WEST VIRGINIA LEGISLATURE
Regular Session, 2005

ENROLLED
Committee Substitute for
SENATE BILL NO. 424

(By Senators Unger and Under)

PASSED April 8, 2005

In Effect 90 days from Passage
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §44-1-29, relating to the authority of personal representatives with regard to conservation or preservation easements; and providing that a personal representative, trustee, administrator or executor may sell, donate or amend conservation or preservation easements under certain conditions.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §44-1-29, to read as follow:

ARTICLE 1. PERSONAL REPRESENTATIVES.

§44-1-29. Authority of personal representative concerning conservation and preservation easements.
(a) A personal representative, trustee, administrator or executor of a decedent or a decedent's estate is hereby granted the authority to:

(1) Sell a conservation or preservation easement created prior to the decedent's death under article twelve, chapter eight-a of this code or article twelve, chapter twenty of this code;

(2) Donate a conservation or preservation easement created prior to the decedent's death under article twelve, chapter eight-a of this code or article twelve, chapter twenty of this code;

(3) Amend a conservation or preservation easement created prior to the decedent's death under article twelve, chapter eight-a of this code or article twelve, chapter twenty of this code and recorded on the decedent's real property in order to obtain the benefit of the estate tax exclusion allowed under §2031(c) of the United States Internal Revenue Code of 1986, as amended;

(4) Execute a deed of conservation or preservation easement and related documents when decedent's application to establish and convey an easement was approved by a holder during the nine-month period preceding the date of decedent's death, but the deed of conservation or preservation easement and related documents were not signed by the decedent before his or her death: Provided, That before executing these documents, the personal representative, trustee or executor complies with the provisions of subsection (b) of this section; or

(5) Execute a deed of conservation or preservation easement and related documents when decedent's application to establish and convey an easement was submitted to a holder before decedent's death but is approved by a holder after the decedent's death: Provided, That before executing these documents, the personal representative,
trustee, administrator or executor complies with the provisions of subsection (b) of this section.

(b) The personal representative, trustee, administrator or executor shall ensure that the sale, donation, amendment or transfer of a conservation or preservation easement complies with the following:

1. The proposed sale, donation, transfer or amendment satisfies the requirements set forth in the provisions of article twelve, chapter eight-a of this code or article twelve, chapter twenty of this code, as applicable to the particular easement;

2. The proposed sale, donation, transfer or amendment is to a qualified conservation organization or holder and the organization or holder agrees to accept the conservation or preservation easement; and

3. The sale, donation, transfer or amendment meets one of the following conditions:

   (A) All heirs, beneficiaries and devisees with interests in the real estate affected provide written consent; or

   (B) The will or other testamentary instrument directs the personal representative, trustee or executor to sell or donate the conservation or preservation easement; or

   (C) At the time of the decedent's death, the decedent had a pending application for a sale or donation of a conservation or preservation easement and such conservation or preservation easement was in process of settlement.
The 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 is approved this the Day of May, 2005.

Governor