

LEGISLATIVE BILL 173

Approved by the Governor April 16, 1981

Introduced by Warner, 25

AN ACT to adopt the Conservation and Preservation Easements Act; and to provide for severability.

Be it enacted by the people of the State of Nebraska,

Section 1. As used in this act, unless the context otherwise requires:

(1) Conservation easement shall mean a right, whether or not stated in the form of an easement, restriction, covenant, or condition in any deed, will, agreement, or other instrument executed by or on behalf of the owner of an interest in real property imposing a limitation upon the rights of the owner or an affirmative obligation upon the owner appropriate to the purpose of retaining or protecting the property in its natural, scenic, or open condition, assuring its availability for agricultural, horticultural, forest, recreational, wildlife habitat, or open space use, protecting air quality, water quality, or other natural resources, or for such other conservation purpose as may qualify as a charitable contribution under the Internal Revenue Code of 1954, as amended;

(2) Preservation easement shall mean a right, whether stated in the form of an easement, restriction, covenant, or condition in any deed, will, agreement, or other instrument executed by or on behalf of the owner of an interest in real property imposing a limitation upon the rights of the owner or an affirmative obligation upon the owner appropriate to the purpose of preserving the historical, architectural, archaeological, or cultural aspects of real property, or for such other historic preservation purpose as may qualify as a charitable contribution under the Internal Revenue Code of 1954, as amended; and

(3) Holder shall mean anyone acquiring a conservation or preservation easement by purchase, exchange, gift, or devise and having the right to enforce it by its terms, which may be:

(a) Any governmental body empowered to hold an interest in real property in this state under the laws of this state or the United States having among its purposes the subject matter of the easement;

(b) In the case of a conservation easement, any charitable corporation or trust whose purposes include retaining or protecting the natural, scenic, or open condition of real property, assuring its availability for agricultural, horticultural, forest, recreational, wildlife habitat, or open space use or protecting air quality, water quality, or other natural resources; or

(c) In the case of a preservation easement, any charitable corporation or trust whose purposes include the preservation of the historical, architectural, archaeological, or cultural aspects of real property.

Sec. 2. (1) A conservation or preservation easement shall be an interest in real property, created by an instrument in which the purpose for the easement is clearly stated. The instrument shall be filed, duly recorded, and indexed in the office of the register of deeds of the county in which the real property subject to the conservation or preservation easement is located.

(2) No conveyance of a conservation or preservation easement shall be effective until accepted by the holder.

(3) In order to minimize conflicts with land use planning, each conservation or preservation easement shall be approved by the appropriate governing body. Such approving body shall first refer the proposed acquisition to and receive comments from the local planning commission with jurisdiction over such property, which shall within sixty days of the referral provide such comments regarding the conformity of the proposed acquisition to comprehensive planning for the area. If such comments are not received within sixty days, the proposed acquisition shall be deemed approved by the local planning commission. If the property is located partially or entirely within the boundaries or zoning jurisdiction of a city or village, approval of the governing body of such city or village shall be required. If such property is located entirely outside the boundaries and zoning jurisdiction of any city or village, approval of the county board shall be required. Approval of a proposed acquisition may be denied upon a finding by the appropriate governing body that the acquisition is not in the public interest when the easement is inconsistent with (a) a comprehensive plan for the area which had been officially adopted and was in force at the time of the conveyance, (b) any national, state, regional, or local program furthering conservation or preservation, or (c) any known proposal by a governmental body for use of the land.

(4) Notwithstanding the provisions of subsection (3) of this section, the state, or any state agency or political subdivision other than a city, village, or county, may accept an easement after first referring the proposed acquisition to and receiving comments from the local planning commission with jurisdiction over the property, which shall within sixty days of the referral provide such comments regarding the conformity of the proposed acquisition to comprehensive planning for the area. If such comments are not received within sixty days, the proposed acquisition shall be deemed approved by the local planning commission.

Sec. 3. (1) A conservation or preservation easement may be released by the holder of the easement to the owner of the servient estate, except that such release shall be approved by the governing body which approved the easement, or if the holder is the state, a state agency, or political subdivision other than a city, village, or county, the release shall be approved by the state or such state agency or political subdivision. The release of an easement may be approved upon a finding by such body that the easement no longer substantially achieves the conservation or preservation purpose for which it was created.

(2) A conservation or preservation easement may be assigned or transferred to any governmental body or charitable corporation or trust authorized to secure such easement pursuant to this act.

Sec. 4. Unless a conservation or preservation easement is otherwise modified or terminated according to the terms of the easement or the provisions of this act, the owner of the subject real property or the holder of the easement may petition the district court in which the greater part of the servient estate is located for modification or termination of the easement. The court may modify or terminate the easement pursuant to this section only if the petitioner establishes that it is no longer in the public interest to hold the easement or that the easement no longer substantially achieves the conservation or preservation purpose for which it was created. No comparative economic test shall be used to determine whether the public interest or the conservation or preservation purpose of the easement is still being served. No modification shall be permitted which is in excess of that reasonably necessary to remedy the deficiency of the easement.

Sec. 5. No duly recorded conservation or preservation easement shall be unenforceable for lack of privity of estate or of contract, for lack of benefit to

a dominant estate, or on account of the easement being assignable. A conservation or preservation easement shall run with the land and shall be perpetual unless otherwise stated in the instrument creating it. A conservation or preservation easement may be enforced by proceedings at law or in equity.

Sec. 6. Real property subject to a conservation or preservation easement shall be assessed with due regard to the restricted uses to which the property may be devoted. The conservation or preservation easement in the hands of the holder shall be subject to assessment, taxation, or exemption from taxation in accordance with general laws applicable to assessment and taxation of interests in real property.

Sec. 7. (1) The provisions of this act do not render invalid or unenforceable any otherwise valid restriction, easement, covenant, or condition whether created before or after the enactment of this act.

(2) Nothing in this act shall diminish the powers granted in any other law to acquire by purchase, gift, grant, eminent domain, or otherwise and to use interests in real property for public purposes.

(3) If property subject to a conservation or preservation easement is condemned for public use, that part of the easement which conflicts with the condemnation shall terminate as of the time of the condemnation. If the easement was obtained by gift or devise the owner shall be entitled to such compensation for the taking as if the property had not been subject to the easement and if the easement was obtained by purchase or exchange, the holder shall be entitled to just compensation for the taking of the easement.

(4) An entity having the power of eminent domain may, through agreement with the owner of the servient estate and the holder of the conservation or preservation easement, acquire an easement over the land for the purpose of providing utility services.

Sec. 8. Sections 1 to 8 of this act shall be known and may be cited as the Conservation and Preservation Easements Act.

Sec. 9. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.