

No. 2001-29

AN ACT

HB 975

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

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

Section 1. Short title.

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

Section 2. Purpose of act.

The General Assembly recognizes the importance and significant public and economic benefit of conservation and preservation easements in its ongoing efforts to protect, conserve or manage the use of the natural, historic, agricultural, open space and scenic resources of this Commonwealth.

Section 3. Definitions.

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

“Conservation easement.” A nonpossessory interest of a holder in real property, whether appurtenant or in gross, imposing limitations or affirmative obligations, the purposes of which include, but are not limited to, retaining or protecting for the public and economic benefit the natural, scenic or open space values of real property; assuring its availability for agricultural, forest, recreational or open space use; protecting, conserving or managing the use of natural resources; protecting wildlife; maintaining or enhancing land, air or water quality or preserving the historical, architectural, archaeological or cultural aspects of real property.

“Holder.” The term means the following:

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

(2) A charitable corporation, charitable association or charitable trust registered with the Bureau of Charitable Organizations of the Department of State and exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3)) or other Federal or Commonwealth statutes or regulations, the purposes or powers of which include retaining or protecting the natural, scenic, agricultural or open space values of real property; assuring the availability of real property for agricultural, forest, recreational or open space use; protecting, conserving or managing the use of natural resources; protecting wildlife; 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 provided in a conservation easement to enforce any of its terms, 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 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 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.

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

- (1) An owner of the real property burdened by the easement.
- (2) A person that holds an estate in the real property burdened by the easement.
- (3) A person that has any interest or right in the real property burdened by the easement.
- (4) A holder of the easement.
- (5) A person having a third-party right of enforcement.
- (6) A person otherwise authorized by Federal or State law.
- (7) The owner of a coal interest in property contiguous to the property burdened by the easement or of coal interests which have been severed from the ownership of the property burdened by the easement.

(b) **Limitation on actions.**—No action may be brought for activities occurring outside the boundaries of a conservation or preservation easement except in circumstances where such activities have or pose a substantial threat of direct, physically identifiable harm within the boundaries of the easement.

(c) **Authority of courts.**—

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

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

(d) **Eminent domain right preserved.**—

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

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

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

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

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

Section 6. Validity.

A conservation or preservation easement is valid even though:

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

Section 7. Applicability.

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

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

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

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

Section 8. Uniformity of application and construction.

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

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

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

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

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

(d) **Notice of coal interests.**—A conservation easement affecting real property containing workable coal seams or from which an interest in coal has been severed may not be recorded or effective unless the grantor or donor of the easement signs a statement printed on the instrument creating the conservation easement stating that the easement may impair the development of such coal interest. This statement must be printed in no less

than 12-point type and must be preceded by the word "Notice" printed in no less than 24-point type.

Section 10. Effective date.

This act shall take effect immediately.

APPROVED—The 22nd day of June, A.D. 2001.

THOMAS J. RIDGE