

1 *Hause* BILL NO. *341*
 2 INTRODUCED BY *Sheldon Bradley* *Stacy Kelle*
 3 *Don Hennrichsen* *Bertelsen*

4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE OPEN SPACE
 5 LAND ACT AND PROVIDING FOR CONSERVATION EASEMENTS; AMENDING
 6 SECTIONS 62-601, 62-602, 62-603, 62-604, 62-605, 62-608,
 7 67-601, AND 67-602, R.C.M. 1947."

8
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 62-601, R.C.M. 1947, is amended to
 11 read as follows:

12 "62-601. Short title. This act ~~shall be known and~~ may
 13 be cited as the "Open-Space Land and Voluntary Conservation
 14 Easement Act."

15 Section 2. Section 62-602, R.C.M. 1947, is amended to
 16 read as follows:

17 "62-602. Purposes of act. The legislature finds that
 18 the rapid growth and spread of urban development are
 19 creating critical problems of service and finance for the
 20 state and local governments; that the present and future
 21 rapid population growth in urban areas is creating severe
 22 problems of urban and suburban living; ~~that the provision~~
 23 ~~and preservation of permanent open space land are necessary~~
 24 ~~to help curb urban sprawl, to prevent the spread of urban~~
 25 ~~blight and deterioration, to encourage and assist more~~

1 ~~economic and desirable urban development to help provide or~~
 2 ~~preserve necessary park, recreational, historic and scenic~~
 3 ~~areas and to conserve land and other natural resources that~~
 4 ~~this population spread and its attendant development is~~
 5 ~~disrupting and altering the remaining natural areas, biotic~~
 6 ~~communities, geological and geographical formations and,~~
 7 ~~thereby, providing the potential for the destruction of~~
 8 ~~scientific, educational, aesthetic, and ecological values;~~
 9 ~~that the present and future rapid population spread~~
 10 ~~throughout the state of Montana into its open spaces, are~~
 11 ~~creating serious problems of lack of open space and~~
 12 ~~overcrowding of the land; that to lessen congestion and to~~
 13 ~~preserve natural, ecological, geographical and geological~~
 14 ~~elements, the provision and preservation of open space lands~~
 15 ~~are necessary to secure park, recreational, historic and~~
 16 ~~scenic areas and to conserve the land, its biotic~~
 17 ~~communities, its natural resources, and its geological and~~
 18 ~~geographic elements in their natural state; that the~~
 19 ~~acquisition or designation of interests and rights in real~~
 20 ~~property by certain qualifying private organizations and by~~
 21 ~~public bodies to provide or preserve permanent open space~~
 22 ~~land is essential to the solution of these problems, the~~
 23 ~~accomplishment of these purposes, and the health and welfare~~
 24 ~~of the citizens of the state; and that the exercise of~~
 25 ~~authority to acquire or designate interests and rights in~~

1 real property to provide or preserve permanent open-space
 2 land and the expenditure of public funds for these purposes
 3 would be for a public purpose; and that the statutory
 4 provision enabling certain qualifying private organizations
 5 to acquire interests and rights in real property to provide
 6 or preserve open-space land is in the public interest.

7 Pursuant--to In accordance with these findings, the
 8 legislature states that the purposes of this act are to
 9 authorize and enable public bodies and certain qualifying
 10 private organizations voluntarily to provide ~~and--preserve~~
 11 ~~permanent--open-space-land-in-urban-areas-in-order-to-assist~~
 12 ~~in-the-solution-of-the-problems-and-the--attainment--of--the~~
 13 ~~objectives--stated--in--its-findings~~ for the preservation of
 14 native plants or animals, or biotic communities, or
 15 geological or geographical formations of scientific,
 16 aesthetic or educational interest, and to provide for the
 17 preservation of other significant open-space land anywhere
 18 in the state either in perpetuity or for a term of years,
 19 and, furthermore to encourage private participation in such
 20 a program by establishing the policy to be utilized in
 21 determining the property tax to be levied upon the real
 22 property which is subject to the provisions of this act."

23 Section 3. Section 62-603, R.C.M. 1947, is amended to
 24 read as follows:

25 "62-603. Definitions. The following terms whenever

1 used or referred to in this act shall have the following
 2 meanings unless a different meaning is clearly indicated by
 3 the context:

4 (a) "Public body" means the state, counties, cities,
 5 towns and other municipalities.

6 (b) "Urban area" means any area which is urban in
 7 character, including surrounding areas which form an
 8 economic and socially related region, taking into
 9 consideration such factors as present and future population
 10 trends and patterns of urban growth, location of
 11 transportation facilities and systems, and distribution of
 12 industrial, commercial, residential, governmental,
 13 institutional, and other activities.

14 (c) "Open-space land" means any land in an urban area
 15 which is provided or preserved for (1) park or recreational
 16 purposes, (2) conservation of land or other natural
 17 resources, (3) historic or scenic purposes, or (4)
 18 assisting in the shaping of the character, direction, and
 19 timing of community development.

20 (d) "Comprehensive planning" means planning for
 21 development of an urban area and shall include: (1)
 22 preparation, as a guide for long-range development, of
 23 general physical plans with respect to the pattern and
 24 intensity of land use and the provision of public
 25 facilities, including transportation facilities, together

1 with long-range fiscal plans for such development; (2)
 2 programming and financing plans for capital improvements;
 3 (3) co-ordination of all related plans and planned
 4 activities at both the intragovernmental and
 5 intergovernmental levels; and (4) preparation of regulatory
 6 and administrative measures in support of the foregoing.

7 (e) "Conservation easement" means an easement or
 8 restriction running with the land and assignable, whereby an
 9 owner of land voluntarily relinquishes to the holder of such
 10 easement or restriction, any or all rights to construct
 11 improvements upon the land or to substantially alter the
 12 natural character of the land or to permit the construction
 13 of improvements upon the land or the substantial alteration
 14 of the natural character of the land, except as this right
 15 is expressly reserved in the instruments evidencing the
 16 easement or restriction. Conservation easements may be
 17 granted either in perpetuity or for a term of years. If
 18 granted for a term of years, that term may not be less than
 19 fifteen (15) years. An easement granted for a term of years
 20 may be renewed for a term of fifteen (15) or more years upon
 21 the execution of a new granting instrument by the parties.

22 (f) "Qualified private organization" means a private
 23 organization: (1) competent to own interests in real
 24 property, and; (2) which qualifies and holds a general tax
 25 exemption under the Federal Internal Revenue Code, section

1 501 (c) and; (3) whose organizational purposes are designed
 2 to further the purposes of this act."

3 Section 4. Section 62-604, R.C.M. 1947, is amended to
 4 read as follows:

5 "62-604. Acquisition and designation of real property
 6 by public body. To carry out the purposes of this act, any
 7 public body may (1) acquire by purchase, gift, devise,
 8 bequest or grant title to or any interests or rights in real
 9 property, including land and water, that will provide a
 10 means for the preservation or provision of permanent
 11 significant open-space land, and or the preservation of
 12 native plants or animals, or biotic communities, or
 13 geological or geographical formations of scientific,
 14 aesthetic, or educational interest, or both, (2) designate
 15 any real property, including land and water, in which it has
 16 an interest to be retained and used for the preservation and
 17 provision of permanent significant open-space land; ~~The use~~
 18 ~~of--the--real--property--for--permanent--open--space--land--shall~~
 19 ~~conform--to--comprehensive--planning--being--actively--carried--on~~
 20 ~~for--the--urban--area--in--which--the--property--is--located,~~ or the
 21 preservation of native plants or animals, or biotic
 22 communities, or geological or geographic formations of
 23 scientific, aesthetic, or educational interests, or both.

24 Where a public body acquires under this act an interest
 25 in land less than fee, this acquisition shall be by

1 conservation easement. Public bodies holding conservation
2 easements shall enforce the provisions of these easements."

3 Section 5. Section 62-605, R.C.M. 1947, is amended to
4 read as follows:

5 "62-605. Conversion or diversion of open-space land,
6 where prohibited--substitution of other realty--conveyance
7 or lease of open-space land authorized. ~~(a)~~ (1) No
8 open-space land, the title to, or interest or right in which
9 has been acquired under this act ~~or--which--has--been~~
10 ~~designated--as--open-space--land--under--the--authority--of--this~~
11 ~~act~~ shall be converted or diverted from open-space land use
12 unless the conversion or diversion is: determined-by-the
13 public-body-to-be-(1)-essential-to-the--orderly--development
14 and-growth-of-the-urban-area,-and-(2)-in-accordance-with-the
15 program--of--comprehensive--planning--for--the-urban-area-in
16 effect-at-the-time-of-conversion-or-diversion (a) necessary
17 to the public interest; (b) not in conflict with the
18 program of comprehensive planning for the area; and (c)
19 permitted by the conditions imposed at the time of the
20 creation of the conservation easement. Other real property
21 of at least equal fair market value and of as nearly as
22 feasible equivalent usefulness and location for use as
23 permanent open-space land shall be substituted within a
24 reasonable period not exceeding one (1) year for any real
25 property converted or diverted from open-space land use.

1 ~~The-public-body-shall--assure--that--the--property~~ Property
2 substituted ~~will--be~~ is subject to the provisions of this
3 act.

