

1 H.553

2 Introduced by Representatives Grad of Moretown, McAllister of Highgate and

3 Stevens of Shoreham

4 Referred to Committee on

5 Date:

6 Subject: Conservation and development; conservation easements;

7 modification

8 Statement of purpose: This bill proposes to amend the conservation easement
9 statutes to permit modification of perpetual conservation easements. The bill
10 establishes the criteria to be used to determine when an easement amendment
11 would be allowed, creates a process for making that determination, and vests
12 the holders of the easement with initial authority to make the determination.

13 Certain amendments and terminations are subject to review and approval by an
14 easement amendment panel created for this purpose within the Vermont
15 natural resources board.

16 An act relating to amending perpetual conservation easements

17 It is hereby enacted by the General Assembly of the State of Vermont:

1 Sec. 1. 10 V.S.A. § 302 is amended to read:

2 § 302. POLICY, FINDINGS, AND PURPOSE

3 (a) The dual goals of creating affordable housing for Vermonters, and
4 conserving and protecting Vermont's agricultural land, forestland, historic
5 properties, important natural areas, and recreational lands are of primary
6 importance to the economic vitality and quality of life of the state.

7 (b) In the best interests of all of its citizens and in order to improve the
8 quality of life for Vermonters and to maintain for the benefit of future
9 generations the essential characteristics of the Vermont countryside, and to
10 support farm, forest, and related enterprises, Vermont should encourage and
11 assist in creating affordable housing and in preserving the state's agricultural
12 land, forestland, historic properties, important natural areas and recreational
13 lands, and in keeping conserved agricultural land in production and affordable
14 for future generations of farmers.

15 (c) It is the purpose of this chapter to create the Vermont housing and
16 conservation trust fund to be administered by the Vermont housing and
17 conservation board to further the policies established by subsections (a) and (b)
18 of this section.

1 Sec. 2. 10 V.S.A. § 324 is amended to read:

2 § 324. CONSERVATION EASEMENTS; STEWARDSHIP

3 (a) The board may amend or terminate conservation easements held
4 pursuant to this chapter in accordance with chapter 155, subchapter 2 of this
5 title.

6 (b) If an activity funded by the board involves acquisition by the state of an
7 interest in real property for the purpose of conserving and protecting
8 agricultural land, important natural areas or recreation lands, the board, in its
9 discretion, may make a one-time grant to the appropriate state agency or
10 municipality. The grant shall not exceed ten percent of the current appraised
11 value of that property interest and shall be used to support its proper
12 management or maintenance or both.

13 Sec. 3. 10 V.S.A. § 6301 is amended to read:

14 § 6301. PURPOSE

15 It is the purpose of this chapter to encourage and assist the maintenance of
16 the present uses of Vermont's agricultural, forest, and other undeveloped land
17 and to prevent the accelerated residential and commercial development thereof;
18 to preserve and to enhance Vermont's scenic natural resources; to strengthen
19 the base of the recreation industry and to increase employment, income,
20 business, and investment; ~~and~~ to enable the citizens of Vermont to plan its
21 orderly growth in the face of increasing development pressures in the interests

1 of the public health, safety, and welfare; and to encourage the use of
2 conservation and preservation tools to support farm, forest, and related
3 enterprises, thereby strengthening Vermont's economy to improve the quality
4 of life for Vermonters, and to maintain the historic settlement pattern of
5 compact village and urban centers separated by rural countryside.

6 Sec. 4. DESIGNATION

7 10 V.S.A. §§ 6301–6309 are designated as 10 V.S.A. chapter 155,
8 subchapter 1 to read:

9 Subchapter 1. General Provisions

10 Sec. 5. 10 V.S.A. § 6301a is amended to read:

11 § 6301a. DEFINITIONS

12 As used in this chapter:

13 (1) “State agency” means the agency of natural resources or any of its
14 departments, agency of transportation, agency of agriculture, food and markets
15 or Vermont housing and conservation board.

