

1 S.179

2 Introduced by Senator Hartwell

3 Referred to Committee on Natural Resources and Energy

4 Date: January 3, 2012

5 Subject: Conservation and development; conservation easements;
6 modification

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

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

15 An act relating to amending perpetual conservation easements

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

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

18 ~~§ 302. POLICY, FINDINGS, AND PURPOSE~~

19 ~~(a) The dual goals of creating affordable housing for Vermonters, and~~
20 ~~conserving and protecting Vermont's agricultural land, historic properties,~~

1 ~~important natural areas, and recreational lands are of primary importance to the~~
2 economic vitality and quality of life of the state.

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

11 (c) It is the purpose of this chapter to create the Vermont housing and
12 conservation trust fund to be administered by the Vermont housing and
13 conservation board to further the policies established by subsections (a) and (b)
14 of this section.

15 Sec. 2. 10 V.S.A. § 6301 is amended to read:

16 § 6301. PURPOSE

17 It is the purpose of this chapter to encourage and assist the maintenance of
18 the present uses of Vermont's agricultural, forest, and other undeveloped land
19 and to prevent the accelerated residential and commercial development thereof;
20 to preserve and to enhance Vermont's scenic natural resources; to strengthen
21 the base of the recreation industry and to increase employment, income,

1 ~~business, and investment; and to enable the citizens of Vermont to plan its~~
2 orderly growth in the face of increasing development pressures in the interests
3 of the public health, safety, and welfare; and to encourage the use of
4 conservation and preservation tools to support farm, forest, and related
5 enterprises, thereby strengthening Vermont's economy to improve the quality
6 of life for Vermonters, and to maintain the historic settlement pattern of
7 compact village and urban centers separated by rural countryside.

8 Sec. 3. DESIGNATION

9 10 V.S.A. §§ 6301–6309 are designated as 10 V.S.A. chapter 155,
10 subchapter 1 to read:

11 Subchapter 1. General Provisions

12 Sec. 4. 10 V.S.A. § 6301a (4)–(10) are added to read:

13 (4) “Adjoining landowner” means a person who owns land in fee
14 simple, if that land either:

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

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

20 (5) “Amend” or “amendment” means a modification of an original or
21 existing conservation easement, the substitution of a new easement for the

1 ~~original or existing easement, or the whole or partial termination of the original~~
2 ~~or existing easement.~~

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

5 (7) "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 (8) "Panel" means the easement amendment panel of the natural
8 resources board established by section 6323 of this title.

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

10 (10) "Qualified holder" and "holder" are as defined in subsection 821(c)
11 of this title.

12 Sec. 5. 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 agency, or qualified organization under the
16 authority of this chapter, the legislative body of the municipality, the state
17 agency, or the qualified organization may institute injunction proceedings to
18 enforce the rights of the municipality, state agency, 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. 6. 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. 7. 10 V.S.A. chapter 155, subchapter 2 is added to read:

12 Subchapter 2. Amendment or Termination of Perpetual Conservation

13 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 may be
17 appropriate and authorized; and provide that in all cases in which an
18 amendment would materially alter the terms of the original easement, the
19 determination of the holder is reviewed and approved by an independent state
20 panel following public notice, disclosure of the circumstances and reasons for
21 the amendment, and an opportunity for the public to comment.

~~§ 6322. CONSERVATION RIGHTS AND INTERESTS; DURATION~~

~~(a) Conservation rights and interests shall be amended or only in accordance with this subchapter.~~

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

~~(c) Conservation rights and interests shall not be affected by any tax lien filed or tax sale occurring subsequent to the recording of the rights and interest in the municipal land records.~~

~~§ 6323. EASEMENT AMENDMENT PANEL~~

~~(a) An easement amendment panel is created as a third panel of the Vermont natural resources board established under section 6021 of this title.~~

