

SB 0447

RECEIVED

1995 MAR 23 AM 9:24

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995



## ENROLLED

*Committee Substitute for*

SENATE BILL NO. 447

(By Senator YODER, ET AL)



PASSED MARCH 9, 1995

In Effect 90 days from Passage

**ENROLLED**

COMMITTEE SUBSTITUTE  
FOR

**Senate Bill No. 447**

(SENATORS YODER, ROSS, DITTMAR AND GRUBB,  
*original sponsors*)

---

[Passed March 9, 1995; in effect ninety days from passage.]

---

AN ACT to amend chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twelve, relating generally to the creation, conveyance, acceptance, duration and validity of conservation and preservation easements; creating the "Conservation and Preservation Easements Act"; defining the purpose of such act; defining the terms used in the act; outlining the procedure for the creation and transfer of conservation and preservation easements; describing who may bring judicial actions; actions the court may take with regard to certain easements; grounds for the validity of the easements; the applicability of the article; and the construction of the article.

*Be it enacted by the Legislature of West Virginia:*

That chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article twelve, to read as follows:

**ARTICLE 12. CONSERVATION AND PRESERVATION EASEMENTS.**

**§20-12-1. Short title.**

- 1 This article shall be known and may be cited as the
- 2 "Conservation and Preservation Easements Act".

**§20-12-2. Purpose of article.**

- 1 The West Virginia Legislature recognizes the impor-
- 2 tance and significant public benefit of conservation and
- 3 preservation easements in its ongoing efforts to protect
- 4 the natural, historic, agricultural, open-space and scenic
- 5 resources of this state.

**§20-12-3. Definitions.**

- 1 The following words and phrases when used in this
- 2 article have the meanings given to them in this section
- 3 unless the context clearly indicates otherwise:
  - 4 (a) "Conservation easement" means a nonpossessory
  - 5 interest of a holder in real property, whether appurte-
  - 6 nant or in gross, imposing limitations or affirmative
  - 7 obligations, the purposes of which include, but are not
  - 8 limited to, retaining or protecting for the public benefit
  - 9 the natural, scenic or open-space values of real property;
  - 10 assuring its availability for agricultural, forest, recre-
  - 11 ational or open-space use; protecting natural resources
  - 12 and wildlife; maintaining or enhancing land, air or water
  - 13 quality; or preserving the historical, architectural,
  - 14 archaeological or cultural aspects of real property.
  - 15 (b) "Holder" means:
    - 16 (1) A governmental body empowered to hold an inter-
    - 17 est in real property under the laws of this state or the
    - 18 United States.
    - 19 (2) A charitable corporation, charitable association or

20 charitable trust registered with the secretary of state and  
21 exempt from taxation pursuant to Section 501(c)(3) of  
22 the Internal Revenue Code of 1986 (Public Law 99-514,  
23 26 U.S.C. Section 501(c)(3), or other federal or state  
24 statutes or rules, the purposes or powers of which  
25 include retaining or protecting the natural, scenic,  
26 agricultural or open-space values of real property;  
27 assuring the availability of real property for agricultural,  
28 forest, recreational or open-space use; protecting natural  
29 resources and wildlife; maintaining or enhancing land,  
30 air or water quality; or preserving the historical, archi-  
31 tectural, archaeological or cultural aspects of real  
32 property.

33 (c) "Preservation easement" means a nonpossessory  
34 interest in an historical building.

35 (d) "Third-party right of enforcement" means a right  
36 provided in a conservation or preservation easement, in  
37 order to enforce any of its terms, granted to a govern-  
38 mental body, charitable corporation, charitable associa-  
39 tion or charitable trust, which, although eligible to be a  
40 holder, is not a holder.

**§20-12-4. Creation, transfer and duration.**

1 (a) Except as otherwise provided in this article, a  
2 conservation or preservation easement may be created,  
3 conveyed, recorded, assigned, released, modified, termi-  
4 nated or otherwise altered or affected in the same  
5 manner as other easements.

6 (b) No right or duty of a holder, successive holder  
7 named in the easement deed or person having a third-  
8 party right of enforcement arises under a conservation or  
9 preservation easement before the easement's acceptance  
10 by the holder, successive holder or third party with right  
11 of enforcement and a recordation of the acceptance.

12 (c) Except as provided in subsection (b), section five of  
13 this article, a conservation or preservation easement  
14 created after the effective date of this article may be

15 perpetual in duration, but in no event shall be for a  
16 duration of less than twenty-five years.

17 (d) An interest in real property in existence at the time  
18 a conservation or preservation easement is created,  
19 including an unrecorded lease for the production of  
20 minerals or removal of timber, shall not be impaired  
21 unless the owner of such interest is a party to the ease-  
22 ment or expressly consents to comply with the restriction  
23 of such easement.

