



# House of Representatives

**File No. 637**

General Assembly

February Session, 2010

**(Reprint of File No. 95)**

Substitute House Bill No. 5117  
As Amended by House Amendment  
Schedules "A" and "B"

Approved by the Legislative Commissioner  
April 26, 2010

***AN ACT CONCERNING CONSERVATION AND PRESERVATION  
RESTRICTIONS HELD BY THE STATE.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 47-42d of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2010*):

3 (a) For purposes of this section, "state or local land use agency"  
4 includes, but is not limited to, a municipal planning commission,  
5 municipal zoning commission, combined municipal planning and  
6 zoning commission, a municipal zoning board of appeals, municipal  
7 inland wetlands and watercourses agency, a municipal historic district  
8 commission and any state agency that issues permits for the  
9 construction or improvement of real property.

10 (b) No person shall file a permit application with a state or local  
11 land use agency or a local building official or director of health, other  
12 than for interior work in an existing building or for exterior work on  
13 an existing building that does not expand or alter the footprint of [an]  
14 such existing building, relating to property that is subject to a

15 conservation restriction or a preservation restriction unless the  
16 applicant provides proof that the applicant has provided written notice  
17 of such application, by certified mail, return receipt requested, to the  
18 party holding such restriction, including, but not limited to, any state  
19 agency that holds such restriction, not later than sixty days prior to the  
20 filing of the permit application. In lieu of such notice, the applicant  
21 may submit a letter from the holder of such restriction or from the  
22 holder's authorized agent, verifying that the application is in  
23 compliance with the terms of the restriction. If the applicant has  
24 provided written notice pursuant to this subsection, the holder of the  
25 restriction may provide proof to the state or local land use agency or  
26 local building official or director of health that granting of the permit  
27 application will violate the terms of the restriction and such agency,  
28 official or director shall not grant the permit. Nothing in this section  
29 shall be construed to prohibit the filing of a permit application or to  
30 require such written notice when the activity that is the subject of such  
31 permit application will occur on a portion of property that is not  
32 restricted under the terms of such conservation or preservation  
33 restriction.

34 (c) If the applicant fails to comply with the provisions of subsection  
35 (b) of this section, (1) the party holding the conservation or  
36 preservation restriction, other than a state agency that holds such  
37 restriction, may, not later than fifteen days after receipt of actual notice  
38 of permit approval, file an appeal with the state or local land use  
39 agency or local building official or director of health, subject to any  
40 rules of such agency, official or director relating to appeals. The  
41 agency, official or director shall reverse the permit approval upon a  
42 finding that the requested land use violates the terms of such  
43 restriction; or (2) the state agency that holds such restriction may, not  
44 later than thirty days after receipt of actual notice of permit approval,  
45 file an appeal with the state or local land use agency or local building  
46 official or director of health, subject to any rules of such state or local  
47 land use agency, official or director relating to appeals. Such state or  
48 local land use agency, official or director shall immediately reverse

49 such permit approval if the commissioner of the state agency that  
50 holds such restriction certifies that the land use authorized in such  
51 permit violates the terms of such conservation or preservation  
52 restriction. The commissioner of the state agency that holds such  
53 restriction may impose a civil penalty of not more than: (A) Five  
54 thousand dollars for a violation of subsection (b) of this section; and  
55 (B) one thousand dollars for each day that such violation continues  
56 after the applicant receives an order from such commissioner assessing  
57 a civil penalty pursuant to subparagraph (A) of this subsection.

58 Sec. 2. (NEW) (*Effective from passage*) (a) For purposes of this section:

59 (1) "Conservation restriction" has the same meaning as provided in  
60 section 47-42a of the general statutes;

61 (2) "Preservation restriction" has the same meaning as provided in  
62 section 47-42a of the general statutes; and

63 (3) "Open space land" has the same meaning as provided in section  
64 12-107b of the general statutes.

65 (b) Whenever a municipality acquires any real property with the  
66 intent to place a conservation restriction, preservation restriction or  
67 other restriction on the use of such property, including acquiring  
68 property with funds specifically allocated for a conservation or  
69 preservation purpose, such municipality shall record in the land  
70 records a description of any such restriction and any applicable source  
71 of such restriction, including, but not limited to, the date of the  
72 referendum or local legislative body action that authorized such  
73 acquisition contingent upon certain use restrictions and the source of  
74 the funding for the acquisition of such property if such funding  
75 restricted the use of such property.

76 (c) Whenever a municipality intends to permanently protect any  
77 municipal property by dedicating such property as a park or open  
78 space land, such municipality shall record in the land records a  
79 description of such property, the date of such dedication and the local

80 legislative body action that authorized such dedication.

81 (d) The failure of a municipality to comply with the provisions of  
82 subsection (b) or (c) of this section shall not be evidence of the lack of  
83 any such conservation restriction, preservation restriction or open  
84 space land dedication.

85 (e) Nothing in this section shall be construed to amend or alter any  
86 other legal right or obligation of a municipality concerning open space  
87 land or park land.

88 (f) If a municipality fails to comply with a dedication of land as  
89 open space land or park land or the terms of a conservation or  
90 preservation restriction, the Attorney General may bring an action in  
91 the superior court to enforce the public interest in such dedication or  
92 conservation or preservation restriction.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2010</i>	47-42d
Sec. 2	<i>from passage</i>	New section

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Effect	FY 11 \$	FY 12 \$
Department of Agriculture	GF - Revenue Gain	Potential Minimal	Potential Minimal

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

The bill creates a civil penalty of up to \$5,000 for anyone who files a permit application for interior or exterior building work without proof of having provided written notice to the, Department of Agriculture, who holds conservation and preservation restrictions. The bill also creates a fine of \$1,000 per day for any violation continuing beyond the initial penalty.

