

1 H.185

2 Introduced by Representative Ellis of Waterbury

3 Referred to Committee on

4 Date:

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

7 Statement of purpose of bill as introduced: This bill proposes to amend the
8 statutes governing conservation easements. Among other proposals, it would
9 allow amendments of perpetual conservation easements and create processes
10 for review of amendments that would materially affect existing conservation
11 easements. The bill proposes to define the term “amendment” to include
12 modifications and whole or partial terminations of conservation easements.

13 An act relating to amending perpetual conservation easements

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

15 Sec. 1. 10 V.S.A. chapter 155 is redesignated to read:

16 CHAPTER 155. ACQUISITION OF INTERESTS IN LAND BY PUBLIC
17 AGENCIES AND QUALIFIED ORGANIZATIONS

18 Sec. 2. DESIGNATION

19 10 V.S.A. §§ 6301–6311 are designated as 10 V.S.A. chapter 155,
20 subchapter 1 to read:

1 ~~of Transportation, agency of agriculture, food and markets~~ Agency of
2 Agriculture, Food and Markets, or Vermont housing and conservation board
3 Vermont Housing and Conservation Board.

4 (2) “Qualified organization” means:

5 (A) an organization qualifying under Section 501(c)(3) of the Internal
6 Revenue Code of 1986, as amended, which is not a private foundation as
7 defined in Section 509(a) of the Internal ~~Revenue~~ Revenue Code, and which
8 has been certified by the ~~commissioner of taxes~~ Commissioner of Taxes as
9 being principally engaged in the preservation of undeveloped land for the
10 purposes expressed in section 6301 of this title.

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

15 (3) “Taxation” and “tax” means ad valorem taxes levied by the ~~state~~
16 State and its municipalities.

17 (4) “Adequate compensation to the holder” means the increase, if any, in
18 the value of a landowner’s estate by reason of an amendment to a conservation
19 easement that applies to the estate.

20 (5) “Adjoining landowner” means a person who owns land in fee
21 simple, if that land either:

1 (A) shares a property boundary with a tract of land where an
2 easement amendment is proposed; or

3 (B) is adjacent to a tract of land where an easement amendment is
4 proposed and the two properties are separated by only a river, stream, or public
5 highway.

6 (6) “Amend” or “amendment” means a modification of an existing
7 conservation easement, the substitution of a new easement for an existing
8 conservation easement, or the whole or partial termination of an existing
9 conservation easement.

10 (7) “Conservation easement” means a conservation right or interest that
11 is less than a fee simple interest and that restricts the landowner’s use or
12 development of land in order to protect the land’s natural, scenic, agricultural,
13 recreational, or cultural qualities or resources or other public values. The term
14 excludes interests in fee simple, leases, restrictive covenants not held by a
15 qualified organization, rights-of-way, spring rights, timber harvesting rights,
16 and similar affirmative rights to use or extract resources from the land. The
17 term also excludes trail easements and other public recreational rights unless
18 those easements or rights are included in the stated purposes of a conservation
19 easement.

20 (8) “Conservation right or interest” means a right or interest described in
21 sections 823 and 6303 of this title.

1 (9) “Holder” means a state agency, a qualified organization, or a
2 municipality that possesses a conservation right or interest. The term “holder”
3 includes all coholders of a conservation right or interest.

4 (10) “Holder’s public review process” means the public review process
5 conducted by an easement holder for a proposed amendment, as set forth in
6 subchapter 2 of this chapter.

7 (11) “Landowner” means an owner of the fee interest in land that is
8 subject to a conservation easement.

9 (12) “Panel” means the Easement Amendment Panel of the Natural
10 Resources Board established in subchapter 2 of this chapter.

11 (13) “Person” shall have the same meaning as in 1 V.S.A. § 128.

12 (14) “Protected property” means real property that is subject to a
13 conservation right or interest.

14 (15) “Protected qualities” means natural, scenic, agricultural,
15 recreational, or cultural qualities and resources and other public values
16 protected by a conservation easement.

17 (16) “Public conservation interest” means the benefits to the public, the
18 environment, and Vermont’s working landscape afforded by conserving land
19 for its natural, scenic, or agricultural qualities, its recreational or cultural
20 resources, or other public values, and also includes investments in a

1 conservation easement made by a state agency, a municipality, and a qualified
2 organization.

3 Sec. 5. 10 V.S.A. § 6310 is added to read:

4 § 6310. EASEMENT HOLDER; FEE INTEREST; NONMERGER

5 If a holder of a conservation easement is or becomes the owner in fee
6 simple of property subject to the easement, the easement shall continue in
7 effect and shall not be extinguished.

8 Sec. 6. 10 V.S.A. § 6311 is added to read:

9 § 6311. CONSERVATION RIGHTS AND INTERESTS; TAX LIENS

10 Conservation rights and interests shall not be affected by any tax lien which
11 attaches to the subject property under 32 V.S.A. § 5061 subsequent to the
12 recording of the conservation rights and interests in the municipal land records.

13 Sec. 7. 10 V.S.A. chapter 155, subchapter 2 is added to read:

14 Subchapter 2. Amendment of Perpetual Conservation Easements

15 § 6321. PURPOSE

16 The purpose of this subchapter is to set forth a process and establish the
17 criteria for determining if an amendment of a conservation easement by the
18 holder may be appropriate and authorized and to provide that in all cases in
19 which an amendment would materially alter the terms of an existing
20 conservation easement, the proposed amendment is reviewed and approved

1 following public notice, disclosure of the circumstances and reasons for the
2 amendment, and an opportunity for the public to comment.