4 ~~(b)~~ (2) A public-body grantee may convey or lease any
5 real property it has acquired or which has been designated
6 for the purposes of this act. The conveyance or lease shall
7 be subject to contractual arrangements that will preserve
8 the property as open-space land and which are consistent
9 with the express terms and conditions of the grant, unless
10 the property is to be converted or diverted from open-space
11 land use in accordance with the provisions of subsection ~~(a)~~
12 (1) of this section."

13 Section 6. Section 62-608, R.C.M. 1947, is amended to
14 read as follows:

15 "62-608. Taxation of property subject to conservation
16 easement. where--public--body--owns-less-than-fee Where an
17 interest-in-real-property-less-than-the-fee--is--held--by--a
18 public--body--for-the-purposes-of-this-act,-assessments-made
19 on-the-property-for-taxation-shall-reflect-any-change-in-the
20 market-value-of-the--property--which--may--result--from--the
21 interest--held-by-the-public-body.-The-value-of-the-interest
22 held-by-the--public--body--shall-be--exempt--from--property
23 taxation--to--the-same-extent-as-other-property-owned-by-the
24 public-body.

25 Assessments made for taxation on property subject to a

1 conservation easement either in perpetuity or for a term of
 2 years shall be determined on the basis of the restricted
 3 purposes for which the property may be used. The value of
 4 the interest held by a public body or qualifying private
 5 organization shall be exempt from property taxation.

6 Expiration of an easement granted for a term of years
 7 shall not result in a reassessment of the land for property
 8 tax purposes if the easement is renewed and the granting
 9 instrument reflecting the renewed easement is executed and
 10 properly filed not later than fifteen (15) days after the
 11 date of expiration."

12 Section 7. There is a new R.C.M. section that reads as
 13 follows:

14 Easements -- type allowed. Easement or restrictions
 15 under this act may prohibit or limit any or all of the
 16 following:

17 (1) Structures. Construction or placing of buildings,
 18 camping trailers, house trailers, mobile homes, roads,
 19 signs, billboards or other advertising, utilities or other
 20 structures on or above the ground.

21 (2) Landfill. Dumping or placing of soil or other
 22 substance or material as landfill, or dumping or placing of
 23 trash, waste or unsightly or offensive materials.

24 (3) Vegetation. Removal or destruction of trees,
 25 shrubs or other vegetation.

1 (4) Loam, gravel, etc. Excavation, dredging or
 2 removal of loam, peat, gravel, soil, rock or other material
 3 substance.

4 (5) Surface use. Surface use except for such purposes
 5 permitting the land or water area to remain predominantly in
 6 its existing condition.

7 (6) Acts detrimental to conservation. Activities
 8 detrimental to drainage, flood control, water conservation,
 9 erosion control or soil conservation or fish and wildlife
 10 habitat and preservation.

11 (7) Subdivision of land. Subdivision of land as
 12 defined in section 11-3861.

13 (8) Other acts. Other acts or uses detrimental to
 14 such retention of land or water areas in their existing
 15 conditions.

16 (9) The term "land" in subsections (2) and (3) above,
 17 includes land under water, and water, and water surface.

18 Section 8. There is a new R.C.M. section that reads as
 19 follows:

20 Acquisition of conservation easements by qualified
 21 private organizations. Any qualified private organization
 22 may acquire by a conservation easement, by purchase or gift,
 23 devise, bequest, or grant, title to any interest or
 24 interests in rights in real property, including land and
 25 water, that will provide a means for the preservation or

1 provision of permanent significant open-space land and/or
2 the preservation of native plants or animals, or biotic
3 communities, or geological or geographic formations of
4 scientific, aesthetic, or educational interest.

5 Section 9. There is a new R.C.M. section that reads as
6 follows:

7 Conservation easements run with the land --
8 enforceability. The provisions of sections 58-305, 58-306,
9 and 58-307, notwithstanding, for the purposes of this act,
10 all conservation easements, whether held by public bodies or
11 qualifying private organizations, shall be considered to run
12 with the land, whether or not such fact is stipulated in the
13 instrument of conveyance or ownership and no conservation
14 easement shall be unenforceable on account of lack of
15 privity of estate or contract or lack of benefit to
16 particular land or on account of such conservation easement
17 not being an appurtenant easement, or because such easement
18 is an easement in gross.

19 Section 10. There is a new R.C.M. section that reads
20 as follows:

21 Assignability. For the purposes of this act, all
22 conservation easements shall be assignable unless the
23 instrument of conveyance or ownership expressly stipulates
24 otherwise, and no conservation easement shall be
25 unenforceable on account of the benefit being assignable or

1 being assigned to any other government body or private
2 organization unless such assignment has violated the express
3 terms of the instrument of conveyance or ownership; provided
4 that the assignees must be qualified under the terms of this
5 act to hold a conservation easement.

6 Section 11. There is a new R.C.M. section that reads
7 as follows:

8 Review by local planning authority. In order to
9 minimize conflict with local comprehensive planning, all
10 conservation easements shall be subject to review by the
11 appropriate local planning authority for the county within
12 which the land lies prior to recording. It shall be the
13 responsibility of the entity acquiring the conservation
14 easement to present the proposed conveyance of the
15 conservation easement to the appropriate local planning
16 authority. The local planning authority shall have ninety
17 (90) days from receipt of the proposed conveyance within
18 which to review and to comment upon the relationship of the
19 proposed conveyance to comprehensive planning for the area.
20 Such comments will not be binding on the proposed grantor or
21 grantee, but shall be merely advisory in nature. The
22 proposed conveyance may be recorded after comments have been
23 received from the local planning authority, or the local
24 planning authority has indicated in writing it will have no
25 comments, or ninety (90) days have elapsed, whichever first

1 occurs.

2 Section 12. There is a new R.C.M. section that reads
3 as follows:

4 Recording and description of land. All conservation
5 easements shall be duly recorded in the county where the
6 land lies so as to effect their titles in the manner of
7 other conveyances of interest in land and shall describe the
8 land subject to said conservation easement by adequate legal
9 description or by reference to a recorded plat showing its
10 boundaries. The county clerk and recorder shall upon
11 recording cause a copy of the conservation easement to be
12 placed in a separate file within the office of the county
13 clerk and recorder and shall cause a copy of the
14 conservation easement to be mailed to the state department
15 of revenue.

16 Section 13. There is a new R.C.M. section that reads
17 as follows:

18 Enforcement. Conservation easements may be enforced by
19 injunction or proceedings in equity. Representatives of the
20 grantee of the conservation easement shall be entitled to
21 enter the land in a reasonable manner and at reasonable
22 times to assure compliance.

23 Section 14. There is a new R.C.M. section that reads
24 as follows:

25 Construction. This section shall not be construed to

1 imply that any easement, covenant, condition or restriction
2 which does not have the benefit of this act shall on account
3 of any provisions hereof be unenforceable. Nothing in this
4 act shall diminish the powers granted by any general or
5 special law to acquire by purchase, gift, eminent domain or
6 otherwise and to use land for public purposes.

7 Section 15. Section 67-609, R.C.M. 1947, is
8 renumbered 62-617.

9 Section 16. Section 67-601, R.C.M. 1947, is amended to
10 read as follows:

11 "67-601. Servitudes attached to land. The following
12 land burdens, or servitudes upon land, may be attached to
13 other land as incidents or appurtenances, and are then
14 called easements:

- 15 1. The right of pasture.
- 16 2. The right of fishing.
- 17 3. The right of taking game.
- 18 4. The right of way.
- 19 5. The right of taking water, wood, minerals, and
20 other things.
- 21 6. The right of transacting business upon land.
- 22 7. The right of conducting lawful sports upon land.
- 23 8. The right of receiving air, light, or heat from or
24 over, or discharging the same upon or over land.
- 25 9. The right of receiving water from or discharging

- 1 the same upon land.
- 2 10. The right of flooding land.
- 3 11. The right of having water flow without diminution
4 or disturbance of any kind.
- 5 12. The right of using a wall as a party wall.
- 6 13. The right of receiving more than natural support
7 from adjacent land or things affixed thereto.
- 8 14. The right of having the whole of a division fence
9 maintained by a coterminous owner.
- 10 15. The right of having public conveyances stopped, or
11 of stopping the same on land.
- 12 16. The right of a seat in church.
- 13 17. The right of burial.
- 14 18. The right of conserving open-space to preserve
15 park, recreational, historic, aesthetic, cultural, and
16 natural values on or related to land."
- 17 Section 17. Section 67-602, R.C.M. 1947, is amended to
18 read as follows:
- 19 "67-602. Servitudes not attached to land. The
20 following land burdens, or servitudes upon land, may be
21 granted and held, though not attached to land:
- 22 1. The right of pasture, and of fishing and taking
23 game.
- 24 2. The right of a seat in church.
- 25 3. The right of burial.

- 1 4. The right of taking rents and tolls.
- 2 5. The right of way.
- 3 6. The right of taking water, wood, minerals, or other
4 things.
- 5 7. The right of conserving open-space to preserve
6 park, recreational, historic, aesthetic, cultural, and
7 natural values on or related to land."