16 (2) “Qualified organization” means:

17 (A) an organization qualifying under Section 501(c)(3) of the Internal
18 Revenue Code of 1986, as amended, which is not a private foundation as
19 defined in Section 509(a) of the Internal Revenue Code, and which
20 has been certified by the commissioner of taxes as being principally engaged in

1 the preservation of undeveloped land for the purposes expressed in section
2 6301 of this title.

3 (B) an organization qualifying under Section 501(c)(2) of the Internal
4 Revenue Code of 1986, as amended, provided such organization is controlled
5 exclusively by an organization or organizations described in subdivision (2)(A)
6 of this section.

7 (3) "Taxation" and "tax" means ad valorem taxes levied by the state and
8 its municipalities.

9 (4) "Adjoining landowner" means a person who owns land in fee
10 simple, if that land either:

11 (A) shares a property boundary with a tract of land where a proposed
12 easement amendment is located; or

13 (B) is adjacent to a tract of land where a proposed easement
14 amendment is located and the two properties are separated by only a river,
15 stream, or public highway.

16 (5) "Amend" or "amendment" means a modification of an original or
17 existing conservation easement, the substitution of a new easement for the
18 original or existing easement, or the whole or partial termination of the original
19 or existing easement.

20 (6) "Conservation easement" means a conservation right or interest that
21 is less than a fee simple interest and that restricts the landowner's use or

1 development of land. The term excludes a lease for a period of ten years or
2 less.

3 (7) "Conservation right or interest" means a right or interest described in
4 section 6303 of this title.

5 (8) "Landowner" means an owner of the fee interest in land that is
6 subject to conservation rights or interests, as authorized by this chapter.

7 (9) "Panel" means the easement amendment panel of the natural
8 resources board established by section 6323 of this title.

9 (10) "Person" is as defined in 1 V.S.A. § 128.

10 (11) "Qualified holder" and "holder" means a state agency, a qualified
11 organization, or a municipality that possesses a conservation right or interest.

12 Sec. 6. 10 V.S.A. § 6307 is amended to read:

13 § 6307. ENFORCEMENT

14 (a) Injunction. In any case where rights and interests in real property are
15 held by a municipality, state agency₂ or qualified organization under the
16 authority of this chapter, the legislative body of the municipality, the state
17 agency₂ or the qualified organization may institute injunction proceedings to
18 enforce the rights of the municipality, state agency₂ or qualified organization,
19 in accordance with the provisions of this chapter, and may take all other
20 proceedings as are available to an owner of real property under the laws of this
21 state to protect and conserve its right or interest.

1 (b) Liquidated damages. Any contract or deed establishing or relating to
2 the sale or transfer of rights or interests in real property under the authority of
3 this chapter may provide for specified liquidated damages, actual damages,
4 costs, and reasonable attorney fees in the event of a violation of the rights of
5 the municipality, state agency, or qualified organization thereunder.

6 (c) Conservation rights. The holder of conservation rights and interests
7 may seek injunctive relief and damages against any person who damages the
8 holder's rights and interests, irrespective of whether the owner of the land is a
9 party to the proceeding.

10 Sec. 7. 10 V.S.A. § 6308 is amended to read:

11 § 6308. ~~TERMINATION OF RIGHTS~~ RIGHTS IN PERPETUITY UNLESS
12 LIMITED

13 ~~(a) If the legislative body of a municipality in the case of municipal rights~~
14 ~~or interests, or a state agency, in the case of state-owned rights or interests,~~
15 ~~finds that the retention of the rights or interests is no longer needed to carry out~~
16 ~~the purposes of this chapter, the rights or interests may be released and~~
17 ~~conveyed to the co-owner, to another public agency, to another party holding~~
18 ~~other rights or interests in the land, or to a third party. Where the conveyance~~
19 ~~is to a party other than another public agency or qualified organization, the~~
20 ~~municipality or state agency shall receive adequate compensation from that~~
21 ~~party for the conveyance of the rights or interests.~~

1 ~~(b) Wherever possible, in order to promote the interests of the state,~~
2 ~~municipalities, qualified organizations, or private landowners involved,~~
3 ~~agreements for the conveyance of rights or interests in real property less than~~
4 ~~fee simple, entered into under the authority of this chapter, shall contain a~~
5 ~~provision limiting the agreement to a specified number of years except where~~
6 ~~both parties agree, such agreements may provide for the conveyance of rights~~
7 ~~and interests in perpetuity.~~

8 The conveyance of rights or interests in real property less than fee simple
9 made under the authority of this chapter shall be perpetual, except if the
10 conveyance is limited by its terms to a specific period.

