



Sen. A. J. Wilhelmi

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1 AMENDMENT TO SENATE BILL 2110

2 AMENDMENT NO. _____. Amend Senate Bill 2110, AS AMENDED,
3 by replacing everything after the enacting clause with the
4 following:

5 "Section 1. Short title. This Act may be cited as the
6 Uniform Environmental Covenants Act.

7 Section 2. Definitions. In this Act:

8 (1) "Activity and use limitations" means restrictions or
9 obligations created under this Act with respect to real
10 property.

11 (2) "Agency" means the Illinois Environmental Protection
12 Agency or any other State or federal agency that determines or
13 approves the environmental response project pursuant to which
14 the environmental covenant is created.

15 (3) "Common interest community" means a condominium,
16 cooperative, or other real property with respect to which a

1 person, by virtue of the person's ownership of a parcel of real
2 property, is obligated to pay property taxes or insurance
3 premiums, or for maintenance, or improvement of other real
4 property described in a recorded covenant that creates the
5 common interest community.

6 (4) "Environmental covenant" means a servitude arising
7 under an environmental response project that imposes activity
8 and use limitations.

9 (5) "Environmental response project" means a plan or work
10 performed for environmental remediation of real property at the
11 following sites or facilities:

12 (A) all sites or facilities that are listed as
13 proposed or final on the National Priorities List
14 pursuant to Section 105 of the Comprehensive
15 Environmental Response, Compensation and Liability Act
16 of 1980, as amended (42 U.S.C. 9601 et seq.);

17 (B) all sites or facilities undergoing remediation
18 pursuant to an administrative order issued pursuant to
19 Section 106 of the Comprehensive Environmental
20 Response, Compensation and Liability Act of 1980, as
21 amended(42 U.S.C.9601 et seq.);

22 (C) all sites or facilities that are owned or
23 operated by a department, agency, or instrumentality
24 of the United States that are undergoing remediation
25 pursuant to Section 120 of the Comprehensive
26 Environmental Response, Compensation and Liability Act

1 of 1980, as amended (42 U.S.C. 9601 et seq.);

2 (D) all sites or facilities undergoing remediation
3 pursuant to a settlement agreement pursuant to Section
4 122 of the Comprehensive Environmental Response,
5 Compensation and Liability Act of 1980, as amended (42
6 U.S.C. 9601 et seq.);

7 (E) all sites or facilities undergoing remediation
8 pursuant to Section 3008(h) of the Resource
9 Conservation and Recovery Act of 1976 (42 U.S.C. 6901
10 et seq.);

11 (F) all sites or facilities undergoing remediation
12 pursuant to Section 7003 of the Resource Conservation
13 and Recovery Act of 1976 (42 U.S.C. 6901 et seq.); or

14 (G) all sites or facilities undergoing remediation
15 pursuant to a court or board order issued pursuant to
16 the Illinois Environmental Protection Act (415 ILCS
17 5/1 et seq.) with the approval of the Agency.

18 (6) "Holder" means the grantee of an environmental covenant
19 as specified in Section 3(a).

20 (7) "Person" means an individual, corporation, business
21 trust, estate, trust, partnership, limited liability company,
22 association, joint venture, public corporation, government,
23 governmental subdivision, agency, or instrumentality, or any
24 other legal or commercial entity.

25 (8) "Prior interest" means a preceding or senior interest,
26 in time or in right, that is recorded with respect to the real

1 property, including but not limited to a mortgage, easement, or
2 other interest, lien, or encumbrance predating the recording of
3 an environmental covenant.

4 (9) "Record", used as a noun, means information that is
5 inscribed on a tangible medium or that is stored in an
6 electronic or other medium and is retrievable in perceivable
7 form.

8 (10) "State" means a state of the United States, the
9 District of Columbia, Puerto Rico, the United States Virgin
10 Islands, or any territory or insular possession subject to the
11 jurisdiction of the United States.

12 Section 3. Nature of rights; subordination of interests.

13 (a) An owner or owners of real property may voluntarily
14 enter into an environmental covenant, as a grantor of an
15 interest in the real property, with an agency and, if
16 appropriate, one or more holders. No owner, agency, or other
17 person shall be required to enter into an environmental
18 covenant as part of an environmental response project;
19 provided, however, that (i) failure to enter into an
20 environmental covenant may result in disapproval of the
21 environmental response project; and (ii) once the owner,
22 agency, or other person assumes obligations in an environmental
23 covenant they must comply with those obligations of the
24 environmental covenant in accordance with this Act.

25 (b) Any person, including a person that owns an interest in

1 the real property, the agency, or a municipality or other unit
2 of local government, may be a holder. An environmental covenant
3 may identify more than one holder. The interest of a holder is
4 an interest in real property.

