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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

A N A C T

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

Introduced By: Senator V. Susan Sosnowski

Date Introduced: April 12, 2011

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 34-39-3 and 34-39-5 of the General Laws in Chapter 34-39
2 entitled "Conservation and Preservation Restrictions on Real Property" are hereby amended to
3 read as follows:

4 **34-39-3. Restrictions enforceable.** -- (a) No conservation restriction held by any
5 governmental body or by a charitable corporation, association, trust, or other entity whose
6 purposes include conservation of land or water areas or of a particular area, and no preservation
7 restriction held by any governmental body or by a charitable corporation, association, trust, or
8 other entity whose purposes include preservation of structures or sites of historical significance or
9 of a particular structure or site, shall be unenforceable against any owner of the restricted land or
10 structure on account of lack of privity of estate or contract, or lack of benefit to particular land, or
11 on account of the benefit being assignable or being assigned to any other governmental body or to
12 any entity with like purposes, or on account of any other doctrine of property law which might
13 cause the termination of the restriction [such as, but not limited to, the doctrine of merger and tax](#)
14 [delinquency.](#)

15 (b) This section shall not be construed to imply that any restriction easement, covenant,
16 or condition which is not covered hereunder shall, on account of any provisions hereof, be
17 unenforceable.

18 (c) The restrictions shall not be subject to the thirty year limitation on restrictive

1 covenants provided in section 34-4-21.

2 (d) The attorney general, pursuant to his or her inherent authority, may bring an action in
3 the superior court to enforce the public interest in such restrictions.

4 (e) The court in any judicial proceeding, or the decision maker in any arbitration or other
5 alternative dispute resolution proceeding, in addition to any other relief ordered, may award the
6 prevailing party, reasonable attorneys' fees and costs incurred in the action or proceeding.

7 **34-39-5. Release of restriction.** -- (a) Subject to the express terms of a conservation or
8 preservation restriction, a restriction held by the state may be released in the same manner as land
9 held by the state may be sold under chapter 7 of title 37, a restriction held by cities and towns
10 may be released in the same manner as land held by cities and towns may be sold under section
11 45-2-5, and a restriction held by any other governmental body may be released in accordance
12 with applicable statutes, regulations, and procedures.

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

16 (c) A conservation or preservation restriction may not be terminated or amended in such a
17 manner as to materially detract from the conservation or preservation values intended for
18 protection, without the prior approval of the court in an action in which the attorney general has
19 been made a party. Termination or amendment that materially detracts from the conservation or
20 preservation values intended for protection may be approved only when it is found by the court
21 that the conservation or preservation restriction, or the provision proposed to be amended, as the
22 case may be, does not serve the public interest or publicly beneficial conservation or preservation
23 purpose, taking into account, among other things, the purposes expressed by the parties in the
24 restriction. No such approval may be sought except with the consent of the holder. If the value of
25 the landowner's estate is increased by reason of the amendment or termination of a conservation
26 or preservation restriction, that increase shall be paid over to the holder, or to such non-profit or
27 governmental entity as the court may designate, to be used for the protection of conservation
28 lands or historic resources consistent, as nearly possible, with the stated publicly beneficial
29 conservation or preservation purposes of the restriction.

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

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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1 This act would clarify the merger of conservation and preservation easements. This act
2 would also provide for judicial review in cases where conservation and preservation easements
3 are terminated or significantly amended.

4 This act would take effect upon passage.

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