11 Sec. 8. 10 V.S.A. chapter 155, subchapter 2 is added to read:

12 Subchapter 2. Amendment or Termination of Perpetual

13 Conservation Easements

14 § 6321. PURPOSE

15 It is the purpose of this subchapter to set forth a process and establish the
16 criteria for determining if an amendment of a conservation easement by the
17 holder may be appropriate and authorized; and provide that in all cases in
18 which an amendment would materially alter the terms of the original easement,
19 the determination of the holder is reviewed and approved by an independent
20 state panel following public notice, disclosure of the circumstances and reasons
21 for the amendment, and an opportunity for the public to comment.

1 § 6322. CONSERVATION RIGHTS AND INTERESTS; DURATION

2 (a) Conservation easements shall be amended or terminated only in
3 accordance with this subchapter.

4 (b) If an easement holder is or becomes the owner in fee of property subject
5 to a conservation easement, the easement shall continue in effect and shall not
6 be extinguished.

7 (c) Conservation rights and interests shall not be affected by any tax lien
8 which attaches under 32 V.S.A. § 5601 subsequent to the recording of the
9 rights and interest in the municipal land records.

10 (d) Any amendment of an easement that is co-held by a state agency and a
11 qualified organization shall be exempt from the requirements of this
12 subchapter, unless the state agency waives this exemption.

13 § 6323. EASEMENT AMENDMENT PANEL

14 (a) An easement amendment panel is created as a third panel of the
15 Vermont natural resources board established under section 6021 of this title.
16 The panel shall consist of the following members:

17 (1) The chair of the natural resources board.

18 (2) Two members of the land use panel of the natural resources board,
19 chosen by the governor, whose terms on this panel shall be contemporaneous
20 with their terms on the land use panel. Remaining land use panel members
21 shall serve as alternates to the easement amendment panel.

1 (3) One member, and an alternate, appointed by the governor from a list
2 of no fewer than five candidates submitted by qualified organizations. The
3 Vermont housing and conservation board shall provide a list of qualified
4 organizations to the governor. Panel members appointed under this section
5 shall serve a term of four years.

6 (4) One member and an alternate, appointed by the governor from a list
7 of five candidates submitted by the Vermont housing and conservation board.
8 Panel members appointed under this section shall serve for a term of four
9 years.

10 (b) The governor shall seek to appoint members who are knowledgeable
11 about agriculture, forestry, and environmental science. No person shall be
12 eligible for appointment to this panel if that person has been employed as a
13 staff member of or consultant to or has served on the governing board of a
14 qualified holder or the Vermont housing and conservation board during the
15 preceding 12 months.

16 (c) Other departments and agencies of state government shall cooperate
17 with the panel and make available to it data, facilities, and personnel as may be
18 needed to assist the panel in carrying out its duties and functions.

19 (d) A panel member shall not participate in a particular matter before the
20 panel if he or she is interested in the event of the matter, or is related to the
21 petitioner, if a natural person, within the fourth degree of consanguinity or

1 affinity, or if a corporation, to any officer, director, trustee, or agent of the
2 corporation within the same degree.

3 (e) Members of the panel shall receive per diem pay and all necessary and
4 actual expenses in accordance with 32 V.S.A. § 1010.

5 (f) Powers:

6 (1) The panel shall have the power, with respect to any matter within its
7 jurisdiction, to:

8 (A) Allow members of the public to enter upon lands of other
9 persons, at times designated by the panel, for the purposes of inspecting and
10 investigating conditions related to the matter before the panel.

