
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 788

Session of
1999

INTRODUCED BY BUNT, GLADECK, CURRY, DRUCE, FICHTER, FREEMAN,
GODSHALL, HARHAI, HERMAN, KREBS, MAITLAND, McCALL, MCGILL,
McILHINNEY, NICKOL, ORIE, RUBLEY, SAYLOR, SEMMEL, SEYFERT,
STERN, TRELLO, BENNINGHOFF, CORNELL, STEVENSON, E. Z. TAYLOR,
BARD, WILLIAMS, B. SMITH, BROWNE, STEIL, HENNESSEY, CIVERA,
STEELMAN, HERSHEY, CLYMER, ROSS, RAMOS, SCHRODER, DeWEESE,
CAPPABIANCA, M. COHEN, GEORGE, GRUCELA AND L. I. COHEN,
MARCH 9, 1999

SENATOR WHITE, ENVIRONMENTAL RESOURCES AND ENERGY, IN SENATE, AS
AMENDED, NOVEMBER 14, 2000

AN ACT

1 Providing for the creation, conveyance, acceptance, duration and
2 validity of conservation and preservation easements; and
3 providing for judicial actions.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the Conservation
8 and Preservation Easements Act.

9 Section 2. Purpose of act.

10 The General Assembly recognizes the importance and
11 significant public benefit of conservation and preservation
12 easements in its ongoing efforts to protect the natural,
13 historic, agricultural, open-space and scenic resources of this
14 Commonwealth.

1 Section 3. Definitions.

2 The following words and phrases when used in this act shall
3 have the meanings given to them in this section unless the
4 context clearly indicates otherwise:

5 "Conservation easement." A nonpossessory interest of a
6 holder in real property, whether appurtenant or in gross,
7 imposing limitations or affirmative obligations, the purposes of
8 which include, but are not limited to, retaining or protecting
9 for the public benefit the natural, scenic or open-space values
10 of real property; assuring its availability for agricultural,
11 forest, recreational or open-space use; protecting natural
12 resources and wildlife; maintaining or enhancing land, air or
13 water quality or preserving the historical, architectural,
14 archaeological or cultural aspects of real property.

15 "Holder." The term means the following:

16 (1) A governmental body empowered to hold an interest in
17 real property under the laws of the United States or this
18 Commonwealth.

19 (2) A charitable corporation, charitable association or
20 charitable trust registered with the Bureau of Charitable
21 Organizations of the Department of State and exempt from
22 taxation pursuant to section 501(c)(3) of the Internal
23 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §
24 501(c)(3)), or other Federal or Commonwealth statutes or
25 regulations, the purposes or powers of which include
26 retaining or protecting the natural, scenic, agricultural or
27 open-space values of real property; assuring the availability
28 of real property for agricultural, forest, recreational or
29 open-space use; protecting natural resources and wildlife;
30 maintaining or enhancing land, air or water quality or

preserving the historical, architectural, archaeological or cultural aspects of real property.

"Preservation easement." A nonpossessory interest in a historical building.

"Successive holder." A holder who is not the original holder and who acquired its interest in a conservation or preservation easement by assignment or transfer.

"Third-party right of enforcement." A right to enforce the terms of a conservation or preservation easement granted to a governmental body, charitable corporation, charitable association or charitable trust, which, although eligible to be a holder, is not a holder.

Section 4. Creation, transfer and duration.

(a) Creating an easement.--Except as otherwise provided in this act, a conservation or preservation easement may be created, conveyed, recorded, assigned, released, modified, terminated or otherwise altered or affected in the same manner as other easements.

(b) Scope.--A conservation easement may encompass an entire fee simple interest in a parcel of real property as described in the deed to the property, or any portion thereof or estate therein. Except when referencing an easement's boundary using setback descriptions from existing deed boundaries or natural or artificial features, such as streams, rivers or railroad rights-of-way, a metes and bounds description of the portion of property subject to the easement shall be provided in the easement document.

(c) Acceptance.--No right or duty of a holder, successive holder named in the conservation or preservation easement or person having a third-party right of enforcement may arise under

1 a conservation or preservation easement before the acceptance of
2 the easement by the holder, successive holder or third party
3 with right of enforcement and recordation of the acceptance.

