

Offered: 5/5/89  
Referred: Rules

6-0350J

Original sponsor: Sturgulewski

1 IN THE SENATE BY THE JUDICIARY COMMITTEE  
2 HOUSE CS FOR CS FOR SENATE BILL NO. 123 (Judiciary)  
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  
7 Act; and providing for an effective date."  
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:  
9 \* Section 1. AS 34 is amended by adding a new chapter to read:  
10 CHAPTER 17. UNIFORM CONSERVATION EASEMENT ACT.  
11 Sec. 34.17.010. CREATION, CONVEYANCE, ACCEPTANCE AND DURATION.  
12 (a) Except as otherwise provided in this chapter, a conservation  
13 easement may be created, conveyed, recorded, assigned, released,  
14 modified, terminated, or otherwise altered or affected in the same  
15 manner as other easements.  
16 (b) A right or duty in favor of or against a holder and a right  
17 in favor of a person having a third-party right of enforcement may not  
18 arise under a conservation easement before the conservation easement  
19 is accepted by the holder and the acceptance is recorded.  
20 (c) Except as provided in AS 34.17.020(b), a conservation ease-  
21 ment is unlimited in duration unless the instrument creating the  
22 conservation easement provides a limitation on duration.  
23 (d) An interest in real property in existence at the time a  
24 conservation easement is created is not impaired by the conservation  
25 easement unless the owner of the interest is a party to or consents to  
26 the conservation easement.  
27 (e) The state or a municipality may not establish a conservation  
28 easement on property by eminent domain.  
29 Sec. 34.17.020. JUDICIAL ACTIONS. (a) An action affecting a

1 conservation easement may be brought by

2 (1) an owner of an interest in the real property burdened  
3 by the easement;

4 (2) a holder of the easement;

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

6 (4) a person authorized by other law.

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

10 Sec. 34.17.030. VALIDITY. A conservation easement is valid even  
11 though

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

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

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

16 (4) it imposes a negative burden;

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

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

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

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

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

1 state or the United States.

2 (c) This chapter does not invalidate an interest, whether des-  
3 igned as a conservation or preservation easement or as a covenant,  
4 equitable servitude, restriction, easement, or otherwise, that is  
5 enforceable under the law of the state.

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

10 Sec. 34.17.060 DEFINITIONS. In this chapter,

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

18 (2) "holder" means

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

22 (B) a nonprofit corporation, charitable corporation,  
23 charitable association, or charitable trust exempted from taxa-  
24 tion under 26 U.S.C. 501(c)(3) and empowered to retain or protect  
25 the natural, scenic, or open space values of real property,  
26 ensure the availability of real property for agricultural,  
27 forest, recreational, or open space use, protect natural re-  
28 sources, maintain or enhance air or water quality, or preserve  
29 the historical, architectural, archaeological, or cultural

1 aspects of real property;

2 (3) "third-party right of enforcement" means a right pro-  
3 vided in a conservation easement to enforce any of its terms granted  
4 to a governmental body, nonprofit corporation, charitable corporation,  
5 charitable association, or charitable trust that is not a holder.

6 \* Sec. 2. AS 29.45.050(e) is amended to read:

7 (e) A municipality may by ordinance classify and exempt or  
8 partially exempt from taxation privately owned land, wet land and  
9 water areas for which a scenic, conservation, or public recreation use  
10 easement is granted to a governmental body. To be eligible for a tax  
11 exemption, or partial exemption, the easement must be in perpetuity.  
12 The [HOWEVER, THE] easement is automatically terminated before an  
13 eminent domain taking of fee simple title or less than fee simple  
14 title to the property, so that the property owner is compensated at a  
15 rate that does not reflect the easement grant. The municipality may  
16 provide by ordinance that, if the area subject to the easement is  
17 sold, leased, or otherwise disposed of for uses incompatible with the  
18 easement or if the easement is conveyed to the owner of the property,  
19 the owner must pay to the municipality all or a portion of the amount  
20 of the tax exempted, with interest.

21 \* Sec. 3. AS 29.45 is amended by adding a new section to read:

22 Sec. 29.45.062. LAND SUBJECT TO A CONSERVATION EASEMENT. (a)  
23 Land that is subject to a conservation easement created under AS 34.17  
24 and used consistent with the conservation easement shall be assessed  
25 on the basis of full and true value for use subject to the conserva-  
26 tion easement and may not be assessed as though it was not subject to  
27 the conservation easement. The assessor shall maintain records valu-  
28 ing the land for both full and true value and value subject to the  
29 conservation easement. The municipality may, by ordinance, require

1 that if the land is sold, leased, or otherwise disposed of for uses  
2 incompatible with the conservation easement or if the conservation  
3 easement is conveyed to the owner of the property, the owner shall pay  
4 to the municipality an amount equal to the additional tax at the  
5 current mill levy together with eight percent interest for the preced-  
6 ing 10 years, as though the land had not been assessed subject to the  
7 conservation easement.

8 (b) To secure the assessment under this section, an owner of  
9 land subject to a conservation easement must apply to the assessor  
10 before May 15 of each year in which the assessment is desired. The  
11 application shall be made upon forms prescribed by the assessor and  
12 shall include information that may reasonably be required to determine  
13 the entitlement of the applicant.

14 \* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).