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
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.

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

§20-12-2. Purpose of article.

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

§20-12-3. Definitions.

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

(a) "Conservation easement" means 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 benefit the natural, scenic or open-space values of real property; assuring its availability for agricultural, forest, recreational or open-space use; protecting natural resources and wildlife; maintaining or enhancing land, air or water quality; or preserving the historical, architectural, archaeological or cultural aspects of real property.

(b) "Holder" means:

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

(2) A charitable corporation, charitable association or
charitable trust registered with the secretary 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. Section 501(c)(3), or other federal or state
statutes or rules, 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 natural
resources and wildlife; maintaining or enhancing land,
air or water quality; or preserving the historical, archi-
tectural, archaeological or cultural aspects of real
property.

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

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

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

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

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

(c) Except as provided in subsection (b), section five of
this article, a conservation or preservation easement
created after the effective date of this article may be
perpetual in duration, but in no event shall be for a duration of less than twenty-five years.

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

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

(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 fifteen, United States code, section
seven hundred seventeen, et seq., or the Federal Power
Act, title fifteen, United States code, section seven
hundred ninety-four-a, 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 con-
strued 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 prop-
erty 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 autho-
rized by this article.

§20-12-6. Validity.

(a) 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 as 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;

or
§20-12-7. Applicability.

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

(b) This article applies to any interest created before the effective date when the interest would have been enforceable had it been created after its effective date, unless retroactive application contravenes the constitution or laws of the United States or of this state. No conservation easement or preservation easement created prior to the effective date of this article may be invalidated by reason of the enactment of this article when the conservation easement or preservation easement was valid under the law in effect at the time of its creation.

(c) This article does not invalidate any interest, whether designated as a conservation or preservation easement or as a covenant, equitable servitude, restriction, easement or otherwise, that is enforceable under another law of this state.

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

This article shall be applied and construed to effectuate its general purpose to make uniform the laws with respect to the subject of this article among states enacting similar laws. Except as expressly otherwise provided, nothing contained in this article is intended to be construed to alter applicable established common law. In a manner consistent with common law, the granting of
a conservation or preservation easement shall not sub-
sequently restrict the right of the fee owner to fur-
ther grant any other interest in real property to any person or entity when the grant does not materially impair the prior conservation or preservation easement. When a fee holder grants an interest beyond the conserv-
vation or preservation easement, he shall notify the holder of any conservation or preservation easement at least forty-five days prior to the execution of any subse-
quent easement or any other conveyance of an interest in land encompassed by the conservation or preservation easement.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within .............. this the ................

day of ........................., 1995.

Governor