-665) and its attendant regulations. The regulations
98 of the Board shall be promulgated in accordance with the Virginia Administrative Process Act
99 (§ 2.2-4000 et seq.).

100 Any person who violates any regulation adopted pursuant to this section shall be subject to a civil
101 penalty not to exceed \$500. Any civil penalty collected pursuant to this section shall be deposited into
102 the state treasury.

103 § 10.1-2206.1. Procedure for designating a historic district, building, structure, or site as a historic
104 landmark; National Register of Historic Places, National Historic Landmarks; historic district defined.

105 A. In any county, city, or town where the Board proposes to designate a historic district, ~~landmark~~,
106 building, structure, object, or site *as a historic landmark*, or where the Director proposes to nominate
107 property to the National Park Service for inclusion in the National Register of Historic Places or for
108 designation as a National Historic Landmark, the Department shall give written notice of the proposal to
109 the governing body and to the owner, owners, or the owner's agent, of property proposed to be *so*
110 designated or nominated as a ~~historic landmark, building, structure, object or site, or to be included in a~~
111 ~~historic district~~, and to the owners, or their agents, of all abutting property and property immediately
112 across the street or road from the property.

113 B. Prior to the designation or nomination of a historic district, the Department shall hold a public
114 hearing at the seat of government of the county, city, or town in which the proposed historic district is
115 located or within the proposed historic district. The public hearing shall be for the purpose of supplying
116 additional information to the Board and to the Director. The time and place of such hearing shall be
117 determined in consultation with a duly authorized representative of the local governing body, and shall
118 be scheduled at a time and place that will reasonably allow for the attendance of the affected property
119 owners. The Department shall publish notice of the public hearing once a week for two successive
120 weeks in a newspaper published or having general circulation in the county, city, or town. Such notice

shall specify the time and place of the public hearing at which persons affected may appear and present their views, not less than six days nor more than twenty-one days after the second publication of the notice in such newspaper. In addition to publishing the notice, the Department shall give written notice of the public hearing at least five days before such hearing to the owner, owners, or the owner's agent, of each parcel of real property to be included in the proposed historic district, and to the owners, or their agents, of all abutting property and property immediately across the street or road from the included property. Notice required to be given to owners by this subsection may be given concurrently with the notice required to be given to the owners by subsection A. The Department shall make and maintain an appropriate record of all public hearings held pursuant to this section.

C. Any written notice required to be given by the Department to any person shall be deemed to comply with the requirements of this section if sent by first class mail to the last known address of such person as shown on the current real estate tax assessment books, provided that a representative of the Department shall make an affidavit that such mailings have been made.

D. The local governing body and property owners shall have thirty days from the date of the notice required by subsection A, or, in the case of a historic district, thirty days from the date of the public hearing required by subsection B to provide comments and recommendations, if any, to the Board and to the Director.

E. For the purposes of this chapter, a historic district means a geographically definable area which contains a significant concentration of historic buildings, structures or sites having a common historical, architectural, *archaeological*, or cultural heritage, and which ~~contains~~ *may contain* local tax parcels having separate owners. *Contributing properties within a registered district are historic landmarks by definition.*

F. All regulations promulgated by the Director pursuant to § 10.1-2202 and all regulations promulgated by the Board pursuant to § 10.1-2205 shall be consistent with the provisions of this section.

§ 10.1-2206.2. Consent of owners required for certain designations by the Board.

A. Before the Board shall designate any ~~historic district, landmark,~~ building, structure, *district, object, or site as a historic landmark* in accordance with § 10.1-2204, the owners of such property proposed for designation shall be given the opportunity to concur in or object to such designation by the Board. If a majority of the owners of the property within such area proposed for designation object to such designation, the Board shall take no formal action to designate the property as historic until such objection is withdrawn.

B. For the purposes of this section, majority of owners of the property shall mean a majority of the number of property owners of or within the proposed property or district.

C. Nothing contained herein shall be deemed or construed to affect any local government charter or ordinance regarding historic districts or historic preservation.

2. That the provisions of this act are declaratory of existing law.