

CERTIFICATION OF ENROLLMENT

**SENATE BILL 6484**

Chapter 66, Laws of 2002

57th Legislature  
2002 Regular Session

TRUSTS--CONSERVATION EASEMENT DONATION

EFFECTIVE DATE: 6/13/02

Passed by the Senate February 14, 2002  
YEAS 45 NAYS 0

BRAD OWEN

\_\_\_\_\_  
**President of the Senate**

Passed by the House March 7, 2002  
YEAS 93 NAYS 0

FRANK CHOPP

\_\_\_\_\_  
**Speaker of the  
House of Representatives**

CERTIFICATE

I, Tony M. Cook, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 6484** as passed by the Senate and the House of Representatives on the dates hereon set forth.

TONY M. COOK

\_\_\_\_\_  
**Secretary**

Approved March 21, 2002

FILED

March 21, 2002 - 2:14 p.m.

GARY LOCKE

\_\_\_\_\_  
**Governor of the State of Washington**

**Secretary of State  
State of Washington**

---

**SENATE BILL 6484**

---

Passed Legislature - 2002 Regular Session

**State of Washington**

**57th Legislature**

**2002 Regular Session**

**By** Senators Haugen, Swecker, Rossi, Regala, B. Sheldon, Finkbeiner, T. Sheldon, Kastama, Jacobsen, Rasmussen, Winsley and Johnson

Read first time 01/18/2002. Referred to Committee on Judiciary.

1 AN ACT Relating to federal estate tax benefits for conservation  
2 easements; and amending RCW 11.98.070 and 11.96A.030.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 11.98.070 and 1997 c 252 s 75 are each amended to read  
5 as follows:

6 A trustee, or the trustees jointly, of a trust, in addition to the  
7 authority otherwise given by law, have discretionary power to acquire,  
8 invest, reinvest, exchange, sell, convey, control, divide, partition,  
9 and manage the trust property in accordance with the standards provided  
10 by law, and in so doing may:

11 (1) Receive property from any source as additions to the trust or  
12 any fund of the trust to be held and administered under the provisions  
13 of the trust;

14 (2) Sell on credit;

15 (3) Grant, purchase or exercise options;

16 (4) Sell or exercise subscriptions to stock or other corporate  
17 securities and to exercise conversion rights;

18 (5) Deposit stock or other corporate securities with any protective  
19 or other similar committee;

- 1 (6) Assent to corporate sales, leases, and encumbrances;
- 2 (7) Vote trust securities in person or by proxy with power of  
3 substitution; and enter into voting trusts;
- 4 (8) Register and hold any stocks, securities, or other property in  
5 the name of a nominee or nominees without mention of the trust  
6 relationship, provided the trustee or trustees are liable for any loss  
7 occasioned by the acts of any nominee, except that this subsection  
8 shall not apply to situations covered by RCW 11.98.070(31);
- 9 (9) Grant leases of trust property, with or without options to  
10 purchase or renew, to begin within a reasonable period and for terms  
11 within or extending beyond the duration of the trust, for any purpose  
12 including exploration for and removal of oil, gas and other minerals;  
13 enter into community oil leases, pooling and unitization agreements;
- 14 (10) Subdivide, develop, dedicate to public use, make or obtain the  
15 vacation of public plats, adjust boundaries, partition real property,  
16 and on exchange or partition to adjust differences in valuation by  
17 giving or receiving money or money's worth;
- 18 (11) Compromise or submit claims to arbitration;
- 19 (12) Borrow money, secured or unsecured, from any source, including  
20 a corporate trustee's banking department, or from the individual  
21 trustee's own funds;
- 22 (13) Make loans, either secured or unsecured, at such interest as  
23 the trustee may determine to any person, including any beneficiary of  
24 a trust, except that no trustee who is a beneficiary of a trust may  
25 participate in decisions regarding loans to such beneficiary from the  
26 trust, unless the loan is as described in RCW 83.110.020(2), and then  
27 only to the extent of the loan, and also except that if a beneficiary  
28 or the grantor of a trust has the power to change a trustee of the  
29 trust, the power to loan shall be limited to loans at a reasonable rate  
30 of interest and for adequate security;
- 31 (14) Determine the hazards to be insured against and maintain  
32 insurance for them;
- 33 (15) Select any part of the trust estate in satisfaction of any  
34 partition or distribution, in kind, in money or both; make nonpro rata  
35 distributions of property in kind; allocate particular assets or  
36 portions of them or undivided interests in them to any one or more of  
37 the beneficiaries without regard to the income tax basis of specific  
38 property allocated to any beneficiary and without any obligation to  
39 make an equitable adjustment;

