

House Bill 2199
Committee on Federal and State Affairs; 2017 Session
Conservation Easements: Facts, Questions and Responses

Question 1: What are conservation easements?

Response 1: Qualified Conservation Easements (CEs) are permanent, land-title encumbrances authorized by Congress¹ to protect lands of *unique* value. CEs cede specific, enforceable rights from landowners to 3rd parties, and can be described as shared management between land owners and land trusts or the federal government. CEs typically impose restrictions on structures, road improvements, vehicular use, road maintenance, and agricultural activities; they usually *eliminate* oil, gas and mineral exploration, and can create problematic, split-estate ownership issues. Many CEs require “buffer zones” to be created around springs, streams or ponds to inhibit livestock access.

Question 2: Aren't conservation easements voluntary?

Response 2: Use of the word “voluntary” is misleading because it assumes the impact from CEs is solely limited to the landowner. In contrast, CEs can reduce the value of neighboring lands, erode the state and local tax base, impact adjacent properties, and provide a mechanism for unwanted plants or animals to be introduced into the region, affecting neighbors and others.

Question 3: Shouldn't property owners be able to do what they wish with their land, without interference?

Response 3: The negative effects of CEs can reach well beyond landowners, creating a nuisance for adjacent landholders, local governments and the state alike. Because CEs are *specifically* designed to depreciate land values, adjacent parcels can - and usually are - devalued as well. As example, if the owner of a parcel hosting a conservation easement elects to release endangered species on their property, those species can and do propagate to nearby lands. Examples of such introductions, in Kansas, include uncontrolled prairie-dog infestations to neighboring properties resulting from government-funded introduction of Black-footed ferrets.

Question 4: Do conservation easements devalue property?

Response 4: One *function* of CEs *is* to devalue property, including the assessed value of lands for purposes of taxation. Over time, CEs have had the result of the Federal government influencing local land use policy thorough the granting of tax exemptions.

Question 5: Are there tax implications to the State and local governments from Conservation Easements?

Response 5: Yes. Because CEs result in land devaluation, corresponding tax revenues into state and local governments can be reduced for parcels encumbered by them.

Question 6: Why is legislation giving local governments authority for conservation easements necessary?

Response 6: Land trusts and CEs are not currently regulated and standards are voluntary. County governments, for their part, possess broad statutory authority to enact zoning, nuisance, infrastructure, safety, and other standards under state home rule statutes. Because local governments are the closest representatives to the people, they are in the best position to understand geographical considerations, notification needs and other, local, land use circumstances. This legislation brings decision-making to the local level, closest to those who own, work and reside on lands affected by CEs.

Question 7: Does the proposed legislation require counties to regulate conservation easements or otherwise enact standards?

Response 7: No. HB 2199 gives local governments the authority to oversee CEs should they desire to do so - but the legislation places no requirements on local government to act.

Question 8: What types of standards are contemplated by this legislation?

Response 8: Examples of potential requirements could be notification of adjacent landholders or providing opportunities for public comment before the conservation easement occurs on the land title.

Question 9: Are there unforeseen problems with Conservation Easements?

Response 9: Because CEs impose *permanent* restrictions that can *only* be removed by land trusts or the federal government, the long term implication of sequestering land blocs from productivity remain unexamined. Future generations may well object to the lack of trust imposed on their decision-making, as they, for their part, will have their own Values - Values that could differ from those of the current landowner. Should not future generations be afforded the deference to manage the land their own way in their own time?

¹ (26 U.S.C. 170(h) Pub. L. 96-541.