

CONSERVATION EASEMENT REVISIONS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mike K. McKell

Senate Sponsor: _____

LONG TITLE

General Description:

This bill enacts language related to the review and approval of a conservation easement.

Highlighted Provisions:

This bill:

▶ enacts Title 17, Chapter 41a, Land Conservation Easement Approval, including:

- enacting general provisions;
 - enacting provisions requiring a property owner to file a request with an applicable legislative body before granting a conservation easement;
 - enacting provisions requiring an applicable legislative body to provide notice of a request and forward a request to the planning commission;
 - enacting provisions requiring the planning commission to review a request and make recommendations to the applicable legislative body;
 - enacting provisions requiring the applicable legislative body to hold a public hearing and approve or reject a request to grant a conservation easement; and
 - enacting criteria for the planning commission and applicable legislative body to apply when determining whether to recommend or grant a conservation easement;
- ▶ prohibits a person from recording or granting a conservation easement unless the easement has been approved by an applicable legislative body; and
- ▶ makes technical and conforming amendments.



28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **57-18-4**, as last amended by Laws of Utah 2011, Chapter 157

35 ENACTS:

36 **17-41a-101**, Utah Code Annotated 1953

37 **17-41a-102**, Utah Code Annotated 1953

38 **17-41a-201**, Utah Code Annotated 1953

39 **17-41a-202**, Utah Code Annotated 1953

40 **17-41a-203**, Utah Code Annotated 1953

41 **17-41a-204**, Utah Code Annotated 1953

42 **17-41a-205**, Utah Code Annotated 1953



44 *Be it enacted by the Legislature of the state of Utah:*

45 Section 1. Section **17-41a-101** is enacted to read:

46 **CHAPTER 41a. LAND CONSERVATION EASEMENT APPROVAL**

47 **Part 1. General Provisions**

48 **17-41a-101. Title.**

49 This chapter is known as "Land Conservation Easement Approval."

50 Section 2. Section **17-41a-102** is enacted to read:

51 **17-41a-102. Definitions.**

52 As used in this chapter:

53 (1) "Applicable legislative body" means:

54 (a) the legislative body of the county in which the land proposed to be subject to a
55 conservation easement is located, if the land is within the unincorporated part of the county; or

56 (b) the legislative body of the municipality in which the land proposed to be subject to
57 a conservation easement is located.

58 (2) "Conservation easement" has the same meaning as in Section 57-18-2.

59 (3) "Planning commission" means:

60 (a) a countywide planning commission, if the land proposed to be subject to a
61 conservation easement is within the unincorporated part of the county and not within a
62 township;

63 (b) a township planning commission, if the land proposed to be subject to a
64 conservation easement is within a township; or

65 (c) a planning commission of a city or town, if the land proposed to be subject to a
66 conservation easement is within a city or town.

67 (4) "Qualified person" means:

68 (a) a charitable organization that qualifies as being tax exempt under Section 501(c)(3)
69 of the Internal Revenue Code; or

70 (b) a governmental entity.

71 (5) "Request" means a request for an applicable legislative body to approve a
72 conservation easement as described in Section 17-41a-201.

73 (6) "Unincorporated" means not within a city or town.

74 Section 3. Section **17-41a-201** is enacted to read:

75 **Part 2. Request and Approval of Conservation Easement**

76 **17-41a-201. Request to grant conservation easement.**

77 (1) A property owner may grant a conservation easement to a qualified person if the
78 applicable legislative body approves the grant in accordance with this chapter.

79 (2) A property owner or qualified person may not grant or record a conservation
80 easement in accordance with Section 57-18-4 unless the conservation easement is approved by
81 the applicable legislative body.

82 (3) A property owner shall file a request for approval to grant a conservation easement
83 with the applicable legislative body if the property owner plans to grant a conservation
84 easement.

85 (4) The request shall:

86 (a) include the name, address, and phone number of the property owner requesting to
87 grant a conservation easement;

88 (b) identify the boundaries of the land proposed to be subject to the conservation
89 easement;

90 (c) include a copy of a proposed deed, will, or other instrument that would grant the
91 conservation easement if approved; and

92 (d) provide the name of the qualified person who would be granted the conservation
93 easement.

94 (5) The applicable legislative body may charge a reasonable fee to accept and process a
95 request.

96 Section 4. Section **17-41a-202** is enacted to read:

97 **17-41a-202. Notice of request -- Protest.**

98 (1) Each applicable legislative body shall provide notice of a request by:

99 (a) publishing notice:

100 (i) in a newspaper having general circulation within the same county or municipality,
101 as applicable, in which the property identified in the request is located; and

102 (ii) as required in Section 45-1-101;

103 (b) posting notice at three public places, designated by the applicable legislative body,
104 near the property identified in the request; and

105 (c) mailing written notice to each owner of land within 500 feet of the property
106 identified in the request.

107 (2) The notice shall include:

108 (a) a statement that a request for approval of a conservation easement has been filed
109 with the applicable legislative body;

110 (b) a description of the property proposed to be subject to the conservation easement;

111 (c) a statement that a person or entity affected by the conservation easement may,
112 within 15 days of the date of the notice, file with the applicable legislative body a written
113 objection to approval of the request;

114 (d) a statement that the applicable legislative body will submit the request to the
115 planning commission for review and recommendations; and

116 (e) a statement that the applicable legislative body will hold a public hearing to discuss
117 and hear public comment on:

118 (i) the request to approve a conservation easement;

119 (ii) the recommendations of the planning commission; and

120 (iii) a statement indicating the date, time, and place of the public hearing.