1       (16) Pay any income or principal distributable to or for the use of  
2 any beneficiary, whether that beneficiary is under legal disability, to  
3 the beneficiary or for the beneficiary's use to the beneficiary's  
4 parent, guardian, custodian under the uniform gifts to minors act of  
5 any state, person with whom he resides, or third person;

6       (17) Change the character of or abandon a trust asset or any  
7 interest in it;

8       (18) Mortgage, pledge the assets or the credit of the trust estate,  
9 or otherwise encumber trust property, including future income, whether  
10 an initial encumbrance or a renewal or extension of it, for a term  
11 within or extending beyond the term of the trust, in connection with  
12 the exercise of any power vested in the trustee;

13       (19) Make ordinary or extraordinary repairs or alterations in  
14 buildings or other trust property, demolish any improvements, raze  
15 existing structures, and make any improvements to trust property;

16       (20) Create restrictions, easements, including easements to public  
17 use without consideration, and other servitudes;

18       (21) Manage any business interest, including any farm or ranch  
19 interest, regardless of form, received by the trustee from the trustor  
20 of the trust, as a result of the death of a person, or by gratuitous  
21 transfer from any other transferor, and with respect to the business  
22 interest, have the following powers:

23       (a) To hold, retain, and continue to operate that business interest  
24 solely at the risk of the trust, without need to diversify and without  
25 liability on the part of the trustee for any resulting losses;

26       (b) To enlarge or diminish the scope or nature or the activities of  
27 any business;

28       (c) To authorize the participation and contribution by the business  
29 to any employee benefit plan, whether or not qualified as being tax  
30 deductible, as may be desirable from time to time;

31       (d) To use the general assets of the trust for the purpose of the  
32 business and to invest additional capital in or make loans to such  
33 business;

34       (e) To endorse or guarantee on behalf of the trust any loan made to  
35 the business and to secure the loan by the trust's interest in the  
36 business or any other property of the trust;

37       (f) To leave to the discretion of the trustee the manner and degree  
38 of the trustee's active participation in the management of the  
39 business, and the trustee is authorized to delegate all or any part of

1 the trustee's power to supervise, manage, or operate to such persons as  
2 the trustee may select, including any partner, associate, director,  
3 officer, or employee of the business; and also including electing or  
4 employing directors, officers, or employees of the trustee to take part  
5 in the management of the business as directors or officers or  
6 otherwise, and to pay that person reasonable compensation for services  
7 without regard to the fees payable to the trustee;

8 (g) To engage, compensate, and discharge or to vote for the  
9 engaging, compensating, and discharging of managers, employees, agents,  
10 lawyers, accountants, consultants, or other representatives, including  
11 anyone who may be a beneficiary of the trust or any trustee;

12 (h) To cause or agree that surplus be accumulated or that dividends  
13 be paid;

14 (i) To accept as correct financial or other statements rendered by  
15 any accountant for any sole proprietorship or by any partnership or  
16 corporation as to matters pertaining to the business except upon actual  
17 notice to the contrary;

18 (j) To treat the business as an entity separate from the trust, and  
19 in any accounting by the trustee it is sufficient if the trustee  
20 reports the earning and condition of the business in a manner  
21 conforming to standard business accounting practice;