~~The panel shall consist of the following members:~~

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

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

~~(3) One member, and an alternate, appointed by the governor from a list of no fewer than five candidates submitted by qualified organizations as defined in section 6301a of this title. The Vermont housing and conservation~~

1 ~~board shall provide a list of qualified organizations to the governor. Panel~~

2 ~~members appointed under this section shall serve a term of four years.~~

3 ~~(4) One member and an alternate, appointed by the governor from a list~~
4 ~~of five candidates submitted by the Vermont housing and conservation board.~~

5 ~~Panel members appointed under this section shall serve for a term of four~~
6 ~~years.~~

7 ~~(b) No person shall be eligible for appointment to this panel if that person~~
8 ~~has been employed as a staff member of or consultant to or has served on the~~
9 ~~governing board of a qualified holder or the Vermont housing and conservation~~
10 ~~board during the preceding 12 months.~~

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

14 ~~(d) A panel member shall not participate in a particular matter before the~~
15 ~~panel if he or she is interested in the event of the matter, or is related to the~~
16 ~~petitioner, if a natural person, within the fourth degree of consanguinity or~~
17 ~~affinity, or if a corporation, to any officer, director, trustee, or agent of the~~
18 ~~corporation within the same degree.~~

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

1 (f) Powers:

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

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

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

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

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

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

17 (A) noncompliance with the panel's decision or any condition of the
18 panel's decision under this subchapter;

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

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

~~§ 6324. CATEGORY 1 AMENDMENTS; APPROVAL BY HOLDER~~

~~WITHOUT ADMINISTRATIVE REVIEW~~

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

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

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

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

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

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

~~(6) Modernizing or clarifying the language of the easement without
changing the intent or uses permitted under the easement; or~~

1 ~~(7) Merging the easements on two or more protected properties into a~~
2 ~~single easement, provided that the merger does not: reduce the area covered~~
3 ~~by the easement; add new uses not already permitted under the existing~~
4 ~~easements; or reduce the existing protections of the resource values on the~~
5 ~~property.~~

6 (b) No other easement amendment shall be approved or permitted without
7 notice to and review by the attorney general and the panel, as set forth in
8 sections 6325–6331 of this title. In the event the holder or the owner of a
9 protected property seeks a recordable document establishing that an
10 amendment satisfies the requirements of a Category 1 amendment, the holder
11 shall follow the procedures for a Category 2 amendment, as set forth in section
12 6325 of this title.

13 § 6325. CATEGORY 2 AMENDMENTS; CRITERIA; REVIEW

14 (a) A Category 2 amendment is an amendment which the holder reasonably
15 believes will have not more than a de minimis negative effect on the resource
16 values protected by the easement, but which does not clearly meet the
17 definition of a Category 1 amendment. A holder seeking to approve a
18 Category 2 amendment shall submit a request for review to the attorney
19 general and the panel, together with a copy of the amendment, a description of
20 the protected property and easement, and an explanation of the purpose and
21 effect of the amendment. The request for review shall include the applicant's

1 ~~name, address, and the address of the applicant's principal office in this state,~~

2 ~~and, if the applicant is not an individual, municipality, or state agency, a~~

3 ~~statement of its qualifications as a holder under subsection 821(c) of this title.~~

4 ~~In addition, the holder shall certify that the amendment:~~

5 ~~(1) clearly serves the public interest;~~

6 ~~(2) is consistent with the conservation purpose and intent of the~~
7 ~~easement;~~

8 ~~(3) is consistent with the documented intent of the donor, grantor, and~~
9 ~~all direct funding sources;~~

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

12 ~~(5) has a net beneficial or neutral effect on the relevant conservation~~
13 ~~values of the property protected by the original easement. In determining the~~
14 ~~net beneficial or neutral effect, the holder shall consider the degree to which~~
15 ~~the amendment will balance the stated goals and purposes of the easement and~~
16 ~~shall take into consideration whether these goals and purposes are ranked by~~
17 ~~the terms of the easement.~~