-End-

Approved by Committee
on Natural Resources

HOUSE BILL NO. 341

INTRODUCED BY SHELDEN, BRADLEY, STOLTZ, KIMBLE,

DAY, HUENNEKENS, BERTELSEN

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE OPEN SPACE
LAND ACT AND PROVIDING FOR CONSERVATION EASEMENTS; AMENDING
SECTIONS 62-601, 62-602, 62-603, 62-604, 62-605, 62-608,
67-601, AND 67-602, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 62-601, R.C.M. 1947, is amended to
read as follows:

"62-601. Short title. This act ~~shall be known and~~ may
be cited as the "Open-Space Land and Voluntary Conservation
Easement Act."

Section 2. Section 62-602, R.C.M. 1947, is amended to
read as follows:

"62-602. Purposes of act. The legislature finds that
the rapid growth and spread of urban development are
creating critical problems of service and finance for the
state and local governments; that the present and future
rapid population growth in urban areas is creating severe
problems of urban and suburban living; ~~that the provision
and preservation of permanent open-space land are necessary
to help curb urban sprawl, to prevent the spread of urban~~

~~slight and deterioration, to encourage and assist more
economic and desirable urban development, to help provide or
preserve necessary park, recreational, historic and scenic
areas and to conserve land and other natural resources that
this population spread and its attendant development is
disrupting and altering the remaining natural areas, biotic
communities, geological and geographical formations and,
thereby, providing the potential for the destruction of
scientific, educational, aesthetic, and ecological values;
that the present and future rapid population spread
throughout the state of Montana into its open-spaces, are
creating serious problems of lack of open-space and
overcrowding of the land; that to lessen congestion and to
preserve natural, ecological, geographical and geological
elements, the provision and preservation of open-space lands
are necessary to secure park, recreational, historic and
scenic areas and to conserve the land, its biotic
communities, its natural resources, and its geological and
geographic elements in their natural state; that the
acquisition or designation of interests and rights in real
property by certain qualifying private organizations and by
public bodies to provide or preserve permanent open-space
land is essential to the solution of these problems, the
accomplishment of these purposes, and the health and welfare
of the citizens of the state; and that the exercise of~~

1 authority to acquire or designate interests and rights in
 2 real property to provide or preserve ~~permanent~~ open-space
 3 land and the expenditure of public funds for these purposes
 4 would be for a public purpose; and that the statutory
 5 provision enabling certain qualifying private organizations
 6 to acquire interests and rights in real property to provide
 7 or preserve open-space land is in the public interest.

8 ~~Pursuant to~~ In accordance with these findings, the
 9 legislature states that the purposes of this act are to
 10 authorize and enable public bodies and certain qualifying
 11 private organizations voluntarily to provide ~~and preserve~~
 12 ~~permanent open-space land in urban areas in order to--assist~~
 13 ~~in--the--solution--of--the--problems--and--the--attainment--of--the~~
 14 ~~objectives--stated--in--its--findings~~ for the preservation of
 15 native plants or animals, or biotic communities, or
 16 geological or geographical formations of scientific,
 17 aesthetic or educational interest, and to provide for the
 18 preservation of other significant open-space land anywhere
 19 in the state either in perpetuity or for a term of years,
 20 and, furthermore to encourage private participation in such
 21 a program by establishing the policy to be utilized in
 22 determining the property tax to be levied upon the real
 23 property which is subject to the provisions of this act."

24 Section 3. Section 62-603, R.C.M. 1947, is amended to
 25 read as follows:

1 "62-603. Definitions. The following terms whenever
 2 used or referred to in this act shall have the following
 3 meanings unless a different meaning is clearly indicated by
 4 the context:

5 (a) "Public body" means the state, counties, cities,
 6 towns and other municipalities.

7 (b) "Urban area" means any area which is urban in
 8 character, including surrounding areas which form an
 9 economic and socially related region, taking into
 10 consideration such factors as present and future population
 11 trends and patterns of urban growth, location of
 12 transportation facilities and systems, and distribution of
 13 industrial, commercial, residential, governmental,
 14 institutional, and other activities.

15 (c) "Open-space land" means any land in an urban area
 16 which is provided or preserved for (1) park or recreational
 17 purposes, (2) conservation of land or other natural
 18 resources, (3) historic or scenic purposes, or (4)
 19 assisting in the shaping of the character, direction, and
 20 timing of community development.

21 (d) "Comprehensive planning" means planning for
 22 development of an urban area and shall include: (1)
 23 preparation, as a guide for long-range development, of
 24 general physical plans with respect to the pattern and
 25 intensity of land use and the provision of public

1 facilities, including transportation facilities, together
 2 with long-range fiscal plans for such development; (2)
 3 programming and financing plans for capital improvements;
 4 (3) co-ordination of all related plans and planned
 5 activities at both the intragovernmental and
 6 intergovernmental levels; and (4) preparation of regulatory
 7 and administrative measures in support of the foregoing.

8 (e) "Conservation easement" means an easement or
 9 restriction running with the land and assignable, whereby an
 10 owner of land voluntarily relinquishes to the holder of such
 11 easement or restriction, any or all rights to construct
 12 improvements upon the land or to substantially alter the
 13 natural character of the land or to permit the construction
 14 of improvements upon the land or the substantial alteration
 15 of the natural character of the land, except as this right
 16 is expressly reserved in the instruments evidencing the
 17 easement or restriction. Conservation easements may be
 18 granted either in perpetuity or for a term of years. If
 19 granted for a term of years, that term may not be less than
 20 fifteen (15) years. An easement granted for a term of years
 21 may be renewed for a term of fifteen (15) or more years upon
 22 the execution of a new granting instrument by the parties. A
 23 CONSERVATION EASEMENT MAY BE APPLIED TO URBAN OR NONURBAN
 24 LAND.

25 (f) "Qualified private organization" means a private

1 organization: (1) competent to own interests in real
 2 property, and; (2) which qualifies and holds a general tax
 3 exemption under the Federal Internal Revenue Code, section
 4 501 (c) and; (3) whose organizational purposes are designed
 5 to further the purposes of this act."

6 Section 4. Section 62-604, R.C.M. 1947, is amended to
 7 read as follows:

8 "62-604. Acquisition and designation of real property
 9 by public body. To carry out the purposes of this act, any
 10 public body may (1) acquire by purchase, gift, devise,
 11 bequest or grant title to or any interests or rights in real
 12 property, including land and water, that will provide a
 13 means for the preservation or provision of permanent
 14 significant open-space land, and or the preservation of
 15 native plants or animals, or biotic communities, or
 16 geological or geographical formations of scientific,
 17 aesthetic, or educational interest, or both, (2) designate
 18 any real property, including land and water, in which it has
 19 an interest to be retained and used for the preservation and
 20 provision of permanent significant open-space land; ~~The use~~
 21 ~~of the real property for permanent open-space land shall~~
 22 ~~conform to comprehensive planning being actively carried on~~
 23 ~~for the urban area in which the property is located; or the~~
 24 preservation of native plants or animals, or biotic
 25 communities, or geological or geographic formations of

1 scientific, aesthetic, or educational interests, or both.

2 Where a public body acquires under this act an interest
 3 in land less than fee, this acquisition shall be by
 4 conservation easement. Public bodies holding conservation
 5 easements shall enforce the provisions of these easements."

6 Section 5. Section 62-605, R.C.M. 1947, is amended to
 7 read as follows:

8 "62-605. Conversion or diversion of open-space land,
 9 where prohibited--substitution of other realty--conveyance
 10 or lease of open-space land authorized. ~~(a)~~ (1) No
 11 open-space land, the title to, or interest or right in which
 12 has been acquired under this act ~~or--which--has--been~~
 13 ~~designated-as-open-space-land-under-the--authority--of--this~~
 14 ~~act~~ shall be converted or diverted from open-space land use
 15 unless the conversion or diversion is: ~~determined--by--the~~
 16 ~~public--body--to-be-(1)-essential-to-the-orderly-development~~
 17 ~~and-growth-of-the-urban-area, and-(2)-in-accordance-with-the~~
 18 ~~program-of-comprehensive-planning--for--the--urban--area--in~~
 19 ~~effect--at-the-time-of-conversion-or-diversion~~ (a) necessary
 20 to the public interest; (b) not in conflict with the
 21 program of comprehensive planning for the area; and (c)
 22 permitted by the conditions imposed at the time of the
 23 creation of the conservation easement. Other real property
 24 of at least equal fair market value and of as nearly as
 25 feasible equivalent usefulness and location for use as

1 permanent open-space land shall be substituted within a
 2 reasonable period not exceeding one (1) year for any real
 3 property converted or diverted from open-space land use.
 4 ~~The--public--body--shall--assure--that--the--property~~ Property
 5 ~~substituted will-be~~ is subject to the provisions of this
 6 act.

7 ~~(b)~~ (2) A public-body grantee may convey or lease any
 8 real property it has acquired or which has been designated
 9 for the purposes of this act. The conveyance or lease shall
 10 be subject to contractual arrangements that will preserve
 11 the property as open-space land and which are consistent
 12 with the express terms and conditions of the grant, unless
 13 the property is to be converted or diverted from open-space
 14 land use in accordance with the provisions of subsection ~~(a)~~
 15 (1) of this section."

