

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2148 Session of 2019

INTRODUCED BY CAUSER, DIAMOND, FEE, GABLER, HERSHEY, IRVIN,
 JAMES, JOZWIAK, KLUNK, LAWRENCE, MILLARD, MOUL, OBERLANDER,
 OWLETT, PICKETT, RAPP, SANKEY, SAYLOR, SCHMITT, WENTLING AND
 ZIMMERMAN, DECEMBER 18, 2019

REFERRED TO COMMITTEE ON AGRICULTURE AND RURAL AFFAIRS,
 DECEMBER 18, 2019

AN ACT

1 Amending the act of June 22, 2001 (P.L.390, No.29), entitled "An
 2 act providing for the creation, conveyance, acceptance,
 3 duration and validity of conservation and preservation
 4 easements; and providing for judicial actions," further
 5 providing for purpose of act, for definitions, for creation,
 6 transfer and duration; providing for forest conservation
 7 easements; and further providing for judicial and related
 8 actions, for validity, for applicability, for uniformity of
 9 application and construction and for coal interests not
 10 affected and notice of mineral interests required.

11 The General Assembly of the Commonwealth of Pennsylvania
 12 hereby enacts as follows:

13 Section 1. Sections 2, 3 and 4 of the act of June 22, 2001
 14 (P.L.390, No.29), known as the Conservation and Preservation
 15 Easements Act, are amended to read:

16 Section 2. Purpose of act.

17 The General Assembly recognizes the importance and
 18 significant public and economic benefit of conservation
 19 easements, forest conservation easements and preservation
 20 easements in its ongoing efforts to protect, conserve or manage

1 the use of the natural, historic, agricultural, forest, open
2 space and scenic resources of this 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 and economic benefit the natural, scenic or open
12 space values of real property; assuring its availability for
13 agricultural, [forest,] recreational or open space use;
14 protecting, conserving or managing the use of natural resources;
15 protecting wildlife; maintaining or enhancing land, air or water
16 quality or preserving the historical, architectural,
17 archaeological or cultural aspects of real property.

18 "Forest conservation easement." A nonpossessory interest of
19 a holder in real property, appurtenant or in gross, imposing
20 limitations or affirmative obligations, the purposes of which
21 are to retain and protect the real property's availability for
22 sustainable forest and timbering use.

23 "Hardwoods Development Council." The council established
24 under the act of October 21, 1988 (P.L.1036, No.116), known as
25 the Hardwoods Development Council Act.

26 "Holder." The term means the following:

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

30 (2) A charitable corporation, charitable association or

1 charitable trust registered with the Bureau of Charitable
2 Organizations of the Department of State and exempt from
3 taxation pursuant to section 501(c)(3) of the Internal
4 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)
5 (3)) or other Federal or Commonwealth statutes or
6 regulations, the purposes or powers of which include
7 retaining or protecting the natural, scenic, agricultural or
8 open space values of real property; assuring the availability
9 of real property for agricultural, forest, recreational or
10 open space use; protecting, conserving or managing the use of
11 natural resources; protecting wildlife; maintaining or
12 enhancing land, air or water quality or preserving the
13 historical, architectural, archaeological or cultural aspects
14 of real property.

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

17 "Successive holder." A holder who is not the original holder
18 and who acquired its interest in a conservation easement, forest
19 conservation easement or preservation easement by assignment or
20 transfer.

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

26 Section 4. Creation, transfer and duration.

27 (a) Creating an easement.--Except as otherwise provided in
28 this act, a conservation easement, forest conservation easement
29 or preservation easement may be created, conveyed, recorded,
30 assigned, released, modified, terminated or otherwise altered or

1 affected in the same manner as other easements.

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

11 (c) Acceptance.--No right or duty of a holder, successive
12 holder named in the conservation easement, forest conservation
13 easement or preservation easement or person having a third-party
14 right of enforcement may arise under a conservation easement,
15 forest conservation easement or preservation easement before the
16 acceptance of the easement by the holder, successive holder or
17 third party with right of enforcement and recordation of the
18 acceptance.

19 (d) Duration.--Except as provided in section 5(c), a
20 conservation easement, forest conservation easement or
21 preservation easement created after the effective date of this
22 act may be perpetual in duration but in no event shall be for a
23 duration of less than 25 years. To the extent the easement is in
24 gross, the easement shall be transferred to a willing successive
25 holder, should the original holder or successive holder be
26 dissolved or otherwise cease to exist, in order to accomplish
27 the goal of the easement. If a willing successive holder cannot
28 be identified, the municipality in which the easement is located
29 shall automatically become the successive holder for perpetuity
30 or the remaining term of the easement. Upon expiration of the

1 easement, the holder shall terminate the easement by recording a
2 written document in the same office of recorder of deeds where
3 the easement was first recorded.

