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Forester

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Providing a complete forest management service since 1982

To: House Ag Committee
Re: Forester's licensing, H355

April 28, 2015

Dear House members,

I have been a consulting forester in Vermont for 32 years. I have a degree in Forestry from U Maine at Orono. I've built a very successful business with 1.5 full time forestry employees besides myself, and serve about 50,000 acres, mostly in southern VT, some in northern VT and also all the adjacent states. We do about 35 timber sales per year and about 30 forest plans for various clients, plus special projects. I manage a few large properties, but mostly the typical southern VT family forests, of 50-500 acres. I am also an author on forestry issues including revising the Silvicultural Guide to Northern Hardwoods in the Northeast. This is the primary guidebook used for about 75% of Vermont forests, as it includes the "mixedwoods" types with a softwood component and maples, beech or birches. This came out in print last spring, and I am honored to be an author of this important revision of our previous guide.

I am also licensed in Massachusetts, certified in New York, accredited by the VT Woodlands Association and certified by the American Tree Farm system, and my employee is licensed in New Hampshire. So I may have a unique perspective on licensing. I am primarily against licensing, though I actually stand to benefit personally by it. I do not see the proposed benefits of licensing accruing in adjacent states, in terms of improved forestry practices, better educated foresters, lack of conflict of interest or other "public harm".

The forestry community is divided on this issue. Some organizations are for licensing, some against, with dissent within the organizations. This is not something the forestry community is asking for. This is not something that a majority of landowners are favoring. I have strong disagreement with many aspects of the Sunrise Report, which favored the most restrictive "solution" even though a majority of their comments were not supportive of licensing. Existing foresters, such as myself, stand to gain from this bill. The reduction in competition will allow us to raise our rates. So who will take a day off from work to come and testify?

Most of the issues of "harm" in forest management are instances where landowners made poor choices, either for the person they dealt with without due diligence, or the services they asked for: "Cut the land and give me as much money as possible." Worse yet, they say "But don't clearcut it." Clearcutting is a responsible technique to regenerate a forest in many cases, and if you take out all the value, generally the remaining trees are just weeds, and clearcutting would be a better choice. We call it "high-grading" when they "cut the best and leave the rest". So the logger has been charged with extracting as much value as possible and keeping his expenses to a bare minimum. In a sense, the logger has been hired to ruin that land, and anything he does in the land's favor that reduces income or increases expenses is actually a breach of contract. This is a landowner problem: perhaps landowners should be licensed.

I do not see any clear examples of harm to Vermonters, or the environment, that would be solved by licensing of foresters. It would certainly raise the cost of forestry services, and not just by the license fee. There is the cost of insurance, the additional liability risk not covered by insurance, the cost of continuing education, and the opportunity created by loss of

competition. It is known that licensing of any profession raises the fees charges for the service. It has also been estimated that the cost to the FP&R Dept to license their 35-40 foresters, in terms of lost time for CE credits, could be as high as \$50,000.

I do not see raising the cost of services as good for forestry or for the forests of the state of Vermont. Vermont likes to pride itself in the concept of a “working landscape” with farm and forest activity, though they seem to do some silly things to stifle this activity. Vermont has perhaps the highest percent of self-employed folks, often providing multiple services. We value the independent thinking person, who might do forestry, surveying, real estate, roofing, tax preparation in March and April, and sell fresh eggs. I know several folks with part-time forestry as part of their business that would not bother in this new situation, and they are all competent. Making forestry services less available and more expensive would be going in the wrong direction. The recent detailed survey of timber harvest impacts and activity in Vermont found that 92% of harvesting in Vermont has specific professional forester involvement. (page 30-32, Assessment of Timber Harvesting in Vermont 2012, published 12/14) That is a good number. Licensing will effectively reduce that number, which is a bad trend. In the other states nearby, I do not see licensing as providing any special means of consumer protection. There are still conflicts of interest, excessive fees, high-grading, and folks with a poor knowledge of silviculture and forestry practice who are nevertheless qualified to be licensed.

Is there room for improvement in the practice of forestry? Sure there is. But I find Vermont to have a higher standard of forestry practice than any of the nearby states. Landowners are generally more educated about forestry options and outcomes, and this is largely due to Use Value Appraisal. About half of the eligible forestland is enrolled, and this means that landowners have some relationship with a forester. Also, most of the loggers work on UVA land, and with foresters, so they have a higher standard. Real problems are rare. Vermont has a higher enrollment of forestland in their forestry tax program (UVA) than other states, and the recent harvest impact study found that about 76% of all harvesting was done on UVA land, requiring compliance with an approved forest management plan. (Assessment page 26) The Adirondacks, for example (with certified foresters) has a very low level of forestry practice, with a lot of high grading. Massachusetts has poor forestry practices (also a lot of high-grading) even with licensed foresters and loggers. Part of this is poor access to low grade markets, particularly in the Berkshires. It really comes down to whether landowners care about the land. High taxes, ownership costs (like forestry fees) and regulation are the things that cause landowners to say “Cut it off and sell it, I’ll move my capital into something else”. And these are usually the worst cases.