5 (c) A right of an agency under this Act or under an
6 environmental covenant, other than a right as a holder, is not
7 an interest in real property.

8 (d) An agency is bound by any obligation it assumes in an
9 environmental covenant, but an agency does not assume
10 obligations merely by signing an environmental covenant. Any
11 other person that signs an environmental covenant is bound by
12 the obligations the person assumes in the covenant, but signing
13 the covenant does not change obligations, rights, or
14 protections granted or imposed under law other than this Act
15 except as provided in the covenant.

16 (e) The following rules apply to interests in real property
17 in existence at the time an environmental covenant is created
18 or amended:

19 (1) An interest that has priority under other law is
20 not affected by an environmental covenant unless the person
21 that owns the interest subordinates that interest to the
22 covenant.

23 (2) This Act does not require a person that owns a
24 prior interest to subordinate that interest to an
25 environmental covenant or to agree to be bound by the
26 covenant.

1 (3) A subordination agreement may be contained in an
2 environmental covenant covering real property or in a
3 separate record. If the environmental covenant covers
4 commonly owned property in a common interest community, the
5 record may be signed by any person authorized by the
6 governing board of the owners association.

7 (4) An agreement by a person to subordinate a prior
8 interest to an environmental covenant affects the priority
9 of that person's interest but does not by itself impose any
10 affirmative obligation on the person with respect to the
11 environmental covenant.

12 (f) Environmental covenants established under this Act
13 shall be subject to eminent domain or condemnation proceedings
14 by any agency of the State having a general grant of authority
15 to acquire property by the exercise of the right of eminent
16 domain under the laws of this State. No environmental covenant
17 established under this Act shall be terminated or modified
18 unless:

19 (1) The agency that signed the covenant is a party to
20 the proceeding;

21 (2) All persons identified in Section 10(a) and (b) are
22 given notice of the pendency of the proceeding; and

23 (3) The agency of the State exercising the right of
24 eminent domain or condemnation determines, after hearing,
25 that the termination or modification will not adversely
26 affect human health or the environment.

1 Section 4. Contents of environmental covenant.

2 (a) An environmental covenant must:

3 (1) State that the instrument is an environmental
4 covenant executed pursuant to this Act.

5 (2) Contain a legally sufficient description of the
6 real property subject to the covenant.

7 (3) Describe the activity and use limitations on the
8 real property.

9 (4) Identify every holder.

10 (5) Be signed by the agency, every holder, and unless
11 waived by the agency every owner of the fee simple of the
12 real property subject to the covenant.

13 (6) Identify the name and location of any
14 administrative record for the environmental response
15 project reflected in the environmental covenant.

16 (b) In addition to the information required by subsection
17 (a), an environmental covenant may contain other information,
18 restrictions, and requirements agreed to by the persons who
19 signed it, including any:

20 (1) Requirements for notice following transfer of a
21 specified interest in, or concerning proposed changes in
22 use of, applications for building permits for, or proposals
23 for any site work affecting the contamination on, the
24 property subject to the covenant.

25 (2) Requirements for periodic reporting describing

1 compliance with the covenant.

2 (3) Rights of access to the property granted in
3 connection with implementation or enforcement of the
4 covenant.

5 (4) A brief narrative description of the contamination
6 and remedy, including the contaminants of concern, the
7 pathways of exposure, limits on exposure, and the location
8 and extent of the contamination.

9 (5) Limitation on amendment or termination of the
10 covenant in addition to those contained in Sections 9 and
11 10.

12 (6) Rights of the holder in addition to its right to
13 enforce the covenant pursuant to Section 11.

14 (c) In addition to other conditions for its approval of an
15 environmental covenant, the agency may require those persons
16 specified by the agency who have interests in the real property
17 to sign the covenant.

18 Section 5. Validity; effect on other instruments.

19 (a) An environmental covenant that complies with this Act
20 runs with the land.

21 (b) An environmental covenant that is otherwise effective
22 is valid and enforceable even if:

23 (1) It is not appurtenant to an interest in real
24 property.

25 (2) It can be or has been assigned to a person other

1 than the original holder.

2 (3) It is not of a character that has been recognized
3 traditionally at common law.

4 (4) It imposes a negative burden.

5 (5) It imposes an affirmative obligation on a person
6 having an interest in the real property or on the holder.

7 (6) The benefit or burden does not touch or concern
8 real property.

9 (7) There is no privity of estate or contract.

10 (8) The holder dies, ceases to exist, resigns, or is
11 replaced.

12 (9) The owner of an interest subject to the
13 environmental covenant and the holder are the same person.