3 § 6322. APPLICABILITY; EXEMPTIONS

4 (a) This subchapter applies to the amendment of conservation easements.
5 As set forth in section 6301a of this title, whole or partial terminations of
6 conservation easements constitute amendments within the meaning of this
7 chapter.

8 (b) A conservation easement shall not be amended without the written
9 approval of the landowner and each holder, except as provided under section
10 6329(a)(1) of this title.

11 (c) Except for the easements identified in subsection (d) of this section,
12 conservation easements shall be amended only in accordance with this chapter,
13 and this chapter shall constitute the exclusive means under law by which an
14 amendment to a conservation easement may be contested or appealed.

15 (d) The following easement amendments shall be exempt from sections
16 6324–6333 of this title unless, for a particular easement amendment, the
17 landowner and each holder elect to employ and be bound by those provisions:

18 (1) any amendment of a conservation easement that requires the
19 approval of the General Assembly or is part of a land transaction that requires
20 such approval;

1 (2) any amendment of a conservation easement that was originally
2 required by a federal, state, or local regulatory body, including a district
3 environmental commission under 10 V.S.A. chapter 151, the Public Service
4 Board, or an appropriate municipal panel under 24 V.S.A. chapter 117, by
5 issuance of a state or municipal land use permit, an environmental permit or
6 other environmental approval, a certificate of public good, or other regulatory
7 approval under the terms of which any amendment of the easement must be
8 approved by the body issuing the permit, certificate, or other approval; and

9 (3) any amendment that is the result of the exercise of a right of eminent
10 domain granted under the Vermont Constitution, Chapter I, Art. 2.

11 § 6323. EASEMENT AMENDMENT PANEL

12 (a) An Easement Amendment Panel consisting of five members is created
13 as a panel of the Vermont Natural Resources Board established under section
14 6021 of this title.

15 (1) The regular members of the Panel shall be:

16 (A) The Chair of the Natural Resources Board, who shall serve as
17 Chair of the Easement Amendment Panel.

18 (B) Two members of the Natural Resources Board, chosen by the
19 Governor, whose terms on this Panel shall be contemporaneous with their
20 terms on the Board.

1 (C) One member appointed by the Governor for a term of four years
2 from a list of no fewer than five candidates submitted by qualified
3 organizations. The Vermont Housing and Conservation Board shall provide a
4 list of qualified organizations to the Governor from which the Governor shall
5 receive nominations.

6 (D) One member appointed by the Governor for a term of four years
7 from a list of five candidates submitted by the Vermont Housing and
8 Conservation Board.

9 (2) There shall be the following alternate members of the Panel, who
10 may be appointed to serve by the Chair on a particular matter before the Panel
11 when a regular Panel member is unable to serve:

12 (A) One alternate member appointed by the Governor for a term of
13 four years from the list submitted to the Governor by qualified organizations
14 under subdivision (1)(C) of this subsection.

15 (B) One alternate member appointed by the Governor for a term of
16 four years from the list submitted to the Governor by the Vermont Housing and
17 Conservation Board under subdivision (1)(D) of this subsection.

18 (3) Each member of the Natural Resources Board not appointed to the
19 Panel shall be an alternate to the Panel and may be designated by the Chair to
20 serve on a particular matter before the Panel if a regular or alternate member
21 under subdivision (1) or (2) of this subsection is unable to serve.

1 (b) The Governor shall seek to appoint members to the Panel who are
2 knowledgeable about agriculture, forestry, and environmental science. A
3 person shall not be eligible for appointment to the Panel if that person has been
4 employed as a staff member of or consultant to or has served on the governing
5 board of a holder during the 12 months preceding the appointment.

6 (c) Other departments and agencies of state government shall cooperate
7 with the Panel and make available to the Panel data, facilities, and personnel as
8 may be needed to assist the Panel in carrying out its duties and functions.

9 (d) A Panel member shall not participate in a particular matter before the
10 Panel if the member has a personal or financial interest in the matter or is
11 related to the petitioner, if a natural person, within the fourth degree of
12 consanguinity or affinity or, if a corporation, to any officer, director, trustee, or
13 agent of the corporation within the same degree.

14 (e) Decisions by the Panel shall be made as promptly as possible,
15 consistent with the degree of review required by the proposed amendment.

16 (f) The Panel shall keep a record of its proceedings, and any decision by
17 the Panel shall be in writing and shall provide an explanation of the reasons
18 and bases for the decision.

19 (g) 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 (h) Powers. The Panel shall have the power, with respect to any matter
2 within its jurisdiction, to:

3 (1) allow members of the public to enter upon lands of other persons, at
4 times designated by the Panel, for the purpose of inspecting and investigating
5 conditions related to the matter before the Panel;

6 (2) enter upon or authorize others to enter upon lands for the purpose of
7 conducting inspections, investigations, examinations, tests, and site evaluations
8 as it deems necessary to verify information presented in any matter within its
9 jurisdiction;

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

13 (4) establish a schedule of filing fees to be paid by petitioners.

14 § 6324. AMENDMENT CATEGORIES

15 (a) This subchapter divides amendments of conservation easements into
16 three categories, which are:

17 (1) Category 1 amendments under section 6325 of this title, which may
18 be made by the holder without a public review process;

19 (2) Category 2 amendments under section 6326 of this title, which are
20 amendments that require a procedural determination by an independent entity
21 concerning whether they may be made without a public review process in

1 accordance with this subchapter or whether they should undergo such a
2 process.