121 (3) (a) A person who objects to the request for a conservation easement may, no later
122 than 15 days after the date of the notice, file a written objection to approval of the request with
123 the applicable legislative body.

124 (b) A person who files a written objection shall state in the objection:

125 (i) the person's name, address, and phone number; and

126 (ii) the person's reasons for objecting to the conservation easement.

127 Section 5. Section **17-41a-203** is enacted to read:

128 **17-41a-203. Review of request.**

129 (1) No later than 30 days after the date of notice, the applicable legislative body shall
130 refer the request and any objections to the planning commission for review and
131 recommendations.

132 (2) (a) No later than 45 days after receipt of a request, the planning commission shall
133 submit a recommendation to approve or reject the request to the applicable legislative body.

134 (b) The planning commission shall conduct and consider the following to determine a
135 recommendation to the applicable legislative body:

136 (i) an analysis and evaluation of:

137 (A) the effect of the creation of the proposed conservation easement on the planning
138 policies and objectives of the county or municipality, respectively; and

139 (B) the request by applying the criteria contained in Section 17-41a-205; and

140 (ii) any objections to the request.

141 (3) The applicable legislative body shall consider a failure of the planning commission
142 to submit a recommendation within the 60 days as a recommendation of the commission to
143 approve the request.

144 Section 6. Section **17-41a-204** is enacted to read:

145 **17-41a-204. Public hearing -- Review and action on request.**

146 (1) After receipt of the planning commission's recommendation, or after 60 days have
147 expired, whichever is earlier, the applicable legislative body shall:

148 (a) schedule a public hearing;

149 (b) provide notice of the public hearing by:

150 (i) publishing notice:

151 (A) in a newspaper having general circulation within the same county or municipality,

152 as applicable, in which the property identified in the request is located; and
153 (B) on the Utah Public Notice Website created in Section 63F-1-701;
154 (ii) posting notice at three public places, designated by the applicable legislative body,
155 near the property identified in the request; and
156 (iii) mailing written notice to each owner of land within 500 feet of the property
157 identified in the request; and
158 (c) include in the notice:
159 (i) the time, date, and place of the public hearing regarding the request;
160 (ii) a description of the property identified in the request;
161 (iii) a summary of the recommendations of the planning commission; and
162 (iv) a statement that interested persons may appear at the public hearing and speak in
163 favor of or against the request or the recommendations of the planning commission.
164 (2) The applicable legislative body shall:
165 (a) convene the public hearing at the time, date, and place specified in the notice; and
166 (b) take verbal or written testimony from interested persons.
167 (3) Within 120 days of the submission of the request, the applicable legislative body
168 shall:
169 (a) consider the recommendation of the planning commission;
170 (b) consider any objections to the request;
171 (c) review the request by applying the criteria contained in Section 17-41a-205; and
172 (d) approve or reject the request.
173 (4) If the applicable legislative body approves the request, the property owner may
174 grant the conservation easement:
175 (a) only to the qualified person identified in the request; and
176 (b) only if the grant is in accordance with the deed, will, or other instrument that was
177 submitted in the request in accordance with Section 17-41a-201 and reviewed by the applicable
178 legislative body and planning commission.
179 Section 7. Section **17-41a-205** is enacted to read:
180 **17-41a-205. Conservation easement evaluation criteria.**
181 In evaluating a request and in determining whether to recommend or reject a request for
182 a conservation easement, the planning commission and applicable legislative body shall apply

183 the following criteria:

184 (1) whether the granting of the conservation easement is in conformance with a general
185 plan adopted by the applicable municipality or county;

186 (2) how, if at all, the granting of the conservation easement will affect property
187 adjacent to the property that would be subject to the conservation easement;

188 (3) whether the property is viable for a conservation easement; and

189 (4) anticipated development trends within the municipality or county, as applicable.

190 Section 8. Section **57-18-4** is amended to read:

191 **57-18-4. Requirements for creation.**

192 (1) Any property owner may, subject to the approval of an applicable legislative body
193 in accordance with Title 17, Chapter 41a, Land Conservation Easement Approval, grant a
194 conservation easement to any other qualified person as defined in Section 57-18-3 [~~in the same~~
195 ~~manner and~~] with the same effect as any other conveyance of an interest in real property.

196 (2) (a) A conservation easement shall be in writing and shall be recorded in the office
197 of the recorder of the county in which the easement is granted.

198 (b) Within 10 days after a conservation easement is recorded, the owner of real
199 property for which the conservation easement is granted shall deliver to the assessor of the
200 county in which the property is located a copy of the conservation easement and proof that the
201 conservation easement has been recorded.

202 (c) Before January 1, 2012, each owner of property subject to a conservation easement
203 recorded before May 10, 2011, shall deliver to the assessor of the county in which the property
204 is located a copy of the conservation easement and proof that the conservation easement has
205 been recorded.

206 (3) The instrument that creates a conservation easement shall identify and describe the
207 land subject to the conservation easement by legal description, specify the purpose for which
208 the easement is created, and include a termination date or a statement that the easement
209 continue in perpetuity.

210 (4) Any qualified person, as defined in Section 57-18-3, that receives a conservation
211 easement shall disclose to the easement's grantor, at least three days prior to the granting of the
212 easement, the types of conservation easements available, the legal effect of each easement, and
213 that the grantor should contact an attorney concerning any possible legal and tax implications

214 of granting a conservation easement.

Legislative Review Note
as of **2-25-13 3:44 PM**

Office of Legislative Research and General Counsel