18 ~~(b) Within a reasonable time of receipt of a request for review of a~~
19 ~~Category 2 amendment, the panel shall notify the holder that:~~

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

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

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

5 ~~(c) In the event the panel determines that no further information or~~
6 ~~approval is required, the panel shall, upon the holder's request, send a notice of~~
7 ~~this determination in a recordable form to the holder.~~

8 § 6326. CATEGORY 3 AMENDMENTS; PETITION

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

1 ~~under subsection 821(e) of this title. In addition, the holder shall pay a filing~~
2 ~~fee in accordance with the schedule established by the panel.~~

3 ~~(b) If there is more than one holder of the easement, all holders shall sign~~
4 ~~the petition. If another person holds an executory interest that in effect allows~~
5 ~~it to assume the ownership of the easement if the amendment is approved, that~~
6 ~~person shall also sign the petition.~~

7 ~~(c) The petitioner shall send a copy of the petition to the Vermont attorney~~
8 ~~general, the Vermont housing and conservation board, the agency of natural~~
9 ~~resources, the agency of agriculture, food and markets, and to the clerk of the~~
10 ~~municipality and executive director of the regional planning commission of the~~
11 ~~region in which the property is located.~~

12 ~~(d) In addition, if the easement was first conveyed not more than 25 years~~
13 ~~from the date of the petition, the petitioner shall send a copy of the petition to~~
14 ~~all persons who conveyed the conservation easement. The panel may waive~~
15 ~~this requirement if the panel determines that the addresses cannot be~~
16 ~~reasonably ascertained under the circumstances or that individual notification~~
17 ~~is otherwise impracticable.~~

18 § 6327. PUBLIC NOTICE; HEARING

19 ~~(a) Upon receipt of a petition, the panel, at the expense of the petitioner,~~
20 ~~shall publish a notice in at least one area newspaper, reasonably calculated to~~
21 ~~reach adjoining landowners to the parcel which is the subject of the petition.~~

1 ~~and shall publish the notice in appropriate electronic format, summarizing the~~
2 nature of the petition. The notice shall set a date, time, and place for a
3 proposed public hearing. The notice may also include a statement that the
4 panel may waive the proposed public hearing, if no request for a hearing is
5 received by the panel within 15 days of the published notice. The panel shall
6 send copies of the hearing notice to the town selectboard, planning
7 commission, and conservation commission, if any, of the town or towns in
8 which the affected property is located, as well as to the regional planning
9 commission. The panel shall send copies of the notice directly to adjoining
10 landowners unless it determines that the number of adjoining landowners is so
11 large that direct notification is not practicable.

12 (b) The panel shall conduct a public hearing on the petition if it determines
13 that a hearing is necessary or if a request for a public hearing is timely filed.

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. Any person who believes that additional~~
6 ~~information is needed from the easement holder before or during the hearing~~
7 ~~may direct a request to the panel, which may then require the petitioner to~~
8 ~~produce the requested information.~~

9 ~~§ 6329. APPROVAL OF CATEGORY 3 AMENDMENT BY PANEL;~~

10 ~~CRITERIA~~

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

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

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

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

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

5 ~~(b) The panel may approve an amendment if it finds, by clear and~~
6 ~~convincing evidence, that the amendment:~~

7 ~~(1) is clearly in the public interest;~~

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

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

11 ~~(4) will result in adequate compensation to the holder, if the amendment~~
12 ~~is a termination by a municipality or state agency; and~~

13 ~~(5) meets one of the following goals:~~

14 ~~(A) The amendment promotes or enhances the conservation purposes~~
15 ~~of the easement, even though it may be inconsistent with a strict interpretation~~
16 ~~of the terms of the easement;~~

17 ~~(B) Enforcement of an easement term would result in significant~~
18 ~~financial burdens to the easement holder or landowner and result in minimal~~
19 ~~conservation benefit to the public; or~~