3 (3) Category 3 amendments under section 6327 of this title, which are
4 amendments that require a public review process in accordance with this
5 subchapter.

6 (b) Except for those amendments that are expressly exempt from the
7 provisions of this subchapter, a person shall not approve or execute an
8 amendment to a conservation amendment other than a Category 1 amendment
9 without complying with sections 6326 through 6331 of this title.

10 § 6325. CATEGORY 1 AMENDMENTS; APPROVAL BY HOLDER

11 WITHOUT REVIEW

12 (a) A Category 1 amendment is an amendment to an existing conservation
13 easement that has a beneficial, neutral, or not more than a de minimis negative
14 impact on the protected qualities under the existing easement. The holder and
15 landowner may approve a Category 1 amendment without notice to or review
16 by an independent entity. Category 1 amendments shall be limited to the
17 following:

18 (1) placing additional land under the protection of the easement;

19 (2) adding, expanding, or enhancing the protected qualities under the
20 easement;

1 (3) including, for the benefit of a holder, a right of first refusal, an
2 option to purchase at agricultural value, or another right to acquire an
3 ownership interest in the property in the future;

4 (4) amending the easement to protect areas that were excluded from the
5 easement or to further restrict rights and uses that were retained by the
6 landowner under the existing easement;

7 (5) correcting typographical or clerical errors without altering the intent
8 of or the protected qualities or the uses permitted under the easement;

9 (6) modernizing or clarifying the language of the easement without
10 changing its intent or the protected qualities or the uses permitted under the
11 easement;

12 (7) permitting additional uses under the easement that will have no more
13 than a de minimis negative impact on the protected qualities under the
14 easement;

15 (8) merging conservation easements on two or more protected properties
16 into a single easement, adjusting the boundaries between two or more
17 protected properties, or adjusting the boundaries of areas excluded from the
18 easement resulting from the merger, provided that the merger does not:

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

20 (B) permit new uses under the easement that will have more than a de
21 minimis negative impact on protected qualities on the property; or

1 (C) reduce the existing safeguards of the protected qualities on the
2 property;

3 (9) modifying the legal description of the protected property to reference
4 a subsequent survey of the area covered by or excluded from the easement; or

5 (10) relocating an existing recreational trail without materially
6 detracting from the public's access or quality of experience.

7 (b) In the event a holder or landowner of a protected property seeks a
8 recordable document from the Panel establishing that an amendment
9 constitutes a Category 1 amendment, the holder shall follow the procedures for
10 a Category 2 amendment under section 6326 of this title.

11 § 6326. CATEGORY 2 AMENDMENTS; CRITERIA; REVIEW

12 (a) A Category 2 amendment is an amendment that:

13 (1) the holder reasonably believes will have not more than a de minimis
14 negative impact on the protected qualities under an existing easement but that
15 does not clearly meet the definition of a Category 1 amendment; or

16 (2) adjusts the boundaries of the land protected by the easement or
17 adjusts the boundaries of areas excluded from the easement, but only if:

18 (A) the adjustment does not reduce the area covered by the easement
19 by more than the greater of:

20 (i) two acres; or

1 (ii) one percent of the land protected by the easement, not to
2 exceed five acres; and

3 (B) the holder reasonably believes the amendment will have no more
4 than a de minimis negative impact on the protected qualities under the existing
5 easement.

6 (b) A holder seeking review of a Category 2 amendment shall submit a
7 request for review to the Panel, together with a copy of the amendment, a
8 description of the protected property and easement, and an explanation of the
9 purpose and effect of the amendment. The request for review shall include the
10 applicant's and landowner's names and addresses, and the address of the
11 applicant's principal office in this State and, if the applicant is not a
12 municipality or state agency, a statement of its qualifications as a holder. The
13 request to the Panel shall be signed by the holder and the landowner. In
14 addition, the holder shall certify and demonstrate that the amendment:

15 (1) is consistent with the public conservation interest;

16 (2) is consistent with the conservation purpose and intent of the
17 easement;

18 (3) complies with all applicable federal, state, and local laws;

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

1 (5) has a net beneficial, neutral, or not more than a de minimis negative
2 impact on the protected qualities under the existing easement. In determining
3 such net beneficial, neutral, or de minimis negative impact, the holder shall
4 address the degree to which the amendment will balance the stated goals and
5 purposes of the easement and shall identify whether these goals and purposes
6 are ranked by the terms of the easement and demonstrate that the proposed
7 amendment is consistent with that ranking; and

8 (6) is consistent with the documented intent of the donor, grantor, and
9 all persons that directly funded the easement.

10 (c) Within a reasonable time after receiving a request for review of a
11 Category 2 amendment and after providing 10 days' notice to all other panel
12 members, the Chair of the Panel shall make a determination and promptly
13 notify the holder and landowner of the subject easement that:

14 (1) no further review of the amendment is required because it satisfies
15 all of the criteria listed under subsection (b) of this section;

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

18 (3) the holder must seek approval of the amendment as a Category 3
19 amendment because the amendment fails one or more of the criteria listed
20 under subsection (b) of this section.

1 (d) If two or more members of the Panel believe that the proposed
2 amendment fails one or more of the criteria listed under subsection (b) of this
3 section and those members notify the Chair either individually or collectively
4 within 10 days of the date of the Chair's notice to the Panel members, the
5 amendment shall be subject to review as a Category 3 amendment.

