

ORIGINAL SENATE  
FILE NO. 0149

ENROLLED ACT NO. 66, SENATE

FIFTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING  
2005 GENERAL SESSION

AN ACT relating to real property; providing for conservation easements as specified; providing for creation and conveyance of the easement as specified; providing definitions; providing for actions and validity; reserving rights of the state regarding eminent domain and taxing interests created; and providing for an effective date.

*Be It Enacted by the Legislature of the State of Wyoming:*

**Section 1.** W.S. 34-1-201 through 34-1-207 are created to read:

ARTICLE 2  
UNIFORM CONSERVATION EASEMENT ACT

**34-1-201. Short title; definitions.**

(a) This article shall be known and may be cited as the "Uniform Conservation Easement Act".

(b) As used in this article, unless the context requires otherwise:

(i) "Conservation easement" means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include 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, archeological or cultural aspects of real property;

(ii) "Holder" means:

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(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, a primary purpose or power of which includes 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, archeological or cultural aspects of real property.

(iii) "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;

(iv) "This act" means W.S. 34-1-201 through 34-1-206.

**34-1-202. Creation; conveyance; acceptance and duration.**

(a) Except as otherwise provided in this article, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated or otherwise altered or affected in the same manner as other easements. The provisions of W.S. 34-1-141 shall apply to this article.

(b) No right or duty in favor of or against a holder and no right in favor of a person having a third-party

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right of enforcement arises under a conservation easement before its acceptance by the holder and a recordation of the acceptance.

(c) Except as provided by W.S. 34-1-203(b), a conservation easement is unlimited in duration unless the instrument creating the easement provides otherwise.

(d) An interest in real property and any interest in minerals including any leasehold interests are not impaired in any way by a conservation easement unless the owners of those interests consent to the conservation easement.

(e) This act shall not alter the law of Wyoming regarding the primacy of the mineral estate and any easement created hereunder shall not limit the right of a mineral owner or his lessee to reasonable use of the surface for the purpose of mineral exploration and production unless the owners and lessees of the entire mineral estate are a party to the conservation easement or consent to the conservation easement.

**34-1-203. Judicial action; modification; termination.**

(a) An action affecting a conservation easement may be brought by:

(i) An owner of an interest in the real property burdened by the conservation easement;

(ii) A holder of the conservation easement;

(iii) A person having third-party rights of enforcement, as named in the instrument creating the conservation easement.

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(b) This article shall not affect the power of a court to modify or terminate a conservation easement in accordance with the principles of law and equity.

**34-1-204. Validity.**

(a) A conservation easement is valid even though:

(i) It is not appurtenant to an interest in real property;

(ii) It can be or has been assigned to another holder;

(iii) It is not of a character that has been recognized traditionally at common law;

(iv) It imposes a negative burden;

(v) It imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;

(vi) The benefit does not touch or concern the real property; or

(vii) There is no privity of estate or of contract.

**34-1-205. Applicability.**

(a) This article shall apply to any interest created after its effective date which complies with the requirements of this article, whether designated as a conservation easement or as a covenant, equitable servitude, restriction, easement or otherwise.

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(b) This article shall apply to any interest created before its effective date if it would have been enforceable had it been created after the effective date of this article unless retroactive application contravenes the constitution or laws of this state or the United States.

(c) This article does not invalidate any interest whether designated as a conservation or preservation easement, a covenant, equitable servitude, restriction, easement or other designation that is enforceable under any other law of this state.

**34-1-206. Uniformity of application and construction.**

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

**34-1-207. Eminent domain; taxation.**

(a) Conservation easements shall be subject to the state's power of eminent domain in the same manner as any other real property interest.

(b) The real property tax imposed upon real property subject to a conservation easement shall not be less than the amount of the ad valorem tax for the property had it been levied and assessed based upon the taxable value of agricultural land of similar productive use and value under W.S. 39-13-101(a)(iii) and 39-13-103(b)(x).

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**Section 2.** This act is effective July 1, 2005.

(END)

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Governor

TIME APPROVED: \_\_\_\_\_

DATE APPROVED: \_\_\_\_\_

I hereby certify that this act originated in the Senate.

\_\_\_\_\_  
Chief Clerk