



General Assembly

January Session, 2001

Raised Bill No. 6598

LCO No. 3070

Referred to Committee on Planning and Development

Introduced by:
(PD)

**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) can be or has been
50 assigned to another holder; (3) is not of a character that has been
51 recognized traditionally at common law; (4) imposes a negative
52 burden; (5) 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 after its effective date which complies
58 with said sections, whether designated as a conservation easement or
59 as a covenant, equitable servitude, restriction, easement or otherwise.

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

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

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

Statement of Purpose:

To protect the viability of conservation restrictions by adopting the provisions of the Uniform Conservation Easement Act as drafted by the National Conference of Commissioners Uniform Laws State Laws.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]