AN ACT
RELATING TO PROPERTY -- CONSERVATION AND PRESERVATION RESTRICTIONS ON REAL PROPERTY

Introduced By: Senators DiPalma, Sosnowski, Kettle, and Felag

Date Introduced: January 27, 2016

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

SECTION 1. Section 34-39-5 of the General Laws in Chapter 34-39 entitled "Conservation and Preservation Restrictions on Real Property" is hereby amended to read as follows:

34-39-5. Release of restriction. -- (a) Subject to the express terms of a conservation or preservation restriction, a restriction held by the state may be released in the same manner as land held by the state may be sold under chapter 7 of title 37, a restriction held by cities and towns may be released in the same manner as land held by cities and towns may be sold under § 45-2-5, and a restriction held by any other governmental body may be released in accordance with applicable statutes, regulations, and procedures.

(b) A charitable corporation, association, or other entity holding a restriction may release that restriction in accordance with the express terms of a restriction, applicable bylaws, or charter provisions of the holding entity, and applicable statutes and regulations.

(c) A conservation or preservation restriction may not be terminated or amended in such a manner as to materially detract from the conservation or preservation values intended for protection, without the prior approval of the court in an action in which the attorney general has been made a party. Termination of an amendment that materially detracts from the conservation or preservation values intended for protection may be approved only when it is found by the court that the conservation or preservation restriction, or the provision proposed to be amended, as the
case may be, does not serve the public interest or publicly beneficial conservation or preservation

purpose, taking into account, among other things, the purposes expressed by the parties in the

restriction. An amendment that materially detracts from a specific conservation or preservation

value intended for protection may be approved only when it is found by the court that the

proposed amendment creates a net gain in the overall conservation or preservation purpose for

which it was intended, and is consistent with the purposes expressed by the parties in the

restriction and the public interest. No such approval may be sought except with the consent of the

holder. If the value of the landowner's estate is increased by reason of the amendment or

termination of a conservation or preservation restriction, that increase shall be paid over to the

holder, or to such non-profit or governmental entity as the court may designate, to be used for the

protection of conservation lands or historic resources consistent, as nearly possible, with the

stated publicly beneficial conservation or preservation purposes of the restriction.

SECTION 2. This act shall take effect upon passage.
EXPLANATION

BY THE LEGISLATIVE COUNCIL

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1 This act would require the court, when deciding whether or not to grant amendments to
2 certain conservation restrictions that materially detract from a specific conservation purpose or
3 preservation value, to find that the proposed amendment creates a net gain in the overall
4 conservation or preservation purpose, is consistent with the purposes expressed by the parties in
5 the restriction, and is in the public interest.
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6 This act would take effect upon passage.

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