



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB2601

by Rep. Bob Morgan

SYNOPSIS AS INTRODUCED:

765 ILCS 120/1	from Ch. 30, par. 401
765 ILCS 120/2	from Ch. 30, par. 402
765 ILCS 120/4	from Ch. 30, par. 404
765 ILCS 120/6	from Ch. 30, par. 406

Amends the Real Property Conservation Rights Act. Provides that a conservation right may be amended or modified from time to time only by a written instrument executed by the grantor and grantee and recorded with the office of the recorder of deeds of the county in which the land is located. Provides that either party may, in the absolute discretion of the party, withhold consent to any amendment or modification requested by the other party. Provides that an amendment or modification shall not materially and adversely affect the conservation purposes of the conservation right or facilitate the extinguishment of the conservation right. Provides that the consent of any party other than the grantor and grantee is not required for amendment or modification, even if the other party is entitled to enforce an easement. Provides that the conservation right may contain other requirements for amendment or modification, and such other requirements shall control. Provides that a unit of local government has the authority to grant a conservation right on property that it owns to another unit of government or to a not-for-profit corporation or trust that meets certain criteria. Provides that an action to enforce a conservation right may be brought by any party entitled to enforce the conservation right against a nonowner who is violating the terms of the conservation right. Provides that a notice of violation may be recorded by the holder of the conservation right against any property that the holder of the conservation right reasonably determines is in violation of the conservation right. Provides that a conservation right shall not be extinguished by adverse possession, a claim of abandonment, or merger, and may be extinguished only by such procedure as may be set forth in the conservation right or by a release of the conservation right in accordance with the terms of the conservation right. Provides that no prescriptive easement shall be established that adversely impacts the conservation values protected by the conservation right. Effective immediately.

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A BILL FOR

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Real Property Conservation Rights Act is
5 amended by changing Sections 1, 2, 4, and 6 as follows:

6 (765 ILCS 120/1) (from Ch. 30, par. 401)

7 Sec. 1. (a) A conservation right is a right, whether stated
8 in the form of a restriction, easement, covenant or condition,
9 or, without limitation, in any other form in any deed, will,
10 plat, or without limitation any other instrument executed by or
11 on behalf of the owner of land or in any condemnation order of
12 taking, appropriate to preserving: (i) the significant
13 physical character and visual characteristics of structures
14 having architectural, historical, or cultural significance,
15 together with any associated real property, whether or not
16 improved; or (ii) land or water areas predominantly in their
17 natural, scenic, open or wooded condition, or as suitable
18 habitat for fish, plants, or wildlife; or (iii) the integrity
19 of archaeological sites and the artifacts or information which
20 they may contain pending properly supervised excavation and
21 investigation. Without limiting the generality of the
22 foregoing, the instrument conveying or reserving a
23 conservation right may, with respect to either the grantor or

1 grantee, require, prohibit, condition, limit or control any or
2 all of the following:

3 (1) access or public visitation;

4 (2) affirmative acts of alteration, restoration,
5 rehabilitation, repair, maintenance, investigation,
6 documentation, payment of taxes, or compliance with public
7 law and regulations;

8 (3) conditions of operation, use, restoration,
9 alteration, repair or maintenance;

10 (4) acts detrimental to the preservation of a place;

11 (5) the construction, placement, maintenance in a
12 particular condition, alteration, or removal of roads,
13 signs, billboards or other advertising, utilities or other
14 structures on or above the ground;

15 (6) the dumping or placing of soil or other substance
16 or material as landfill, or dumping or placing of trash,
17 waste or other materials;

18 (7) the excavation, dredging or removal of loam, peat,
19 gravel, soil, rock or other material substance in such
20 manner as to affect the surface or to otherwise alter the
21 topography of the area;

22 (8) the removal or destruction of trees, shrubs or
23 other vegetation;

24 (9) surface use inconsistent with preservation of
25 water or land areas, or the improvement or appurtenance
26 thereto;

1 (10) activities affecting drainage, flood control,
2 water conservation, erosion control or soil conservation,
3 or fish and wildlife habitat preservation; or

4 (11) any other acts or uses having relation to the
5 preservation of structures, sites and water or land areas
6 or the improvements or appurtenances thereto.

7 (b) A conservation right shall be taken to include a
8 preservation restriction as that term is defined in Section
9 11-48.2-1A of the "Illinois Municipal Code", as now or
10 hereafter amended, and shall not be unenforceable on account of
11 lack of privity of estate or contract or lack of benefit to
12 particular land or on account of the benefit being assigned or
13 assignable. Conservation rights shall be construed and
14 enforced in accordance with their terms, and shall be
15 transferable and transferred, recorded and indexed, in the same
16 manner as fee simple interests in real property, subject only
17 to the limitations provided herein.