22 (k) To exercise with respect to the retention, continuance, or  
23 disposition of any such business all the rights and powers that the  
24 trustor of the trust would have if alive at the time of the exercise,  
25 including all powers as are conferred on the trustee by law or as are  
26 necessary to enable the trustee to administer the trust in accordance  
27 with the instrument governing the trust, subject to any limitations  
28 provided for in the instrument; and

29 (l) To satisfy contractual and tort liabilities arising out of an  
30 unincorporated business, including any partnership, first out of the  
31 business and second out of the estate or trust, but in no event may  
32 there be a liability of the trustee, except as provided in RCW  
33 11.98.110 (2) and (4), and if the trustee is liable, the trustee is  
34 entitled to indemnification from the business and the trust,  
35 respectively;

36 (22) Participate in the establishment of, and thereafter in the  
37 operation of, any business or other enterprise according to subsection  
38 (21) of this section except that the trustee shall not be relieved of  
39 the duty to diversify;

1       (23) Cause or participate in, directly or indirectly, the  
2 formation, reorganization, merger, consolidation, dissolution, or other  
3 change in the form of any corporate or other business undertaking where  
4 trust property may be affected and retain any property received  
5 pursuant to the change;

6       (24) Limit participation in the management of any partnership and  
7 act as a limited or general partner;

8       (25) Charge profits and losses of any business operation, including  
9 farm or ranch operation, to the trust estate as a whole and not to the  
10 trustee; make available to or invest in any business or farm operation  
11 additional moneys from the trust estate or other sources;

12       (26) Pay reasonable compensation to the trustee or co-trustees  
13 considering all circumstances including the time, effort, skill, and  
14 responsibility involved in the performance of services by the trustee;

15       (27) Employ persons, including lawyers, accountants, investment  
16 advisors, or agents, even if they are associated with the trustee, to  
17 advise or assist the trustee in the performance of the trustee's duties  
18 or to perform any act, regardless of whether the act is discretionary,  
19 and to act without independent investigation upon their  
20 recommendations, except that:

21       (a) A trustee may not delegate all of the trustee's duties and  
22 responsibilities;

23       (b) This power to employ and to delegate duties does not relieve  
24 the trustee of liability for such person's discretionary acts, that, if  
25 done by the trustee, would result in liability to the trustee;

26       (c) This power to employ and to delegate duties does not relieve  
27 the trustee of the duty to select and retain a person with reasonable  
28 care;

29       (d) The trustee, or a successor trustee, may sue the person to  
30 collect any damages suffered by the trust estate even though the  
31 trustee might not be personally liable for those damages, subject to  
32 the statutes of limitation that would have applied had the claim been  
33 one against the trustee who was serving when the act or failure to act  
34 occurred;

35       (28) Appoint an ancillary trustee or agent to facilitate management  
36 of assets located in another state or foreign country;

37       (29) Retain and store such items of tangible personal property as  
38 the trustee selects and pay reasonable storage charges thereon from the  
39 trust estate;

1 (30) Issue proxies to any adult beneficiary of a trust for the  
2 purpose of voting stock of a corporation acting as the trustee of the  
3 trust;

4 (31) Place all or any part of the securities at any time held by  
5 the trustee in the care and custody of any bank, trust company, or  
6 member firm of the New York Stock Exchange with no obligation while the  
7 securities are so deposited to inspect or verify the same and with no  
8 responsibility for any loss or misapplication by the bank, trust  
9 company, or firm, so long as the bank, trust company, or firm was  
10 selected and retained with reasonable care, and have all stocks and  
11 registered securities placed in the name of the bank, trust company, or  
12 firm, or in the name of its nominee, and to appoint such bank, trust  
13 company, or firm agent as attorney to collect, receive, receipt for,  
14 and disburse any income, and generally may perform, but is under no  
15 requirement to perform, the duties and services incident to a so-called  
16 "custodian" account;