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

14 Section 2. The act is amended by adding a section to read:
15 Section 4.1. Forest conservation easements.

16 (a) Creation.--A forest conservation easement that is
17 created using funding provided by Federal, State or local
18 government, even if that funding is transferred or made
19 available to a holder, shall be subject to the following terms,
20 conditions, restrictions and limitations:

21 (1) The term of a forest conservation easement shall be
22 perpetual.

23 (2) A forest conservation easement shall be available to
24 the public for outdoor recreational activities, such as
25 snowmobiling, ATV use, public hunting, hiking, camping,
26 picknicking, fishing, swimming and boating.

27 (3) Instruments and documents for the purchase, sale and
28 conveyance of a forest conservation easement shall be
29 approved by the Hardwoods Development Council prior to
30 execution and delivery. Proper releases from mortgage holders

1 and lienholders must be obtained and executed to ensure that
2 forest conservation easements are purchased free and clear of
3 all encumbrances.

4 (4) The Hardwoods Development Council shall require the
5 following information when reviewing forest conservation
6 easements:

7 (i) A description of the scope of the forest
8 conservation easement under section 4(b).

9 (ii) The owner of real property burdened by the
10 forest conservation easement.

11 (iii) Persons who hold an estate or interest or
12 right in the real property burdened by the forest
13 conservation easement.

14 (iv) The holder of the forest conservation easement.

15 (v) A person having a third-party right of
16 enforcement in the forest conservation easement.

17 (vi) All sources of funding to purchase the forest
18 conservation easement.

19 (vii) The amount of funding used to purchase the
20 forest conservation easement.

21 (viii) The nature of compliance with paragraph (2).

22 (ix) Evidence of application of and compliance with
23 a sustainable forest management plan developed by a
24 consulting forester.

25 (x) Evidence of notification to officials in
26 counties and municipalities where the real property
27 subject to a forest conservation easement is situated
28 that a forest conservation easement is proposed.

29 (xi) Any other information the Hardwoods Development
30 Council deems necessary to review the forest conservation

1 easement for approval.

2 (5) The Hardwoods Development Council shall transmit
3 notice to the Legislative Reference Bureau for publication in
4 the Pennsylvania Bulletin of the instruments and documents
5 for the purchase, sale and conveyance of a forest
6 conservation easement and provide for a minimum of a 30-day
7 public comment period prior to approving a forest
8 conservation easement.

9 (b) Limitation.--If the real property subject to a forest
10 conservation easement under this section is conveyed to the
11 Commonwealth or an instrumentality of the Commonwealth, the
12 conveyance shall be approved by the General Assembly.

13 Section 3. Sections 5, 6, 7, 8 and 9 of the act are amended
14 to read:

15 Section 5. Judicial and related actions.

16 (a) Persons who have standing.--A legal or equitable action
17 affecting a conservation easement, forest conservation easement
18 or preservation easement may only be brought by any of the
19 following:

20 (1) An owner of the real property burdened by the
21 easement.

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

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

26 (4) A holder of the easement.

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

28 (6) A person otherwise authorized by Federal or State
29 law.

30 (7) The owner of a coal interest in property contiguous

1 to the property burdened by the easement or of coal interests
2 which have been severed from the ownership of the property
3 burdened by the easement.

4 (b) Limitation on actions.--No action may be brought for
5 activities occurring outside the boundaries of a conservation
6 easement, forest conservation easement or preservation easement
7 except in circumstances where such activities have or pose a
8 substantial threat of direct, physically identifiable harm
9 within the boundaries of the easement.

10 (c) Authority of courts.--

11 (1) This act shall not affect the power of a court to
12 modify or terminate a conservation easement, forest
13 conservation easement or preservation easement in accordance
14 with the principles of law and equity consistent with the
15 public policy of this act as stated under section 2 when the
16 easement is broadly construed to effect that policy.

17 (2) Any general rule of construction to the contrary
18 notwithstanding, conservation easements, forest conservation
19 easements or preservation easements shall be liberally
20 construed in favor of the grants contained therein to effect
21 the purposes of those easements and the policy and purpose of
22 this act.

23 (d) Eminent domain right preserved.--

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

25 (i) to limit the lawful exercise of the right of
26 eminent domain or the power of condemnation by any person
27 or entity having such power over real property subject to
28 a conservation easement, forest conservation easement or
29 preservation easement by any person or entity having
30 legal authority to do so or in lieu thereof; or

1 (ii) to limit the right of such person or entity to
2 purchase rights for its public purposes over real
3 property subject to a conservation easement, forest
4 conservation easement or preservation easement without
5 resort to condemnation.