14 (c) An instrument that creates restrictions or obligations
15 with respect to real property that would qualify as activity
16 and use limitations except for the fact that the instrument was
17 recorded before the effective date of this Act is not invalid
18 or unenforceable because of any of the limitations on
19 enforcement of interests described in subsection (b) or because
20 it was identified as an easement, servitude, deed restriction,
21 or other interest. This Act does not apply in any other respect
22 to such an instrument.

23 (d) This Act does not invalidate or render unenforceable
24 any interest, whether designated as an environmental covenant
25 or other interest, that is otherwise enforceable under the law
26 of this State, including but not limited to interests compliant

1 with 35 Ill. Adm. Code 742, Subpart J.

2 Section 6. Relationship to other land-use law. This Act
3 does not authorize a use of real property that is otherwise
4 prohibited by zoning, by law other than this Act regulating use
5 of real property, or by a recorded instrument that has priority
6 over the environmental covenant. An environmental covenant may
7 prohibit or restrict uses of real property which are authorized
8 by zoning or by law other than this Act.

9 Section 7. Notice.

10 (a) A copy of an environmental covenant shall be provided
11 by the persons and in the manner required by the agency to:

12 (1) Each person that signed the covenant.

13 (2) Each person holding a recorded interest in the real
14 property subject to the covenant.

15 (3) Each person in possession of the real property
16 subject to the covenant.

17 (4) Each municipality or other unit of local government
18 in which real property subject to the covenant is located.

19 (5) Any other person the agency requires.

20 (b) The validity of a covenant is not affected by failure
21 to provide a copy of the covenant as required under this
22 Section.

23 Section 8. Recording.

1 (a) An environmental covenant and any amendment or
2 termination of the covenant must be recorded in every county in
3 which any portion of the real property subject to the covenant
4 is located. For purposes of indexing, a holder shall be treated
5 as a grantee.

6 (b) Except as otherwise provided in Section 9(c), an
7 environmental covenant is subject to the laws of this State
8 governing recording and priority of interests in real property.

9 Section 9. Duration; amendment by court action.

10 (a) An environmental covenant is perpetual unless it is:

11 (1) By its terms limited to a specific duration or
12 terminated by the occurrence of a specific event.

13 (2) Terminated by consent pursuant to Section 10.

14 (3) Terminated pursuant to subsection (b).

15 (4) Terminated by foreclosure of an interest that has
16 priority over the environmental covenant.

17 (5) Terminated or modified in an eminent domain
18 proceeding, but only if:

19 (A) The agency that signed the covenant is a party
20 to the proceeding.

21 (B) All persons identified in Section 10(a) and (b)
22 are given notice of the pendency of the proceeding.

23 (C) The court determines, after hearing, that the
24 termination or modification will not adversely affect
25 human health or the environment.

1 (b) If the agency that signed an environmental covenant has
2 determined that the intended benefits of the covenant can no
3 longer be realized, a court, under the doctrine of changed
4 circumstances, in an action in which all persons identified in
5 Section 10(a) and (b) have been given notice, may terminate the
6 covenant or reduce its burden on the real property subject to
7 the covenant. The agency's determination or its failure to make
8 a determination upon request is subject to review pursuant to
9 the Administrative Review Law.

10 (c) Except as otherwise provided in subsections (a) and
11 (b), an environmental covenant may not be extinguished,
12 limited, or impaired through issuance of a tax deed,
13 foreclosure of a tax lien, or application of the doctrine of
14 adverse possession, prescription, abandonment, waiver, lack of
15 enforcement, or acquiescence, or a similar doctrine.

16 (d) An environmental covenant may not be extinguished,
17 limited, or impaired by application of any Illinois Law
18 concerning marketable title or dormant mineral interests.

19 Section 10. Amendment or termination by consent.

20 (a) An environmental covenant may be amended or terminated
21 by consent only if the amendment or termination is signed by:

22 (1) The agency.

23 (2) Unless waived by the agency, the current owner of
24 the fee simple of the real property subject to the
25 covenant.

1 (3) Each person that originally signed the covenant,
2 unless the person waived in a signed record the right to
3 consent or a court finds that the person no longer exists
4 or cannot be located or identified with the exercise of
5 reasonable diligence.

6 (4) Except as otherwise provided in subsection (d)(2),
7 the holder.

8 (b) If an interest in real property is subject to an
9 environmental covenant, the interest is not affected by an
10 amendment of the covenant unless the current owner of the
11 interest consents to the amendment or has waived in a signed
12 record the right to consent to amendments.

13 (c) Except for an assignment undertaken pursuant to a
14 governmental reorganization, assignment of an environmental
15 covenant to a new holder is an amendment.