17 (32) Determine at any time that the corpus of any trust is  
18 insufficient to implement the intent of the trust, and upon this  
19 determination by the trustee, terminate the trust by distribution of  
20 the trust to the current income beneficiary or beneficiaries of the  
21 trust or their legal representatives, except that this determination  
22 may only be made by the trustee if the trustee is neither the grantor  
23 nor the beneficiary of the trust, and if the trust has no charitable  
24 beneficiary; ((and))

25 (33) Continue to be a party to any existing voting trust agreement  
26 or enter into any new voting trust agreement or renew an existing  
27 voting trust agreement with respect to any assets contained in trust;  
28 and

29 (34)(a) Donate a qualified conservation easement, as defined by  
30 section 2031(c) of the Internal Revenue Code, on any real property, or  
31 consent to the donation of a qualified conservation easement on any  
32 real property by a personal representative of an estate of which the  
33 trustee is a devisee, to obtain the benefit of the estate tax exclusion  
34 allowed under section 2031(c) of the Internal Revenue Code or the  
35 deduction allowed under section 2055(f) of the Internal Revenue Code as  
36 long as:

37 (i)(A) The governing instrument authorizes the donation of a  
38 qualified conservation easement on the real property; or

1 (B) Each beneficiary that may be affected by the qualified  
2 conservation easement consents to the donation under the provisions of  
3 chapter 11.96A RCW; and

4 (ii) The donation of a qualified conservation easement will not  
5 result in the insolvency of the decedent's estate.

6 (b) The authority granted under this subsection includes the  
7 authority to amend a previously donated qualified conservation  
8 easement, as defined under section 2031(c)(8)(B) of the Internal  
9 Revenue Code, and to amend a previously donated unqualified  
10 conservation easement for the purpose of making the easement a  
11 qualified conservation easement under section 2031(c)(8)(B).

12 **Sec. 2.** RCW 11.96A.030 and 1999 c 42 s 104 are each amended to  
13 read as follows:

14 The definitions in this section apply throughout this chapter  
15 unless the context clearly requires otherwise.

16 (1) "Matter" includes any issue, question, or dispute involving:

17 (a) The determination of any class of creditors, devisees,  
18 legatees, heirs, next of kin, or other persons interested in an estate,  
19 trust, nonprobate asset, or with respect to any other asset or property  
20 interest passing at death;

21 (b) The direction of a personal representative or trustee to do or  
22 to abstain from doing any act in a fiduciary capacity;

23 (c) The determination of any question arising in the administration  
24 of an estate or trust, or with respect to any nonprobate asset, or with  
25 respect to any other asset or property interest passing at death, that  
26 may include, without limitation, questions relating to: (i) The  
27 construction of wills, trusts, community property agreements, and other  
28 writings; (ii) a change of personal representative or trustee; (iii) a  
29 change of the situs of a trust; (iv) an accounting from a personal  
30 representative or trustee; or (v) the determination of fees for a  
31 personal representative or trustee;

32 (d) The grant to a personal representative or trustee of any  
33 necessary or desirable power not otherwise granted in the governing  
34 instrument or given by law;

35 (e) The amendment, reformation, or conformation of a will or a  
36 trust instrument to comply with statutes and regulations of the United  
37 States internal revenue service in order to achieve qualification for  
38 deductions, elections, and other tax requirements, including the



1 qualification of any gift thereunder for the benefit of a surviving  
2 spouse who is not a citizen of the United States for the estate tax  
3 marital deduction permitted by federal law, including the addition of  
4 mandatory governing instrument requirements for a qualified domestic  
5 trust under section 2056A of the internal revenue code, the  
6 qualification of any gift thereunder as a qualified conservation  
7 easement as permitted by federal law, or the qualification of any gift  
8 for the charitable estate tax deduction permitted by federal law,  
9 including the addition of mandatory governing instrument requirements  
10 for a charitable remainder trust; and