16 Section 6. Section 62-608, R.C.M. 1947, is amended to
 17 read as follows:

18 "62-608. Taxation of property subject to conservation
 19 easement, where public-body-owns-less--than--fee. ~~Where--an~~
 20 ~~interest--in--real--property--less-than-the-fee-is-held-by-a~~
 21 ~~public-body-for-the-purposes-of-this-act,--assessments--made~~
 22 ~~on-the-property-for-taxation-shall-reflect-any-change-in-the~~
 23 ~~market--value--of--the--property--which--may-result-from-the~~
 24 ~~interest-held-by-the-public-body.-The-value-of-the--interest~~
 25 ~~held--by--the--public--body--shall--be--exempt-from-property~~

1 received from the local planning authority, or the local
2 planning authority has indicated in writing it will have no
3 comments, or ninety (90) days have elapsed, whichever first
4 occurs.

5 Section 12. There is a new R.C.M. section that reads
6 as follows:

7 Recording and description of land. All conservation
8 easements shall be duly recorded in the county where the
9 land lies so as to effect their titles in the manner of
10 other conveyances of interest in land and shall describe the
11 land subject to said conservation easement by adequate legal
12 description or by reference to a recorded plat showing its
13 boundaries. The county clerk and recorder shall upon
14 recording cause a copy of the conservation easement to be
15 placed in a separate file within the office of the county
16 clerk and recorder and shall cause a copy of the
17 conservation easement to be mailed to the state department
18 of revenue.

19 Section 13. There is a new R.C.M. section that reads
20 as follows:

21 Enforcement. Conservation easements may be enforced by
22 injunction or proceedings in equity. Representatives of the
23 grantee of the conservation easement shall be entitled to
24 enter the land in a reasonable manner and at reasonable
25 times to assure compliance.

1 Section 14. There is a new R.C.M. section that reads
2 as follows:

3 Construction. This section shall not be construed to
4 imply that any easement, covenant, condition or restriction
5 which does not have the benefit of this act shall on account
6 of any provisions hereof be unenforceable. Nothing in this
7 act shall diminish the powers granted by any general or
8 special law to acquire by purchase, gift, eminent domain or
9 otherwise and to use land for public purposes.

10 Section 15. Section 67-609, R.C.M. 1947, is
11 renumbered 62-617.

12 Section 16. Section 67-601, R.C.M. 1947, is amended to
13 read as follows:

14 "67-601. Servitudes attached to land. The following
15 land burdens, or servitudes upon land, may be attached to
16 other land as incidents or appurtenances, and are then
17 called easements:

- 18 1. The right of pasture.
- 19 2. The right of fishing.
- 20 3. The right of taking game.
- 21 4. The right of way.
- 22 5. The right of taking water, wood, minerals, and
23 other things.
- 24 6. The right of transacting business upon land.
- 25 7. The right of conducting lawful sports upon land.

1 8. The right of receiving air, light, or heat from or
2 over, or discharging the same upon or over land.

3 9. The right of receiving water from or discharging
4 the same upon land.

5 10. The right of flooding land.

6 11. The right of having water flow without diminution
7 or disturbance of any kind.

8 12. The right of using a wall as a party wall.

9 13. The right of receiving more than natural support
10 from adjacent land or things affixed thereto.

11 14. The right of having the whole of a division fence
12 maintained by a coterminous owner.

13 15. The right of having public conveyances stopped, or
14 of stopping the same on land.

15 16. The right of a seat in church.

16 17. The right of burial.

17 18. The right of conserving open-space to preserve
18 park, recreational, historic, aesthetic, cultural, and
19 natural values on or related to land."

20 Section 17. Section 67-602, R.C.M. 1947, is amended to
21 read as follows:

22 "67-602. Servitudes not attached to land. The
23 following land burdens, or servitudes upon land, may be
24 granted and held, though not attached to land:

25 1. The right of pasture, and of fishing and taking

1 game.

2 2. The right of a seat in church.

3 3. The right of burial.

4 4. The right of taking rents and tolls.

5 5. The right of way.

6 6. The right of taking water, wood, minerals, or other
7 things.

8 7. The right of conserving open-space to preserve
9 park, recreational, historic, aesthetic, cultural, and
10 natural values on or related to land."

-End-

HOUSE BILL NO. 341

INTRODUCED BY SHELDEN, BRADLEY, STOLTZ, KIMBLE,
DAY, HUENNEKENS, BERTELSEN

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE OPEN SPACE
LAND ACT AND PROVIDING FOR CONSERVATION EASEMENTS; AMENDING
SECTIONS 62-601, 62-602, 62-603, 62-604, 62-605, 62-608,
67-601, AND 67-602, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 62-601, R.C.M. 1947, is amended to
read as follows:

"62-601. Short title. This act ~~shall be known and~~ may
be cited as the "Open-Space Land and Voluntary Conservation
Easement Act."

Section 2. Section 62-602, R.C.M. 1947, is amended to
read as follows:

"62-602. Purposes of act. The legislature finds that
the rapid growth and spread of urban development are
creating critical problems of service and finance for the
state and local governments; that the present and future
rapid population growth in urban areas is creating severe
problems of urban and suburban living; ~~that the provision
and preservation of permanent open-space land are necessary
to help curb urban sprawl, to prevent the spread of urban~~

~~blight and deterioration, to encourage and assist more
economic and desirable urban development, to help provide or
preserve necessary park, recreational, historic and scenic
areas and to conserve land and other natural resources that
this population spread and its attendant development is
disrupting and altering the remaining natural areas, biotic
communities, geological and geographical formations and,
thereby, providing the potential for the destruction of
scientific, educational, aesthetic, and ecological values;
that the present and future rapid population spread
throughout the state of Montana into its open-spaces, are
creating serious problems of lack of open-space and
overcrowding of the land; that to lessen congestion and to
preserve natural, ecological, geographical and geological
elements, the provision and preservation of open-space lands
are necessary to secure park, recreational, historic and
scenic areas and to conserve the land, its biotic
communities, its natural resources, and its geological and
geographic elements in their natural state; that the
acquisition or designation of interests and rights in real
property by certain qualifying private organizations and by
public bodies to provide or preserve permanent open-space
land is essential to the solution of these problems, the
accomplishment of these purposes, and the health and welfare
of the citizens of the state; and that the exercise of~~

1 authority to acquire or designate interests and rights in
 2 real property to provide or preserve permanent open-space
 3 land and the expenditure of public funds for these purposes
 4 would be for a public purpose; and that the statutory
 5 provision enabling certain qualifying private organizations
 6 to acquire interests and rights in real property to provide
 7 or preserve open-space land is in the public interest.

8 Pursuant to In accordance with these findings, the
 9 legislature states that the purposes of this act are to
 10 authorize and enable public bodies and certain qualifying
 11 private organizations voluntarily to provide and preserve
 12 ~~permanent-open-space-land-in-urban-areas-in-order-to--assist~~
 13 ~~in--the--solution--of--the--problems--and--the--attainment--of--the~~
 14 ~~objectives--stated--in--its--findings~~ for the preservation of
 15 native plants or animals, or biotic communities, or
 16 geological or geographical formations of scientific,
 17 aesthetic or educational interest, and to provide for the
 18 preservation of other significant open-space land anywhere
 19 in the state either in perpetuity or for a term of years,
 20 and, furthermore to encourage private participation in such
 21 a program by establishing the policy to be utilized in
 22 determining the property tax to be levied upon the real
 23 property which is subject to the provisions of this act."

24 Section 3. Section 62-603, R.C.M. 1947, is amended to
 25 read as follows:

1 "62-603. Definitions. The following terms whenever
 2 used or referred to in this act shall have the following
 3 meanings unless a different meaning is clearly indicated by
 4 the context:

5 (a) "Public body" means the state, counties, cities,
 6 towns and other municipalities.

7 (b) "Urban area" means any area which is urban in
 8 character, including surrounding areas which form an
 9 economic and socially related region, taking into
 10 consideration such factors as present and future population
 11 trends and patterns of urban growth, location of
 12 transportation facilities and systems, and distribution of
 13 industrial, commercial, residential, governmental,
 14 institutional, and other activities.

15 (c) "Open-space land" means any land ~~in-an-urban-area~~
 16 which is provided or preserved for (1) park or recreational
 17 purposes, (2) conservation of land or other natural
 18 resources, (3) historic or scenic purposes, or (4)
 19 assisting in the shaping of the character, direction, and
 20 timing of community development.

21 (d) "Comprehensive planning" means planning for
 22 development ~~of--an--urban--area~~ and shall include: (1)
 23 preparation, as a guide for long-range development, of
 24 general physical plans with respect to the pattern and
 25 intensity of land use and the provision of public

1 facilities, including transportation facilities, together
 2 with long-range fiscal plans for such development; (2)
 3 programming and financing plans for capital improvements;
 4 (3) co-ordination of all related plans and planned
 5 activities at both the intragovernmental and
 6 intergovernmental levels; and (4) preparation of regulatory
 7 and administrative measures in support of the foregoing.

