

STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

HOUSE BILL NO. 2442

By: Glover

AS INTRODUCED

An Act relating to property; amending 60 O.S. 1991, Section 49, which relates to easements; creating the Uniform Conservation Easement Act; defining terms; providing for creation, conveyance, acceptance and duration of conservation easements; providing for certain judicial actions; providing for validity of conservation easements; providing for applicability of the act; adding to certain rights creating easements; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 49.1 of Title 60, unless there is created a duplication in numbering, reads as follows:

Sections 2 through 6 of this act shall be known and may be cited as the "Uniform Conservation Easement Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 49.2 of Title 60, unless there is created a duplication in numbering, reads as follows:

As used in the Uniform Conservation Easement Act:

1. "Conservation easement" means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include but are not limited to retaining or protecting natural, scenic, or open-space values of real property, assuring its availability for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property;

2. "Holder" means:

- a. a governmental body empowered to hold an interest in real property under the laws of this state or the United States, or
- b. a charitable corporation, charitable association, or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic, or open-space values of real property, assuring the availability of real property for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property; and

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

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 49.3 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided in the Uniform Conservation Easement Act, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements.

B. No right or duty in favor of or against a holder and no right in favor of a person having a third-party right of enforcement arises under a conservation easement before its acceptance by the holder and a recordation of the acceptance.

C. Except as provided in subsection B of Section 4 of this act, a conservation easement is unlimited in duration unless the instrument creating it provides otherwise.

D. An interest in real property in existence at the time a conservation easement is created is not impaired by it unless the owner of the interest is a party to the conservation easement or consents to it.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 49.4 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. An action affecting a conservation easement may be brought by:

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 authorized by other law.

B. The Uniform Conservation Easement Act does not affect the power of a court to modify or terminate a conservation easement in accordance with the principles of law and equity.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 49.5 of Title 60, unless there is created a duplication in numbering, reads as follows:

A conservation 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 at 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
7. There is no privity of estate or of contract.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 49.6 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. The Uniform Conservation Easement Act applies to any interest created after November 1, 1996, which complies with the Uniform Conservation Easement Act, whether designated as a conservation easement or as a covenant, equitable servitude, restriction, easement, or otherwise.

B. The Uniform Conservation Easement Act applies to any interest created before November 1, 1996, if it would have been enforceable had it been created after November 1, 1996, unless retroactive application contravenes the constitution or laws of this state or the United States.

C. The Uniform Conservation Easement Act 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 other law of this state.

SECTION 7. AMENDATORY 60 O.S. 1991, Section 49, is amended to read as follows:

Section 49. The following land burdens or servitudes upon land, may be attached to other land as incidents or appurtenances, and are then called easements:

1. The right of pasture;i
2. The right of fishing;i
3. The right of taking game;i
4. The right-of-way;i
5. The right of taking water, wood, minerals and other things;i
6. The right of transacting business upon land;i
7. The right of conducting lawful sports upon land;i
8. The right of receiving air, light or heat from or over, or discharging the same upon or over land;i
9. The right of receiving water from or discharging the same upon land;i
10. The right of flooding land;i
11. The right of having water flow without diminution or disturbance of any kind;i
12. The right of using a wall as a party wall;i
13. The right of receiving more than natural support from adjacent land or things affixed thereto;i
14. The right of having the whole of a division fence maintained by a coterminous owner;i
15. The right of having public conveyances stopped, or of stopping the same on land;i
16. The right of a seat in church;i
17. The right of burial; and
18. The right to impose limitations or affirmative obligations relating to conservation pursuant to the Uniform Conservation Easement Act.

SECTION 8. This act shall become effective November 1, 1996.

45-2-8595

KSM