11 (f) With respect to any nonprobate asset, or with respect to any  
12 other asset or property interest passing at death, including joint  
13 tenancy property, property subject to a community property agreement,  
14 or assets subject to a pay on death or transfer on death designation:

15 (i) The ascertaining of any class of creditors or others for  
16 purposes of chapter 11.18 or 11.42 RCW;

17 (ii) The ordering of a qualified person, the notice agent, or  
18 resident agent, as those terms are defined in chapter 11.42 RCW, or any  
19 combination of them, to do or abstain from doing any particular act  
20 with respect to a nonprobate asset;

21 (iii) The ordering of a custodian of any of the decedent's records  
22 relating to a nonprobate asset to do or abstain from doing any  
23 particular act with respect to those records;

24 (iv) The determination of any question arising in the  
25 administration under chapter 11.18 or 11.42 RCW of a nonprobate asset;

26 (v) The determination of any questions relating to the abatement,  
27 rights of creditors, or other matter relating to the administration,  
28 settlement, or final disposition of a nonprobate asset under this  
29 title;

30 (vi) The resolution of any matter referencing this chapter,  
31 including a determination of any questions relating to the ownership or  
32 distribution of an individual retirement account on the death of the  
33 spouse of the account holder as contemplated by RCW 6.15.020(6);

34 (vii) The resolution of any other matter that could affect the  
35 nonprobate asset.

36 (2) "Notice agent" has the meanings given in RCW 11.42.010.

37 (3) "Nonprobate assets" has the meaning given in RCW 11.02.005.

38 (4) "Party" or "parties" means each of the following persons who  
39 has an interest in the subject of the particular proceeding and whose

1 name and address are known to, or are reasonably ascertainable by, the  
2 petitioner:

3 (a) The trustor if living;

4 (b) The trustee;

5 (c) The personal representative;

6 (d) An heir;

7 (e) A beneficiary, including devisees, legatees, and trust  
8 beneficiaries;

9 (f) The surviving spouse of a decedent with respect to his or her  
10 interest in the decedent's property;

11 (g) A guardian ad litem;

12 (h) A creditor;

13 (i) Any other person who has an interest in the subject of the  
14 particular proceeding;

15 (j) The attorney general if required under RCW 11.110.120;

16 (k) Any duly appointed and acting legal representative of a party  
17 such as a guardian, special representative, or attorney in fact;

18 (l) Where applicable, the virtual representative of any person  
19 described in this subsection the giving of notice to whom would meet  
20 notice requirements as provided in RCW 11.96A.120;

21 (m) Any notice agent, resident agent, or a qualified person, as  
22 those terms are defined in chapter 11.42 RCW; and

23 (n) The owner or the personal representative of the estate of the  
24 deceased owner of the nonprobate asset that is the subject of the  
25 particular proceeding, if the subject of the particular proceeding  
26 relates to the beneficiary's liability to a decedent's estate or  
27 creditors under RCW 11.18.200.

28 (5) "Persons interested in the estate or trust" means the trustor,  
29 if living, all persons beneficially interested in the estate or trust,  
30 persons holding powers over the trust or estate assets, the attorney  
31 general in the case of any charitable trust where the attorney general  
32 would be a necessary party to judicial proceedings concerning the  
33 trust, and any personal representative or trustee of the estate or  
34 trust.

35 (6) "Principal place of administration of the trust" means the  
36 trustee's usual place of business where the day-to-day records  
37 pertaining to the trust are kept, or the trustee's residence if the  
38 trustee has no such place of business.

1       (7) The "situs" of a trust means the place where the principal  
2 place of administration of the trust is located, unless otherwise  
3 provided in the instrument creating the trust.

4       (8) "Trustee" means any acting and qualified trustee of the trust.

5       (9) "Representative" and other similar terms refer to a person who  
6 virtually represents another under RCW 11.96A.120.

Passed the Senate February 14, 2002.

Passed the House March 7, 2002.

Approved by the Governor March 21, 2002.

Filed in Office of Secretary of State March 21, 2002.