6 (e) If the determination under this section is that no further information or
7 approval is required, the Chair shall, upon the holder's request, send a notice of
8 this determination in a recordable form to the holder.

9 (f) The Panel may adopt rules allowing certain Category 2 amendments to
10 proceed as Category 1 amendments, provided the Panel establishes reasonable
11 limitations to ensure that any such amendment will have not more than a
12 de minimis negative impact on the protected qualities under the easement.

13 § 6327. CATEGORY 3 AMENDMENTS; REVIEW OPTIONS

14 (a) A Category 3 amendment is an amendment to an existing conservation
15 easement that:

16 (1) removes a protected quality from the easement or changes the
17 hierarchy of the easement's stated purposes;

18 (2) materially reduces the safeguards afforded to the protected qualities
19 under the easement; or

20 (3) is not a Category 1 or Category 2 amendment.

1 (b) A holder shall not execute or record a Category 3 amendment without
2 first:

3 (1) filing a petition for approval and obtaining the approval of the Panel
4 for a Category 3 amendment in accordance with section 6328 of this title;

5 (2) filing a petition for approval and obtaining the approval of the
6 Environmental Division of the Superior Court for a Category 3 amendment in
7 accordance with section 6329 of this title. If, by its express terms, an easement
8 provides that it may not be amended except by court order, then a holder may
9 seek to amend the easement only by filing a petition for approval with the
10 Environmental Division; or

11 (3) notifying the Panel that the holder will be conducting a holder's
12 public review process under section 6330 of this title and completing that
13 review process and any review by the Panel under section 6331 of this title.

14 (c) Having elected one of the review options described in this section for a
15 given amendment, a holder may not elect to use one of the other options for the
16 same amendment, except as provided in subsection 6330(h) of this title.

17 § 6328. CATEGORY 3 PETITION TO PANEL; PROCEDURE; CRITERIA

18 (a) Petition. A petition to the Panel to seek approval of a Category 3
19 amendment shall comply with each of the following:

20 (1) The petition shall include:

21 (A) a copy of the existing easement and proposed amendment;

1 (B) a map and description of the protected property and easement;

2 (C) an explanation of the purpose and effect of the amendment;

3 (D) the same certification and demonstration required for Category 2

4 amendments by subdivisions 6326(b)(1)–(4) of this title;

5 (E) the landowner’s name and address;

6 (F) the applicant’s name and address, the address of the applicant’s

7 principal office in this State, and, if the applicant is not a municipality or state

8 agency, a statement of its qualifications as a holder;

9 (G) the filing fee in accordance with the schedule established by the

10 Panel.

11 (2) The petition shall be signed by each holder of the subject easement,

12 the landowner or landowner’s representative, and any person who holds an

13 executory interest that allows assumption of the ownership of the property or

14 the easement if the amendment is approved.

15 (b) Service of petition. Immediately on filing with the Panel, the petitioner

16 shall send a copy of the petition to:

17 (1) the Attorney General and the Agencies of Agriculture, Food and

18 Markets and of Natural Resources;

19 (2) the legislative body, the planning commission, and the conservation

20 commission, if any, of the municipality in which the property is located;

1 (3) the executive director of the regional planning commission within
2 whose region the property is located;

3 (4) any person holding an executory interest in the conservation
4 easement; and

5 (5) all persons who originally conveyed the conservation easement,
6 unless the existing easement was conveyed or amended more than 25 years
7 before the filing of the petition or the Panel determines that the addresses
8 cannot be reasonably ascertained under the circumstances or that notification
9 of such persons is otherwise impracticable.

10 (c) Online posting. At the time a petition for a Category 3 amendment is
11 filed, the holder shall post on its website or on another website designated by
12 the Panel a copy of the petition and accompanying materials and information
13 required under subsection (a) of this section.

14 (d) Notice of petition and proposed hearing by Panel.

15 (1) On receipt of a complete petition, the Panel shall promptly publish,
16 at the expense of the petitioner, a notice of the petition in at least one area
17 newspaper reasonably calculated to reach members of the public in the area
18 where the protected property is located. The Panel also shall post the notice of
19 public hearing on the Natural Resources Board website. The Panel shall send
20 copies of the hearing notice to the petitioners, to the persons listed in
21 subsection (b) of this section, and to adjoining landowners who may be

1 affected by the amendment to the easement, unless it determines that the
2 number of adjoining landowners is so large that direct notification is not
3 practicable.

4 (2) The Panel's notice shall include each of the following:

5 (A) a description of the property subject to the existing conservation
6 easement, the name of each petitioner, and a summary of the proposed
7 amendment;

8 (B) the date, time, and place of the public hearing that the Panel
9 proposes to hold. The date of the proposed public hearing shall be not less
10 than 25 days and not more than 40 days from the date of publication of the
11 notice in the newspaper. The place of the public hearing shall be in the
12 vicinity of the protected property subject to the easement;

13 (C) a link to the website on which the petition for the amendment and
14 accompanying materials and information can be found;

15 (D) a statement that the Panel may waive the proposed public
16 hearing, if no request for a hearing is received by the Panel within 15 days of
17 the date on which the notice is published in the newspaper;

18 (E) information on how a person may request a public hearing; and

19 (F) information on how a person may confirm whether the proposed
20 public hearing will be held.