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

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

3 (1) An owner of an interest in the real property bur-  
4 dened by the easement;

5 (2) A holder of the easement;

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

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

10 (b) This article does not affect the power of a court to  
11 modify or terminate a conservation or preservation  
12 easement in accordance with the principles of law and  
13 equity consistent with the public policy of this article as  
14 stated under section two of this article, when the ease-  
15 ment is broadly construed to effect that policy. Notwith-  
16 standing provision of law to the contrary, conservation  
17 and preservation easements shall be liberally construed  
18 in favor of the grants contained therein to effect the  
19 purposes of those easements and the policy and purpose  
20 of this article.

21 (c) A holder, governmental entity or other person may  
22 not exercise the right of eminent domain or the power of  
23 condemnation to acquire a conservation easement  
24 without condemning or exercising the right of eminent

25 domain as to the entire fee interest of the property:  
26 *Provided*, That any public utility regulated pursuant to  
27 the provisions of chapter twenty-four of this code or any  
28 public service enterprise subject to the provisions of the  
29 Natural Gas Act, title fifteen, United States code, section  
30 seven hundred seventeen, et seq., or the Federal Power  
31 Act, title fifteen, United States code, section seven  
32 hundred ninety-four-a, et seq., or any successor statute  
33 for the regulation of public utility or public service  
34 business, may condemn land or an interest in land  
35 subject to a conservation or preservation easement for  
36 any purpose authorized by the governing regulatory  
37 statute or by the administrative agency established  
38 under the statute. Nothing in this article may be con-  
39 strued to limit the lawful exercise of the right of eminent  
40 domain or the power of condemnation by any person or  
41 entity having such power, or the right of any real prop-  
42 erty owner to compensation by reason of the lawful  
43 exercise of such right of eminent domain or power of  
44 condemnation, for any estate or interest in real property  
45 except a conservation or preservation easement autho-  
46 rized by this article.

**§20-12-6. Validity.**

- 1 (a) A conservation or preservation easement is valid
- 2 even though:
  - 3 (1) It is not appurtenant to an interest in real property;
  - 4 (2) It can be or has been assigned to another holder;
  - 5 (3) It is not of a character that has been recognized
  - 6 traditionally as common law;
  - 7 (4) It imposes a negative burden;
  - 8 (5) It imposes affirmative obligations upon the owner
  - 9 of an interest in the burdened property or upon the
  - 10 holder;
  - 11 (6) The benefit does not touch or concern real property;
  - 12 or

13 (7) There is no privity of estate or of contract.

14 (b) To be enforceable under the provisions of this  
15 article, a conservation or preservation easement shall be  
16 recorded within sixty days of the effective date of the  
17 easement. Upon proper recording, the provisions of this  
18 article apply retroactively to the effective date of the  
19 easement.

**§20-12-7. Applicability.**

1 (a) This article applies to any interest created after the  
2 effective date of this article, whether designated as a  
3 conservation or preservation easement or as a covenant,  
4 equitable servitude, restriction, easement or otherwise.

5 (b) This article applies to any interest created before  
6 the effective date when the interest would have been  
7 enforceable had it been created after its effective date,  
8 unless retroactive application contravenes the constitu-  
9 tion or laws of the United States or of this state. No  
10 conservation easement or preservation easement created  
11 prior to the effective date of this article may be invali-  
12 dated by reason of the enactment of this article when the  
13 conservation easement or preservation easement was  
14 valid under the law in effect at the time of its creation.

15 (c) This article does not invalidate any interest,  
16 whether designated as a conservation or preservation  
17 easement or as a covenant, equitable servitude, restric-  
18 tion, easement or otherwise, that is enforceable under  
19 another law of this state.

**§20-12-8. Uniformity of application and construction.**

1 This article shall be applied and construed to effectu-  
2 ate its general purpose to make uniform the laws with  
3 respect to the subject of this article among states enact-  
4 ing similar laws. Except as expressly otherwise pro-  
5 vided, nothing contained in this article is intended to be  
6 construed to alter applicable established common law.  
7 In a manner consistent with common law, the granting of

8 a conservation or preservation easement shall not  
9 subsequently restrict the right of the fee owner to  
10 further grant any other interest in real property to any  
11 person or entity when the grant does not materially  
12 impair the prior conservation or preservation easement.  
13 When a fee holder grants an interest beyond the conser-  
14 vation or preservation easement, he shall notify the  
15 holder of any conservation or preservation easement at  
16 least forty-five days prior to the execution of any subse-  
17 quent easement or any other conveyance of an interest in  
18 land encompassed by the conservation or preservation  
19 easement.



That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Randy Schoonover*  
.....  
Chairman Senate Committee

*Ernest E Moore*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Parrell R. Adams*  
.....  
Clerk of the Senate

*Daniel J. Kopp*  
.....  
Clerk of the House of Delegates

*Earl Ray Tomblin*  
.....  
President of the Senate

*Paul Eubank*  
.....  
Speaker House of Delegates

The within ~~is approved~~..... this the 22<sup>nd</sup>  
day of March....., 1995.

*Gaston Caperton*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/10/95

Time 10:40 AM