16 (d) Except as otherwise provided in an environmental
17 covenant:

18 (1) A holder may not assign its interest without
19 consent of the other parties.

20 (2) A holder may be removed and replaced by agreement
21 of the other parties specified in subsection (a).

22 (3) A court of competent jurisdiction may fill a
23 vacancy in the position of holder.

24 Section 11. Enforcement of environmental covenant.

25 (a) A civil action for injunctive or other equitable relief

1 for violation of an environmental covenant may be maintained
2 by:

3 (1) A party to the covenant.

4 (2) The agency or, if it is not the agency, the
5 Illinois Environmental Protection Agency.

6 (3) Any person to whom the covenant expressly grants
7 power to enforce.

8 (4) A person whose interest in the real property or
9 whose collateral or liability may be affected by the
10 alleged violation of the covenant.

11 (5) A municipality or other unit of local government in
12 which the real property subject to the covenant is located.

13 (b) This Act does not limit the regulatory authority of the
14 agency or the Illinois Environmental Protection Agency under
15 law other than this Act with respect to an environmental
16 response project.

17 (c) A person is not responsible for or subject to liability
18 for environmental remediation solely because it has the right
19 to enforce an environmental covenant.

20 Section 12. Registry; substitute notice.

21 (a) The Illinois Environmental Protection Agency shall
22 establish and maintain a registry that contains all
23 environmental covenants and any amendment or termination of
24 those covenants. The registry may also contain any other
25 information concerning environmental covenants and the real

1 property subject to them which the Illinois Environmental
2 Protection Agency considers appropriate. The registry is a
3 public record for purposes of the Freedom of Information Act.

4 (b) After an environmental covenant or an amendment or
5 termination of a covenant is filed in the registry established
6 pursuant to subsection (a), a notice of the covenant,
7 amendment, or termination that complies with this Section may
8 be recorded in the land records in lieu of recording the entire
9 covenant. Any such notice must contain:

10 (1) A legally sufficient description and any available
11 street address of the real property subject to the
12 covenant.

13 (2) The name and address of the owner of the fee simple
14 interest in the real property, the agency, and the holder
15 if other than the agency.

16 (3) A statement that the covenant, amendment, or
17 termination is available in a registry at the Environmental
18 Protection Agency at its office in Springfield, which
19 discloses the method of any electronic access.

20 (4) A statement that the notice is notification of an
21 environmental covenant executed pursuant to this Act.

22 (c) A statement in substantially the following form,
23 executed with the same formalities as a deed in this State,
24 satisfies the requirements of subsection (b):

25 (1) This notice is filed in the land records of (insert
26 name of county in which the real property is located)

1 pursuant to Section 12 of the Uniform Environmental
2 Covenants Act.

3 (2) This notice and the covenant, amendment or
4 termination to which it refers may impose significant
5 obligations with respect to the property described below.

6 (3) A legal description of the property is attached as
7 Exhibit A to this notice. The address of the property that
8 is subject to the environmental covenant is (insert address
9 of property).

10 (4) The name and address of the owner of the fee simple
11 interest in the real property on the date of this notice is
12 (insert name of current owner of the property and the
13 owner's current address as shown on the tax records of the
14 jurisdiction in which the property is located).

15 (5) The environmental covenant, amendment or
16 termination was signed by (insert name and address of the
17 agency).

18 (6) The environmental covenant, amendment, or
19 termination was filed in the registry on (insert date of
20 filing).

21 (7) The full text of the covenant, amendment, or
22 termination and any other information required by the
23 agency is on file and available for inspection and copying
24 in the registry maintained for that purpose by the Illinois
25 Environmental Protection Agency at (insert address and
26 room of buildings in which the registry is maintained). The

1 covenant, amendment or termination may be found
2 electronically at (insert web address for covenant).

3 Section 13. Uniformity of application and construction. In
4 applying and construing this uniform Act, consideration must be
5 given to the need to promote uniformity of the law with respect
6 to its subject matter among states that enact it.

7 Section 14. Relation to Electronic Signatures in Global and
8 National Commerce Act. This Act modifies, limits, or supersedes
9 the federal Electronic Signatures in Global and National
10 Commerce Act (15 U.S.C. Section 7001 et seq.) but does not
11 modify, limit, or supersede Section 101 of that Act (15 U.S.C.
12 Section 7001(a)) or authorize electronic delivery of any of the
13 notices described in Section 103 of that Act (15 U.S.C. Section
14 7003(b)).

15 Section 15. Severability. If any provision of this Act or
16 its application to any person or circumstance is held invalid,
17 the invalidity does not affect other provisions or applications
18 of this Act which can be given effect without the invalid
19 provision or application, and to this end the provisions of
20 this Act are severable.".