



House of Representatives

General Assembly

File No. 348

January Session, 2001

Substitute House Bill No. 6598

House of Representatives, April 18, 2001

The Committee on Planning and Development reported through REP. DAVIS of the 50th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT ADOPTING THE PROVISIONS OF THE UNIFORM CONSERVATION EASEMENT ACT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) As used in sections 1 to 6, inclusive, of this act,
2 unless the context otherwise requires:

3 (1) "Conservation easement" means a nonpossessory interest of a
4 holder in real property imposing limitations or affirmative obligations
5 the purposes of which include retaining or protecting natural, scenic,
6 or open-space values of real property, assuring its availability for
7 agricultural, forest, recreational or open-space use, protecting natural
8 resources, maintaining or enhancing air or water quality or preserving
9 the historical, architectural, archaeological or cultural aspects of real
10 property.

11 (2) "Holder" means (A) a governmental body empowered to hold an
12 interest in real property under the laws of this state or the United

13 States, or (B) a charitable corporation, charitable association or
14 charitable trust, the purposes or powers of which include retaining or
15 protecting the natural, scenic or open-space values of real property,
16 assuring the availability of real property for agricultural, forest,
17 recreational or open-space use, protecting natural resources,
18 maintaining or enhancing air or water quality or preserving the
19 historical, architectural, archaeological or cultural aspects of real
20 property.

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

25 Sec. 2. (NEW) (a) Except as otherwise provided in sections 1 to 6,
26 inclusive, of this act, a conservation easement may be created,
27 conveyed, recorded, assigned, released, modified, terminated or
28 otherwise altered or affected in the same manner as other easements.

29 (b) No right or duty in favor of or against a holder and no right in
30 favor of a person having a third party right of enforcement arises
31 under a conservation easement before its acceptance by the holder and
32 a recordation of the acceptance.

33 (c) Except as provided in subsection (b) of section 3 of this act, a
34 conservation easement is unlimited in duration unless the instrument
35 creating it otherwise provides.

36 (d) An interest in real property in existence at the time a
37 conservation easement is created is not impaired by such conservation
38 easement unless the owner of the interest is a party to the conservation
39 easement or consents to it.

40 Sec. 3. (NEW) (a) An action affecting a conservation easement may
41 be brought by the following: (1) An owner of an interest in the real

42 property burdened by the easement; (2) a holder of the easement; (3) a
43 person having a third-party right of enforcement; or (4) a person
44 authorized by any other law.

45 (b) The provisions of sections 1 to 6, inclusive, of this act, shall not
46 affect the power of a court to modify or terminate a conservation
47 easement in accordance with the principles of law and equity.

48 Sec. 4. (NEW) A conservation easement is valid even though: (1) It is
49 not appurtenant to an interest in real property; (2) it can be or has been
50 assigned to another holder; (3) it is not of a character that has been
51 recognized traditionally at common law; (4) it imposes a negative
52 burden; (5) it imposes affirmative obligations upon the owner of an
53 interest in the burdened property or upon the holder; (6) the benefit
54 does not touch or concern real property; or (7) there is no privity of
55 estate or of contract.

56 Sec. 5. (NEW) (a) The provisions of sections 1 to 6, inclusive, of this
57 act, apply to any interest created on or after its effective date which
58 complies with said sections, whether designated as a conservation
59 easement or as a covenant, equitable servitude, restriction, easement or
60 otherwise.

61 (b) The provisions of sections 1 to 6, inclusive, of this act, apply to
62 any interest created before its effective date if it would have been
63 enforceable had it been created on or after the effective date of this act
64 unless retroactive application contravenes the constitution or laws of
65 this state or the United States.

66 (c) The provisions of sections 1 to 6, inclusive, of this act, do not
67 invalidate any interest, whether designated as a conservation or
68 preservation easement or as a covenant, equitable servitude,
69 restriction, easement or otherwise, that is enforceable under other laws
70 of this state.

71 Sec. 6. (NEW) The provisions of sections 1 to 6, inclusive, of this act,
72 shall be applied and construed to effectuate its general purpose to
73 make uniform the laws with respect to the subject of this act among
74 states enacting it.

Statement of Legislative Commissioners:

In section 5, "on or" was inserted before "after" for accuracy.

PD *Joint Favorable Subst.-LCO*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: None

Affected Agencies: Various

Municipal Impact: None

Explanation

State Impact:

Adoption of the legislation will make uniform the language concerning conservation easements and is not anticipated to have a fiscal impact.

OLR Bill Analysis

sHB 6598

AN ACT ADOPTING THE PROVISIONS OF THE UNIFORM CONSERVATION EASEMENT ACT.

SUMMARY:

This bill establishes as state law the Uniform Conservation Easement Act adopted by the National Conference of Commissioners on Uniform State Laws. It explicitly treats conservation easements held by government and charitable organizations the same as other easements. It also allows these organizations to enforce easements. Those holding easements or the right to enforce them cannot act until they have accepted the easements and recorded that fact. The bill specifies the conditions under which the easements are valid.

It allows parties to create easements of unlimited duration subject to a court order to modify or terminate the easement. Current law requires the holders to re-record their interest in the easement within 40 years after creating it. Under the bill, the easements do not impair the rights of a party who has an interest in the property before the easement is established unless the party is also a party to the easement and agreed to its terms.

The bill does not invalidate conservation or preservation easements, covenants, restrictions, or other interests enforceable under Connecticut or federal law.

EFFECTIVE DATE: October 1, 2001

CONSERVATION EASEMENTS

Conservation easements limit or require properties to be used in a way that retains or protects natural, scenic, or open-space values. They assure that the properties remain available for agricultural, forest, recreational, or open-space uses; maintain and enhance their air or

water qualify; or preserve their historical, architectural, archaeological or cultural aspects.

Application

The bill applies to easements that comply with its provisions created after October 1, 2001 regardless of whether they are designated as conservation easements, covenants, restrictions, easements, or otherwise. It also applies to easements created before that date if they comply with the bill unless they would have been invalid under state or federal laws and constitutions in effect before October 1, 2001.

Validity

An easement is valid under the bill even if:

1. it gives the holder the right to use the property,
2. it can be assigned to another party,
3. it is generally not recognized under common law because it involves conserving land,
4. it restricts or limits how the property owner or other interest holders can use the land to ways common law does not generally recognize,
5. it imposes obligations on the property owner that generally aim to conserve the land,
6. it does not touch or concern the land, (eg. if the easement is for the air above the land), or
7. there is no relationship between the property owner and the easement holder.

PARTIES TO EASEMENTS

Under the bill, conservation easements may be held by government agencies authorized to acquire interests in land and charitable

corporations, charitable associations, and charitable trusts established to retain and protect land for the purposes specified above. These agencies and organizations may also enforce easements that they do not hold. These enforcers must be eligible to hold the easement.

BRINGING ACTION REGARDING AN EASEMENT

The following parties can enforce, modify, or terminate easements; remove encumbrances on titles to parcels burdened by them; or otherwise affect the easements:

1. the owner of an interest in the property burdened by the easement,
2. the holder of the easement,
3. the government agency or charitable organization authorized to enforce it, and
4. any other party the law authorizes.

COMMITTEE ACTION

Planning and Development Committee

Joint Favorable Report

Yea 17 Nay 1