

SENATE BILL REPORT

HB 2329

As Reported By Senate Committee On:
Judiciary, February 26, 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: Representatives Lantz, Cooper, Esser, Dunshee, Haigh, McDermott, Linville, Sehlin, Murray, Anderson, Jarrett, Pflug, Cairnes, Barlean, Schmidt, Morell and Rockefeller.

Brief History:

Committee Activity: Judiciary: 2/25/02, 2/26/02 [DP].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

Signed by Senators Kline, Chair; Kastama, Vice Chair; Costa, Hargrove, Johnson, Long, McCaslin, Poulsen, Thibaudeau and Zarelli.

Staff: Dick Armstrong (786-7460)

Background: A conservation easement is a voluntary donation of an interest in real property by a land owner to a qualified private nonprofit 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.

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.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: The bill is a real benefit to the public and will help a lot of people who would otherwise be facing significant estate taxes. These easements keep land in open space for the benefit of the public.

Testimony Against: None.

Testified: PRO: Representative Lantz, prime sponsor; Len Barson, Nature Conservancy.