1 (e) Request for hearing. Any person may request that the Panel hold a
2 public hearing on the proposed amendment. The request for a hearing shall be
3 submitted to the Panel and state the reasons why a hearing is warranted. On
4 receipt by the Panel of a request for hearing, the Panel promptly shall send a
5 copy of the request to the petitioners and to all persons listed in subsection (b)
6 of this section.

7 (f) Public hearing; process; subpoena authority. The Panel shall conduct a
8 public hearing on a petition under this section if a request for a public hearing
9 is timely filed or it determines that a hearing is necessary.

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

12 (2) Any person may participate in any hearing on any petition for
13 amendment of an easement and shall have an opportunity to provide written or
14 oral testimony to the Panel.

15 (3) The Panel shall have the power to issue a subpoena under the
16 Vermont Rules of Civil Procedure to compel a petitioner to make available all
17 relevant records pertaining to the conservation easement and the proposed
18 amendment. The Environmental Division of the Superior Court shall have
19 jurisdiction over any motion to quash or enforce such a subpoena.

20 (A) A petitioner may request that the Panel not disclose personal or
21 confidential information contained in records subject to a subpoena under this

1 section that the petitioner demonstrates is not directly and substantially related
2 to the criteria of subsection (h) of this section. On a determination that the
3 petitioner has made such a demonstration, the records shall be exempt from
4 inspection and copying under the Public Records Act and the Panel shall keep
5 the records confidential from all persons except the Panel's members and staff
6 unless a court of competent jurisdiction orders disclosure of the records.

7 (B) Any person who believes that additional information is needed
8 from the easement holder before or during the hearing may direct a request to
9 the Panel, which may then require the petitioner to produce the requested
10 information.

11 (C) If the petitioner fails to respond to a subpoena in a timely fashion,
12 the Panel may deny the petition for amendment.

13 (g) Information considered. In any proceeding under this section, the Panel
14 shall consider all circumstances and information that may reasonably bear
15 upon the public conservation interest in upholding or amending the
16 conservation easement, including each of the following:

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

1 (2) whether the circumstances leading to the proposed amendment were
2 anticipated at the time the easement was conveyed or last amended;

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

5 (4) whether the amendment changes an easement's stated purpose or
6 hierarchy of purposes;

7 (5) the certification requirements for Category 2 amendments listed in
8 subdivisions 6326(b)(1)–(4) of this title;

9 (6) the documented intent of the donor, grantor, or all direct funding
10 sources; and

11 (7) any other information or issue that the Panel considers relevant.

12 (h) Criteria for approval.

13 (1) The Panel shall approve an amendment if it finds, by clear and
14 convincing evidence, that the amendment:

15 (A) is consistent with the public conservation interest;

16 (B) is consistent with the purposes stated in section 6301 of this
17 chapter;

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

20 (D) will result in adequate compensation to the holder. Any such
21 compensation shall be paid to the holder of the easement and shall be used by

1 the holder for the conservation of lands in a manner consistent, as nearly as
2 possible, with the public conservation interest stated in the easement; and

3 (E) meets at least one of the following:

4 (i) the amendment promotes or enhances the conservation
5 purposes of the easement or the protected qualities under the easement, even
6 though it may be inconsistent with a strict interpretation of the terms of the
7 existing easement;

8 (ii) enforcement of the easement term proposed for amendment
9 would result in significant financial burdens to the easement holder or
10 landowner and result in minimal conservation benefit to the public; or

11 (iii) the amendment clearly enhances the public conservation
12 interest, even though it may allow the diminution of one or more conservation
13 purposes or protected qualities on the property protected by the existing
14 easement.

15 (2) In the event the conservation easement subject to the petition
16 requires that an amendment comply with more restrictive conditions than the
17 criteria listed in this subsection, the Panel must also find that those conditions
18 have been met in order to approve the amendment.

19 (i) Decision. Following the hearing, or after a determination without a
20 hearing, the Panel shall issue a written decision approving, approving with

1 conditions, or denying the amendment request and stating the reasons for the
2 Panel's decision.

3 (1) The Panel shall post its written decision on the Board's website and
4 shall distribute a copy to each holder of the subject easement, the landowner,
5 the Attorney General, and to any other person who participated in the public
6 hearing, if one was held.

7 (2) If the decision approves an amendment that terminates an easement
8 in whole or in part, the Panel shall require that the holder apply any monetary
9 compensation to achieve a conservation purpose similar to that stated in the
10 easement and shall require, as a condition of approval, the holder to identify
11 such purpose and provide documentation proving that the compensation has
12 been applied in accordance with this subdivision (2).

13 § 6329. PETITION TO ENVIRONMENTAL DIVISION

14 (a) A holder may file a petition for approval of a Category 3 amendment
15 with the Environmental Division of the Superior Court.

16 (1) The petition shall be signed by the petitioning holder and the
17 landowner or landowner's representative. It need not be signed by all holders
18 of the easement.

19 (2) The petitioner shall serve the petition on the persons described in
20 subdivisions 6328(b)(1)–(5) of this title and on any other holders of the subject
21 easement not signing the petition.

1 (A) As to a petition under this section, the Division shall make the
2 decisions on notice to persons originally conveying the subject easement that
3 are committed to the Panel under subdivision 6328(b)(5) of this title.

4 (B) The petitioner shall serve the petition on adjoining landowners
5 who may be affected by the amendment to the easement, unless on motion of
6 the petitioner the Division determines that the number of adjoining landowners
7 is so large that such service is not practicable. The Division may direct the
8 petitioner to provide a list of adjoining landowners.

