

To: The House Judiciary Committee
From: Geoffrey Gardner
Fairlee, VT
Subject: Senate Bill 119: An act relating to amending perpetual
conservation easements

NB: The following is a letter I have sent to the editor of the Valley News in response to an OpEd piece in the paper, on Sunday, March 16, by one of Senate Bill 119's major proponents. The letter has not yet been published in the Valley News, but I had a call from the paper yesterday and am expecting to see it in print later this week. At all events, I think the letter speaks for itself, and I hope that the points it raises will be helpful to the Committee as it considers this bill.

Respectfully,

Geoffrey Gardner
West Fairlee Conservation Commission
West Fairlee Planning Commission

To the Editor:

Readers of Darby Bradley's OpEd in Sunday's paper, arguing in favor of S.119 that would alter how conservation easements are amended, should be aware that the Vermont Land Trust, once a major advocate of the bill has now withdrawn support for it, saying it now believes the bill is too broad.

I think many Vermonters seriously concerned about land conservation are opposed to S.119, not only because it is too broad, but because of two other more serious flaws. The first is that S.119 is an attempt to solve a problem that doesn't exist. Bradley himself offers a number of examples of important amendments to conservation easements that have been made under present law. He fails to mention that S.119 would allow much more radical amendments to and even extinction of a property's conservation easement for the sake of protecting other property deemed by an executive panel to be of higher conservation value.

And this goes to the second dangerous flaw in S.119. The bill would wrest decisions amending conservation easements from the courts where they belong and instead would place them before an executive panel of mostly political appointees. This process would subject these decisions—and the legally guaranteed intent of the grantors of conservation easements-- to political and financial considerations. This is precisely what those grantors seek to preclude when they choose the easement route for protecting their land in the way they want it protected.

A very large proportion of conserved land in Vermont is the result of conservation easements by which private owners donate the development rights to their property to land trusts or other conservation organizations. The easement enshrines an agreement between the owner and the trust about the public value of land conservation generally and the particular conservation values of the private property protected by the easement. Entering the agreement, the trust guarantees it will uphold the intent and wishes of the owner. If this can't be relied on, less land will be conserved and the public interest served by conservation will suffer and decline.

We should let S.119 die quietly and vanish away.

Geoffrey Gardner
West Fairlee Conservation Commission