11 (B) Enter upon lands for the purpose of conducting inspections,
12 investigations, examinations, tests, and site evaluations as it deems necessary
13 to verify information presented in any matter within its jurisdiction.

14 (C) Adopt rules of procedure and adopt substantive rules, in
15 accordance with the provisions of 3 V.S.A. chapter 25, that interpret and carry
16 out the provisions of this subchapter that pertain to easement modifications.

17 (D) Establish a schedule of filing fees to be paid by petitioners.

18 (2) The natural resources board may petition the environmental court for
19 revocation of easement amendments issued under this chapter. Grounds for
20 revocation are:

1 (A) noncompliance with the panel’s decision or any condition of the
2 panel’s decision under this subchapter;

3 (B) failure to disclose all relevant and material facts in the
4 application or during the review process;

5 (C) misrepresentation of any relevant and material fact at any time.

6 § 6324. CATEGORY 1 AMENDMENTS; APPROVAL BY HOLDER

7 WITHOUT ADMINISTRATIVE REVIEW

8 (a) A Category 1 amendment is an amendment that has not more than a de
9 minimis negative effect on the resource values protected by the easement. The
10 easement holder may approve a Category 1 amendment without notice to or
11 review by the attorney general or the panel. Category 1 amendments are
12 limited to the following:

13 (1) Placing additional land under the protection of the easement;

14 (2) Adding, expanding, or enhancing the easement’s protection of
15 natural or cultural resources existing on the protected property;

16 (3) Including a right of first refusal, an option to purchase at agricultural
17 value, or another right to acquire an ownership interest in the property in the
18 future;

19 (4) Amending the easement to protect areas that were excluded from the
20 easement or to further restrict rights and uses that were retained by the owner
21 under the existing easement;

1 (5) Correcting typographical or clerical errors without altering the intent
2 of or uses permitted under the easement;

3 (6) Modernizing or clarifying the language of the easement without
4 changing the intent or permitting additional uses under the easement that will
5 have more than a de minimis negative impact on resource values; or

6 (7) Merging the easements on two or more protected properties into a
7 single easement, adjusting the boundaries between two or more protected
8 properties, or adjusting the boundaries of areas excluded from the easement,
9 provided that the merger does not:

10 (A) reduce the area covered by the easement;

11 (B) permit new uses under the easement that will have more than a
12 de minimis negative impact on resource values; or

13 (C) reduce the existing protections of the resource values on the
14 property.

15 (b) No other easement amendment shall be approved or permitted without
16 notice to and review by the attorney general and the panel, as set forth in
17 sections 6325–6331 of this title. In the event the holder or the owner of a
18 protected property seeks a recordable document establishing that an
19 amendment satisfies the requirements of a Category 1 amendment, the holder
20 shall follow the procedures for a Category 2 amendment, as set forth in section
21 6325 of this title.

1 § 6325. CATEGORY 2 AMENDMENTS; CRITERIA; REVIEW

2 (a) A Category 2 amendment is an amendment which the holder reasonably
3 believes will have not more than a de minimis negative impact on the resource
4 values protected by the easement, but which does not clearly meet the
5 definition of a Category 1 amendment. A holder seeking approval of a
6 Category 2 amendment shall submit a request for review to the panel, together
7 with a copy of the amendment, a description of the protected property and
8 easement, and an explanation of the purpose and effect of the amendment. The
9 request for review shall include the applicant's name, address, and the address
10 of the applicant's principal office in this state, and, if the applicant is not a
11 municipality or state agency, a statement of its qualifications as a holder. In
12 addition, the holder shall certify that the amendment:

13 (1) is consistent with the public interest;

14 (2) is consistent with the conservation purpose and intent of the
15 easement;

16 (3) is consistent with the documented intent of the donor, grantor, and
17 all direct funding sources;

18 (4) does not result in private inurement or confer impermissible private
19 benefit under 26 U.S.C. § 501(c)(3); and

20 (5) has a net beneficial, neutral, or not more than a de minimis negative
21 impact on the conservation values of the property protected by the existing

1 easement. In determining the net beneficial, neutral, or de minimis negative
2 impact, the holder shall consider the degree to which the amendment will
3 balance the stated goals and purposes of the easement and shall take into
4 consideration whether these goals and purposes are ranked by the terms of the
5 easement.