9 (3) A petition under this section shall include the content required by
10 subdivision 6328(a)(1)(A) through (F) of this title and such other information
11 as the Division's rules may direct.

12 (b) A petition under this section shall be a matter of original jurisdiction
13 before the Environmental Division. The Division shall provide notice of the
14 first status conference or hearing, whichever is earlier, to the persons signing
15 the petition and the persons on whom service of the petition is required. The
16 Vermont Rules of Environmental Court Proceedings shall apply to petitions
17 under this section. The Attorney General shall have a statutory right to
18 intervene in a petition under this section and may appear at his or her
19 discretion.

20 (c) In deciding a petition under this section, the Division shall consider the
21 information described under subsection 6328(g) of this title and apply the

1 criteria enumerated under subdivision 6328(h) of this title. However, if the
2 terms of the conservation easement proposed for an amendment provide one or
3 more criteria for amendment that are more stringent than those applied by the
4 Panel, the Division shall apply the more stringent criteria set forth in the
5 easement in making its decision.

6 (d) The holder or holders who file a petition under this section shall bear
7 the costs and expenses of review of the petition. The Division's decision shall
8 be binding on all holders and all parties to the case.

9 § 6330. HOLDER'S PUBLIC REVIEW AND HEARING PROCESS

10 (a) A holder may adopt and conduct a holder's public review process for a
11 Category 3 amendment. Such a process may only be used if all holders agree
12 to use the process and one of the holders is publicly identified in the initial
13 notice as responsible for the publication by newspaper and on its website of all
14 notices and documents required under this section.

15 (b) A holder's public review process shall include each of the following:

16 (1) Creation of an easement amendment proposal containing the same
17 information described in subdivision 6328(a)(1)(A)–(F) of this title, except that
18 a holder may defer the certification requirements referenced in subdivision
19 6328(a)(1)(D) of this title until after it completes the public hearing;

20 (2) Posting of the easement amendment proposal on the website of the
21 holder publicly identified under subsection (a) of this section;

1 (3) Publication of a notice of the petition in at least one area newspaper
2 reasonably calculated to reach members of the public in the area where the
3 protected property is located. The notice also shall be placed on the website of
4 the holder publicly identified under subsection (a) of this section. The notice
5 shall include each of the following:

6 (A) A description of the property subject to the existing conservation
7 easement, the name of each petitioner, and a summary of the proposed
8 amendment;

9 (B) The date, time, and place of the public hearing. The date of the
10 public hearing shall be not less than 25 days and not more than 40 days from
11 the date of publication of the notice in the newspaper. The place of the public
12 hearing shall be in the vicinity of the protected property subject to the
13 easement;

14 (C) A link to the website where the easement amendment proposal
15 and accompanying materials and information may be found;

16 (4) Sending a copy of the easement amendment proposal and notice to
17 the persons described in subdivisions 6328(b)(1)–(5) of this title;

18 (5) Sending a copy of the notice to all adjoining landowners who may be
19 affected by the amendment to the easement, unless all holders of the subject
20 easement agree that the number of adjoining landowners is so large that direct
21 notification is not practicable.

1 (c) Any person may participate in the holder's public review process and
2 public hearing by submitting written comments or oral comments, or both, at
3 the public hearing. The holder may require each participant in the public
4 hearing to sign a register noting their presence at the hearing and providing
5 their electronic or other mailing address.

6 (d) If following the public review and hearing process the holder approves
7 the amendment, the holder shall prepare a written decision that:

8 (1) Explains the changes to the easement that have been approved;

9 (2) Considers the information described under subsection 6328(g) of this
10 title in relation to the easement amendment proposal;

11 (3) Applies the criteria enumerated under subdivision 6328(h) of this
12 title to the easement amendment proposal;

13 (4) Lists all persons who submitted written or oral comments during the
14 public review and hearing process;

15 (5) Summarizes the nature of any objection made to the amendment
16 during the public review and hearing process and explains how the objection
17 was addressed or why it was rejected.

18 (e) All holders of an easement shall conduct a single, combined holder's
19 public review process that complies with this section for any particular
20 amendment that has been proposed to the easement. The holders may prepare

1 a written decision to which they all agree. If all holders do not agree to the
2 written decision, the amendment shall not be approved.

3 (f) The holder shall file the decision with the Panel, together with a
4 certification that the holder has conducted a public hearing and complied with
5 this section. At the time of this filing, the holder shall post on its website:

6 (1) a copy of the written decision and certification filed with the Panel;

7 (2) the date that the decision and certification were filed with the
8 Panel; and

9 (3) the notice described in subsection (g) of this section.

10 (g) Immediately on filing the decision with the Panel, the holder shall send
11 a notice of the decision to all persons listed in subdivisions 6328(b)(1)–(5) of
12 this title and shall provide a link to the holder’s website where the decision,
13 certification, and other information may be found. The notice shall:

14 (1) state the date on which the decision was filed with the Panel;

15 (2) list the persons who have the right to file a request for review with
16 the Panel under subsection 6331(a) of this title and state that any request for
17 review must be submitted to the Panel within 30 days of the date the holder
18 filed its decision with the Panel; and

19 (3) state that any such request for review must state the bases for the
20 appeal, include a statement of issues, and make a prima facie showing that the
21 holder’s decision is not in the public conservation interest.