4 (d) Duration.--Except as provided in section 5(c), a
5 conservation or preservation easement created after the
6 effective date of this act may be perpetual in duration but in
7 no event shall be for a duration of less than 25 years. To the
8 extent the easement is in gross, the easement shall be
9 transferred to a willing successive holder, should the original
10 holder or the original holder or successive holder be dissolved
11 or otherwise cease to exist, in order to accomplish the goal of
12 the easement. If a willing successive holder cannot be
13 identified, the municipality in which the easement is located
14 shall automatically become the successive holder for perpetuity
15 or the remaining term of the easement. Upon expiration of the
16 easement, the holder shall terminate the easement by recording a
17 written document in the same office of recorder of deeds where
18 the easement was first recorded.

19 (e) Existing interests.--An interest in real property in
20 existence at the time a conservation or preservation easement is
21 created, including ~~prior unrecorded easements intended to~~ <—
22 ~~provide services of a public utility nature, and~~ operating
23 rights and easements appurtenant to real property contiguous to
24 real property burdened by the easement which are of record or
25 which arise by operation of law, may not be impaired unless the
26 owner of the interest is a party to the easement or consents in
27 writing to comply with the restrictions of such easement.

28 Section 5. Judicial and related actions.

29 (a) Persons who have standing.--A legal or equitable action
30 affecting a conservation or preservation easement may only be

1 brought by any of the following:

2 (1) An owner of the real property burdened by the
3 easement.

4 (2) A person that holds an estate in the real property
5 burdened by the easement.

6 (3) A person that has any interest or right in the real
7 property burdened by the easement.

8 (4) A holder of the easement.

9 (5) A person having a third-party right of enforcement.

10 (6) A person otherwise authorized by Federal or State
11 law.

12 (7) The owner of ~~an~~ A COAL interest in property <—
13 contiguous to the property burdened by the easement or of
14 coal interests which have been severed from the ownership of
15 the property burdened by the easement.

16 (b) Limitation on actions.--No action may be brought for
17 activities occurring outside the boundaries of a conservation or
18 preservation easement except in circumstances where such
19 activities have or pose a substantial threat of direct,
20 physically identifiable effects within the boundaries of the
21 easement.

22 (c) Authority of courts.--

23 (1) This act shall not affect the power of a court to
24 modify or terminate a conservation or preservation easement
25 in accordance with the principles of law and equity
26 consistent with the public policy of this act as stated under
27 section 2 when the easement is broadly construed to effect
28 that policy.

29 (2) Any general rule of construction to the contrary
30 notwithstanding, conservation or preservation easements shall

1 be liberally construed in favor of the grants contained
2 therein to effect the purposes of those easements and the
3 policy and purpose of this act.

4 (d) Eminent domain right preserved.--

5 (1) Nothing in this act shall be construed either:

6 (i) to limit the lawful exercise of the right of
7 eminent domain or the power of condemnation by any person
8 or entity having such power over real property subject to
9 a conservation or preservation easement by any person or
10 entity having legal authority to do so, or in lieu
11 thereof; or

12 (ii) to limit the right of such person or entity to
13 purchase rights for its public purposes over real
14 property subject to a conservation or preservation
15 easement without resort to condemnation.

16 (2) In the event of exercise of eminent domain, nothing
17 in this act shall be construed so as to restrict any right to
18 compensation a holder of a conservation or preservation
19 easement may have under applicable law.

20 (e) Just compensation.--A court order issued under
21 subsection (d) shall provide for the holder of the easement to
22 be compensated in accordance with the applicable provisions of
23 the conservation or preservation easement which specify a
24 particular allocation of damages and, in the absence of such a
25 provision, for the fair market value of the easement. Nothing in
26 this act shall be construed to prevent a purchase agreement in
27 lieu of condemnation as a means of settling such claims by
28 providing either the specifically allocated damages or the fair
29 market value to the holder of the easement. The net proceeds of
30 the condemnation received by the holder shall be applied in

1 furtherance of the public benefit in accordance with its charter
2 or articles of incorporation. The court in adjudicating damages
3 to a conservation or preservation easement shall be guided by
4 principles generally applicable to condemnation proceedings.