8 (e) "Conservation easement" means an easement or
 9 restriction running with the land and assignable, whereby an
 10 owner of land voluntarily relinquishes to the holder of such
 11 easement or restriction, any or all rights to construct
 12 improvements upon the land or to substantially alter the
 13 natural character of the land or to permit the construction
 14 of improvements upon the land or the substantial alteration
 15 of the natural character of the land, except as this right
 16 is expressly reserved in the instruments evidencing the
 17 easement or restriction. Conservation easements may be
 18 granted either in perpetuity or for a term of years. If
 19 granted for a term of years, that term may not be less than
 20 fifteen (15) years. An easement granted for a term of years
 21 may be renewed for a term of fifteen (15) or more years upon
 22 the execution of a new granting instrument by the parties. A
 23 CONSERVATION EASEMENT MAY BE APPLIED TO URBAN OR NONURBAN
 24 LAND.

25 (f) "Qualified private organization" means a private

1 organization: (1) competent to own interests in real
 2 property, and; (2) which qualifies and holds a general tax
 3 exemption under the Federal Internal Revenue Code, section
 4 501 (c) and; (3) whose organizational purposes are designed
 5 to further the purposes of this act."

6 Section 4. Section 62-604, R.C.M. 1947, is amended to
 7 read as follows:

8 "62-604. Acquisition and designation of real property
 9 by public body. To carry out the purposes of this act, any
 10 public body may (1) acquire by purchase, gift, devise,
 11 bequest or grant title to or any interests or rights in real
 12 property, including land and water, that will provide a
 13 means for the preservation or provision of permanent
 14 significant open-space land, and or the preservation of
 15 native plants or animals, or biotic communities, or
 16 geological or geographical formations of scientific,
 17 aesthetic, or educational interest, or both, (2) designate
 18 any real property, including land and water, in which it has
 19 an interest to be retained and used for the preservation and
 20 provision of permanent significant open-space land; ~~The use~~
 21 ~~of--the--real--property--for--permanent--open--space--land--shall~~
 22 ~~conform--to--comprehensive--planning--being--actively--carried--on~~
 23 ~~for--the--urban--area--in--which--the--property--is--located,~~ or the
 24 preservation of native plants or animals, or biotic
 25 communities, or geological or geographic formations of

1 scientific, aesthetic, or educational interests, or both.

2 Where a public body acquires under this act an interest
3 in land less than fee, this acquisition shall be by
4 conservation easement. Public bodies holding conservation
5 easements shall enforce the provisions of these easements."

6 Section 5. Section 62-605, R.C.M. 1947, is amended to
7 read as follows:

8 "62-605. Conversion or diversion of open-space land,
9 where prohibited--substitution of other realty--conveyance
10 or lease of open-space land authorized. ~~(a) (1)~~ No
11 open-space land, the title to, or interest or right in which
12 has been acquired under this act ~~or which has been~~
13 ~~designated as open-space land under the authority of this~~
14 ~~act~~ shall be converted or diverted from open-space land use
15 unless the conversion or diversion is: ~~determined by the~~
16 ~~public body to be (1) essential to the orderly development~~
17 ~~and growth of the urban area, and (2) in accordance with the~~
18 ~~program of comprehensive planning for the area in~~
19 ~~effect at the time of conversion or diversion~~ (a) necessary
20 to the public interest; (b) not in conflict with the
21 program of comprehensive planning for the area; and (c)
22 permitted by the conditions imposed at the time of the
23 creation of the conservation easement. Other real property
24 of at least equal fair market value and of as nearly as
25 feasible equivalent usefulness and location for use as

1 permanent open-space land shall be substituted within a
2 reasonable period not exceeding one (1) year for any real
3 property converted or diverted from open-space land use.
4 ~~The public body shall assure that the property~~ Property
5 substituted ~~will be~~ is subject to the provisions of this
6 act.

7 ~~(b) (2)~~ A public body grantee may convey or lease any
8 real property it has acquired or which has been designated
9 for the purposes of this act. The conveyance or lease shall
10 be subject to contractual arrangements that will preserve
11 the property as open-space land and which are consistent
12 with the express terms and conditions of the grant, unless
13 the property is to be converted or diverted from open-space
14 land use in accordance with the provisions of subsection ~~(a)~~
15 (1) of this section."

16 Section 6. Section 62-608, R.C.M. 1947, is amended to
17 read as follows:

18 "62-608. Taxation of property subject to conservation
19 easement, where public body owns less than fee. ~~Where an~~
20 ~~interest in real property less than the fee is held by a~~
21 ~~public body for the purposes of this act, assessments made~~
22 ~~on the property for taxation shall reflect any change in the~~
23 ~~market value of the property which may result from the~~
24 ~~interest held by the public body. The value of the interest~~
25 ~~held by the public body shall be exempt from property~~

1 ~~taxation to the same extent as other property owned by the~~
2 ~~public body.~~

3 Assessments made for taxation on property subject to a
4 conservation easement either in perpetuity or for a term of
5 years shall be determined on the basis of the restricted
6 purposes for which the property may be used. The value of
7 the interest held by a public body or qualifying private
8 organization shall be exempt from property taxation.

9 Expiration of an easement granted for a term of years
10 shall not result in a reassessment of the land for property
11 tax purposes if the easement is renewed and the granting
12 instrument reflecting the renewed easement is executed and
13 properly filed not later than fifteen (15) days after the
14 date of expiration."

15 Section 7. There is a new R.C.M. section that reads as
16 follows:

17 Easements -- type allowed. Easement or restrictions
18 under this act may prohibit or limit any or all of the
19 following:

20 (1) Structures. Construction or placing of buildings,
21 camping trailers, house trailers, mobile homes, roads,
22 signs, billboards or other advertising, utilities or other
23 structures on or above the ground.

24 (2) Landfill. Dumping or placing of soil or other
25 substance or material as landfill, or dumping or placing of

1 trash, waste or unsightly or offensive materials.

2 (3) Vegetation. Removal or destruction of trees,
3 shrubs or other vegetation.

4 (4) Loam, gravel, etc. Excavation, dredging or
5 removal of loam, peat, gravel, soil, rock or other material
6 substance.

7 (5) Surface use. Surface use except for such purposes
8 permitting the land or water area to remain predominantly in
9 its existing condition.

10 (6) Acts detrimental to conservation. Activities
11 detrimental to drainage, flood control, water conservation,
12 erosion control or soil conservation or fish and wildlife
13 habitat and preservation.

14 (7) Subdivision of land. Subdivision of land as
15 defined in section 11-3861.

16 (8) Other acts. Other acts or uses detrimental to
17 such retention of land or water areas in their existing
18 conditions.

19 (9) The term "land" in subsections (2) and (3) above,
20 includes land under water, and water, and water surface.

21 Section 8. There is a new R.C.M. section that reads as
22 follows:

23 Acquisition of conservation easements by qualified
24 private organizations. Any qualified private organization
25 may acquire by a conservation easement, by purchase or gift,

1 devise, bequest, or grant, title to any interest or
 2 interests in rights in real property, including land and
 3 water, that will provide a means for the preservation or
 4 provision of permanent significant open-space land and/or
 5 the preservation of native plants or animals, or biotic
 6 communities, or geological or geographic formations of
 7 scientific, aesthetic, or educational interest.

8 Section 9. There is a new R.C.M. section that reads as
 9 follows:

10 Conservation easements run with the land --
 11 enforceability. The provisions of sections 58-305, 58-306,
 12 and 58-307, notwithstanding, for the purposes of this act,
 13 all conservation easements, whether held by public bodies or
 14 qualifying private organizations, shall be considered to run
 15 with the land, whether or not such fact is stipulated in the
 16 instrument of conveyance or ownership and no conservation
 17 easement shall be unenforceable on account of lack of
 18 privity of estate or contract or lack of benefit to
 19 particular land or on account of such conservation easement
 20 not being an appurtenant easement, or because such easement
 21 is an easement in gross.

22 Section 10. There is a new R.C.M. section that reads
 23 as follows:

24 Assignability. For the purposes of this act, all
 25 conservation easements shall be assignable unless the

1 instrument of conveyance or ownership expressly stipulates
 2 otherwise, and no conservation easement shall be
 3 unenforceable on account of the benefit being assignable or
 4 being assigned to any other government body or private
 5 organization unless such assignment has violated the express
 6 terms of the instrument of conveyance or ownership; provided
 7 that the assignees must be qualified under the terms of this
 8 act to hold a conservation easement.

9 Section 11. There is a new R.C.M. section that reads
 10 as follows:

11 Review by local planning authority. In order to
 12 minimize conflict with local comprehensive planning, all
 13 conservation easements shall be subject to review by the
 14 appropriate local planning authority for the county within
 15 which the land lies prior to recording. It shall be the
 16 responsibility of the entity acquiring the conservation
 17 easement to present the proposed conveyance of the
 18 conservation easement to the appropriate local planning
 19 authority. The local planning authority shall have ninety
 20 (90) days from receipt of the proposed conveyance within
 21 which to review and to comment upon the relationship of the
 22 proposed conveyance to comprehensive planning for the area.
 23 Such comments will not be binding on the proposed grantor or
 24 grantee, but shall be merely advisory in nature. The
 25 proposed conveyance may be recorded after comments have been

1 received from the local planning authority, or the local
 2 planning authority has indicated in writing it will have no
 3 comments, or ninety (90) days have elapsed, whichever first
 4 occurs.

