

ENROLLED SENATE
BILL NO. 266

By: Henry and Williams of the
Senate

and

Askins of the House

An Act relating to property; amending 60 O.S. 1991, Section 49, which relates to easements; creating the Uniform Conservation Easement Act and providing short title; defining terms; providing for creation, conveyance, acceptance, and duration of conservation easements; providing for certain judicial actions; stating validity of conservation easements; providing for application and construction; adding to certain rights for creation of easements; creating easements; requiring a copy of the covenants and restrictions of a real estate development to be provided to a buyer; authorizing fee; 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:

SHORT TITLE

Sections 1 through 8 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:

DEFINITIONS

As used in this 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; and

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.

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:

CREATION, CONVEYANCE, ACCEPTANCE, AND DURATION

A. Except as otherwise provided in this 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, provided however, nothing herein shall authorize any entity or individual to obtain a conservation easement by condemnation.

B. No right or duty in favor of or against a holder 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, the term of a conservation easement shall be the term stated in the instrument creating it.

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:

JUDICIAL ACTIONS

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; or
3. 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:

VALIDITY

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:

APPLICABILITY

A. The Uniform Conservation Easement Act applies to any interest created after November 1, 1999, 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, 1999, if it would have been enforceable had it been created after November 1, 1999, 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 laws of this state.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 49.7 of Title 60, unless there is created a duplication in numbering, reads as follows:

UNIFORMITY OF APPLICATION AND CONSTRUCTION

This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 49.8 of Title 60, unless there is created a duplication in numbering, reads as follows:

ADDITIONAL CONSTRUCTION

Unless the grantor of a conservation easement elects otherwise at the time of and in the same manner as the grant of the easement:

1. Nothing in this act shall be construed to impair the rights of a party with respect to the acquisition of rights-of-way, easements, or other property rights, whether through voluntary conveyance or eminent domain, upon or under which facilities, plant, system, or other improvements including, but not limited to, a pipeline for transmission, gathering, or transportation of hydrocarbons are to be constructed; and

2. The holder of a conservation easement must subordinate, without construction restrictions or other obligations, the conservation easement upon the request of any party owning any of the above rights-of-way, easements, or other property rights whether acquired prior or subsequent to the conservation easement.

SECTION 9. 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~~;~~;
2. The right of fishing~~;~~;
3. The right of taking game~~;~~;
4. The right-of-way~~;~~;
5. The right of taking water, wood, minerals~~;~~, and other things~~;~~;
6. The right of transacting business upon land~~;~~;
7. The right of conducting lawful sports upon land~~;~~;
8. The right of receiving air, light~~;~~, or heat from or over, or discharging the same upon or over land~~;~~;

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~~;~~i and

18. The right to impose limitations or affirmative obligations relating to conservation pursuant to the Uniform Conservation Easement Act.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 857 of Title 60, unless there is created a duplication in numbering, reads as follows:

A copy or a certified copy of all the recorded covenants and restrictions of a real estate development shall be provided by the title company upon the request of any buyer of property in the real estate development as a part of the closing of the real estate sale. The buyer may be charged no more than Ten Dollars (\$10.00) for the copy, and the copy shall be mailed no more than thirty (30) days from the date of the closing.

SECTION 11. This act shall become effective November 1, 1999.

Passed the Senate the 26th day of May, 1999.

President of the Senate

Passed the House of Representatives the 27th day of May, 1999.

Speaker of the House of
Representatives