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

4 ~~(c) If the holder receives monetary compensation as a result of an~~
5 ~~amendment, the panel may require that the holder apply the compensation to~~
6 ~~achieve a conservation purpose similar to that stated in the easement.~~

7 § 6330. DECISION OF THE PANEL

8 ~~(a) Following the hearing, or after a determination without a hearing, the~~
9 ~~panel shall issue a written decision approving, approving with conditions, or~~
10 ~~denying the amendment request and stating the reasons for the panel's~~
11 ~~conclusions. The panel shall distribute its written decision to all persons listed~~
12 ~~in subdivision (b)(1) of this section and to any additional participants in the~~
13 ~~hearing.~~

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

16 ~~(A) the easement holder;~~

17 ~~(B) the current landowner;~~

18 ~~(C) the affected town;~~

19 ~~(D) state agencies that participated in the hearing;~~

20 ~~(E) the attorney general; and~~

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

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

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

13 ~~§ 6331. AMENDMENT AND TERMINATION OF CONSERVATION~~

14 ~~RIGHTS AND INTERESTS~~

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

18 Sec. 8. 10 V.S.A. § 6021(a) is amended to read:

19 (a) A natural resources board is created with a land use panel ~~and~~, a water
20 resources panel, and an easement amendment panel as established by chapter
21 155, subchapter 2 of this title. The board shall consist of nine members

1 ~~appointed by the governor, with the advice and consent of the senate, so that~~
2 one appointment on each panel expires in each odd numbered year. In making
3 appointments, the governor and the senate shall give consideration to
4 experience, expertise, or skills relating to the environment or land use. The
5 governor shall appoint a chair of the board, a position that shall be a full-time
6 position. The other eight members shall be appointed by the governor, four to
7 the water resources panel of the board and four others to the land use panel of
8 the board. The chair shall serve as chair on each panel of the board.
9 Following initial appointments, the members, except for the chair, shall be
10 appointed for terms of four years. The governor shall appoint up to five
11 persons, with preference given to former environmental board, water resources
12 board, natural resources board, or district commission members, with the
13 advice and consent of the senate, to serve as alternates for board members.
14 Alternates shall be appointed for terms of four years, with initial appointments
15 being staggered. The board chair may assign alternates to sit on specific
16 matters before the panels of the board, in situations where fewer than five
17 panel members are available to serve. No person who receives or, during the
18 previous two years, has received a significant portion of the person's income
19 directly or indirectly from permit holders or applicants for one or more permits
20 under chapter 47 of this title may be a member of the water resources panel.

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

2 § 823. INTERESTS IN REAL PROPERTY

3 Conservation and preservation rights and interests shall be deemed to be
4 interests in real property and shall run with the land. A document creating
5 such a right or interest shall be deemed to be a conveyance of real property and
6 shall be recorded under 27 V.S.A. chapter 5 of Title 27. ~~Such a right or~~
7 ~~interest shall be subject to the requirement of filing a notice of claim within the~~
8 ~~40 year period as provided in 27 V.S.A. § 603.~~ Such a right or interest shall
9 be enforceable in law or in equity. Any subsequent transfer, mortgage, lease,
10 or other conveyance of the property or an interest in the real property shall
11 reference the grant of conservation rights and interests in the real property.

12 Sec. 10. 27 V.S.A. § 604(a) is amended to read:

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

16 * * *

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

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

3 Sec. 11. 10 V.S.A. § 6303(a) is amended to read:

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

7 * * *

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

11 Sec. 12. 4 V.S.A. § 34 is amended to read:

12 § 34. JURISDICTION; ENVIRONMENTAL DIVISION

13 The environmental division shall have:

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

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

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

20 (4) original jurisdiction to revoke easement amendments under
21 10 V.S.A. chapter 155, subchapter 2.