5 Section 12. There is a new R.C.M. section that reads
 6 as follows:

7 Recording and description of land. All conservation
 8 easements shall be duly recorded in the county where the
 9 land lies so as to effect their titles in the manner of
 10 other conveyances of interest in land and shall describe the
 11 land subject to said conservation easement by adequate legal
 12 description or by reference to a recorded plat showing its
 13 boundaries. The county clerk and recorder shall upon
 14 recording cause a copy of the conservation easement to be
 15 placed in a separate file within the office of the county
 16 clerk and recorder and shall cause a copy of the
 17 conservation easement to be mailed to the state department
 18 of revenue.

19 Section 13. There is a new R.C.M. section that reads
 20 as follows:

21 Enforcement. Conservation easements may be enforced by
 22 injunction or proceedings in equity. Representatives of the
 23 grantee of the conservation easement shall be entitled to
 24 enter the land in a reasonable manner and at reasonable
 25 times to assure compliance.

1 Section 14. There is a new R.C.M. section that reads
 2 as follows:

3 Construction. This section shall not be construed to
 4 imply that any easement, covenant, condition or restriction
 5 which does not have the benefit of this act shall on account
 6 of any provisions hereof be unenforceable. Nothing in this
 7 act shall diminish the powers granted by any general or
 8 special law to acquire by purchase, gift, eminent domain or
 9 otherwise and to use land for public purposes.

10 Section 15. Section 67-609, R.C.M. 1947, is
 11 renumbered 62-617.

12 Section 16. Section 67-601, R.C.M. 1947, is amended to
 13 read as follows:

14 "67-601. Servitudes attached to land. The following
 15 land burdens, or servitudes upon land, may be attached to
 16 other land as incidents or appurtenances, and are then
 17 called easements:

- 18 1. The right of pasture.
- 19 2. The right of fishing.
- 20 3. The right of taking game.
- 21 4. The right of way.
- 22 5. The right of taking water, wood, minerals, and
- 23 other things.
- 24 6. The right of transacting business upon land.
- 25 7. The right of conducting lawful sports upon land.

1 8. The right of receiving air, light, or heat from or
2 over, or discharging the same upon or over land.

3 9. The right of receiving water from or discharging
4 the same upon land.

5 10. The right of flooding land.

6 11. The right of having water flow without diminution
7 or disturbance of any kind.

8 12. The right of using a wall as a party wall.

9 13. The right of receiving more than natural support
10 from adjacent land or things affixed thereto.

11 14. The right of having the whole of a division fence
12 maintained by a coterminous owner.

13 15. The right of having public conveyances stopped, or
14 of stopping the same on land.

15 16. The right of a seat in church.

16 17. The right of burial.

17 18. The right of conserving open-space to preserve
18 park, recreational, historic, aesthetic, cultural, and
19 natural values on or related to land."

20 Section 17. Section 67-602, R.C.M. 1947, is amended to
21 read as follows:

22 "67-602. Servitudes not attached to land. The
23 following land burdens, or servitudes upon land, may be
24 granted and held, though not attached to land:

25 1. The right of pasture, and of fishing and taking

1 game.

2 2. The right of a seat in church.

3 3. The right of burial.

4 4. The right of taking rents and tolls.

5 5. The right of way.

6 6. The right of taking water, wood, minerals, or other
7 things.

8 7. The right of conserving open-space to preserve
9 park, recreational, historic, aesthetic, cultural, and
10 natural values on or related to land."

-Enxi-

March 31, 1975

SENATE COMMITTEE OF THE WHOLE
AMENDMENTS TO HOUSE BILL NO. 341

Amend Senate Committee on Taxation Amendments, dated March 26, 1975,
as follows:

1. Amend amendment No. 1.

Strike: Amendment No. 1 in its entirety

and Amend House Bill No. 341, third reading, as follows:

2. Amend page 9, section 6, lines 4 through 5 and line 6.

Following: "easement"

Strike: "either in perpetuity or for a term of years shall be determined on the basis of the restricted purposes for which the property may be used"

Insert: "in perpetuity, or for a term of years where a public body holds the term conservation easement, shall be determined on the basis of the restricted purposes for which the property may be used, provided, however, that such assessment shall not, by reason of this act, be reduced below the value such property would have for agriculture or silviculture purposes. Assessments made for taxation on property subject to a conservation easement for a term of years where a "qualified private organization" holds the conservation easement shall be determined on the basis of the restricted purposes for which the property may be used, provided, however, that the assessed value on any land subject to a conservation easement held by a "qualified private organization" for a term of years shall not, by reason of this act, be reduced below the classification or assessed value in effect at the time of the grant.

The obtaining of any tax benefit by reason of the granting of a conservation easement shall not be construed as a continuing contract and the legislature may remove any such tax benefit."

March 26, 1975

SENATE COMMITTEE ON TAXATION
AMENDMENTS TO HOUSE BILL NO. 341

That House Bill 341, third reading, be amended as follows:

1. Amend page 8, section 6, lines 16 through line 14 page 9.
Following: line 15
Strike: Section 6 in its entirety
Renumber: All subsequent sections

AND AS SO AMENDED, BE CONCURRED IN

HOUSE BILL NO. 341

INTRODUCED BY SHELDEN, BRADLEY, STOLTZ, KIMBLE,
DAY, HUBBENKENS, BERTELSEN

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE OPEN SPACE
LAND ACT AND PROVIDING FOR CONSERVATION EASEMENTS; AMENDING
SECTIONS 62-601, 62-602, 62-603, 62-604, 62-605, 62-608,
67-601, AND 67-602, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 62-601, R.C.M. 1947, is amended to
read as follows:

"62-601. Short title. This act ~~shall be known and may~~
be cited as the "Open-Space Land and Voluntary Conservation
Easement Act."

Section 2. Section 62-602, R.C.M. 1947, is amended to
read as follows:

"62-602. Purposes of act. The legislature finds that
the rapid growth and spread of urban development are
creating critical problems of service and finance for the
state and local governments; that the present and future
rapid population growth in urban areas is creating severe
problems of urban and suburban living; ~~that the provision~~
~~and preservation of permanent open space land are necessary~~
~~to help curb urban sprawl, to prevent the spread of urban~~

~~blight and deterioration, to encourage and assist more~~
~~economic and desirable urban development, to help provide or~~
~~preserve necessary park, recreational, historic and scenic~~
~~areas and to conserve land and other natural resources that~~
~~this population spread and its attendant development is~~
~~disrupting and altering the remaining natural areas, biotic~~
~~communities, geological and geographical formations and,~~
~~thereby, providing the potential for the destruction of~~
~~scientific, educational, aesthetic, and ecological values;~~
~~that the present and future rapid population spread~~
~~throughout the state of Montana into its open spaces, are~~
~~creating serious problems of lack of open space and~~
~~overcrowding of the land; that to lessen congestion and to~~
~~preserve natural, ecological, geographical and geological~~
~~elements, the provision and preservation of open-space lands~~
~~are necessary to secure park, recreational, historic and~~
~~scenic areas and to conserve the land, its biotic~~
~~communities, its natural resources, and its geological and~~
~~geographic elements in their natural state; that the~~
acquisition or designation of interests and rights in real
property by certain qualifying private organizations and by
public bodies to provide or preserve ~~permanent~~ open-space
land is essential to the solution of these problems, the
accomplishment of these purposes, and the health and welfare
of the citizens of the state; and that the exercise of

1 authority to acquire or designate interests and rights in
 2 real property to provide or preserve ~~permanent~~ open-space
 3 land and the expenditure of public funds for these purposes
 4 would be for a public purpose; and that the statutory
 5 provision enabling certain qualifying private organizations
 6 to acquire interests and rights in real property to provide
 7 or preserve open-space land is in the public interest.

8 Pursuant to In accordance with these findings, the
 9 legislature states that the purposes of this act are to
 10 authorize and enable public bodies and certain qualifying
 11 private organizations voluntarily to provide ~~and preserve~~
 12 ~~permanent open-space land in urban areas in order to assist~~
 13 ~~in the solution of the problems and the attainment of the~~
 14 ~~objectives stated in its findings for the preservation of~~
 15 native plants or animals, or biotic communities, or
 16 geological or geographical formations of scientific,
 17 aesthetic or educational interest, and to provide for the
 18 preservation of other significant open-space land anywhere
 19 in the state either in perpetuity or for a term of years,
 20 and, furthermore to encourage private participation in such
 21 a program by establishing the policy to be utilized in
 22 determining the property tax to be levied upon the real
 23 property which is subject to the provisions of this act."

24 Section 3. Section 62-603, R.C.M. 1947, is amended to
 25 read as follows:

1 "62-603. Definitions. The following terms whenever
 2 used or referred to in this act shall have the following
 3 meanings unless a different meaning is clearly indicated by
 4 the context:

5 (a) "Public body" means the state, counties, cities,
 6 towns and other municipalities.

