

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005
4
5 By: Senator Broadway
6
7

A Bill

SENATE BILL 1132

For An Act To Be Entitled

AN ACT PROVIDING FOR THE CREATION, CONVEYANCE,
ACCEPTANCE, DURATION, AND VALIDITY OF
CONSERVATION EASEMENTS AND PRESERVATION
EASEMENTS; AND FOR OTHER PURPOSES.

Subtitle

AN ACT PROVIDING FOR THE CREATION,
CONVEYANCE, ACCEPTANCE, DURATION, AND
VALIDITY OF CONSERVATION EASEMENTS AND
PRESERVATION EASEMENTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 15, Subchapter 20 is amended to add an additional subchapter to read as follows:

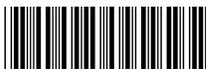
15-20-1201. Short title.

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

15-20-1202. Purpose.

The General Assembly recognizes the importance and significant public and economic benefit of conservation and preservation easements in its ongoing efforts to protect, conserve, or manage the use of the natural, historic, agricultural, open space, and scenic resources of the State of Arkansas.

15-20-1203. Definitions.



1 As used in this subchapter:

2 (1) "Conservation easement" means a nonpossessory interest of a
3 holder in real property, whether appurtenant or in gross, imposing
4 limitations or affirmative obligations, the purposes of which include, but
5 are not limited to:

6 (A) Retaining or protecting for the public and economic
7 benefit the natural, scenic, or open space values of real property, assuring
8 its availability for agricultural, forest, recreational, or open space use;

9 (B) Protecting, conserving, or managing the use of natural
10 resources; and

11 (C) Protecting wildlife, maintaining or enhancing land,
12 air, or water quality, or preserving the historical, architectural,
13 archaeological, or cultural aspects of real property;

14 (2) "Holder" means:

15 (A) A governmental body empowered to hold an interest in
16 real property under the laws of the United States or this state; and

17 (B) A charitable corporation, charitable association or
18 charitable trust:

19 (i) Registered with the Secretary of State and
20 exempt from taxation under section 501(c)(3) of the Internal Revenue Code of
21 1986, as it existed on January 1, 2005, other federal statutes or
22 regulations, as they existed on January 1, 2005, or Arkansas statutes, or
23 regulations; and

24 (ii) Having the purposes or powers of the entity
25 include:

26 (a) Retaining or protecting the natural,
27 scenic, agricultural, or open space values of real property;

28 (b) Assuring the availability of real property
29 for agricultural, forest, recreational, or open space use and protecting,
30 conserving, or managing the use of natural resources; and

31 (c) Protecting wildlife, maintaining or
32 enhancing land, air, or water quality, or preserving the historical,
33 architectural, archaeological, or cultural aspects of real property;

34 (2) "Preservation easement" means a nonpossessory interest in a
35 historical building;

36 (3) "Successive holder" means a holder who is not the original

1 holder and who acquired its interest in a conservation or preservation
2 easement by assignment or transfer; and

3 (4) "Third-party right of enforcement" means a right provided in
4 a conservation easement to enforce any of its terms that is granted to a
5 governmental body, charitable corporation, charitable association, or
6 charitable trust, which, although eligible to be a holder, is not a holder.

7
8 15-20-1204. Creation, transfer, and duration.

9 (a) Except as otherwise provided in this subchapter, a conservation
10 easement or preservation easement may be created, conveyed, recorded,
11 assigned, released, modified, terminated or otherwise altered or affected in
12 the same manner as other easements.

13 (b)(1) A conservation easement may encompass an entire fee simple
14 interest in a parcel of real property as described in the deed to the
15 property or any portion thereof or estate therein.

16 (2) Except when referencing an easement's boundary using setback
17 descriptions from existing deed boundaries or natural or artificial features
18 such as streams, rivers, or railroad rights-of-way, a meets and bounds
19 description of the portion of property subject to the easement shall be
20 provided in the easement document.

21 (c) No right or duty of a holder, successive holder named in the
22 conservation easement or preservation easement, or person having a third-
23 party right of enforcement may arise under a conservation easement or
24 preservation easement before the acceptance of the easement by the holder,
25 successive holder, or third party with right of enforcement and recordation
26 of the acceptance.

27 (d)(1) Except as provided in § 15-20-1205(c), a conservation easement
28 or preservation easement created after the effective date of this subchapter
29 may be perpetual in duration but shall not be for a duration of less than
30 twenty-five (25) years.

31 (2)(A) To the extent the conservation easement or preservation
32 easement is in gross, the conservation easement or preservation easement
33 shall be transferred to a willing successive holder, should the original
34 holder or successive holder be dissolved or otherwise cease to exist, in
35 order to accomplish the goal of the conservation easement or preservation
36 easement.

1 (B) If a willing successive holder cannot be identified,
2 the municipality or county in which the conservation easement or preservation
3 easement is located shall automatically become the successive holder for
4 perpetuity or the remaining term of the conservation easement or preservation
5 easement.

