

SENATE BILL NO. 473

INTRODUCED BY A. CURTISS

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO CONSERVATION EASEMENTS;
5 REQUIRING THAT CONSERVATION EASEMENTS PROVIDE FOR THE PURPOSES OF THE EASEMENT;
6 REVISING THE TIME FOR REVIEW OF AND RECORDING OF CONSERVATION EASEMENTS; CLARIFYING
7 QUALIFIED PRIVATE ORGANIZATIONS; PROVIDING FOR DISCLOSURE OF RESPONSIBILITIES IN
8 CONTRACTS CREATING CONSERVATION EASEMENTS; PROVIDING FOR MONITORING OF EASEMENT
9 PROPERTY; REVISING ENFORCEMENT; AUTHORIZING THE ENVIRONMENTAL QUALITY COUNCIL TO
10 REVIEW CONSERVATION EASEMENTS AND TO MAKE RECOMMENDATIONS TO THE LEGISLATURE; AND
11 AMENDING SECTIONS 75-1-324, 76-6-202, 76-6-203, 76-6-204, 76-6-207, 76-6-208, AND 76-6-210, MCA."

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13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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15 **Section 1.** Section 75-1-324, MCA, is amended to read:16 **"75-1-324. Duties of environmental quality council.** (1) The environmental quality council shall:

17 ~~(1)~~(a) gather timely and authoritative information concerning the conditions and trends in the quality of
18 the environment, both current and prospective, analyze and interpret the information for the purpose of
19 determining whether the conditions and trends are interfering or are likely to interfere with the achievement of the
20 policy set forth in 75-1-103, and compile and submit to the governor and the legislature studies relating to the
21 conditions and trends;

22 ~~(2)~~(b) review and appraise the various programs and activities of the state agencies, in the light of the
23 policy set forth in 75-1-103, for the purpose of determining the extent to which the programs and activities are
24 contributing to the achievement of the policy and make recommendations to the governor and the legislature with
25 respect to the policy;

26 ~~(3)~~(c) develop and recommend to the governor and the legislature state policies to foster and promote
27 the improvement of environmental quality to meet the conservation, social, economic, health, and other
28 requirements and goals of the state;

29 ~~(4)~~(d) conduct investigations, studies, surveys, research, and analyses relating to ecological systems
30 and environmental quality;

1 ~~(5)(e)~~ document and define changes in the natural environment, including the plant and animal systems,
 2 and accumulate necessary data and other information for a continuing analysis of these changes or trends and
 3 an interpretation of their underlying causes;

4 ~~(6)(f)~~ make and furnish studies, reports on studies, and recommendations with respect to matters of
 5 policy and legislation as the legislature requests;

6 ~~(7)(g)~~ analyze legislative proposals in clearly environmental areas and in other fields in which legislation
 7 might have environmental consequences and assist in preparation of reports for use by legislative committees,
 8 administrative agencies, and the public;

9 ~~(8)(h)~~ consult with and assist legislators who are preparing environmental legislation to clarify any
 10 deficiencies or potential conflicts with an overall ecologic plan;

11 ~~(9)(i)~~ review and evaluate operating programs in the environmental field in the several agencies to
 12 identify actual or potential conflicts, both among the activities and with a general ecologic perspective, and
 13 suggest legislation to remedy the situations; and

14 ~~(10)(j)~~ perform the administrative rule review, draft legislation review, program evaluation, and monitoring
 15 functions of an interim committee for the following executive branch agencies and the entities attached to the
 16 agencies for administrative purposes:

17 ~~(a)(i)~~ department of environmental quality;

18 ~~(b)(ii)~~ department of fish, wildlife, and parks; and

19 ~~(c)(iii)~~ department of natural resources and conservation.

20 (2) The environmental quality council may review the number and types of conservation easements
 21 created in the state and compliance with the disclosure and monitoring requirements provided in Title 76, chapter
 22 6, part 2. The environmental quality council may make recommendations to the legislature concerning
 23 conservation easements and any proposed changes to the laws relating to conservation easements."

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25 **Section 2.** Section 76-6-202, MCA, is amended to read:

26 **"76-6-202. Duration of conservation easements -- termination.** (1) Conservation easements may
 27 be granted either in perpetuity or for a term of years. If granted for a term of years, that term may not be less than
 28 15 years. An easement granted for a term of years may be renewed for a term of 15 or more years upon the
 29 execution of a new granting instrument by the parties.

30 (2) A conservation easement may not be terminated or amended in a manner that materially detracts

1 from the conservation values intended for protection without the prior approval of the court in an action in which
 2 the attorney general is made a party. In making this determination, the court shall consider, among other relevant
 3 factors, the purposes expressed by the parties in the easement and the public interest. Subject to federal tax law,
 4 if the value of the landowner's estate is increased by reason of the amendment or termination of a conservation
 5 easement, that increase must be paid over to the holder or to a nonprofit or governmental entity that the court
 6 may designate, to be used for the protection of conservation lands consistent, as nearly as possible, with the
 7 stated publicly beneficial conservation purposes of the easement."