1 (h) If at any time prior to the issuance of a final decision by the holder, any
2 holder or the landowner decides to terminate the holder's public review
3 process, the amendment shall not be approved. However, at the option of the
4 landowner and holder, the proposed amendment may be submitted and
5 approved as a Category 3 amendment by the Panel or the Environmental
6 Division of the Superior Court in accordance with this subchapter.

7 § 6331. PANEL REVIEW OF HOLDER'S DECISION FOLLOWING
8 PUBLIC REVIEW AND HEARING

9 (a) The following persons have the right to request that the Panel review
10 the holder's decision under section 6330 of this title:

11 (1) the Attorney General;

12 (2) the person who originally conveyed the easement, if the easement
13 was donated or provided through a bargain sale or other mechanism in which
14 the person who conveyed the easement received a tax deduction;

15 (3) the legislative body of the municipality in which the property subject
16 to the easement is located;

17 (4) any person who provided an oral or written comment during the
18 holder's public review and hearing process.

19 (b) A request to review under this section must be filed with the Panel
20 within 30 days of the date the holder files the decision and certification with
21 the Panel.

1 (c) A request for review of a holder’s decision must be in writing, state the
2 bases for the request to review, contain a statement of issues, and make a prima
3 facie showing that the holder’s decision is not in the public conservation
4 interest.

5 (1) A person who originally conveyed the easement may also make a
6 prima facie case that the amendment fails to comply with conditions
7 concerning amendments that may be contained in the original easement.

8 (2) In this section, the term “prima facie” means an initial showing of
9 specific facts which, if proven, would show that the easement amendment is
10 not in the public conservation interest or, if the request was filed by a person
11 who originally conveyed the easement, does not comply with conditions
12 concerning amendments that may be contained in the original easement. A
13 prima facie showing also shall include the reasons why the facts prove that the
14 amendment is not in the public conservation interest or does not comply with
15 the original easement’s conditions.

16 (d) The Panel, on its own initiative or by written request of the holder, may
17 dismiss a request for review without further hearing if the person requesting
18 the review is not eligible to request review under this section or the request for
19 review fails to comply with subsection (c) of this section.

20 (e) With respect to an amendment for which the holder’s public review and
21 hearing under section 6330 of this title was completed, the Panel shall, at the

1 request of the landowner or holder, issue a certificate in recordable form that
2 the holder has made the required certifications and that no further approval of
3 the amendment is required if:

4 (1) no request for review was filed within the time permitted under
5 subsection (b) of this section; or

6 (2) such a request was filed and dismissed under subsection (d) of this
7 section.

8 (f) In the event that a timely request for review is filed and not dismissed
9 under subsection (d) of this section, the Panel shall review the amendment as a
10 Category 3 amendment in accordance with section 6328 of this title, provided
11 that:

12 (1) the request for review shall be limited to the statement of issues
13 raised in the request for review, unless the Panel determines that a request to
14 amend the statement of issues is timely filed and will not result in prejudice to
15 any party to the proceeding; and

16 (2) the decision of the holder shall be presumed to be in the public
17 conservation interest. This presumption shall be rebutted if the Panel finds that
18 there was a substantial violation of the procedural requirements of section 6330
19 of this title or if the amendment does not meet the criteria of section 6328(h) of
20 this title.

1 § 6332. REVOCATION OF EASEMENT AMENDMENTS

2 (a) Revocation by the Panel. On its own initiative or at the request of the
3 Attorney General or a person who participated in the Panel's or holder's
4 review process, the Panel may revoke easement amendments approved under
5 section 6328, 6330, or 6331 of this title.

6 (1) A revocation petition before the Panel shall be a contested case
7 under 3 V.S.A. chapter 25, and the Panel shall comply with 3 V.S.A. § 814(c)
8 (notice; opportunity to show compliance).

9 (2) The Panel may revoke an easement amendment approved under
10 section 6328, 6330, or 6331 of this title if finds one or more of the following:

11 (A) noncompliance with the easement amendment decision of the
12 Panel or any condition of that decision;

13 (B) noncompliance with the holder's decision following the holder's
14 public review and hearing process under section 6330 of this title, concerning
15 which decision the Panel has issued a certificate to the holder pursuant to
16 section 6331 of this title;

17 (C) failure of a holder of the easement to disclose all relevant and
18 material facts in the petition or during the review process;

19 (D) misrepresentation by a holder of the easement of any relevant
20 and material fact at any time.

1 (b) The Attorney General or the Panel may petition the Environmental
2 Division to revoke an easement amendment approved by the Division under
3 section 6329 of this title.

4 (1) Each holder of the easement amendment subject to the petition shall
5 be given notice and an opportunity to show compliance.

6 (2) The Division may revoke an easement amendment approved by the
7 Division under section 6329 of this title if it finds one or more of the
8 following:

9 (A) noncompliance with the easement amendment decision of the
10 Division or any condition of that decision;

11 (B) failure of a holder of the easement to disclose all relevant and
12 material facts in the petition or during the review process;

13 (C) misrepresentation by a holder of the easement of any relevant and
14 material fact at any time.

15 (c) This section shall not be applied to alter the rights of a good faith
16 purchaser who, subsequent to approval of an amendment under this chapter,
17 purchased property affected by the amendment without notice of the
18 misrepresentation or failure to disclose and was not responsible for and had no
19 knowledge or constructive notice of the conditions imposed by the Panel or
20 Environmental Division.