6 (b) Within a reasonable time of receipt of a request for review of a
7 Category 2 amendment and after providing notice to all other panel members,
8 the chair of the panel shall make a determination and notify the holder that:

9 (1) no further review of the amendment is required;

10 (2) the holder must submit further information before a review can be
11 completed; or

12 (3) the holder must seek the panel's approval of the amendment as a
13 Category 3 amendment.

14 (c) In the event the chair determines that no further information or approval
15 is required, the chair shall, upon the holder's request, send a notice of this
16 determination in a recordable form to the holder.

17 (d) The panel may adopt rules allowing certain Category 2 amendments to
18 proceed as Category 1 amendments, provided the board establishes reasonable
19 limitations to ensure that the amendment will have not more than a de minimis
20 negative impact on the resource values protected by the easement.

1 § 6326. CATEGORY 3 AMENDMENTS; PETITION

2 (a) In the event an amendment does not constitute a Category 1
3 amendment, or the holder has not received a notice from the panel that no
4 further information or approval is required, as provided for in a Category 2
5 amendment, the holder shall not amend an easement without first filing a
6 petition for approval and obtaining the approval of the panel for a Category 3
7 amendment in accordance with this section. The petition shall include a copy
8 of the existing easement and proposed amendment, a map and description of
9 the protected property and easement, an explanation of the purpose and effect
10 of the amendment, and the certification required by subdivisions
11 6325(a)(1)–(4) of this title. The petition also shall include the landowner’s
12 name and address, the applicant’s name and address, and the address of the
13 applicant’s principal office in this state, and, if the applicant is not a
14 municipality or state agency, a statement of its qualifications as a holder. In
15 addition, the holder shall pay a filing fee in accordance with the schedule
16 established by the panel.

17 (b) The petition shall be signed by the landowner or landowner’s
18 representative. If there is more than one holder of the easement, all holders
19 shall sign the petition. If another person holds an executory interest that in
20 effect allows it to assume the ownership of the property or the easement if the
21 amendment is approved, that person shall also sign the petition.

1 (c) The petitioner shall send a copy of the petition to the Vermont attorney
2 general, the Vermont housing and conservation board, the agency of natural
3 resources, the agency of agriculture, food and markets, and to the clerk of the
4 municipality and executive director of the regional planning commission of the
5 region in which the property is located.

6 (d) In addition, the petitioner shall send a copy of the petition to all persons
7 who conveyed the conservation easement. The panel may waive this
8 requirement if the panel determines that the addresses cannot be reasonably
9 ascertained under the circumstances or that individual notification is otherwise
10 impracticable.

11 § 6327. PUBLIC NOTICE; HEARING

12 (a) Upon receipt of a petition, the panel, at the expense of the petitioner,
13 shall publish a notice in at least one area newspaper, reasonably calculated to
14 reach adjoining landowners to the parcel which is the subject of the petition,
15 and shall publish the notice in appropriate electronic format, summarizing the
16 nature of the petition. The notice shall set a date, time, and place for a
17 proposed public hearing. The notice may also include a statement that the
18 panel may waive the proposed public hearing, if no request for a hearing is
19 received by the panel within 15 days of the published notice. The panel shall
20 send copies of the hearing notice to the town selectboard, planning
21 commission, and conservation commission, if any, of the town or towns in

1 which the affected property is located, as well as to the regional planning
2 commission. The panel shall send copies of the notice directly to adjoining
3 landowners unless it determines that the number of adjoining landowners is so
4 large that direct notification is not practicable.