Forestry activities are highly regulated in Vermont: All forest harvesting in Vermont is subject to strict water quality protection laws, the “Acceptable Management Practices”, whether or not a forester is involved. These laws require water to be kept pure of debris and siltation, with substantial penalties for non-compliance. There are only a few cases brought to enforcement each year. Additionally, any clearcuts or heavy cuts are also regulated if they are over 40 acres. This requires a permit from the Dept of Forestry and Fish and Wildlife review. A “heavy cut” is technically defined, and 100 trees per acre can be left and still be a violation. Basically, if it looks ugly to a tourist, it is a heavy cut. (Sorry, that may be a subjective comment.) Only a few heavy cut cases are brought to enforcement each year, and thousands of acres are permitted for heavy cuts (but not enough to create an appropriate age-class balance). Additionally contract laws, wetland rules, high elevation sites and whole-tree chip harvests are regulated. A summary of laws and regulations affecting logging in Vermont can be found at

http://www.vtfrpr.org/regulate/documents/Timber_Harvest09_web.pdf This is a 52 page

book covering logging, trucking, health and safety, business practices and taxes. So, any egregious harm to Vermonters or the environment is already covered under current law.

If you still find it appropriate to regulate foresters by the most extreme method, rather than a registration or certification process, I have several very specific comments regarding the current draft of the bill, H 355. I have heard of some changes but have not seen any new language:

P2 lines 18-21: Forestry definition is so broad that Wildlife biologists, Conservation professionals Arborists, and other related professionals that are not foresters, will need a forestry license. A neighbor might be in violation if he suggests that “it looks like time to harvest those pine trees.” That might be a good thing, but they are probably not even aware of it at this point. There is contradictory language on page 4 line 14, and this should be clarified. A simpler approach to this whole thing would be to require a license only to prepare a UVA forest management plan, or other very specific tasks. “Sustainable” is nearly impossible to define. And the current language seems to suggest that if I am not doing forestry in a sustainable way, I don’t need a license.

P3 lines 1-4. Timber appraisal: does this mean that a mill, broker or logger, to give a price on standing timber, needs to be a licensed forester? What if I put a harvest unit out to bid to loggers? Can the loggers give me an appraisal of the unit?

Pg 3: no definition of forestlands. There is one in use with Use Value Appraisal:

(A) any land, exclusive of any house site, which is at least 25 acres in size and which is under active long-term forest management for the purpose of growing and harvesting repeated forest crops in accordance with minimum acceptable standards for forest management. Such land may include eligible ecologically significant treatment areas in accordance with minimum acceptable standards for forest management and as approved by the Commissioner...

P4 line 14: Other related professionals do not need to be licensed, but this conflicts with page 3. If a conservation biologist or wildlife biologist is making recommendations regarding the management of forestland, do they need to be licensed as foresters? Page 2 says yes, Page 4 says no. If a logger is telling a landowner that their maple trees are ready for harvest, are they covered under page 2 or page 4? Now is the time to clear this up.

P4 line 16-21: “Direct supervision” is defined in an unworkable way. Forest technicians are often sent out to mark trees for harvest or collect cruise data, by themselves, for days at a time. I am directly responsible for their training, actions and results. But I cannot be “on site and present” for their every action. I had heard that this was changed.

P6 line 3. Appointees should have 15 years experience, not just 5. How can someone with only 5 years of experience pass judgment over someone with 30 years experience?

P6 sections 1 and 2 :I am not in favor of the use the SAF Certified Forester Exam. There should be a Vermont-specific exam created by the Advisory Board.

P7 section 4 or 5. There should be a path to licensure that does not involve the degree, but allows some type of apprenticeship. University degrees are increasingly expensive and less relevant to ‘real life’ practice.

P9 section 5 is poorly worded. Habit forming drugs like caffeine and nicotine? Perhaps it should say “illegal use of drugs”. This is covered by section 3. Intemperate is also defined as immoderate or unwilling to compromise. I would be offended to be considered moderate. I realize that this is supposed to be applied to illegal drug use, but the language, as written, is much more broadly applicable. I was told that this is “standard language”. If it is poor language, why not change it?

P9 section 6 is poorly worded. If someone has a physical disability that interferes with their ability to practice forestry, does that include bad hips? Overweight? Poor eyesight? I’m 55 and overweight, and that certainly interferes with my ability to practice. It would be better to say “that renders them unable to practice forestry competently”, or to that effect. This is already covered by section 3.

P9 section 8: This is too broadly worded. Anyone who deliberately and repeatedly breaks the rules should be punished, and the wording should be quite clear on this. Current wording suggest that one negligent act that results in breaking one rule of FP&R is just cause for revoking a license. But we cannot be held responsible for the actions of others who are not under our direct employment, such as logging contractors. If I inspect a logging job on Monday, and the logger does something stupid on Tuesday, then that could be considered my negligence. Negligence needs to be removed from this. This goes too far to take away a license. Also, the interpretation of a management plan with actions on the ground can be subjective. The Plum Creek case is a prime example and is currently before the VT Supreme Court. After exhausting the Department’s appeal process, Plum Creek went to the Superior Court, which found that Plum Creek followed their plan in all stands. So the Department foresters are not always “correct”. Most landowners do not have the resources to pursue justice this far, and might rather just pay a fine. This might leave the forester at risk of losing his license, since the record will show that a “FP&R rule” has been broken, but the interpretation may be subjective.

I am not satisfied by Mr. Benjamin’s assurances that “We would never interpret the language this way”. All too often, we have been assured that the details of a bill’s language are nothing to worry about. When it goes to court, the judges are not too interested in how we interpret things today. They are interested in what the words mean.

Respectfully Yours,
Robbo Holleran