1 ~~Sec. 13. 32 V.S.A. § 9606 is amended to read:~~

2 § 9606. PROPERTY TRANSFER RETURN

3 * * *

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

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

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

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

7 Sec. 14. EASEMENT AMENDMENT PANEL; INITIAL APPOINTMENTS

8 By October 1, 2012, the governor shall appoint the members of the
9 easement amendment panel under Sec. 7 of this act, 10 V.S.A.
10 § 6323(a)(2)–(4) (members; easement amendment panel). The initial term of
11 the member appointed under 10 V.S.A. § 6323(a)(3) shall expire on
12 February 1, 2017. The initial term of the member appointed under 10 V.S.A.
13 § 6323(a)(4) shall expire on February 1, 2015.

14 Sec. 15. EFFECTIVE DATES

15 (a) This section and Sec. 9 (interests in real property) of this act shall take
16 effect on passage.

17 ~~(b) The remaining sections of this act shall take effect on January 1, 2013.~~

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

§ 302. POLICY, FINDINGS, AND PURPOSE

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

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

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

Sec. 2. 10 V.S.A. § 6301 is amended to read:

§ 6301. PURPOSE

It is the purpose of this chapter to encourage and assist the maintenance of the present uses of Vermont's agricultural, forest, and other undeveloped land and to prevent the accelerated residential and commercial development thereof; to preserve and to enhance Vermont's scenic natural resources; to strengthen the base of the recreation industry and to increase employment, income, business, and investment; ~~and~~ to enable the citizens of Vermont to plan its orderly growth in the face of increasing development pressures in the interests of the public health, safety, and welfare; and to encourage the use of conservation and preservation tools to support farm, forest, and related enterprises, thereby strengthening Vermont's economy to improve the quality of life for Vermonters, and to maintain the historic settlement pattern of compact village and urban centers separated by rural countryside.

Sec. 3. 10 V.S.A. § 6307 is amended to read:

§ 6307. ENFORCEMENT

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

(b) Liquidated damages. Any contract or deed establishing or relating to the sale or transfer of rights or interests in real property under the authority of this chapter may provide for specified liquidated damages, actual damages,

costs, and reasonable attorney fees in the event of a violation of the rights of the municipality, state agency, or qualified organization thereunder.

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

Sec. 4. 10 V.S.A. § 6308 is amended to read:

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

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

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

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

Sec. 5. 10 V.S.A. § 823 is amended to read:

§ 823. INTERESTS IN REAL PROPERTY

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

property, provided, however, that the failure to include a reference to the grant shall not affect the validity or enforceability of the conservation rights and interests.

Sec. 6. 27 V.S.A. § 604(a) is amended to read:

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

* * *

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

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

Sec. 7. 10 V.S.A. § 6303(a) is amended to read:

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

* * *

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

Sec. 8. 32 V.S.A. § 9606 is amended to read:

§ 9606. *PROPERTY TRANSFER RETURN*

* * *

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

(f) The property transfer return required under this section shall also contain a certificate in such form as the commissioner of taxes shall prescribe and shall be signed under oath on affirmation by each of the parties or their legal representatives. The certificate shall indicate that the transfer, mortgage, deed, lease, or other conveyance references all grants of

conservation rights or interests in the real property, as required by 10 V.S.A. § 823.

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

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

Sec. 9. WORKING GROUP ON CONSERVATION EASEMENTS

(a) Creation of working group. There is created a working group on perpetual conservation easements to study the issues relating to the creation of a formal and transparent public process for the amendment of perpetual conservation easements, the criteria for approving such amendments, and the entity most appropriate to review and approve such amendments.

(b) Membership. The conservation easements working group (the working group) shall be composed of the following members:

(1) The secretary of agriculture, food and markets or designee.

(2) A representative of the Vermont housing and conservation board, designated by the board.

(3) The commissioner of forests, parks and recreation or designee.

(4) One member of the legal staff in the Vermont office of the attorney general, designated by the attorney general.

