

Ohio PACE Enabling Laws

Ohio Rev. Code Ann. §§ 5301.67 to 5301.70
Current through legislation passed by the 133rd General Assembly (2019)

§ 5301.67 Definitions.

As used in sections 5301.67 to 5301.70 of the Revised Code:

(A) “Conservation easement” means an incorporeal right or interest in land that is held for the public purpose of retaining land, water, or wetland areas predominantly in their natural, scenic, open, or wooded condition, including, without limitation, the use of land in agriculture when consistent with and in furtherance of the purpose of retaining those areas in such a condition, or retaining their use predominantly as suitable habitat for fish, plants, or wildlife; that imposes any limitations on the use or development of the areas that are appropriate at the time of creation of the conservation easement to achieve one or more of those purposes; and that includes appropriate provisions for the holder to enter the property subject to the easement at reasonable times to ensure compliance with its provisions.

(B) “Agriculture” means those activities occurring on land devoted exclusively to agricultural use, as defined in section 5713.30 of the Revised Code, or on land that constitutes a homestead.

(C) “Agricultural easement” means an incorporeal right or interest in land that is held for the public purpose of retaining the use of land predominantly in agriculture; that imposes any limitations on the use or development of the land that are appropriate at the time of creation of the easement to achieve that purpose; that is in the form of articles of dedication, easement, covenant, restriction, or condition; and that includes appropriate provisions for the holder to enter the property subject to the easement at reasonable times to ensure compliance with its provisions.

(D) “Homestead” means the portion of a farm on which is located a dwelling house, yard, or outbuildings such as a barn or garage.

History: Eff 7-26-2001.

§ 5301.68 Grant of conservation or agricultural easement.

An owner of land may grant a conservation easement to the department of natural resources, a park district created under Chapter 1545. of the Revised Code, a township park district created under section 511.18 of the Revised Code, a conservancy district created under Chapter 6101. of the Revised Code, a soil and water conservation district created under Chapter 940. of the Revised Code, a regional water and sewer district created under Chapter 6119. of the Revised Code, a county, a township, a municipal corporation, or a charitable organization that is authorized to hold conservation easements by division (B) of section 5301.69 of the Revised Code, in the form of articles of dedication, easement, covenant, restriction, or condition. An owner of land also may grant an agricultural easement to the director of agriculture; to a municipal corporation, county, township, or soil and water conservation district; or to a charitable organization described in division (B) of section 5301.69 of the Revised Code. An owner of land may grant an agricultural easement only on land that is valued for purposes of real property taxation at its current value for agricultural use under section 5713.31 of the Revised Code or that constitutes a homestead when the easement is granted.

All conservation easements and agricultural easements shall be executed and recorded in the same manner as other instruments conveying interests in land.

History: Effective Date: 07-26-2001; 04-15-2005; amended by 129th General Assembly File No.141, HB 509, §1, eff. 9/28/2012; amended by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 1/1/2016.

§ 5301.69 Who may acquire easement; procedure for acquiring and supervising.

(A) The director of natural resources, the board of park commissioners of a park district created under Chapter 1545. of the Revised Code, the board of park commissioners of a township park district created under section 511.18 of the Revised Code, the board of directors of a conservancy district created under Chapter 6101. of the Revised Code, the board of supervisors of a soil and water conservation district created under Chapter 940. of the Revised Code, the board of trustees of a regional water and sewer district created under Chapter 6119. of the Revised Code, the board of county commissioners of a county, the board of township trustees of a township, or the legislative authority of a municipal corporation may acquire conservation easements in the name of the state, the district, or the county, township, or municipal corporation in the same manner as other interests in land may be acquired under section 307.02, 307.18, 505.10, 505.261, 511.23, 717.01, 940.06, 1501.01, 1545.11, 6101.15, or 6119.111 of the Revised Code. Each officer, board, or authority acquiring a conservation easement shall name an appropriate administrative officer, department, or division to supervise and enforce the easement.

(B) A charitable organization may acquire and hold conservation easements if it is exempt from federal taxation under subsection 501(a) and is described in subsection 501(c) of the "Internal Revenue Code of 1954," 68A Stat. 3, 26 U.S.C. 1, as amended, and organized for any of the following purposes: the preservation of land areas for public outdoor recreation or education, or scenic enjoyment; the preservation of historically important land areas or structures; or the protection of natural environmental systems. Such a charitable organization also may acquire and hold agricultural easements subject to the limitation that it may do so only on land that is valued for purposes of real property taxation at its current value for agricultural use under section 5713.31 of the Revised Code or that constitutes a homestead when the easement is granted.

History: Effective Date: 07-26-2001; amended by 129th General Assembly File No.141, HB 509, §1, eff. 9/28/2012; amended by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 1/1/2016.