6 (2) In the event of exercise of eminent domain, nothing
7 in this act shall be construed so as to restrict any right to
8 compensation a holder of a conservation easement, forest
9 conservation easement or preservation easement may have under
10 applicable law.

11 (e) Just compensation.--A court order issued under
12 subsection (d) shall provide for the holder of the easement to
13 be compensated in accordance with the applicable provisions of
14 the conservation easement, forest conservation easement or
15 preservation easement which specify a particular allocation of
16 damages and, in the absence of such a provision, for the fair
17 market value of the easement. Nothing in this act shall be
18 construed to prevent a purchase agreement in lieu of
19 condemnation as a means of settling such claims by providing
20 either the specifically allocated damages or the fair market
21 value to the holder of the easement. The net proceeds of the
22 condemnation received by the holder shall be applied in
23 furtherance of the public benefit in accordance with its charter
24 or articles of incorporation. The court in adjudicating damages
25 to a conservation easement, forest conservation easement or
26 preservation easement shall be guided by principles generally
27 applicable to condemnation proceedings.

28 Section 6. Validity.

29 A conservation easement, forest conservation easement or
30 preservation easement is valid even though:

- 1 (1) it is not appurtenant to an interest in real
- 2 property;
- 3 (2) it can be or has been assigned to another holder;
- 4 (3) it is not of a character that has been recognized
- 5 traditionally at common law;
- 6 (4) it imposes a negative burden;
- 7 (5) it imposes affirmative obligations upon the owner of
- 8 an interest in the burdened property or upon the holder;
- 9 (6) the benefit does not touch or concern real property;
- 10 (7) there is no privity of estate or of contract; or
- 11 (8) the holder is or becomes the owner in fee of the
- 12 subject property.

13 Section 7. Applicability.

14 (a) Interests created after effective date.--This act shall
15 apply to any interest created after the effective date of this
16 act which complies with this act, whether designated as a
17 conservation easement, forest conservation easement or
18 preservation easement or as a covenant, equitable servitude,
19 restriction, easement or otherwise.

20 (b) Interests created before effective date.--This act shall
21 apply to any interest created before the effective date of this
22 act when the interest would have been enforceable had it been
23 created after the effective date of this act and has been
24 recorded or, if not previously recorded, is recorded or
25 otherwise placed of record within 180 days of the effective date
26 of this act unless retroactive application contravenes the
27 Constitution of the United States or laws of the United States
28 or of this Commonwealth.

29 (c) Enforceable interests not invalidated.--This act does
30 not invalidate any interest, whether designated as a

1 conservation easement, forest conservation easement or
2 preservation easement or as a covenant, equitable servitude,
3 restriction, easement or otherwise, enforceable under another
4 law of this Commonwealth or the common law.

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

12 Section 8. Uniformity of application and construction.

13 This act shall be applied and construed to effectuate its
14 general purpose to make uniform the laws with respect to the
15 subject of this act among states enacting similar laws. Except
16 as expressly otherwise provided in this act, nothing in this act
17 is intended to be construed to alter or supersede applicable law
18 pertaining to the creation, perfection, priority or
19 enforceability of instruments affecting real estate, including
20 conservation easements, forest conservation easements or
21 preservation easements. The owner of real property which is
22 subject to a conservation easement, forest conservation easement
23 or preservation easement retains the right to transfer, encumber
24 or otherwise alienate the real property, subject to applicable
25 limitations, including any provision requiring notice to the
26 holder, contained in the conservation easement, forest
27 conservation easement or preservation easement.

28 Section 9. Coal interests not affected and notice of mineral
29 interests required.

30 (a) Coal rights preserved.--Nothing in this act limits,

1 expands, modifies or preempts the rights, powers, duties and
2 liabilities of operators or other persons under the act of May
3 31, 1945 (P.L.1198, No.418), known as the Surface Mining
4 Conservation and Reclamation Act, or the act of April 27, 1966
5 (1st Sp.Sess., P.L.31, No.1), known as The Bituminous Mine
6 Subsidence and Land Conservation Act. This act does not limit or
7 restrict any coal mining activity which was permitted or for
8 which an application for permit was filed prior to the recording
9 of a conservation easement or forest conservation easement under
10 this act.

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

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

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

1 the word "Notice" printed in no less than 24-point type.

2 Section 4. This act shall take effect in 60 days.