

**Vermont
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Conservation
Board**



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**Testimony on H.580 – An Act Relating to Conservation Easements
House Committee on Natural Resources and Energy**

Ethan Parke and Jennifer Hollar, Vermont Housing and Conservation Board

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The Vermont Housing and Conservation Board is a public instrumentality of the State of Vermont, authorized by statute to carry out “the dual goals of creating affordable housing for Vermonters, and conserving and protecting Vermont’s agricultural land, forestland, historic properties, important natural areas, and recreational lands....” [10 VSA § 301–325]

VHCB receives annual legislative appropriations and leverages federal funds for both housing and conservation. It then makes grants to nonprofits, municipalities, and certain state agencies to carry out its mission. On the conservation side, these include the Vermont Land Trust, the Upper Valley Land Trust and others you have heard from today. The investments are secured by conservation easements that are held by VHCB and its partners and are recorded in the town land records.

Easements are important tools for protecting the state’s investment and the public’s rights and interests. We support H.580 which will help ensure they remain in place as intended.

Since VHCB’s inception in 1987, it has protected approximately 900 properties and over 400,000 acres using conservation easements. VHCB has also protected approximately 60 historic buildings using historic preservation easements. Most of these are public buildings such as town halls.

By state policy and statute, conservation and historic preservation easements are meant to be perpetual. They are interests in real property that run with the property. Conveyance of these interests are made in the form of a deed that is recorded as specified in 10 VSA § 823. This section of statute requires that holders of these interests file a notice of claim (re-record) within 40 years. Our understanding is this section was not updated in 2011 when the Legislature amended 27 VSA § 604 to clarify that failure to file such notice for conservation easements does not extinguish their interests. H.580 would make these sections consistent.

The bill addresses two other issues in addition to the re-recording requirement. It includes historic preservation rights or interests in the list of items that are not extinguished by a failure to file notice and clarifies that a conservation easement



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is not extinguished by a tax sale if the lien is filed after the easement went into effect.

VHCB sees each of these as important and supports passage of H.580 for the following reasons:

By policy and statute, easements are intended to be permanent. The bill maintains the integrity of the public's conservation and preservation rights by ensuring they are perpetual and not subject to re-recording requirements or extinguished by tax sales.

Our federal funders also require easements to be perpetual and the statutory changes ensure we can meet those requirements.

The bill would not affect municipalities' right to place tax liens on properties or conduct tax sales. It provides clarity in these circumstances which can sometimes be confusing for local officials.

It would ease administration expenses associated with re-recording. VHCB and other agencies have recently undergone an extensive review, known as the LEAN process, of our farmland conservation program looking for administrative efficiencies. Eliminating the requirement that each easement be re-recorded every 40 years is a good example of doing away with something that takes time and money without any additional benefit or protection.

The bill reduces the opportunity for an easement to lapse due to human oversight.

The proposed changes will allow funders and donors greater confidence in the tools being used to protect our natural resources, working lands, and historic properties.

It would give the same certainty to the public's preservation rights as those provided for conservation, both of which were created under Chapter 34 of Title 10.

Thank you for taking the time to consider H.580 and for allowing us to speak in support of the bill. We'd be happy to answer any questions.