

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1260 Session of
1989

INTRODUCED BY SHAFFER, LINCOLN, JONES, GREENWOOD, BELAN,
AFFLERBACH, JUBELIRER, HELFRICK, HOLL, DAWIDA AND ANDREZESKI,
OCTOBER 2, 1989

REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY, OCTOBER 2, 1989

AN ACT

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

4 The General Assembly, recognizing the importance of
5 conservation easements in the effort to protect the natural and
6 historic resources of this Commonwealth, hereby adopts the
7 Uniform Conservation Easement Act.

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 Section 1. Short title.

11 This act shall be known and may be cited as the Uniform
12 Conservation Easement Act.

13 Section 2. Definitions.

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

17 "Conservation easement." A nonpossessory interest of a
18 holder in real property imposing limitations or affirmative

1 obligations, the purposes of which include retaining or
2 protecting natural, scenic or open-space values of real
3 property, assuring its availability for agricultural, forest,
4 recreational or open-space use, protecting natural resources,
5 maintaining or enhancing air or water quality, or preserving the
6 historical, architectural, archaeological or cultural aspects of
7 real property.

8 "Holder." The term includes the following:

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

12 (2) A charitable corporation, charitable association or
13 charitable trust registered with the Bureau on Charitable
14 Organizations in the Department of State and exempt from
15 taxation pursuant to section 501(c)(3) of the Internal
16 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §
17 501(c)(3)), the purposes or powers of which include retaining
18 or protecting the natural, scenic or open-space values of
19 real property, assuring the availability of real property for
20 agricultural, forest, recreational or open-space use,
21 protecting natural resources, maintaining or enhancing air or
22 water quality, or preserving the historical, architectural,
23 archaeological or cultural aspects of real property.

24 "Third-party right of enforcement." A right provided in a
25 conservation easement, in order to enforce any of its terms,
26 granted to a governmental body, charitable corporation,
27 charitable association or charitable trust, which, although
28 eligible to be a holder, is not a holder.

29 Section 3. Creation, conveyance, acceptance and duration.

30 (a) Creation, conveyance, etc.--Except as otherwise provided

1 in this act, a conservation easement may be created, conveyed,
2 recorded, assigned, released, modified, terminated or otherwise
3 altered or affected in the same manner as other easements.

4 (b) Acceptance.--No right or duty in favor of or against a
5 holder and no right in favor of a person having a third-party
6 right of enforcement arises under a conservation easement before
7 its acceptance by the holder and a recordation of the
8 acceptance.

9 (c) Duration.--Except as provided in section 4(b), a
10 conservation easement is unlimited in duration unless the
11 instrument creating it otherwise provides.

12 (d) Existing interests.--An interest in real property in
13 existence at the time a conservation easement is created is not
14 impaired by it unless the owner of the interest is a party to
15 the conservation easement or consents to it.

16 (e) Tax exempt.--Upon recordation of a conservation easement
17 in perpetuity, and upon compliance with the notification
18 provisions contained in subsection (f), and where a governmental
19 unit is the holder, the designated successor to the holder, or
20 has a third-party right of enforcement, neither the interest of
21 the holder of an easement nor a third party right of enforcement
22 of such an easement shall be subject to State or local taxation
23 nor shall the owner of the fee be taxed for the interest of the
24 holder.

25 (f) Notice.--After the effective date of this act, whenever
26 any instrument conveying a perpetual conservation easement is
27 recorded, the holder shall provide written notice, by certified
28 mail, of all recording data along with a true and correct copy
29 of the conservation easement recorded and shall provide these to
30 the county assessment office in the county of the situs of the

1 easement, and shall provide this information to the local
2 municipality having taxing authority concerning the land subject
3 to the conservation easement. The holder shall provide proof of
4 service to the Bureau of State Parks in the Department of
5 Environmental Resources indicating compliance with this section
6 and shall provide the Department of Environmental Resources with
7 a true and correct copy of the recorded conservation easement.

8 (g) Inventory.--The Bureau of State Parks in the Department
9 of Environmental Resources shall maintain a comprehensive
10 inventory of all in perpetuity conservation easements which are
11 registered with it.

12 Section 4. Judicial actions.

13 (a) General rule.--An action affecting a conservation
14 easement may be brought by any of the following:

- 15 (1) An owner of an interest in the real property
16 burdened by the easement.
- 17 (2) A holder of the easement.
- 18 (3) A person having a third-party right of enforcement.
- 19 (4) A person authorized by another law.

20 (b) Power of court.--This act does not affect the power of a
21 court to modify or terminate a conservation easement in
22 accordance with the principles of law and equity.

23 Section 5. Validity.

24 A conservation easement is valid even though:

- 25 (1) it is not appurtenant to an interest in real
26 property;
- 27 (2) it can be or has been assigned to another holder;
- 28 (3) it is not of a character that has been recognized
29 traditionally at common law;
- 30 (4) it imposes a negative burden;

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

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

5 (7) there is no privity of estate or of contract.

6 Section 6. Applicability.

7 (a) Interests created after effective date.--This act shall
8 apply to any interest created after its effective date which
9 complies with this act, whether designated as a conservation
10 easement or as a covenant, equitable servitude, restriction,
11 easement or otherwise.

12 (b) Interests created before effective date.--This act shall
13 apply to any interest created before its effective date if the
14 interest would have been enforceable had it been created after
15 its effective date, unless retroactive application contravenes
16 the constitution or laws of this Commonwealth or of the United
17 States.

18 (c) Enforceable interests not invalidated.--This act does
19 not invalidate any interest, whether designated as a
20 conservation or preservation easement or as a covenant,
21 equitable servitude, restriction, easement or otherwise, that is
22 enforceable under another law of this Commonwealth.

23 (d) Agricultural Area Security Law.--Notwithstanding any
24 other provision of this act, nothing contained herein shall be
25 construed as altering, modifying or superseding either the
26 method of creating agricultural conservation easements or the
27 rights, duties, powers and obligations appurtenant thereto under
28 the act of June 30, 1981 (P.L.128, No.43), known as the
29 Agricultural Area Security Law.

30 Section 7. Uniformity of application and construction.

1 This act shall be applied and construed to effectuate its
2 general purpose to make uniform the laws with respect to the
3 subject of this act among states enacting it.

4 Section 8. Effective date.

5 This act shall take effect in 60 days.