

# HOUSE BILL REPORT

## HB 2329

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### As Passed House:

February 8, 2002

**Title:** An act relating to federal estate tax benefits for conservation easements.

**Brief Description:** Authorizing additional trust authority to take advantage of federal estate tax benefits for conservation easements.

**Sponsors:** By Representatives Lantz, Cooper, Esser, Dunshee, Haigh, McDermott, Linville, Sehlin, Murray, Anderson, Jarrett, Pflug, Cairnes, Barlean, Schmidt, Morell and Rockefeller.

### Brief History:

#### Committee Activity:

Judiciary: 1/24/02, 1/29/02 [DP].

#### Floor Activity:

Passed House: 2/8/02, 97-0.

### Brief Summary of Bill

- Allows a trustee to donate a conservation easement in real property of the trust in order to qualify for federal estate tax exclusions and deductions.

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## HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass. Signed by 9 members: Representatives Lantz, Chair; Hurst, Vice Chair; Carrell, Ranking Minority Member; Boldt, Dickerson, Esser, Jarrett, Lovick and Lysen.

**Staff:** Bill Perry (786-7123).

### Background:

A conservation easement is a voluntary donation of an interest in real property by a land owner to a qualified private non-profit entity or to a unit of government. If qualified under federal tax law, such a donation may result in reduced federal estate tax on the estate of which the real property is a part.

A conservation easement may include all or part of an owner's interest in the land. To qualify under the federal tax code, several requirements must be met. For example, the donation of the interest must be in perpetuity, and the donation must be for a "conservation purpose" as defined by the code. Generally, allowable conservation purposes include preservation of land for:

- Outdoor recreation or education for the general public;
- protection of natural habitat; or
- open space for scenic or other purposes if it will significantly benefit the public.

Under the state's probate and trust code, a trustee is given general and specific authority to make various decisions regarding a trust. General powers of a trustee include the authority to acquire, sell, convey, control, and manage the property of the trust. Specific powers with respect to real estate include the authority to lease, subdivide, develop, or dedicate land to public use. All authority of a trustee, however, is limited by the trustee's duty to act as a fiduciary.

There is no specific authority in state law for a trustee of a decedent's estate to donate real property to a conservation easement.

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**Summary of Bill:**

A trustee may donate a conservation easement in order to qualify for federal estate tax exclusions or deductions. A trustee may also consent to such a donation by the personal representative of an estate through which the trustee receives real property. In either case, such a donation may be made only if the donation will not make the estate insolvent and:

- The trust instrument itself allows the donation; or
- every affected beneficiary of the trust has agreed to the donation.

Questions regarding the donation of a conservation easement are specifically included in the kinds of matters that are to be resolved under the state's trust and estate dispute resolution law.

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**Appropriation:** None.

**Fiscal Note:** Requested on January 21, 2002.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** The bill allows trustees to carry out the wishes of a deceased landowner and allows the estate to avoid inheritance taxes. The bill promotes the protection and preservation of family farms, open spaces, wildlands, and natural habitats through the

voluntary donations of landowners.

**Testimony Against:** None.

**Testified:** Representative Lantz, prime sponsor; Len Barson, The Nature Conservancy; Mike Ryherd, Washington Wildlife and Recreation Coalition; Richard Hines, American Farmland Trust; and Gail Stone, Washington State Bar Association.