WEST VIRGINIA CODE: §20-12-5

§20-12-5. Judicial and related actions.

(a) An action affecting a conservation or preservation easement may be brought by any of the following:

(1) An owner of an interest in the real property burdened by the easement;

(2) A holder of the easement;

(3) A person having a third-party right of enforcement; or

(4) A person, agency or entity otherwise authorized by state or federal law.

(b) This article does 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 article as stated under section two of this article, when the easement is broadly construed to effect that policy. Notwithstanding provision of law to the contrary, conservation and 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 article.

(c) A holder, governmental entity or other person may not exercise the right of eminent domain or the power of condemnation to acquire a conservation easement without condemning or exercising the right of eminent domain as to the entire fee interest of the property: Provided, That any public utility regulated pursuant to the provisions of chapter twenty-four of this code or any public service enterprise subject to the provisions of the Natural Gas Act, title XV, United States Code, Section 717, et seq., or the Federal Power Act, title XV, United States Code, Section 794a, et seq., or any successor statute for the regulation of public utility or public service business, may condemn land or an interest in land subject to a conservation or preservation easement for any purpose authorized by the governing regulatory statute or by the administrative agency established under the statute. Nothing in this article may be construed to limit the lawful exercise of the right of eminent domain or the power of condemnation by any person or entity having such power, or the right of any real property owner to compensation by reason of the lawful exercise of such right of eminent domain or power of condemnation for any estate or interest in real property except a conservation or preservation easement authorized by this article.

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