



The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

February 22, 2021

The Honorable Edward Gordon
Chair, House Judiciary Committee
Legislative Office Building, Room 208
Concord, NH 03301

RE: HB 82 – AN ACT relative to amending a conservation easement between the state and a landowner

Dear Chair Gordon and Members of the Committee:

Thank you for the opportunity to comment on HB 82 relative to amending a conservation easement between the state and a landowner. The NH Department of Environmental Services (NHDES) does not support the bill as proposed and suggests that this bill be referred to a study committee.

The bill would amend RSA 477:46 which deals with the enforceability of conservation restrictions, by adding language, the intent of which seems to be to remove a statutory restriction on changing the terms of an established conservation easement involving a governmental body and a landowner. While the actual effect of the language is not entirely clear, NHDES is concerned that it may adversely affect the state's investments in conserving land to protect important resources such as water supplies, wetlands, rivers and lakes, wildlife habitat, and natural storage of flood water.

NHDES has a strong record of utilizing conservation easements as a mechanism to protect lands important to resource protection, to be in compliance with state and federal regulations in wetland permitting, and as established in the Drinking Water and Groundwater Trust Fund. NHDES also has many easements to access and maintain dams. In all of these programs, the terms of conservation easements already can be amended under very strict guidelines created by the Department of Justice, Charitable Trust Bureau. The current law (RSA 477:46) does not need to be changed to allow for amendments and could jeopardize existing conservation easements by allowing them to be overturned, negating the purpose of their establishment. In the case of wetland mitigation easements, this could jeopardize the permit authorizing the work and cause those associated impacts to be restored.

Many conservation easements were designed to protect water supply, which is critical to our state's economy, clean drinking water, and the fish and wildlife that inhabit the landscape. The landowners who have willingly placed easements on their properties, as well as the local, state, and federal funds that paid for these easements, were to ensure the permanent protection of specific resources. The proposed change would create ambiguity around the applicable standards for amending legally established conservation easements held by governmental entities potentially circumventing the purpose for which those easements were established.

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NHDES is also concerned about the bill's potential impact on the public's confidence in the permanence of conservation restrictions. When NHDES invests in land conservation, the department's grants must be matched, and this often involves private donations of money or land interests. NHDES is concerned that this bill would create the perception that conservation easements can easily be changed, resulting in a chilling effect on the public donations that enable the state to leverage its contributions.

Thank you again for the opportunity to comment on HB 82. Should you have questions, please feel free to contact either Lori Sommer of the Wetlands Bureau (Lori.Sommer@des.nh.gov or 271-4059) or Paul Susca of the Drinking Water and Groundwater Bureau (Paul.Susca@des.nh.gov or 271-7061).

Sincerely,

A handwritten signature in black ink, appearing to read "Robert R. Scott", with a long horizontal flourish extending to the right.

Robert R. Scott
Commissioner

ec: Sponsors of HB 82: Representatives Berch, Abbott, and Harvey