5 (b) The panel shall conduct a public hearing on the petition if it determines
6 that a hearing is necessary or if a request for a public hearing is timely filed by
7 the attorney general, a state agency, the affected town, the current landowner,
8 the easement holder, or, in the case of a donated easement or easement sold at
9 less than fair market value, the landowner who conveyed the easement. Any
10 other entity or person may request that the panel conduct a public hearing on
11 the amendment. The request shall state the reasons why a hearing is
12 warranted, and a copy shall be mailed to the current landowner and easement
13 holder.

14 § 6328. PETITION; PROCESS; PUBLIC HEARING

15 (a) Any petition and any hearing on a petition for amendment of an
16 easement shall not be considered a contested case under 3 V.S.A. chapter 25.

17 (b) At any hearing on a petition for amendment of an easement, all
18 members of the public may participate. There shall be no requirement to
19 obtain party status, and a person need not have a vested interest to participate
20 in the hearing. Any person wishing to speak in support of or opposition to the

1 petition shall have an opportunity to provide written and oral testimony to the
2 panel.

3 (c) The panel shall have the authority to compel a petitioner to make
4 available all relevant background documents pertaining to the easement and
5 the proposed amendment. On the request of the petitioner, the panel shall keep
6 confidential and shall not disclose personal or confidential information that the
7 petitioner demonstrates is not directly and substantially related to the criteria
8 and findings included in section 6329 of this title. Any person who believes
9 that additional information is needed from the easement holder before or
10 during the hearing may direct a request to the panel, which may then require
11 the petitioner to produce the requested information.

12 § 6329. APPROVAL OF CATEGORY 3 AMENDMENT BY PANEL;

13 CRITERIA

14 (a) The panel shall consider all circumstances and information that may
15 reasonably bear upon the public interest in upholding or amending the
16 conservation easement. These considerations shall include:

17 (1) Any material change in circumstances that has taken place since the
18 easement was conveyed. Changes in circumstances may include changes in
19 applicable laws or regulations, changes in the native flora or fauna, the
20 development of new technologies, the development of new agricultural and
21 forestry enterprises, and changes in community conditions and needs.

1 (2) An evaluation of whether the circumstances leading to the proposed
2 amendment were anticipated at the time the easement was conveyed.

3 (3) The existence or lack of reasonable alternatives to address the
4 changed circumstances.

5 (4) The certification requirements for Category 2 amendments listed in
6 subdivisions 6325(a)(1)–(4) of this title.

7 (b) The panel shall approve an amendment if it finds, by clear and
8 convincing evidence, that the amendment:

9 (1) is consistent with the public interest;

10 (2) is consistent with the purposes stated in section 6301 of this title;

11 (3) will not result in private inurement or confer impermissible private
12 benefit under 26 U.S.C. § 501(c)(3);

13 (4) will result in adequate compensation to the holder, if the amendment
14 is a whole or partial termination of an easement held by a municipality or state
15 agency; and

16 (5) meets one of the following goals:

17 (A) The amendment promotes or enhances the conservation purposes
18 of the easement, even though it may be inconsistent with a strict interpretation
19 of the terms of the easement;

1 (B) Enforcement of an easement term would result in significant
2 financial burdens to the easement holder or landowner and result in minimal
3 conservation benefit to the public; or

4 (C) The amendment clearly enhances the benefit to the public, even
5 though it may allow the diminution of one or more conservation purposes on
6 the property protected by the original easement.

7 (c) If the holder receives monetary compensation as a result of an
8 amendment, the panel may require that the holder apply the compensation to
9 achieve a conservation purpose similar to that stated in the easement. If the
10 amendment terminates an easement in whole or in part, the panel shall require
11 that the holder apply any monetary compensation to achieve a conservation
12 purpose similar to that stated in the easement.

13 § 6330. DECISION OF THE PANEL

14 (a) Following the hearing, or after a determination without a hearing, the
15 panel shall issue a written decision approving, approving with conditions, or
16 denying the amendment request and stating the reasons for the panel's
17 conclusions. The panel shall distribute its written decision to all persons listed
18 in subdivision (b)(1) of this section and to any additional participants in the
19 hearing.

