

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 975 Session of
2001

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GABIG, MARCH 13, 2001

AS RE-REPORTED FROM COMMITTEE ON APPROPRIATIONS, HOUSE OF
REPRESENTATIVES, AS AMENDED, MAY 7, 2001

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,

1 historic, agricultural, open-space and scenic resources of this
2 Commonwealth.

3 Section 3. Definitions.

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

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

17 "Holder." The term means the following:

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

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

1 open-space use; protecting natural resources and wildlife;
2 maintaining or enhancing land, air or water quality or
3 preserving the historical, architectural, archaeological or
4 cultural aspects of real property.

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

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

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

15 Section 4. Creation, transfer and duration.

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

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

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

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

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

Section 5. Judicial and related actions.

1 (a) Persons who have standing.--A legal or equitable action
2 affecting a conservation or preservation easement may only be
3 brought by any of the following:

4 (1) An owner of the real property burdened by the
5 easement.

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

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

10 (4) A holder of the easement.

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

12 (6) A person otherwise authorized by Federal or State
13 law.

14 (7) The owner of a coal interest in property contiguous
15 to the property burdened by the easement or of coal interests
16 which have been severed from the ownership of the property
17 burdened by the easement.

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

24 (c) Authority of courts.--

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

1 (2) Any general rule of construction to the contrary
2 notwithstanding, conservation or preservation easements shall
3 be liberally construed in favor of the grants contained
4 therein to effect the purposes of those easements and the
5 policy and purpose of this act.

6 (d) Eminent domain right preserved.--

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

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

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

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

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

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

7 Section 6. Validity.

8 A conservation or preservation easement is valid even though:

9 (1) it is not appurtenant to an interest in real
10 property;

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

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

14 (4) it imposes a negative burden;

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

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

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

19 (8) the holder is or becomes the owner in fee of the
20 subject property.

21 Section 7. Applicability.

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

27 (b) Interests created before effective date.--This act shall
28 apply to any interest created before the effective date of this
29 act when the interest would have been enforceable had it been
30 created after the effective date of this act, and has been

1 recorded or, if not previously recorded, is recorded or
2 otherwise placed of record within 180 days of the effective date
3 of this act unless retroactive application contravenes the
4 Constitution of the United States or laws of the United States
5 or of this Commonwealth.

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

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

19 Section 8. Uniformity of application and construction.

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

1 ~~prior to execution of the subsequent interest in real property.~~

2 OR SUPERSEDE APPLICABLE LAW PERTAINING TO THE CREATION, <—
3 PERFECTION, PRIORITY OR ENFORCEABILITY OF INSTRUMENTS, AFFECTING
4 REAL ESTATE, INCLUDING CONSERVATION OR PRESERVATION EASEMENTS.
5 THE OWNER OF REAL PROPERTY WHICH IS SUBJECT TO A CONSERVATION OR
6 PRESERVATION EASEMENT RETAINS THE RIGHT TO TRANSFER, ENCUMBER OR
7 OTHERWISE ALIENATE THE REAL PROPERTY, SUBJECT TO APPLICABLE
8 LIMITATIONS, INCLUDING ANY PROVISION REQUIRING NOTICE TO THE
9 HOLDER, CONTAINED IN THE CONSERVATION OR PRESERVATION EASEMENT.

10 Section 9. Coal interests not affected and notice of mineral
11 interests required.

12 (a) Coal rights preserved.--Nothing in this act limits,
13 expands, modifies or preempts the rights, powers, duties and
14 liabilities of operators or other persons under the act of May
15 31, 1945 (P.L.1198, No.418), known as the Surface Mining
16 Conservation and Reclamation Act, or the act of April 27, 1966
17 (1st Sp.Sess., P.L.31, No.1), known as The Bituminous Mine
18 Subsidence and Land Conservation Act. This act does not limit or
19 restrict any coal mining activity which was permitted or for
20 which an application for permit was filed prior to the recording
21 of a conservation easement under this act.

22 (b) Prohibited action.--The existence of a conservation
23 easement on contiguous property may not serve as the sole
24 grounds for designation of areas unsuitable for mining pursuant
25 to section 4.5 of the Surface Mining Conservation and
26 Reclamation Act.

27 (c) Easements of necessity.--Nothing in this act shall be
28 construed to limit the exercise of rights created by easements
29 of necessity or inherent in the ownership of property contiguous
30 to the property burdened by the easement or of coal interests

1 which have been severed from the ownership of the property
2 burdened by the easement.

3 (d) Notice of coal interests.--A conservation easement
4 affecting real property containing workable coal seams or from
5 which an interest in coal has been severed may not be recorded
6 or effective unless the grantor or donor of the easement signs a
7 statement printed on the instrument creating the conservation
8 easement stating that the easement may impair the development of
9 such coal interest. This statement must be printed in no less
10 than 12-point type and must be preceded by the word "Notice"
11 printed in no less than 24-point type.

12 Section 10. Effective date.

13 This act shall take effect immediately.