

ACT 149

S.B. NO. 1409

A Bill for an Act Relating to Conservation Easements.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER**

**CONSERVATION EASEMENTS**

**§ -1 Conservation easement defined.** For the purposes of this chapter, a “conservation easement” is an interest in real property created by deed, restrictions, covenants, or conditions, the purpose of which is to preserve and protect land predominantly in its natural, scenic, forested, or open-space condition.

**§ -2 Nature.** (a) A conservation easement is freely transferable in whole or in part for the purposes stated in section -1 by any lawful method for the transfer of interests in real property in this State.

(b) A conservation easement shall be perpetual in duration.

(c) A conservation easement shall not be deemed personal in nature and shall constitute an interest in real property notwithstanding the fact that it may be negative in character.

(d) The particular characteristics of a conservation easement shall be those granted or specified in the instrument creating or transferring the easement.

**§ -3 Holders.** Any public body and any organization which qualifies for and holds an income tax exemption under section 501(c) of the federal Internal

Revenue Code of 1954, as amended, and whose organizational purposes are designed to facilitate the purposes of this chapter, may acquire and hold conservation easements by purchase, agreement, donation, devise, or bequest, but not by eminent domain.

**§ -4 Recordation.** Instruments creating, assigning, or otherwise transferring conservation easements shall be recorded in the bureau of conveyances, or the land court, as the case may be, and such instruments shall be subject in all respects to the requirements of chapters 501 and 502.

**§ -5 Enforcement of easement.** (a) All conservation easements, whether held by public bodies or qualifying private organizations, shall be considered to run with the land, whether or not such fact is stipulated in the instrument of conveyance or ownership, and no conservation easement shall be unenforceable on account of the lack of privity of estate or contract, or on account of such conservation easement not being an appurtenant easement, or because such easement is a general easement.

(b) Actual or threatened injury to or impairment of a conservation easement, or actual or threatened violation of its terms, may be prohibited or restrained, or the interest intended for protection by such easement may be enforced, by injunctive relief granted by any court of competent jurisdiction in a proceeding initiated by the grantor or by the holder of the easement.

(c) In addition to the remedy of injunctive relief, the holder of a conservation easement shall be entitled to recover money damages for any injury to such easement or to the interest being protect thereby or for the violation of the terms of such easement. In assessing such damages there may be taken into account, in addition to the cost of restoration, the loss of scenic, aesthetic, or environmental value to the real property subject to the easement, and other damages.

(d) The court may award to the prevailing party in any action authorized by this section the costs of litigation, including reasonable attorney's fees.

**§ -6 Construction.** This chapter shall not be construed to imply that any easement, covenant, condition, or restriction which does not have the benefit of this chapter shall on account of any provisions of this chapter be unenforceable. Nothing in this chapter shall diminish the powers granted by any general or special law to acquire, by purchase, gift, eminent domain, or otherwise, and to use land for public purposes."

**SECTION 2.** This Act shall take effect upon its approval.

(Approved May 29, 1985.)