

From: Shems, Ron
Sent: Monday, January 23, 2012 4:41 PM
To: Roessle, Drusilla; MacLean, Alex
CC: Markowitz, Deb; Snyder, Michael
Subject: RE: H553billreviewNRB -- Amend of pertual conservation easements -- CORRECTED
Attachments: H553billreviewNRB.docx

Apologies, folks here found a critical typo on p.2, reproduced below. A corrected version is attached.

The VLT anticipates approximately 20 easement amendments per year and that the number of proceedings will increase as more easements age. Ten of these amendments would require more than a pro forma review. A (estimated) small number of cases would result in the need for Panel site visits and hearings, notices, document review, issuance of decisions/orders, and related impacts on administrative and legal staff time to review and address the complexities of conservation easements. An initial set of rulemaking would engender one-time expenses.

Board members are paid per diems and expenses. **Based on an initial estimate of ten proceedings per year, these costs would be approximately \$5,000.00 ~~\$500.00~~ per year.** Rule making will cost \$1250.00 in out-of pocket costs (for publication) and some attorney time to navigate the process. We also anticipate approximately .17 FTE of legal and administrative staff time, which we estimate to cost approximately \$12,000.00. We presently do not have the capacity to take on these additional costs and demands on staff time. However, if the NRB is able to fill an enforcement attorney position currently held open for vacancy savings, existing staff might be able to absorb the initially anticipated additional demands on work load.

Ronald A. Shems
Chair
Vermont Natural Resources Board
802 828 5440
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From: Roessle, Drusilla
Sent: Monday, January 23, 2012 1:44 PM
To: Shems, Ron
Subject: RE: H553billreviewNRB -- Amend of pertual conservation easements

Thank you!

From: Shems, Ron
Sent: Monday, January 23, 2012 11:20 AM
To: Roessle, Drusilla; MacLean, Alex
Cc: Markowitz, Deb; Snyder, Michael; Borie, Lou
Subject: H553billreviewNRB -- Amend of pertual conservation easements

The NRB's review of H553 is attached.

Please let me know if you have questions.

Ronald A. Shems
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CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM

Bill Number: H.553 Name of Bill: Amending perpetual conservation easements

Agency/Dept: Natural Resources Board Author of Bill Review Ron Shems

Date of Bill Review: January 19, 2012 (check status below)

Upon introduction Upon Passage of 1st body Final bill review Fiscal

1. SUMMARY OF THIS LEGISLATION:

The Natural Resources Board is composed of two panels, the Land Use Panel that oversees Act 250, and the Water Resources Panel that promulgates Vermont's Water Quality Standards and other water-related rules. This bill would add a third, five-member panel (Chair, 2 land use-panel members and two easement panel appointees) to review petitions to amend perpetual conservation easements to address new circumstances and needs consistent with the easement's purpose. The need for, scope, and language of an easement amendment would be based on new circumstances, party comments, legal obligations and other similar factors. The bill allows the NRB to petition the Environmental Court to revoke easement amendments for non-use, non-compliance, or factual misrepresentations. The panel's purpose would be to assure the easement's conservation purposes while allowing limited, but appropriate amendment to stay with the times.

2. STATEMENT OF NEED:

Perpetual easements require some modification from time to time to reflect changing circumstances. Other states have mechanisms to review and approve of amendment petitions. Vermont does not.

3. PRIMARY ADVOCATES/OPPONENTS:

This bill has been proposed by the Vermont Land Trust (VLT). We are not aware of opponents.

ANR/FPR supports the bill, but with an exemption for FPR lands. We understand that the Housing and Conservation Board has given its support to the bill. The Agency of Agriculture may have some reservations.

4. COSTS & PROGRAM IMPLICATIONS:

The VLT anticipates approximately 20 easement amendments per year and that the number of proceedings will increase as more easements age. Ten of these amendments would require more than a pro forma review. A (estimated) small number of cases would result in the need for Panel site visits and hearings, notices, document review, issuance of decisions/orders, and related impacts on administrative and legal staff time to review and address the complexities of conservation easements. An initial set of rulemaking would engender one-time expenses.

Board members are paid per diems and expenses. Based on an initial estimate of ten proceedings per year, these costs would be approximately \$5000.00 per year. Rule making will cost \$1250.00 in out-of pocket costs (for publication) and some attorney time to navigate the process. We also anticipate approximately .17 FTE of legal and administrative staff time, which we estimate to cost approximately \$12,000.00. We presently do not have the capacity to take on these additional costs and demands on staff time. However, if the NRB is able to fill an enforcement attorney position currently held open for vacancy savings, existing staff might be able to absorb the initially anticipated additional demands on work load.

The bill provides that the NRB would set fees to be paid by the person or organization petitioning for an easement amendment. Because setting fees too high would discourage petitions (many of which, we believe, are in the public interest), an anticipated fee for full NRB review and decision on an easement amendment would be approximately \$500.00. We thus do not expect such fees to cover the entire cost of administering this new program; some General Fund appropriation would likely be necessary.

Costs of seeking petitioning the Environmental Division for revocation of easement amendments are not estimated, but could be significant because non-use, non-compliance, or factual misrepresentation are evidence-extensive proceedings requiring significant investigative and legal resources. It is expected, however, that revocation petitions would be infrequent.

The bill's purposes are needed and we believe that, as proposed, costs would be less than having the Superior Court Environmental Division or another entity perform the tasks.

5. RECOMMENDED POSITION:

We should support this legislation, but assure a funding mechanism. We suggest a combination of fees and appropriations.

6. RATIONALE:

Conservation easements are critical to preservation of Vermont's open lands, agricultural resources, open lands, and other natural resources. These easements must be able to adapt to future circumstances and future needs of persons benefitting from these easements for the easements to retain their vitality and vibrancy.

7. WHO WILL THE BILL IMPACT FISCALLY AND PROGRAMMATICALLY

See 4, above. Programmatically, the bill would impact state-wide and local land trusts and state agencies that hold conservation easements, such as the Department of Forests, Parks and Recreation, the Housing and Conservation Board, and the Agency of Agriculture.

Please return this bill review as a Microsoft Word document to Dru Roessle in the Governor's Office by e-mail to: drusilla.roessle@state.vt.us