18 Conservation rights may be released by the holder of such
19 rights to the holder of the fee even though the holder of the
20 fee may not be an agency of the State, a unit of local
21 government or a not-for-profit corporation or trust.

22 The holder of a grant pursuant to this Act shall not be
23 required to record any instrument subsequent to the recording
24 of the grant in order to maintain or continue the validity of
25 the grant.

26 The holder of such rights shall also be permitted to

1 transfer or assign such rights but only to another agency of
2 the State, a unit of local government or to a not-for-profit
3 corporation or trust.

4 (c) A conservation right may be amended or modified from
5 time to time only by a written instrument executed by the
6 grantor and grantee and recorded with the office of the
7 recorder of deeds of the county in which the land is located.
8 Either party may, in the absolute discretion of the party,
9 withhold consent to any amendment or modification requested by
10 the other party. An amendment or modification shall not
11 materially and adversely affect the conservation purposes of
12 the conservation right or facilitate the extinguishment of the
13 conservation right. The consent of any party other than the
14 grantor and grantee is not required for amendment or
15 modification, even if the other party is entitled to enforce an
16 easement under this Act or any other law. The conservation
17 right may contain other requirements for amendment or
18 modification, and such other requirements shall control.

19 (Source: P.A. 91-497, eff. 1-1-00.)

20 (765 ILCS 120/2) (from Ch. 30, par. 402)

21 Sec. 2. Any owner of real property in this State may convey
22 a conservation right in such real property to the United States
23 or any agency of the federal government an agency of the State,
24 to a unit of local government, or to a not-for-profit
25 corporation or trust whose primary purposes include the

1 conservation of land, natural areas, open space or water areas,
2 or the preservation of native plants or animals, or biotic
3 communities, or geographic formations of scientific,
4 aesthetic, or educational interest, or the preservation of
5 buildings, structures or sites of historical, architectural,
6 archeological or cultural significance.

7 No conveyance of such conservation rights shall take effect
8 until such conveyance is accepted by the grantee. Acceptance of
9 such conservation rights may be conditioned upon any
10 requirements which are deemed proper by the grantee. Such
11 requirements may include the payment of funds by the grantor to
12 provide for the management of such conservation rights.

13 A unit of local government, including, but not limited to,
14 a county, township, forest preserve district, conservation
15 district, park district, or municipality, has the authority to
16 grant a conservation right on property that it owns to another
17 unit of government or to any not-for-profit corporation or
18 trust described in this Section.

19 (Source: P.A. 91-497, eff. 1-1-00.)

20 (765 ILCS 120/4) (from Ch. 30, par. 404)

21 Sec. 4. A conservation right created pursuant to this Act
22 may be enforced in an action seeking injunctive relief,
23 specific performance, or damages in the circuit court of the
24 county in which the area, place, building, structure or site is
25 located by any of the following:

1 (a) the United States or any agency of the federal
2 government, the State of Illinois, or any unit of local
3 government;

4 (b) any not-for-profit corporation or trust which owns the
5 conservation right;

6 (c) the owner of any real property abutting or within 500
7 feet of the real property subject to the conservation right.
8 Any owner of property subject to a conservation right who
9 wilfully violates any term of such conservation right may, in
10 the court's discretion, be held liable for punitive damages in
11 an amount equal to the value of the real property subject
12 thereto.

13 An action to enforce a conservation right may also be
14 brought by any party entitled to enforce the conservation right
15 against a nonowner who is violating the terms of the
16 conservation right.

17 A notice of violation may be recorded by the holder of the
18 conservation right against any property that the holder of the
19 conservation right reasonably determines is in violation of the
20 conservation right.

21 (Source: P.A. 91-497, eff. 1-1-00.)

22 (765 ILCS 120/6) (from Ch. 30, par. 406)

23 Sec. 6. This Act shall not be construed to imply that any
24 restriction, easement, covenant or condition which does not
25 have the benefit of the Act shall, on account of any provision

1 herein, be unenforceable. Nothing in this Act shall diminish
2 the powers granted in any other law to acquire by purchase,
3 gift, grant, eminent domain or otherwise and to use land for
4 public purposes. A conservation right shall not be extinguished
5 by adverse possession, a claim of abandonment, or merger, and
6 may be extinguished only by such procedure as may be set forth
7 in the conservation right or by a release of the conservation
8 right in accordance with the terms of the conservation right.
9 No prescriptive easement shall be established that adversely
10 impacts the conservation values protected by the conservation
11 right.

12 (Source: P.A. 80-584.)

13 Section 99. Effective date. This Act takes effect upon
14 becoming law.