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9 **Section 3.** Section 76-6-203, MCA, is amended to read:

10 **"76-6-203. Types of permissible easements.** (1) Easements or restrictions under this chapter may
 11 prohibit or limit any or all of the following:

12 (1)(a) structures--construction or placing of buildings, camping trailers, housetrailer, mobile homes,
 13 roads, signs, billboards or other advertising, utilities, or other structures on or above the ground;

14 (2)(b) landfill--dumping or placing of soil or other substance or material as landfill or dumping or placing
 15 of trash, waste, or unsightly or offensive materials;

16 (3)(c) vegetation--removal or destruction of trees, shrubs, or other vegetation;

17 (4)(d) loam, gravel, etc.--excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other
 18 material substance;

19 (5)(e) surface use--surface use except for such purposes permitting the land or water area to remain
 20 predominantly in its existing condition;

21 (6)(f) acts detrimental to conservation--activities detrimental to drainage, flood control, water
 22 conservation, erosion control, soil conservation, or fish and wildlife habitat and preservation;

23 (7)(g) subdivision of land--subdivision of land as defined in 76-3-103, 76-3-104, and 76-3-202;

24 (8)(h) other acts--other acts or uses detrimental to such retention of land or water areas in their existing
 25 conditions.

26 (2) A conservation easement executed on or after [the effective date of this act] must include a statement
 27 of the conservation purposes of the easement, the conservation attributes associated with the real property, and
 28 the benefit to the general public intended to be served by the restriction on uses of the real property subject to
 29 the conservation easement."

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1 **Section 4.** Section 76-6-204, MCA, is amended to read:

2 **"76-6-204. Acquisition of conservation easements by qualified private organizations -- registration**
 3 **-- annual report -- revocation.** (1) Any qualified private organization may acquire by a conservation easement,
 4 by purchase, or by gift, devise, bequest, or grant title to any interest or interests in rights in real property, including
 5 land and water, that will provide a means for:

6 (a) the preservation or provision of permanent significant open-space land; ~~and/or~~

7 (b) the preservation of native plants or animals, biotic communities, or geological or geographical
 8 formations of scientific, aesthetic, or educational interest; or

9 (c) a combination of any of the purposes described in subsections (1)(a) and (1)(b).

10 (2) In order to be a qualified private organization, the entity must be registered with the secretary of state
 11 pursuant to Title 30, chapter 13, and by June 1 of each year shall file with the secretary of state an annual report
 12 of the conservation easements that the organization holds. Failure to file an annual report revokes the
 13 organization's qualification under this part."

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15 **Section 5.** Section 76-6-207, MCA, is amended to read:

16 **"76-6-207. Recording and description of easement.** (1) All conservation easements must be recorded
 17 in the county where the land lies so as to effect the land's title in the manner of other conveyances of interest in
 18 land and must describe the land subject to the conservation easement by adequate legal description or by
 19 reference to a recorded plat showing its boundaries. A conservation easement must be recorded as provided in
 20 this subsection within 30 days of the date on which the conservation easement is granted.

21 (2) (a) The county clerk and recorder shall, upon recording, place a copy of the conservation easement
 22 in a separate file within the office of the county clerk and recorder.

23 (b) The county clerk and recorder shall provide a copy of the conservation easement to the department
 24 of revenue office in that county within 30 days of the receipt of the original conservation easement."

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26 **Section 6.** Section 76-6-208, MCA, is amended to read:

27 **"76-6-208. Taxation of property subject to conservation easement.** (1) Assessments made for
 28 taxation on property subject to a conservation easement either in perpetuity or for a term of years, where a public
 29 body or a qualifying private organization holds the conservation easement, ~~shall~~ must be determined on the basis
 30 of the restricted purposes for which the property may be used. The minimum assessed value for land subject

1 to an easement conveyed under this chapter may not be less than the actual assessed value of ~~such the~~ land
 2 in ~~calendar~~ the year 1973 in which the easement is granted. Any land subject to ~~such a conservation~~ easement
 3 may not be classified into a class affording a lesser assessed valuation solely by reason of the creation of the
 4 easement. The value of the interest held by a public body or qualifying private organization ~~shall be~~ is exempt
 5 from property taxation.

6 (2) Expiration of an easement granted for a term of years ~~shall may~~ not result in a reassessment of the
 7 land for property tax purposes if the easement is renewed and the granting instrument reflecting the renewed
 8 easement is executed and properly filed not later than 15 days after the date of expiration. A reassessment must
 9 be performed by a licensed appraiser.

10 (3) Notwithstanding any other provision of this section, the director of the department of revenue may
 11 require that detailed information regarding a claim for a credit under 15-30-180 or a deduction for the donation
 12 of a conservation easement and any appraisal submitted in support of the credit claimed under 15-30-180 be
 13 given to the department of revenue as the director determines is necessary in the performance of the
 14 department's functions relating to the credit or deduction."

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16 **Section 7.** Section 76-6-210, MCA, is amended to read:

17 **"76-6-210. Enforcement -- monitoring.** (1) Conservation easements may be enforced by injunction or
 18 proceedings in equity. Representatives of the grantee of the conservation easement ~~shall be~~ are entitled to enter
 19 the land in a reasonable manner and at reasonable times to assure compliance.

20 (2) ~~No~~ A conservation easement ~~shall be unenforceable on account of~~ is enforceable even if:

21 (a) there is a lack of privity of estate or contract or lack of benefit to particular land; or on account of such

22 (b) the conservation easement is not being an appurtenant easement; or because such

23 (c) the easement is an easement in gross.

24 (3) An action affecting a conservation easement may be brought or intervened in by:

25 (a) a grantee of the easement; or

26 (b) the attorney general, except that the attorney general may initiate an action seeking enforcement of

27 a conservation easement only when the parties designated as having the right to do so under the terms of the
 28 conservation easement:

29 (i) are no longer in legal existence;

30 (ii) are bankrupt or insolvent;