6 (3) Upon expiration of the conservation easement or preservation
7 easement, the holder shall terminate the conservation easement or
8 preservation easement by recording a written document in the same office of
9 recorder of deeds where the conservation easement or preservation easement
10 was first recorded.

11 (e) An interest in real property in existence at the time a
12 conservation easement or preservation easement is created, including
13 easements intended to provide services of a public utility nature and
14 operating rights and easements appurtenant to real property continuous to
15 real property burdened by the conservation easement or preservation easement
16 which are of record or which arise by operation of law, may not be impaired
17 unless the owner of the interest is a party to the conservation easement or
18 preservation easement or consents in writing to comply with the restrictions
19 of the conservation easement or preservation easement.

20
21 15-20-1205. Judicial and related actions.

22 (a) A legal action or equitable action affecting a conservation
23 easement or preservation easement may only be brought by any of the
24 following:

25 (1) An owner of the real property burdened by the easement;

26 (2) A person that holds an estate in the real property burdened
27 by the easement;

28 (3) A person that has any interest or right in the real property
29 burdened by the easement;

30 (4) A holder of the easement;

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

32 (6) A person otherwise authorized by federal law or Arkansas
33 law.

34 (b) No action may be brought for activities occurring outside the
35 boundaries of a conservation easement or preservation easement except in
36 circumstances in which the activities have or pose a substantial threat of

1 direct, physically identifiable harm within the boundaries of the easement.

2 (c)(1) This subchapter shall not affect the power of a court to modify
 3 or terminate a conservation or preservation easement in accordance with the
 4 principles of law and equity consistent with the public policy of this
 5 subchapter as stated under § 15-20-1202 when the easement is broadly
 6 construed to effect that policy.

7 (2) Any general rule of construction to the contrary
 8 notwithstanding, conservation easements or preservation easements shall be
 9 liberally construed in favor of the grants contained therein to effect the
 10 purposes of those easements and the policy and purpose of this subchapter.

11
 12 15-20-1206. Validity.

13 A conservation easement or preservation easement is valid even though:

- 14 (1) It is not appurtenant to an interest in real property;
 15 (2) It can be or has been assigned to another holder;
 16 (3) It is not of a character that has been recognized
 17 traditionally at common law;
 18 (4) It imposes a negative burden;
 19 (5) It imposes affirmative obligations upon the owner of an
 20 interest in the burdened property or upon the holder;
 21 (6) The benefit does not touch or concern real property;
 22 (7) There is no privity of estate or of contract; or
 23 (8) The holder is or becomes the owner in fee of the subject
 24 property.

25
 26 15-20-1207. Applicability.

27 (a) This subchapter shall apply to any interest created after the
 28 effective date of this subchapter which complies with this subchapter,
 29 whether designated as a conservation easement or preservation easement or as
 30 a covenant, equitable servitude, restriction, easement, or otherwise.

31 (b) This subchapter shall apply to any interest created before the
 32 effective date of this subchapter when the interest would have been
 33 enforceable had it been created after the effective date of this subchapter
 34 and has been recorded or, if not previously recorded, is recorded or
 35 otherwise placed of record within one hundred eighty (180) days of the
 36 effective date of this subchapter unless retroactive application contravenes

1 the Constitution of the United States or laws of the United States or of this
2 state.

3 (c) This subchapter does not invalidate any interest, whether
4 designated as a conservation easement or preservation easement or as a
5 covenant, equitable servitude, restriction, easement, or otherwise,
6 enforceable under another law of this state or under the common law.

7
8 15-20-1208. Construction.

9 (a) Except as expressly otherwise provided in this subchapter, nothing
10 in this subchapter is intended to be construed to alter or supersede
11 applicable law pertaining to the creation, perfection, priority or
12 enforceability of instruments affecting real estate, including conservation
13 or preservation easements.

14 (b) The owner of real property which is subject to a conservation or
15 preservation easement retains the right to transfer, encumber or otherwise
16 alienate the real property, subject to applicable limitations, including any
17 provision requiring notice to the holder, contained in the conservation or
18 preservation easement.

19
20 15-20-1209. Interests not affected and notice of mineral interests
21 required.

22 (c) This subchapter does not limit the exercise of rights created by
23 easements of necessity or inherent in the ownership of property contiguous to
24 the property burdened by the easement or of coal interests which have been
25 served from the ownership of the property burdened by the easement.

26 (d)(1) A conservation easement affecting real property containing
27 workable coal seams or from which an interest in coal has been severed may
28 not be recorded or effective unless the grantor or donor of the easement
29 signs a statement printed on the instrument creating the conservation
30 easement stating that the easement may impair the development of the coal
31 interest.

32 (2) This statement must be printed in no less than 12-point type
33 and must be preceded by the word "Notice" printed in no less than 24-point
34 type.

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