

1 IN THE SENATE

BY STURGULEWSKI

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SENATE BILL NO. 123

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act adopting the Uniform Conservation Easement

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Act; and providing for an effective date."

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

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* Section 1. AS 34 is amended by adding a new chapter to read:

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CHAPTER 17. UNIFORM CONSERVATION EASEMENT ACT.

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Sec. 34.17.010. CREATION, CONVEYANCE, ACCEPTANCE AND DURATION.

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(a) Except as otherwise provided in this chapter, a conservation

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easement may be created, conveyed, recorded, assigned, released,

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modified, terminated, or otherwise altered or affected in the same

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manner as other easements.

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(b) A right or duty in favor of or against a holder and a right

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in favor of a person having a third-party right of enforcement may not

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arise under a conservation easement before the conservation easement

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is accepted by the holder and the acceptance is recorded.

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(c) Except as provided in AS 34.17.020(b), a conservation ease-

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ment is unlimited in duration unless the instrument creating the

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conservation easement provides a limitation on duration.

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(d) An interest in real property in existence at the time a

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conservation easement is created is not impaired by the conservation

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easement unless the owner of the interest is a party to or consents to

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the conservation easement.

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Sec. 34.17.020. JUDICIAL ACTIONS. (a) An action affecting a

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conservation easement may be brought by

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(1) an owner of an interest in the real property burdened

1 by the easement;

2 (2) a holder of the easement;

3 (3) a person having a third-party right of enforcement; or

4 (4) a person authorized by other law.

5 (b) This chapter does not affect the power of a court to modify
6 or terminate a conservation easement under the principles of law and
7 equity.

8 Sec. 34.17.030. VALIDITY. A conservation easement is valid even
9 though

10 (1) it is not appurtenant to an interest in real property;

11 (2) it can be or has been assigned to another holder;

12 (3) it is not of a character that has been recognized
13 traditionally at common law;

14 (4) it imposes a negative burden;

15 (5) it imposes affirmative obligations upon the owner of an
16 interest in the burdened property or upon the holder;

17 (6) the benefit does not touch or concern real property; or

18 (7) there is no privity of estate or of contract.

19 Sec. 34.17.040. APPLICABILITY. (a) This chapter applies to an
20 interest created on or after the effective date of this Act that
21 complies with this chapter, whether designated as a conservation
22 easement or as a covenant, equitable servitude, restriction, easement,
23 or otherwise.

24 (b) This chapter applies to an interest created before the
25 effective date of this Act if the interest would have been enforceable
26 if it had been created after the effective date of this Act unless the
27 retroactive application contravenes the constitution or laws of the
28 state or the United States.

29 (c) This chapter does not invalidate an interest, whether

1 designated as a conservation or preservation easement or as a cove-
2 nant, equitable servitude, restriction, easement, or otherwise, that
3 is enforceable under the law of the state.

4 Sec. 34.17.050. UNIFORMITY OF APPLICATION AND CONSTRUCTION.
5 This chapter shall be applied and construed to effectuate its general
6 purpose to make uniform the laws with respect to the subject of the
7 chapter among states enacting it.

8 Sec. 34.17.060 DEFINITIONS. In this chapter,

9 (1) "conservation easement" means a nonpossessory interest
10 of a holder in real property imposing limitations or affirmative
11 obligations to retain or protect natural, scenic, or open space values
12 of real property, ensure its availability for agricultural, forest,
13 recreational, or open space use, protect natural resources, maintain
14 or enhance air or water quality, or preserve the historical, architec-
15 tural, archaeological, or cultural aspects of real property;

16 (2) "holder" means

17 (A) a governmental body empowered to hold an interest
18 in real property under the laws of the state or the United
19 States; or

20 (B) a nonprofit corporation, a charitable corporation,
21 charitable association, or charitable trust empowered to retain
22 or protect the natural, scenic, or open space values of real
23 property, ensure the availability of real property for agricul-
24 tural, forest, recreational, or open space use, protect natural
25 resources, maintain or enhance air or water quality, or preserve
26 the historical, architectural, archaeological, or cultural as-
27 pects of real property;

28 (3) "third-party right of enforcement" means a right pro-
29 vided in a conservation easement to enforce any of its terms granted

- 1 to a governmental body, nonprofit corporation, charitable corporation,
2 charitable association, or charitable trust that is not a holder.
3 * Sec. 2. This Act takes effect immediately under AS 01.10.070(c).