§ 49-0305. Conservation easements; certain common law rules not applicable.

1. A conservation easement may be created or conveyed only by an instrument which complies with the requirements of section 5-703 of the general obligations law and which is subscribed by the grantee. It shall be of perpetual duration unless otherwise provided in such instrument.

2. A conservation easement shall be modified or extinguished only pursuant to the provisions of section 49-0307 of this title. Any such modification or extinguishment shall be set forth in an instrument which complies with the requirements of section 5-703 of the general obligations law or in an instrument filed in a manner prescribed for recording a conveyance of real property pursuant to section two hundred ninety-one of the real property law.

3. (a) A conservation easement shall be held only by a public body or not-for-profit conservation organization, except that the state shall not be authorized or empowered to acquire or hold any conservation easement which is subject to the provisions of article fourteen of the constitution.

(b) Any conservation easement created pursuant to this title shall not limit, restrict or modify the right to construct, operate or continue the use of any facility, or impede any activity, duly authorized under the applicable provisions of the federal natural gas act (15 U.S.C. §§ 717-717 w).

4. A conservation easement shall be duly recorded and indexed as such in the office of the recording officer for the county or counties where the land is situate in the manner prescribed by article nine of the real property law. The easement shall describe the property encumbered by the easement by adequate legal description or by reference to a recorded map showing its boundaries and bearing the seal and signature of a licensed land surveyor, or if the easement encumbers the entire property described in a deed of record, the easement may incorporate by reference the description in such deed, otherwise it shall refer to the liber and page of the deed or deeds of the record owner or owners of the real

property burdened by the conservation easement. An instrument for the purpose of creating, conveying, modifying or terminating a conservation easement shall not be effective unless recorded. A person causing any such document to be so recorded shall forthwith forward a copy thereof to the department, which shall maintain a file of conservation easements.

5. A conservation easement may be enforced in law or equity by its grantor, its holder or by a public body or any not-for-profit conservation organization designated in the easement as having a third party enforcement right, and is enforceable against the owner of the burdened property. Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel or waiver. No general law of the state which operates to defeat the enforcement of any interest in real property shall operate to defeat the enforcement of any conservation easement unless such general law expressly states the intent to defeat the enforcement of such easement or provides for the exercise of the power of eminent domain. It is not a defense in any action to enforce a conservation easement that:

(a) It is not appurtenant to an interest in real property;

(b) It can be or has been assigned to another holder;

(c) It is not of a character that has been recognized traditionally at common law;

(d) It imposes a negative burden;

(e) It imposes affirmative obligations upon the owner of any interest in the burdened property, or upon the holder;

(f) The benefit does not touch or concern real property; or

(g) There is no privity of estate or of contract.

6. The holder of a conservation easement, its agents, employees, or other representatives may enter and inspect the property burdened by a conservation easement in a reasonable manner and at reasonable times to assure compliance with the restriction.

7. The department shall promulgate regulations establishing standards for conservation easements which shall specify but not be limited to:

(a) the minimum term for a conservation easement as is necessary and

appropriate to achieve the policy and purpose of this title, except that such standards shall not preclude taxpayers who own or convey conservation easements from qualifying for benefits under federal or state tax laws when such benefits would otherwise be available by virtue of such ownership or conveyance; and

(b) standards and procedures which require each conservation easement held by a public body to include terms under which the easement shall be modified where the commissioner has found after a non-adjudicatory public hearing at which the public shall be given opportunity to be heard, that such easement is inconsistent with any other interest in land required for the local gathering, transmission or distribution of gas, electricity, water, telephone or cable television services and that no reasonable alternative exists for the local gathering, transmission or distribution of such service. Notice of any such hearing shall be given to the public pursuant to thirty days published notice in the state register, the environmental notice bulletin and in a newspaper having general circulation in the county where the real property burdened by the easement is situated and individual notice shall be given in writing to any person who may be entitled to enforce such easement pursuant to the provisions of subdivision five of this section at such address as such person shall file with the commissioner.

8. Where a conservation easement is modified pursuant to subdivision seven of this section, or pursuant to any regulations promulgated thereunder, such easement shall be modified only to the minimum extent necessary to accommodate the local gathering, transmission or distribution of gas, electricity, water, telephone or cable television service.

9. Written notice shall be provided to the director of the budget and notice published in the state register and the environmental notice bulletin at least thirty days prior to the acquisition, or entry into a contract for the acquisition, on behalf of the state of any conservation easement.