7 (b) "Urban area" means any area which is urban in
 8 character, including surrounding areas which form an
 9 economic and socially related region, taking into
 10 consideration such factors as present and future population
 11 trends and patterns of urban growth, location of
 12 transportation facilities and systems, and distribution of
 13 industrial, commercial, residential, governmental,
 14 institutional, and other activities.

15 (c) "Open-space land" means any land ~~in an urban area~~
 16 which is provided or preserved for (1) park or recreational
 17 purposes, (2) conservation of land or other natural
 18 resources, (3) historic or scenic purposes, or (4)
 19 assisting in the shaping of the character, direction, and
 20 timing of community development.

21 (d) "Comprehensive planning" means planning for
 22 development ~~of an urban area~~ and shall include: (i)
 23 preparation, as a guide for long-range development, of
 24 general physical plans with respect to the pattern and
 25 intensity of land use and the provision of public

1 facilities, including transportation facilities, together
 2 with long-range fiscal plans for such development; (2)
 3 programming and financing plans for capital improvements;
 4 (3) co-ordination of all related plans and planned
 5 activities at both the intragovernmental and
 6 intergovernmental levels; and (4) preparation of regulatory
 7 and administrative measures in support of the foregoing.

8 (e) "Conservation easement" means an easement or
 9 restriction running with the land and assignable, whereby an
 10 owner of land voluntarily relinquishes to the holder of such
 11 easement or restriction, any or all rights to construct
 12 improvements upon the land or to substantially alter the
 13 natural character of the land or to permit the construction
 14 of improvements upon the land or the substantial alteration
 15 of the natural character of the land, except as this right
 16 is expressly reserved in the instruments evidencing the
 17 easement or restriction. Conservation easements may be
 18 granted either in perpetuity or for a term of years. If
 19 granted for a term of years, that term may not be less than
 20 fifteen (15) years. An easement granted for a term of years
 21 may be renewed for a term of fifteen (15) or more years upon
 22 the execution of a new granting instrument by the parties. A
 23 CONSERVATION EASEMENT MAY BE APPLIED TO URBAN OR NONURBAN
 24 LAND.

25 (f) "Qualified private organization" means a private

1 organization: (1) competent to own interests in real
 2 property; and (2) which qualifies and holds a general tax
 3 exemption under the Federal Internal Revenue Code, section
 4 501 (c); and (3) whose organizational purposes are designed
 5 to further the purposes of this act."

6 Section 4. Section 62-604, P.C.M. 1947, is amended to
 7 read as follows:

8 "62-604. Acquisition and designation of real property
 9 by public body. To carry out the purposes of this act, any
 10 public body may (1) acquire by purchase, gift, devise,
 11 bequest or grant title to or any interests or rights in real
 12 property, including land and water, that will provide a
 13 means for the preservation or provision of permanent
 14 significant open-space land, and or the preservation of
 15 native plants or animals, or biotic communities, or
 16 geological or geographical formations of scientific,
 17 aesthetic, or educational interest, or both, (2) designate
 18 any real property, including land and water, in which it has
 19 an interest to be retained and used for the preservation and
 20 provision of permanent significant open-space land; ~~The use~~
 21 ~~of the real property for permanent open space land shall~~
 22 ~~conform to comprehensive planning being actively carried on~~
 23 ~~for the urban area in which the property is located.~~ or the
 24 preservation of native plants or animals, or biotic
 25 communities, or geological or geographic formations of

1 scientific, aesthetic, or educational interests, or both.
 2 Where a public body acquires under this act an interest
 3 in land less than fee, this acquisition shall be by
 4 conservation easement. Public bodies holding conservation
 5 easements shall enforce the provisions of these easements."
 6 Section 5. Section 62-605, R.C.M. 1947, is amended to
 7 read as follows:
 8 "62-605. Conversion or diversion of open-space land,
 9 where prohibited—substitution of other realty—conveyance
 10 or lease of open-space land authorized. ~~(a) (1)~~ No
 11 open-space land, the title to, or interest or right in which
 12 has been acquired under this act ~~or which has been~~
 13 ~~designated as open space land under the authority of this~~
 14 ~~act~~ shall be converted or diverted from open-space land use
 15 unless the conversion or diversion is: ~~determined by the~~
 16 ~~public body to be (1) essential to the orderly development~~
 17 ~~and growth of the urban area, and (2) in accordance with the~~
 18 ~~program of comprehensive planning for the urban area in~~
 19 ~~effect at the time of conversion or diversion (a) necessary~~
 20 to the public interest; (b) not in conflict with the
 21 program of comprehensive planning for the area; and (c)
 22 permitted by the conditions imposed at the time of the
 23 creation of the conservation easement. Other real property
 24 of at least equal fair market value and of as nearly as
 25 feasible equivalent usefulness and location for use as

1 ~~permanent~~ open-space land shall be substituted within a
 2 reasonable period not exceeding one (1) year for any real
 3 property converted or diverted from open-space land use.
 4 ~~The public body shall assure that the property~~ Property
 5 ~~substituted will be~~ is subject to the provisions of this
 6 act.
 7 ~~(b) (2)~~ (2) A ~~public body grantee~~ may convey or lease any
 8 real property it has acquired or which has been designated
 9 for the purposes of this act. The conveyance or lease shall
 10 be subject to contractual arrangements that will preserve
 11 the property as open-space land and which are consistent
 12 with the express terms and conditions of the grant, unless
 13 the property is to be converted or diverted from open-space
 14 land use in accordance with the provisions of subsection ~~(a)~~
 15 (1) of this section."
 16 Section 6. Section 62-608, R.C.M. 1947, is amended to
 17 read as follows:
 18 "~~62-608. Taxation of property subject to conservation~~
 19 ~~easement, where public body owns less than fee. Where an~~
 20 ~~interest in real property less than the fee is held by a~~
 21 ~~public body for the purposes of this act, assessments made~~
 22 ~~on the property for taxation shall reflect any change in the~~
 23 ~~market value of the property which may result from the~~
 24 ~~interest held by the public body. The value of the interest~~
 25 ~~held by the public body shall be exempt from property~~

1 ~~taxation to the same extent as other property owned by the~~
2 ~~public body.~~

3 ~~Assessments made for taxation on property subject to a~~
4 ~~conservation easement either in perpetuity or for a term of~~
5 ~~years shall be determined on the basis of the restricted~~
6 ~~purposes for which the property may be used. The value of~~
7 ~~the interest held by a public body or qualifying private~~
8 ~~organization shall be exempt from property taxation.~~

9 ~~Expiration of an easement granted for a term of years~~
10 ~~shall not result in a reassessment of the land for property~~
11 ~~tax purposes if the easement is renewed and the granting~~
12 ~~instrument reflecting the renewed easement is executed and~~
13 ~~properly filed not later than fifteen (15) days after the~~
14 ~~date of expiration.~~

15 SECTION 6. SECTION 62-608, P.C.M. 1947, IS AMENDED TO
16 READ AS FOLLOWS:

17 "62-608. Taxation of property subject to conservation
18 easement, where public body owns less than fee. Where an
19 interest in real property less than the fee is held by a
20 public body for the purposes of this act, assessments made
21 on the property for taxation shall reflect any change in the
22 market value of the property which may result from the
23 interest held by the public body. The value of the interest
24 held by the public body shall be exempt from property
25 taxation to the same extent as other property owned by the

1 public body.

2 Assessments made for taxation on property subject to a
3 conservation easement either in perpetuity or for a term of
4 years shall be determined on the basis of the restricted
5 purposes for which the property may be used EITHER IN
6 PERPETUITY OR FOR A TERM OF YEARS WHERE A PUBLIC BODY OR A
7 QUALIFYING PRIVATE ORGANIZATION HOLDS THE CONSERVATION
8 EASEMENT, SHALL BE DETERMINED ON THE BASIS OF THE RESTRICTED
9 PURPOSES FOR WHICH THE PROPERTY MAY BE USED. THE MINIMUM
10 ASSESSED VALUE FOR LAND SUBJECT TO AN EASEMENT CONVEYED
11 UNDER THIS CHAPTER MAY NOT BE LESS THAN THE ACTUAL ASSESSED
12 VALUE OF SUCH LAND IN CALENDAR YEAR 1973. ANY LAND SUBJECT
13 TO SUCH EASEMENT MAY NOT BE CLASSIFIED INTO A CLASS
14 AFFORDING A LESSER ASSESSED VALUATION SOLELY BY REASON OF
15 THE CREATION OF THE EASEMENT. IN PERPETUITY, OR FOR A TERM
16 OF YEARS WHERE A PUBLIC BODY HOLDS THE TERM CONSERVATION
17 EASEMENT, SHALL BE DETERMINED ON THE BASIS OF THE RESTRICTED
18 PURPOSES FOR WHICH THE PROPERTY MAY BE USED, PROVIDED,
19 HOWEVER, THAT SUCH ASSESSMENT SHALL NOT, BY REASON OF THIS
20 ACT, BE REDUCED BELOW THE VALUE SUCH PROPERTY WOULD HAVE FOR
21 AGRICULTURE OR SILVICULTURE PURPOSES. ASSESSMENTS MADE FOR
22 TAXATION ON PROPERTY SUBJECT TO A CONSERVATION EASEMENT FOR
23 A TERM OF YEARS WHERE A "QUALIFIED PRIVATE ORGANIZATION"
24 HOLDS THE CONSERVATION EASEMENT SHALL BE DETERMINED ON THE
25 BASIS OF THE RESTRICTED PURPOSES FOR WHICH THE PROPERTY MAY