1 § 6333. APPEALS

2 (a) Appeals. A final decision of the Panel or the Environmental Division of
3 the Superior Court under this subchapter may be appealed to the Supreme
4 Court within 30 days of the decision's issuance.

5 (b) Persons eligible to appeal. Only the following persons may appeal to
6 the Vermont Supreme Court under this section:

7 (1) a holder of the subject easement;

8 (2) the landowner;

9 (3) the Attorney General; or

10 (4) the Panel, but only of a decision of the Environmental Division on a
11 revocation petition brought by the Panel under section 6332 of this title.

12 (c) Appeal by fewer than all holders. If the appeal is filed by fewer than all
13 of the holders, the holder or holders filing the appeal shall bear the cost and
14 expenses of the appeal. However, the decision on appeal shall be binding on
15 all holders and on all other parties.

16 (d) Preservation. An objection that has not been raised before the Panel or
17 the Environmental Division may not be considered by the Supreme Court,
18 unless the failure or neglect to raise that objection is excused by the Supreme
19 Court because of extraordinary circumstances.

1 (e) Standard of review. The Supreme Court may reverse a decision
2 appealed under this section only if the decision is clearly erroneous or the
3 Panel or Environmental Division clearly abused its discretion.

4 § 6334. CONTRIBUTOR RESTITUTION ACTIONS; DAMAGE
5 LIMITATION

6 A decision by the Panel or the Environmental Division on an amendment
7 under this subchapter shall not affect any right of a person who has personally
8 or directly contributed to the holder's acquisition of the easement to seek
9 restitution in a court of competent jurisdiction of the contribution based upon
10 misrepresentation or breach of contract on the part of the easement holder.
11 However, such restitution shall be only for the amount contributed or granted,
12 and shall not include interest, damages, attorney's fees, or other costs, unless
13 the reviewing court finds that the holder has acted in bad faith.

14 § 6335. REPORT TO GENERAL ASSEMBLY

15 Each state agency shall provide to the General Assembly a report of any
16 easement amendments made during the previous year. The report shall
17 summarize each easement amendment and describe both the reasons for the
18 amendment and how the amendment promotes the public conservation interest.
19 The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not
20 apply to the report to be made under this section.

1 Sec. 8. 4 V.S.A. § 34 is amended to read:

2 § 34. JURISDICTION; ENVIRONMENTAL DIVISION

3 The ~~environmental division~~ 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 61,
7 subchapter 12, and chapter 117 ~~and subchapter 12 of chapter 61 of Title 24;~~
8 ~~and~~

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

11 (4) such original jurisdiction to approve or deny and to revoke
12 amendments of conservation easements as is provided by 10 V.S.A. chapter
13 155, subchapter 2.

14 Sec. 9. 10 V.S.A. § 324 is amended to read:

15 § 324. STEWARDSHIP

16 (a) The Board shall amend or terminate conservation easements held
17 pursuant to this chapter only in accordance with chapter 155, subchapter 2 of
18 this title.

19 (b) If an activity funded by the ~~board~~ Board involves acquisition by the
20 ~~state~~ State of an interest in real property for the purpose of conserving and
21 protecting agricultural land or forestland, important natural areas, or recreation

1 lands, the ~~board~~ Board, in its discretion, may make a one-time grant to the
2 appropriate state agency, qualified organization, or municipality. The grant
3 shall not exceed ten percent of the current appraised value of that property
4 interest and shall be used to support its proper management or maintenance or
5 both.

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

7 § 823. INTERESTS IN REAL PROPERTY

8 Conservation and preservation rights and interests shall be deemed to be
9 interests in real property and shall run with the land. A document creating
10 such a right or interest shall be deemed to be a conveyance of real property and
11 shall be recorded under 27 V.S.A. chapter 5. ~~Such a right or interest shall be~~
12 ~~subject to the requirement of filing a notice of claim within the 40 year period~~
13 ~~as provided in 27 V.S.A. § 603.~~ Such a right or interest shall be enforceable in
14 law or in equity. Any subsequent transfer, mortgage, lease, or other
15 conveyance of the real property or an interest in the real property shall
16 reference the grant of conservation rights and interests in the real property,
17 provided, however, that the failure to include a reference to the grant shall not
18 affect the validity or enforceability of the conservation rights and interests.

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

2 § 604. FAILURE TO FILE NOTICE

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

6 * * *

7 (8) Any conservation rights or interests created pursuant to 10 V.S.A.
8 chapter 34 or 155.

9 * * *

10 Sec. 12. EASEMENT AMENDMENT PANEL; INITIAL APPOINTMENTS

11 By October 1, 2013, the Governor shall appoint the members of the
12 Easement Amendment Panel under Sec. 7 of this act, 10 V.S.A.
13 § 6323(a)(2)–(4) (members; easement amendment panel). The initial term of
14 the members appointed under 10 V.S.A. § 6323(a) from a list submitted by
15 qualified organizations shall expire on February 1, 2017. The initial term of
16 the members appointed under 10 V.S.A. § 6323(a) from a list submitted by the
17 Vermont Housing and Conservation Board shall expire on February 1, 2015.

18 Sec. 13. EFFECTIVE DATE

19 This act shall take effect on July 1, 2013. However, the Easement
20 Amendment Panel shall not have authority to take actions under 10 V.S.A.

- 1 chapter 155, subchapter 2 until the appointment of the Panel members or
- 2 October 1, 2013, whichever is earlier.