
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 975 Session of
2001

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GABIG, LEH AND SANTONI, MARCH 13, 2001

AS AMENDED ON SECOND CONSIDERATION, IN SENATE, JUNE 19, 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 AND ECONOMIC benefit of conservation and
12 preservation easements in its ongoing efforts to protect, <—
<—

1 CONSERVE OR MANAGE THE USE OF the natural, historic,
2 agricultural, open-space and scenic resources of this
3 Commonwealth.

4 Section 3. Definitions.

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

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

19 "Holder." The term means the following:

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

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

1 open-space values of real property; assuring the availability
2 of real property for agricultural, forest, recreational or
3 open-space use; protecting ~~natural resources and~~, CONSERVING ←
4 OR MANAGING THE USE OF NATURAL RESOURCES; PROTECTING
5 wildlife; maintaining or enhancing land, air or water quality
6 or preserving the historical, architectural, archaeological
7 or cultural aspects of real property.

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

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

13 "Third-party right of enforcement." A right ~~to enforce the~~ ←
14 ~~terms of a conservation or preservation easement~~ PROVIDED IN A ←
15 CONSERVATION EASEMENT TO ENFORCE ANY OF ITS TERMS, granted to a
16 governmental body, charitable corporation, charitable
17 association or charitable trust, which, although eligible to be
18 a holder, is not a holder.

19 Section 4. Creation, transfer and duration.

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

25 (b) Scope.--A conservation easement may encompass an entire
26 fee simple interest in a parcel of real property as described in
27 the deed to the property, or any portion thereof or estate
28 therein. Except when referencing an easement's boundary using
29 setback descriptions from existing deed boundaries or natural or
30 artificial features, such as streams, rivers or railroad rights-

1 of-way, a metes and bounds description of the portion of
2 property subject to the easement shall be provided in the
3 easement document.

4 (c) Acceptance.--No right or duty of a holder, successive
5 holder named in the conservation or preservation easement or
6 person having a third-party right of enforcement may arise under
7 a conservation or preservation easement before the acceptance of
8 the easement by the holder, successive holder or third party
9 with right of enforcement and recordation of the acceptance.

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

25 (e) Existing interests.--An interest in real property in
26 existence at the time a conservation or preservation easement is
27 created, including easements intended to provide services of a
28 public utility nature, and operating rights and easements
29 appurtenant to real property contiguous to real property
30 burdened by the easement which are of record or which arise by

1 operation of law, may not be impaired unless the owner of the
2 interest is a party to the easement or consents in writing to
3 comply with the restrictions of such easement.

4 Section 5. Judicial and related actions.

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

8 (1) An owner of the real property burdened by the
9 easement.

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

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

14 (4) A holder of the easement.

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

16 (6) A person otherwise authorized by Federal or State
17 law.

18 (7) The owner of a coal interest in 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 (b) Limitation on actions.--No action may be brought for
23 activities occurring outside the boundaries of a conservation or
24 preservation easement except in circumstances where such
25 activities have or pose a substantial threat of direct,
26 physically identifiable ~~effects~~ HARM within the boundaries of ←
27 the easement.

28 (c) Authority of courts.--

29 (1) This act shall not affect the power of a court to
30 modify or terminate a conservation or preservation easement

1 in accordance with the principles of law and equity
2 consistent with the public policy of this act as stated under
3 section 2 when the easement is broadly construed to effect
4 that policy.

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

10 (d) Eminent domain right preserved.--

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

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

18 (ii) to limit the right of such person or entity to
19 purchase rights for its public purposes over real
20 property subject to a conservation or preservation
21 easement without resort to condemnation.

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

26 (e) Just compensation.--A court order issued under
27 subsection (d) shall provide for the holder of the easement to
28 be compensated in accordance with the applicable provisions of
29 the conservation or preservation easement which specify a
30 particular allocation of damages and, in the absence of such a

1 provision, for the fair market value of the easement. Nothing in
2 this act shall be construed to prevent a purchase agreement in
3 lieu of condemnation as a means of settling such claims by
4 providing either the specifically allocated damages or the fair
5 market value to the holder of the easement. The net proceeds of
6 the condemnation received by the holder shall be applied in
7 furtherance of the public benefit in accordance with its charter
8 or articles of incorporation. The court in adjudicating damages
9 to a conservation or preservation easement shall be guided by
10 principles generally applicable to condemnation proceedings.

11 Section 6. Validity.

12 A conservation or preservation easement is valid even though:

- 13 (1) it is not appurtenant to an interest in real
14 property;
- 15 (2) it can be or has been assigned to another holder;
- 16 (3) it is not of a character that has been recognized
17 traditionally at common law;
- 18 (4) it imposes a negative burden;
- 19 (5) it imposes affirmative obligations upon the owner of
20 an interest in the burdened property or upon the holder;
- 21 (6) the benefit does not touch or concern real property;
- 22 (7) there is no privity of estate or of contract; or
- 23 (8) the holder is or becomes the owner in fee of the
24 subject property.

25 Section 7. Applicability.

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

1 (b) Interests created before effective date.--This act shall
2 apply to any interest created before the effective date of this
3 act when the interest would have been enforceable had it been
4 created after the effective date of this act, and has been
5 recorded or, if not previously recorded, is recorded or
6 otherwise placed of record within 180 days of the effective date
7 of this act unless retroactive application contravenes the
8 Constitution of the United States or laws of the United States
9 or of this Commonwealth.

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

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

23 Section 8. Uniformity of application and construction.

24 This act shall be applied and construed to effectuate its
25 general purpose to make uniform the laws with respect to the
26 subject of this act among states enacting similar laws. Except
27 as expressly otherwise provided in this act, nothing in this act
28 is intended to be construed to alter or supersede applicable law
29 pertaining to the creation, perfection, priority or
30 enforceability of instruments, affecting real estate, including

1 conservation or preservation easements. The owner of real
2 property which is subject to a conservation or preservation
3 easement retains the right to transfer, encumber or otherwise
4 alienate the real property, subject to applicable limitations,
5 including any provision requiring notice to the holder,
6 contained in the conservation or preservation easement.

7 Section 9. Coal interests not affected and notice of mineral
8 interests required.

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

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

24 (c) Easements of necessity.--Nothing in this act shall be
25 construed to limit the exercise of rights created by easements
26 of necessity or inherent in the ownership of property contiguous
27 to the property burdened by the easement or of coal interests
28 which have been severed from the ownership of the property
29 burdened by the easement.

30 (d) Notice of coal interests.--A conservation easement

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

9 Section 10. Effective date.

10 This act shall take effect immediately.