20 (b)(1) The following persons may appeal the decision of the panel to the
21 supreme court within 30 days of issuance:

1 (A) the easement holder;

2 (B) the current landowner;

3 (C) the affected town;

4 (D) state agencies that participated in the hearing;

5 (E) the attorney general; and

6 (F) in the case of a donated easement or easement sold for less than
7 fair market value, the original donor.

8 (2) The supreme court may reverse the panel's decision only if there has
9 been an abuse of discretion or clear error of law. The supreme court shall not
10 reverse the panel's decision for harmless error.

11 (c) The panel's decision shall not affect any right of a person or
12 organization that has personally or directly contributed to the holder's
13 acquisition of the easement to seek restitution of the contribution based upon
14 misrepresentation or breach of contract on the part of the easement holder.
15 Such restitution shall be only for the amount contributed or granted, and shall
16 not include interest, damages, attorney fees, or other costs, unless the court
17 finds that the holder has acted in bad faith.

1 § 6331. AMENDMENT AND TERMINATION OF CONSERVATION

2 RIGHTS AND INTERESTS

3 This subchapter shall not apply to modifications or terminations that are the
4 result of the exercise of a right of eminent domain granted under Chapter I,
5 Article 2 of the Constitution of the State of Vermont.

6 Sec. 9. 10 V.S.A. § 6021(a) is amended to read:

7 (a) A natural resources board is created with a land use panel ~~and~~, a water
8 resources panel, and an easement amendment panel as established by chapter
9 155, subchapter 2 of this title. The board shall consist of nine members
10 appointed by the governor, with the advice and consent of the senate, so that
11 one appointment on each panel expires in each ~~odd-numbered~~ odd-numbered
12 year. In making appointments, the governor and the senate shall give
13 consideration to experience, expertise, or skills relating to the environment or
14 land use. The governor shall appoint a chair of the board, a position that shall
15 be a full-time position. The other eight members shall be appointed by the
16 governor, four to the water resources panel of the board and four others to the
17 land use panel of the board. The chair shall serve as chair on each panel of the
18 board. Following initial appointments, the members, except for the chair, shall
19 be appointed for terms of four years. The governor shall appoint up to five
20 persons, with preference given to former environmental board, water resources
21 board, natural resources board, or district commission members, with the

1 advice and consent of the senate, to serve as alternates for board members.
2 Alternates shall be appointed for terms of four years, with initial appointments
3 being staggered. The board chair may assign alternates to sit on specific
4 matters before the panels of the board, in situations where fewer than five
5 panel members are available to serve. No person who receives or, during the
6 previous two years, has received a significant portion of the person's income
7 directly or indirectly from permit holders or applicants for one or more permits
8 under chapter 47 of this title may be a member of the water resources panel.

9 Sec. 10. 10 V.S.A. § 823 is amended to read:

10 § 823. INTERESTS IN REAL PROPERTY

11 Conservation and preservation rights and interests shall be deemed to be
12 interests in real property and shall run with the land. A document creating
13 such a right or interest shall be deemed to be a conveyance of real property and
14 shall be recorded under 27 V.S.A. chapter 5 of Title 27. ~~Such a right or~~
15 ~~interest shall be subject to the requirement of filing a notice of claim within the~~
16 ~~40-year period as provided in 27 V.S.A. § 603.~~ Such a right or interest shall
17 be enforceable in law or in equity. Any subsequent transfer, mortgage, lease,
18 or other conveyance of the real property or an interest in the real property shall
19 reference the grant of conservation rights and interests in the real property.

1 Sec. 11. 27 V.S.A. § 604(a) is amended to read:

2 (a) This subchapter shall not bar or extinguish any of the following
3 interests, by reason of failure to file the notice provided for in section 605 of
4 this title:

5 * * *

6 (7) Any easement or interest in the nature of an easement, or any rights
7 appurtenant thereto granted, excepted or reserved by a recorded instrument
8 creating such easement or interest, ~~including any rights for future use, except~~
9 ~~rights and interests created pursuant to chapter 34 of Title 10.~~

10 (8) Any conservation rights or interests created pursuant to 10 V.S.A.
11 chapter 155.