5 Section 6. Validity.

6 A conservation or preservation easement is valid even though:

7 (1) it is not appurtenant to an interest in real
8 property;

9 (2) it can be or has been assigned to another holder;

10 (3) it is not of a character that has been recognized
11 traditionally at common law;

12 (4) it imposes a negative burden;

13 (5) it imposes affirmative obligations upon the owner of
14 an interest in the burdened property or upon the holder;

15 (6) the benefit does not touch or concern real property;

16 (7) there is no privity of estate or of contract; or

17 (8) the holder is or becomes the owner in fee of the
18 subject property.

19 Section 7. Applicability.

20 (a) Interests created after effective date.--This act shall
21 apply to any interest created after the effective date of this
22 act which complies with this act, whether designated as a
23 conservation or preservation easement or as a covenant,
24 equitable servitude, restriction, easement or otherwise.

25 (b) Interests created before effective date.--This act shall
26 apply to any interest created before the effective date of this
27 act when the interest would have been enforceable had it been
28 created after the effective date of this act, and has been
29 recorded or, if not previously recorded, is recorded or
30 otherwise placed of record within 180 days of the effective date

1 of this act unless retroactive application contravenes the
2 Constitution of the United States or laws of the United States
3 or of this Commonwealth.

4 (c) Enforceable interests not invalidated.--This act does
5 not invalidate any interest, whether designated as a
6 conservation or preservation easement or as a covenant,
7 equitable servitude, restriction, easement or otherwise,
8 enforceable under another law of this Commonwealth or the common
9 law.

10 (d) Agricultural Area Security Law.--Notwithstanding any
11 other provision of this act, nothing contained in this act shall
12 be construed as altering, modifying or superseding either the
13 method of creating agricultural conservation easements or the
14 rights, duties, powers and obligations appurtenant to these
15 easements under the act of June 30, 1981 (P.L.128, No.43), known
16 as the Agricultural Area Security Law.

17 Section 8. Uniformity of application and construction.

18 This act shall be applied and construed to effectuate its
19 general purpose to make uniform the laws with respect to the
20 subject of this act among states enacting similar laws. Except
21 as expressly otherwise provided in this act, nothing in this act
22 is intended to be construed to alter applicable established
23 common law. In a manner consistent with common law, the granting
24 of a conservation or preservation easement shall not in any way
25 restrict the right of the fee owner to grant any other interest
26 to any person or entity for any purpose in the real property,
27 provided, however, that the holder of a conservation or
28 preservation easement shall be given 30 days' written notice
29 prior to execution of the subsequent interest in real property.

30 Section 9. Coal interests not affected and notice of mineral

1 interests required.

2 (a) Coal rights preserved.--Nothing in this act limits,
3 expands, modifies or preempts the rights, powers, duties and
4 liabilities of operators or other persons under the act of May
5 31, 1945 (P.L.1198, No.418), known as the Surface Mining
6 Conservation and Reclamation Act, or the act of April 27, 1966
7 (1st Sp.Sess., P.L.31, No.1), known as The Bituminous Mine
8 Subsidence and Land Conservation Act. This act does not limit or
9 restrict any coal mining activity which was permitted or for
10 which an application for permit was filed prior to the recording
11 of a conservation easement under this act.

12 (b) Prohibited action.--The existence of a conservation
13 easement on contiguous property may not serve as the sole
14 grounds for designation of areas unsuitable for mining pursuant
15 to section 4.5 of the Surface Mining Conservation and
16 Reclamation Act.

17 (c) Easements of necessity.--Nothing in this act shall be
18 construed to limit the exercise of rights created by easements
19 of necessity or inherent in the ownership of property contiguous
20 to the property burdened by the easement or of coal interests
21 which have been severed from the ownership of the property
22 burdened by the easement.

23 (d) Notice of coal interests.--A conservation easement
24 affecting real property containing workable coal seams or from
25 which an interest in coal has been severed may not be recorded
26 or effective unless the grantor or donor of the easement signs a
27 statement printed on the instrument creating the conservation
28 easement stating that the easement may impair the development of
29 such coal interest. This statement must be printed in no less
30 than 12-point type and must be preceded by the word "Notice"

- 1 printed in no less than 24-point type.
- 2 Section 10. Effective date.
- 3 This act shall take effect immediately.