§ 5301.691 Acquisition of agricultural easements by state, political subdivision, or soil and water conservation district.

(A)

(1) Subject to divisions (A)(2) and (F) of this section, the director of agriculture, with moneys credited to the agricultural easement purchase fund created in section 901.21 of the Revised Code, may purchase agricultural easements in the name of the state.

(2) Not less than thirty days prior to the acquisition of an agricultural easement under division (A)(1) of this section or the extinguishment of such an easement purchased under that division, the director shall provide written notice of the intention to do so to the board of county commissioners of the county in which the land that is or is proposed to be subject to the easement or extinguishment is located, and either to the legislative authority of the municipal corporation in

which the land is located, if it is located in an incorporated area, or to the board of township trustees of the township in which the land is located, if it is located in an unincorporated area. If, within thirty days after the director provides the notice, the board of county commissioners, legislative authority, or board of township trustees requests an informational meeting with the director regarding the proposed acquisition or extinguishment, the director shall meet with the legislative authority or board to respond to the board's or authority's questions and concerns. If a meeting is timely requested under division (A)(2) of this section, the director shall not undertake the proposed acquisition or extinguishment until after the meeting has been concluded.

The director, upon the director's own initiative and prior to the purchase of an agricultural easement under division (A)(1) of this section or the extinguishment of such an easement, may hold an informational meeting with the board of county commissioners and the legislative authority of the municipal corporation or board of township trustees in which land that would be affected by the proposed acquisition or extinguishment is located, to respond to any questions and concerns of the board or authority regarding the proposed acquisition or extinguishment.

(B)

(1) Subject to division (F) of this section, the legislative authority of a municipal corporation, board of county commissioners of a county, or board of trustees of a township, with moneys in the political subdivision's general fund not required by law or charter to be used for other specified purposes or with moneys in a special fund of the political subdivision to be used for the purchase of agricultural easements, may purchase agricultural easements in the name of the municipal corporation, county, or township.

(2) Subject to division (F) of this section, the legislative authority of a municipal corporation, board of county commissioners of a county, or board of township trustees of a township may acquire agricultural easements by gift, devise, or bequest. Any terms may be included in an agricultural easement so acquired that are necessary or appropriate to preserve on behalf of the grantor of the easement the favorable tax consequences of the gift, devise, or bequest under the "Internal Revenue Act of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended.

(C)

(1) Subject to division (F) of this section, the board of supervisors of a soil and water conservation district, with moneys in any fund not required by law to be used for other specified purposes or with moneys provided to the board through matching grants made under section 901.22 of the Revised Code for the purchase of agricultural easements, may purchase agricultural easements in the name of the board.

(2) Subject to division (F) of this section, the board of supervisors of a soil and water conservation district may acquire agricultural easements by gift, devise, or bequest. Any terms may be included in an agricultural easement so acquired that are necessary or appropriate to preserve on behalf of the grantor of the easement the favorable tax consequences of the gift, devise, or bequest under the "Internal Revenue Act of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended.

(D)

(1) The term of an agricultural easement purchased wholly or in part with money from the agricultural easement purchase fund shall be perpetual and shall run with the land.

(2) The term of an agricultural easement purchased by the legislative authority of a municipal corporation, board of county commissioners of a county, board of township trustees of a township, or board of supervisors of a soil and water conservation district without the use of any money from the agricultural easement purchase fund may be perpetual or for a specified period. The agricultural easement shall run with the land. The instrument conveying an agricultural easement for a specified period shall include provisions specifying, at a minimum, all of the following:

- (a) The consideration to be paid for the easement and manner of payment;
- (b) Whether the easement is renewable and, if so, procedures for its renewal;
- (c) The circumstances under which the easement may be extinguished;
- (d) The method for determining the amount of money, if any, due the holder of the easement upon extinguishment and for payment of that amount to the holder.

(E)

(1) The director and each legislative authority of a municipal corporation, board of county commissioners, board of township trustees, or board of supervisors of a soil and water conservation district, upon acquiring an agricultural easement by purchase, gift, devise, or bequest under this section or section 901.21 of the Revised Code, shall name an appropriate administrative officer, department, or division to supervise and enforce the easement. A legislative authority of a municipal corporation, board of county commissioners, or board of township trustees may enter into a contract with the board of park commissioners of a park district established under Chapter 1545. of the Revised Code, the board of park commissioners of a township park district established under section 511.18 of the Revised Code, or the board of supervisors of a soil and water conservation district having territorial jurisdiction within the municipal corporation, county, or township, or with a charitable organization described in division (B) of section 5301.69 of the Revised Code, to supervise on behalf of the legislative authority or board an agricultural easement so acquired. A board of supervisors of a soil and water conservation district may enter into a contract with the board of park commissioners of a park district established under Chapter 1545. of the Revised Code or the board of park commissioners of a township park district established under section 511.18 of the Revised Code having territorial jurisdiction within the soil and water conservation district, or with a charitable organization described in division (B) of section 5301.69 of the Revised Code, to supervise on behalf of the board an agricultural easement so acquired. The contract may be entered into on such terms as are agreeable to the parties and shall specify or prescribe a method for determining the amounts of any payments to be made by the legislative authority, board of county commissioners, board of township trustees, or board of supervisors for the performance of the contract.