12 Sec. 12. 10 V.S.A. § 6303(a) is amended to read:

13 (a) The rights and interests in real property which may be acquired, used,
14 encumbered, and conveyed by a municipality, state agency, or qualified
15 organization shall include, but not be limited to, the following:

16 * * *

17 (7) ~~Option~~ Preemptive rights and options to purchase. The acquisition
18 of preemptive rights such as a right of first refusal or an option to purchase
19 land or rights and interests therein.

1 Sec. 13. 4 V.S.A. § 34 is amended to read:

2 § 34. JURISDICTION; ENVIRONMENTAL DIVISION

3 The environmental division shall have:

4 (1) jurisdiction of matters arising under 10 V.S.A. chapters 201 and 220
5 ~~of Title 10;~~

6 (2) jurisdiction of matters arising under 24 V.S.A. chapter 117 and
7 ~~subchapter 12 of chapter 61 of Title 24, subchapter 12; and~~

8 (3) original jurisdiction to revoke permits under 10 V.S.A. chapter 151
9 ~~of Title 10; and~~

10 (4) original jurisdiction to revoke easement amendments under
11 10 V.S.A. chapter 155, subchapter 2.

12 Sec. 14. 32 V.S.A. § 9606 is amended to read:

13 § 9606. PROPERTY TRANSFER RETURN

14 * * *

15 (e) The property transfer return required under this section shall also
16 contain a certificate in such form as the secretary of the agency of natural
17 resources shall prescribe and shall be signed under oath on affirmation by each
18 of the parties or their legal representatives. The certificate shall indicate that
19 each party has investigated and disclosed all of his or her knowledge relating to
20 the flood regulations, if any, affecting the property.

1 (f) The property transfer return required under this section shall also
2 contain a certificate in such form as the commissioner of taxes shall prescribe
3 and shall be signed under oath on affirmation by each of the parties or their
4 legal representatives. The certificate shall indicate that the transfer, mortgage,
5 deed, lease, or other conveyance references all grants of conservation rights or
6 interests in the real property, as required by 10 V.S.A. § 823.

7 (g) The property transfer tax return shall not be required of properties
8 qualified for the exemption stated in subdivision 9603(17) of this title. A
9 public utility shall notify the listers of a municipality of the grantors, grantees,
10 consideration, date of execution, and location of the easement when it files for
11 recording a deed transferring a utility line easement that does not require a
12 transfer tax return.

13 ~~(g)~~(h) The commissioner of taxes is authorized to disclose to any person
14 any information appearing on a property transfer tax return, including
15 statistical information derived therefrom, and such information derived from
16 research into information appearing on property transfer tax returns as is
17 necessary to determine if the property being transferred is subject to 10 V.S.A.
18 chapter 151.

19 Sec. 15. EASEMENT AMENDMENT PANEL; INITIAL APPOINTMENTS

20 By October 1, 2012, the governor shall appoint the members of the
21 easement amendment panel under Sec. 8 of this act, 10 V.S.A.

1 § 6323(a)(2)–(4) (members; easement amendment panel). The initial term of
2 the member appointed under 10 V.S.A. § 6323(a)(3) shall expire on
3 February 1, 2017. The initial term of the member appointed under 10 V.S.A.
4 § 6323(a)(4) shall expire on February 1, 2015.

5 Sec. 16. EFFECTIVE DATES

6 (a) This section and Secs. 10 (interests in real property) and 15 (easement
7 amendment panel; initial appointments) of this act shall take effect on passage.

8 (b) The remaining sections of this act shall take effect on July 1, 2013,
9 except that in Sec. 8, 10 V.S.A. § 6323(f)(1)(C) (easement amendment panel;
10 rulemaking authority) shall take effect on passage.