



Legislation Proposed in Vermont will change laws governing Conservation Easements Summary of S.119 pending as of March 29, 2013

A bill under review in the Vermont Legislature will substantially change the ways in which conservation easements in the state are overseen, primarily with respect to amendments or terminations of the original conservation easement deeds.

Last legislative session, a similar bill was proposed; however, testimony and concerns raised in 2012 by various conservation organizations (including UVLT) highlighted the need to take a closer look a number of issues with the drafting, and the intersection of the bill with existing state and federal laws. Legislators, therefore, established a working group of multiple stakeholders to research and report back with a revised bill for this year. The resulting bill, titled S.119 "An act relating to amending perpetual conservation easements," has received initial testimony and has been recommended by the Senate Natural Resources and Energy Committee. UVLT has been an active participant throughout the process to date, and continues to monitor the bill's progression and ask important questions of those advocating for this legislation so that we fully understand its implications for UVLT and our donors.

One primary goal of the bill is to increase public input and transparency in the process of amending or terminating perpetual conservation easements. Transparency and consistency are important, and UVLT and its partners are in agreement that such an outcome is desirable. In general, the bill outlines a rather complicated process by which conservation easement amendments may be proposed and reviewed and approved.

Some key features of S.119:

- Defines three categories of conservation easement amendments: 1) those that are minor and fall in a specific list outlined in the bill, 2) those that have low impact to the conservation purposes but require third-party write-off, and 3) those that require a full public review process due to the significance of the change from the original conservation easement (including removal of protected land from the easement's restrictions entirely).
- Creation of three venues for public review and third-party oversight of all major amendments: A) an administrative panel of the Vermont Natural Resources Board (NRB), B) a court proceeding through the Environmental Division of Vermont Superior Court, or C) the holder of the easement may conduct its own public-review process subject to review by the NRB.
- The public is given rights to comment on major amendments at public hearings, and in many cases, notice of the proposed amendment must be provided to abutters, the Town Planning Board and Regional Planning Commission, and other stakeholders, even if those entities had no involvement in the original easement.
- If the original easement was donated with donor-imposed restrictions that the holder accepted in exchange for the easement, then the holder must disclose those added restrictions to the reviewing entity and make additional effort to notify the original donor of any proposed amendment.

UVLT's testimony in the Senate Natural Resources and Energy Committee in February and March 2013 helped guide some edits to the bill that will require better disclosures for conservation easements that contain donor-imposed restrictions. In addition, UVLT sought clarity on the duty of land trusts to follow judicial proceedings for certain amendments, if required by explicit provisions within the conservation easement itself.

As the bill continues through the Senate and House in Vermont, UVLT will participate and advocate for a legislative outcome that preserves conservation easement permanence and responsible stewardship of these conservation agreements. We continue to work with our partners, including the Vermont Land Trust, Vermont Housing and Conservation Board, state agencies, and smaller non-profit land trusts, to further our shared mission of permanently protecting important places in Vermont.

This summary is based on the draft law as of March 29, 2013. Changes are expected during review by House Committees in April.

To follow the progress of this bill refer to the VT Legislative schedules here:

<http://www.leg.state.vt.us/>

The specific actions taken on this bill are reported by the legislature here:

<http://www.leg.state.vt.us/database/status/summary.cfm?Bill=S.0119&Session=2014>