(2) With respect to an agricultural easement purchased with a matching grant that is made under division (D) of section 901.22 of the Revised Code and that consists in whole or in part of moneys from the clean Ohio agricultural easement fund created in section 901.21 of the Revised Code, the recipient of the matching grant shall make an annual monitoring visit to the land that is the subject of the easement. The purpose of the visit is to ensure that no development that is prohibited by the terms of the easement has occurred or is occurring. In accordance with rules adopted under division (A)(1)(d) of section 901.22 of the Revised Code, the grant recipient shall prepare a written annual monitoring report and submit it to the office of farmland preservation in the department of agriculture. If necessary to enforce the terms of the easement, the grant recipient shall take corrective action in accordance with those rules. The director may agree to share these monitoring and enforcement responsibilities with the grant recipient.

(F) The director; a municipal corporation, county, township, or soil and water conservation district; or a charitable organization may acquire agricultural easements by purchase, gift, devise, or bequest only on land that is valued for purposes of real property taxation at its current value for agricultural use under section 5713.31 of the Revised Code or that constitutes a homestead when the easement is granted.

(G) An agricultural easement acquired by the director under division (A) of this section may be extinguished if an unexpected change in the conditions of or surrounding the land that is subject to the easement makes impossible or impractical the continued use of the land for the purposes described in the agricultural easement, or if the requirements of the easement are extinguished by judicial proceedings. Upon the sale, exchange, or involuntary conversion of the land subject to the easement, the director shall be paid an amount of money that is at least equal to the proportionate value of the easement compared to the total value of the land at the time the easement was acquired. Moneys so received shall be credited to the agricultural easement purchase fund.

An agricultural easement acquired by a municipal corporation, county, or township under division (B) of this section or by a soil and water conservation district under division (C) of this section may be extinguished under the circumstances prescribed, and in accordance with the terms and conditions set forth, in the instrument conveying the agricultural easement. An agricultural easement acquired by a charitable organization described in division (B) of section 5301.69 of the Revised Code may be extinguished under the circumstances prescribed, and in accordance with the terms and conditions set forth, in the instrument conveying the agricultural easement.

Any instrument extinguishing an agricultural easement shall be executed and recorded in the same manner as other instruments conveying or terminating interests in real property.

(H) Promptly after the recording and indexing of an instrument conveying an agricultural easement to any person or to a municipal corporation, county, township, or soil and water conservation district or of an instrument extinguishing an agricultural easement held by any person or such a political subdivision, the county recorder shall mail, by regular mail, a photocopy of the instrument to the office of farmland preservation in the department of agriculture. The photocopy shall be accompanied by an invoice for the applicable fee established in section 317.32 of the Revised Code. Promptly after receiving the photocopy and invoice, the office of farmland preservation shall remit the fee to the county recorder.

(I) The director, the legislative authority of a municipal corporation, a board of county commissioners, a board of township trustees, or a board of supervisors of a soil and water conservation district may receive and expend grants from any public or private source for the purpose of purchasing agricultural easements and supervising and enforcing them.

History: Effective Date: 05-30-2002; 04-15-2005.

§ 5301.692 Local government authority to promote retaining agricultural use of land.

The legislative authority of a municipal corporation, board of county commissioners of a county, or board of township trustees of a township, in addition to the legislative authority's or board's other powers, may hold land or interests in land for the purpose of retaining the use of the land predominantly in agriculture. The authority and boards may do all things necessary or appropriate to achieve that purpose, including, without limitation, performing any of the activities described in division (A)(1) or (2) of section 5713.30 of the Revised Code or entering into contracts to lease or rent the land or

interests in land so held to persons or governmental entities who will use the land predominantly in agriculture.

History: Eff 4-5-99.

§ 5301.70 Enforcement, assignment of easement.

Conservation easements are not unenforceable for lack of privity of contract or estate or lack of benefit to a particular dominant estate. Conservation easements are assignable to another entity authorized to hold conservation easements. Nothing in sections 5301.67 to 5301.70 of the Revised Code affects the enforceability of any article of dedication, restriction, easement, covenant, or condition that does not meet the requirements of those sections.

The terms of a conservation easement may be enforced by injunction or in any other civil action by the holder of the easement.

History: Eff 3-14-80.

<http://codes.ohio.gov/orc/5301.67v1>