(5) A representative of Vermont Land Trust, designated by its board.

(6) A representative of Upper Valley Land Trust, designated by its board.

(7) A representative of the Vermont Federation of Sportsmen's Clubs, designated by its board.

(8) A representative of the Vermont Green Mountain Club, designated by its board.

(9) A representative of the Vermont chapter of The Nature Conservancy, designated by its director.

(10) A representative of a regional land trust in Vermont, appointed by the governor.

(11) An attorney licensed in Vermont and practicing in or knowledgeable about both federal tax law and real estate law, including land conservation, appointed by the Vermont Bar Association.

(12) A representative from a farming organization who is knowledgeable about agricultural conservation, appointed by the governor.

(13) A representative of the Vermont Association of Snow Travelers, designated by its board.

(14) A Vermont landowner owning land subject to a conservation easement, appointed by the governor.

(c) Structure; decision-making. The working group shall elect a chair from its membership. The provisions of 1 V.S.A. § 172 (joint authority to three or more) shall apply to the meetings and decision-making of the working group.

(d) Issues. The working group shall:

(1) Investigate the options for conservation easement amendment approval laid out in S.179 and H.553 of 2012 and during the course of consideration of those bills in the relevant standing committees of the general assembly, including the following options:

(A) creating an easement amendment panel within the natural resources board to provide administrative oversight and approval for the amendment of conservation easements;

(B) requiring the housing and conservation board, in conjunction with the agency of agriculture, food and markets, to provide administrative oversight and approval for the amendment of conservation easement amendments;

(C) requiring all qualified holders to individually run a transparent public process for the approval of conservation easement amendments and to issue a written decision. Under this option, the working group should consider whether the decision should be revocable or appealable, and if so, by whom;

(D) requiring all qualified holders to get court approval for amendments that may have a significant effect on the conservation values protected by the easement.

(2) Investigate any other options for conservation easement amendment approval that the working group believes are relevant.

(3) Consider any other issues it identifies as relevant to the amendment of perpetual conservation easements.

(4) Develop a proposal setting out a transparent process or processes for the amendment of perpetual conservation easements held by land trusts, state agencies, and other entities qualified to hold perpetual conservation easements in Vermont.

(5) Develop proposed statutory provisions setting out criteria to be used by an administrative body, a court, or an easement holder in approving proposed amendments to perpetual conservation easements, which will ensure that conservation values protected by easement are protected in perpetuity, and that conservation easement holders in Vermont are in compliance with federal law.

(6) Study the issue and make recommendations as to whether conservation rights and interests should be excluded from the requirements of 27 V.S.A. § 603 concerning the re-recording of interests in land within a 40-year period.

(7) Investigate whether there is an existing online or other database appropriate for the storage of information about conservation easements alongside other information relevant to a specific property or parcel of land. This database should be available to an individual completing a title search.

(e) Report. On or before January 15, 2013, the working group shall submit to the general assembly its findings, recommendations, and proposed statutory revisions regarding the issues identified in subsection (d) of this section.

(f) Assistance. For the purpose of its study of the issues identified in subsection (d) of this section and the preparation of its recommendations pursuant to subsection (e) of this section, the working group shall have the administrative and technical assistance of the housing and conservation board.

(g) Meetings. The member from the housing and conservation board shall convene the first meeting of the working group no later than July 15, 2012.

(h) Appointments. Within 30 days of the effective date of this section, each entity required to submit a list of names to the governor pursuant to subsection (b) of this section shall make such submission. Within 60 days of this section's effective date, the appointing or designating authority shall appoint or designate each member of the working group under subsection (b) of this section and shall report the member so appointed or designated to the housing and conservation board.

Sec. 10. EFFECTIVE DATES

(a) Sec. 9 of this act and this section shall take effect on passage.

(b) All remaining sections of this act shall take effect on July 1, 2012.

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