

1                   **S.119: POTENTIAL AMENDMENTS FROM EASEMENT**

2                                   **WORKING GROUP**

3           First: In Sec. 4, 10 V.S.A. § 6301a, in subdivision (7), in the second  
4 sentence after “timber,” by striking “harvesting” and inserting in lieu thereof or  
5 mining

6           Second: In Sec. 7, in 10 V.S.A. § 6322, in subsection (c), after the period,  
7 by inserting: Except with respect to contesting or appealing the amendment of  
8 a conservation easement, this chapter shall not affect the Attorney General’s  
9 authority to regulate and oversee charities operating in the State.

10          Third: In Sec. 7, in 10 V.S.A. § 6323, in subdivision (a)(3), after “Each  
11 member,” by inserting and alternate

12          Fourth: In Sec. 7, in 10 V.S.A. § 6325, by striking subdivisions (a)(8), (9),  
13 and (10) and inserting in lieu thereof new subdivisions (a)(8), (9), and (10) to  
14 read:

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

18                   (A) remove land covered by the easement;

19                   (B) permit new uses under the easement that will have more than a

20 de 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 or updated map of the area covered by or excluded from  
5 the easement; or

6           (10) creating or relocating a recreational trail without materially  
7 detracting from the public’s access or quality of experience.

8           Fifth: In Sec. 7, in 10 V.S.A. § 6326, in subsection (b), by striking  
9 subdivision (1) and inserting in lieu thereof a new subdivision (1) to read:

10           (1) is consistent with the public conservation interest. If the amendment  
11 serves a public purpose other than conservation, the holder may certify the  
12 amendment as consistent with the public conservation interest if the  
13 amendment has no more than a de minimis negative impact on the protected  
14 qualities under the existing easement;

15           Sixth: In Sec. 7, in 10 V.S.A. § 6328, in subdivision (a)(1)(H), by striking  
16 “donor-imposed restriction” and inserting in lieu thereof restriction imposed on  
17 the holder by the donor

18           Seventh: In Sec. 7, in 10 V.S.A. § 6328, by striking subdivision (g) and  
19 inserting in lieu thereof a new subdivision (g) to read:

20           (g) Information considered. In any proceeding under this section, the Panel  
21 shall consider all circumstances and information that may reasonably bear

1 upon the public conservation interest in upholding or amending the  
2 conservation easement.

3 (1) Factors to be considered by the Panel shall include each of the  
4 following:

5 (A) any material change in circumstances that has taken place since  
6 the easement was conveyed or last amended, including changes in applicable  
7 laws or regulations, in the native flora or fauna, or in community conditions  
8 and needs, or the development of new technologies or new agricultural and  
9 forestry enterprises;

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

12 (C) the existence or lack of reasonable alternatives to address the  
13 changed circumstances;

14 (D) whether the amendment changes an easement's stated purpose or  
15 hierarchy of purposes;

16 (E) the certification requirements for Category 2 amendments listed  
17 in subdivisions 6326(b)(1)–(4) of this title;

18 (F) the documented intent of the donor, grantor, and all direct  
19 funding sources and any restriction imposed on the holder by the donor and  
20 accepted by the holder in exchange for the easement, if applicable; and

21 (G) any other information or issue that the Panel considers relevant.

1           (2) The Panel may issue a partial decision on whether an amendment is  
2           consistent with the public conservation interest if it finds that evidence  
3           otherwise necessary to issue a complete decision under this section, such as an  
4           appraisal or survey is unnecessary to determine whether the amendment is  
5           consistent with the public conservation interest, and production of that  
6           evidence in advance of this determination would place an undue financial  
7           burden on the petitioner. If the application is partially approved, the petitioner  
8           may produce the evidence for a complete decision.

9           Eighth: In Sec. 7, in 10 V.S.A. § 6328, by striking subdivision (h)(2) and  
10           inserting in lieu thereof a new subdivision (h)(2) to read:

11           (2) If a requirement of the conservation easement subject to the petition  
12           conflicts with a requirement of a criterion listed in this subsection, the Panel  
13           shall apply the requirement that is more restrictive.

14           Ninth: In Sec. 7, in 10 V.S.A. § 6329, in subsection (c), by striking the  
15           second sentence and inserting in lieu thereof: If a requirement of the  
16           conservation easement subject to the petition conflicts with a requirement of a  
17           criterion applied by the Panel, the Division shall apply the requirement that is  
18           more restrictive.

19           Tenth: In Sec. 12 (easement amendment panel; initial appointments), in the  
20           first sentence, by striking “October 1, 2013” and inserting in lieu thereof “June  
21           1, 2014”

1        Eleventh: By inserting Sec. 12b to read:

2        Sec. 12b. 10 V.S.A. § 6021(e) is added to read:

3        (e) The Board also shall include the Easement Amendment Panel  
4        constituted in accordance with section 6323 of this title.

5        Twelfth: By striking Sec. 13 (effective dates) and inserting in lieu thereof a  
6        new Sec. 13 to read:

7        Sec. 13. EFFECTIVE DATES; EMERGENCY RULES

8        (a) This section, Sec. 12, and, in Sec. 7, 10 V.S.A. § 6323 shall take effect  
9        on passage.

10       (b) The remainder of this act shall take effect on July 1, 2014.

11       (c) On or before September 1, 2014, the Easement Amendment Panel may  
12       adopt emergency rules under Sec. 7, 10 V.S.A. § 6323(h)(3), pending its  
13       adoption of permanent rules of procedure and substantive rules under that same  
14       subdivision. These emergency rules shall be deemed to meet the standard  
15       under 3 V.S.A. § 844(a) (imminent peril).