~~1 BE USED, PROVIDED, HOWEVER, THAT THE ASSESSED VALUE ON ANY~~
~~2 LAND SUBJECT TO A CONSERVATION EASEMENT HELD BY A "QUALIFIED~~
~~3 PRIVATE ORGANIZATION" FOR A TERM OF YEARS SHALL NOT, BY~~
~~4 REASON OF THIS ACT, BE REDUCED BELOW THE CLASSIFICATION OR~~
~~5 ASSESSED VALUE IN EFFECT AT THE TIME OF THE GRANT.~~

~~6 THE OBTAINING OF ANY TAX BENEFIT BY REASON OF THE~~
~~7 GRANTING OF A CONSERVATION EASEMENT SHALL NOT BE CONSTRUED~~
~~8 AS A CONTINUING CONTRACT AND THE LEGISLATURE MAY REMOVE ANY~~
~~9 SUCH TAX BENEFIT.~~ The value of the interest held by a public
 10 body or qualifying private organization shall be exempt from
 11 property taxation.

12 Expiration of an easement granted for a term of years
 13 shall not result in a reassessment of the land for property
 14 tax purposes if the easement is renewed and the granting
 15 instrument reflecting the renewed easement is executed and
 16 properly filed not later than fifteen (15) days after the
 17 date of expiration."

18 Section 7. There is a new R.C.M. section that reads as
 19 follows:

20 Easements — type allowed. Easement or restrictions
 21 under this act may prohibit or limit any or all of the
 22 following:

23 (1) Structures. Construction or placing of buildings,
 24 camping trailers, house trailers, mobile homes, roads,
 25 signs, billboards or other advertising, utilities or other

1 structures on or above the ground.

2 (2) Landfill. Dumping or placing of soil or other
 3 substance or material as landfill, or dumping or placing of
 4 trash, waste or unsightly or offensive materials.

5 (3) Vegetation. Removal or destruction of trees,
 6 shrubs or other vegetation.

7 (4) Loam, gravel, etc. Excavation, dredging or
 8 removal of loam, peat, gravel, soil, rock or other material
 9 substance.

10 (5) Surface use. Surface use except for such purposes
 11 permitting the land or water area to remain predominantly in
 12 its existing condition.

13 (6) Acts detrimental to conservation. Activities
 14 detrimental to drainage, flood control, water conservation,
 15 erosion control or soil conservation or fish and wildlife
 16 habitat and preservation.

17 (7) Subdivision of land. Subdivision of land as
 18 defined in section 11-3861.

19 (8) Other acts. Other acts or uses detrimental to
 20 such retention of land or water areas in their existing
 21 conditions.

22 (9) The term "land" in subsections (2) and (3) above,
 23 includes land under water, and water, and water surface.

24 Section 8. There is a new R.C.M. section that reads as
 25 follows:

1 Acquisition of conservation easements by qualified
 2 private organizations. Any qualified private organization
 3 may acquire by a conservation easement, by purchase or gift,
 4 devise, bequest, or grant, title to any interest or
 5 interests in rights in real property, including land and
 6 water, that will provide a means for the preservation or
 7 provision of permanent significant open-space land and/or
 8 the preservation of native plants or animals, or biotic
 9 communities, or geological or geographic formations of
 10 scientific, aesthetic, or educational interest.

11 Section 9. There is a new R.C.M. section that reads as
 12 follows:

13 Conservation easements run with the land —
 14 enforceability. The provisions of sections 58-305, 58-306,
 15 and 58-307, notwithstanding, for the purposes of this act,
 16 all conservation easements, whether held by public bodies or
 17 qualifying private organizations, shall be considered to run
 18 with the land, whether or not such fact is stipulated in the
 19 instrument of conveyance or ownership and no conservation
 20 easement shall be unenforceable on account of lack of
 21 privity of estate or contract or lack of benefit to
 22 particular land or on account of such conservation easement
 23 not being an appurtenant easement, or because such easement
 24 is an easement in gross.

25 Section 10. There is a new R.C.M. section that reads

1 as follows:

2 Assignability. For the purposes of this act, all
 3 conservation easements shall be assignable unless the
 4 instrument of conveyance or ownership expressly stipulates
 5 otherwise, and no conservation easement shall be
 6 unenforceable on account of the benefit being assignable or
 7 being assigned to any other government body or private
 8 organization unless such assignment has violated the express
 9 terms of the instrument of conveyance or ownership; provided
 10 that the assignees must be qualified under the terms of this
 11 act to hold a conservation easement.

12 Section 11. There is a new R.C.M. section that reads
 13 as follows:

14 Review by local planning authority. In order to
 15 minimize conflict with local comprehensive planning, all
 16 conservation easements shall be subject to review by the
 17 appropriate local planning authority for the county within
 18 which the land lies prior to recording. It shall be the
 19 responsibility of the entity acquiring the conservation
 20 easement to present the proposed conveyance of the
 21 conservation easement to the appropriate local planning
 22 authority. The local planning authority shall have ninety
 23 (90) days from receipt of the proposed conveyance within
 24 which to review and to comment upon the relationship of the
 25 proposed conveyance to comprehensive planning for the area.

1 Such comments will not be binding on the proposed grantor or
 2 grantee, but shall be merely advisory in nature. The
 3 proposed conveyance may be recorded after comments have been
 4 received from the local planning authority, or the local
 5 planning authority has indicated in writing it will have no
 6 comments, or ninety (90) days have elapsed, whichever first
 7 occurs.

8 Section 12. There is a new R.C.M. section that reads
 9 as follows:

10 Recording and description of land. All conservation
 11 easements shall be duly recorded in the county where the
 12 land lies so as to effect their titles in the manner of
 13 other conveyances of interest in land and shall describe the
 14 land subject to said conservation easement by adequate legal
 15 description or by reference to a recorded plat showing its
 16 boundaries. The county clerk and recorder shall upon
 17 recording cause a copy of the conservation easement to be
 18 placed in a separate file within the office of the county
 19 clerk and recorder and shall cause a copy of the
 20 conservation easement to be mailed to the state department
 21 of revenue.

22 Section 13. There is a new R.C.M. section that reads
 23 as follows:

24 Enforcement. Conservation easements may be enforced by
 25 injunction or proceedings in equity. Representatives of the

1 grantee of the conservation easement shall be entitled to
 2 enter the land in a reasonable manner and at reasonable
 3 times to assure compliance.

4 Section 14. There is a new R.C.M. section that reads
 5 as follows:

6 Construction. This section shall not be construed to
 7 imply that any easement, covenant, condition or restriction
 8 which does not have the benefit of this act shall on account
 9 of any provisions hereof be unenforceable. Nothing in this
 10 act shall diminish the powers granted by any general or
 11 special law to acquire by purchase, gift, eminent domain or
 12 otherwise and to use land for public purposes.

13 Section 15. Section 67-609, R.C.M. 1947, is
 14 renumbered 62-617.

15 Section 16. Section 67-601, R.C.M. 1947, is amended to
 16 read as follows:

17 "67-601. Servitudes attached to land. The following
 18 land burdens, or servitudes upon land, may be attached to
 19 other land as incidents or appurtenances, and are then
 20 called easements:

- 21 1. The right of pasture.
- 22 2. The right of fishing.
- 23 3. The right of taking game.
- 24 4. The right of way.
- 25 5. The right of taking water, wood, minerals, and

1 other things.

2 6. The right of transacting business upon land.

3 7. The right of conducting lawful sports upon land.

4 8. The right of receiving air, light, or heat from or

5 over, or discharging the same upon or over land.

6 9. The right of receiving water from or discharging

7 the same upon land.

8 10. The right of flooding land.

9 11. The right of having water flow without diminution

10 or disturbance of any kind.

11 12. The right of using a wall as a party wall.

12 13. The right of receiving more than natural support

13 from adjacent land or things affixed thereto.

14 14. The right of having the whole of a division fence

15 maintained by a coterminous owner.

16 15. The right of having public conveyances stopped, or

17 of stopping the same on land.

18 16. The right of a seat in church.

19 17. The right of burial.

20 18. The right of conserving open space to preserve

21 park, recreational, historic, aesthetic, cultural, and

22 natural values on or related to land.*

23 Section 17. Section 67-602, R.C.M. 1947, is amended to

24 read as follows:

25 *67-602. Servitudes not attached to land. The

1 following land burdens, or servitudes upon land, may be

2 granted and held, though not attached to land:

3 1. The right of pasture, and of fishing and taking

4 game.

5 2. The right of a seat in church.

6 3. The right of burial.

7 4. The right of taking rents and tolls.

8 5. The right of way.

9 6. The right of taking water, wood, minerals, or other

10 things.

11 7. The right of conserving open space to preserve

12 park, recreational, historic, aesthetic, cultural, and

13 natural values on or related to land.*

-End-