There are 265 conservation easement restrictions containing over 35,000 acres of farmland soil in the state. The bill may result in a minimal revenue gain, depending on the number of violations from fines. The Department of Agriculture did not collect any revenue for civil penalties of any type in FY 09.

House "A" added language on the filing of a permit application under certain conditions and made technical changes. This does not result in a fiscal impact.

House "B" added provisions on municipal land records concerning conservation and preservation restrictions and open space dedication. This also does not result in a fiscal impact.

**The Out Years**

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

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**OLR Bill Analysis****sHB 5117 (as amended by House "A" and "B")\******AN ACT CONCERNING CONSERVATION AND PRESERVATION RESTRICTIONS HELD BY THE STATE.*****SUMMARY:**

By law, anyone seeking a permit from state or local land use agencies, local building officials, or health directors generally must notify holders of conservation or preservation restrictions on the affected property before filing an application, other than for permits for interior or exterior work not expanding or altering the building's footprint. This bill specifies that it does not prohibit filing a permit application or requiring written notice when the activity that is the subject of the application will take place on a portion of property not restricted under the terms of the conservation or preservation restriction.

Where a state agency holds the restriction, the bill increases, from 15 to 30 days, the amount of time the state agency has to appeal the granted permit. It requires the state agency that holds the restriction to comply with the permitting authority's rules regarding appeals.

Under current law, the permitting authority must reverse its permit approval if it finds that the requested land use violates the restriction. The bill requires the permitting authority to immediately reverse its approval if the state agency commissioner, holding a restriction certifies that the land use activity authorized by the permit violates the restriction.

The bill creates a civil penalty of up to \$5,000 for anyone who files a permit application without proof of having provided written notice to the state agency holding the restriction, as well as a fine of \$1,000 per

day for violations continuing beyond the initial penalty. The bill specifies that it applies only to property subject to a restriction.

The bill requires a municipality to record certain information in the land records whenever it (1) acquires real property with the intent to place a conservation, preservation, or other restriction on its use or (2) intends to permanently protect municipal property by dedicating it as park or open space land. It authorizes the attorney general to bring an action in superior court to enforce these provisions

\*House Amendment "A" adds the language on the filing of permit application where a portion of the property is not restricted and makes technical changes.

\*House Amendment "B" adds the provisions on municipal land records concerning conservation and preservation restrictions and open space dedication.

EFFECTIVE DATE: October 1, 2010, except that the municipal land records provisions take effect upon passage.

**MUNICIPALITIES AND CONSERVATION AND PRESERVATION RESTRICTIONS AND OPEN SPACE DEDICATION**

The bill requires a municipality to record in the land records a description of a restriction and its source whenever it acquires any real property and intends to place a conservation, preservation, or other restriction on the property's use. This includes property acquired with funds specifically allocated for a conservation or preservation purpose. The municipality must also include in its recording the (1) date of the referendum or local legislative body action that authorized the acquisition contingent on certain land use restrictions and (2) funding source for acquiring the property if the funding restricted its use.

Under the bill, whenever a municipality intends to permanently protect any municipal property by dedicating it as a park or open space land, it must record in the land records a property description, the date of dedication, and the local legislative action authorizing the

dedication.

The bill specifies that a municipality's failure to comply with the above provisions is not evidence of the lack of a conservation or preservation restriction, or open space land dedication. It also specifies that it should not be construed as amending or altering any other municipal legal right or obligation concerning open space or park land.

The bill authorizes the attorney general to bring an action in Superior Court to enforce the public interest if a municipality fails to comply with a dedication of open space land or a conservation or preservation restriction.

## **BACKGROUND**

### ***State and Local Land Use Agency***

Under the law, "state or local land use agency" includes a municipal planning commission, municipal zoning commission, combined municipal planning and zoning commission, a municipal zoning board of appeals, municipal inland wetlands agency, a municipal historic district commission, or any state agency that issues permits for the construction or improvement of real property.

### ***Conservation and Preservation Restrictions***

The law prohibits people from filing permit applications relating to property subject to a conservation or preservation restriction unless they show that they provided written notice of the application to the restriction holder at least 60 days before applying. Notice must be sent by certified mail, return receipt requested. In place of the notice, an applicant may submit a letter from the restriction holder, or the holder's authorized agent, verifying that the application complies with the restriction terms. The filing requirements do not apply to permits for (1) interior work in an existing building or (2) exterior work that does not expand or alter the footprint of an existing building.

If the applicant has provided written notice, the restriction holder

may provide proof to the state, local land use agency, local building official, or health director that granting the permit will violate the restriction’s terms. The agency, official, or director cannot grant the permit when the restriction holder provides such proof.

The restriction holder may, no later than 15 days after receiving the permit approval notice, file an appeal with the appropriate state or local agency or person. The agency, official, or director must reverse the permit approval upon finding that the requested land use violates the terms of the restriction.

Under farm and open space preservation programs, a restriction or an easement is placed in the town land record where the property is located and serves to notify any potential buyer that the land can be developed only for agricultural purposes or permanently held in its natural condition.

**COMMITTEE ACTION**

Environment Committee

Joint Favorable Substitute

Yea 29 Nay 0 (03/05/2010)

Planning and Development Committee

Joint Favorable

Yea 17 Nay 3 (04/07/2010)

Judiciary Committee

Joint Favorable

Yea 40 Nay 0 (04/12/2010)