

1 H.851

2 Introduced by Committee on Natural Resources and Energy

3 Date:

4 Subject: Conservation and development; judiciary; land use; right to forest;

5 nuisance

6 Statement of purpose of bill as introduced: This bill proposes to provide that  
7 certain forestry operations would not be subject to liability as a public or  
8 private nuisance. The bill would also provide that a municipal bylaw may not  
9 provide for the regulation of forestry operations.

10 An act relating to the conduct of forestry operations

11 It is hereby enacted by the General Assembly of the State of Vermont:

12 Sec. 1. 12 V.S.A. chapter 196 is added to read:

13 CHAPTER 196. VERMONT RIGHT TO CONDUCT FORESTRY

14 OPERATIONS

15 § 5755. FINDINGS

16 The General Assembly finds that:

17 (1) Private and public forestlands:

18 (A) constitute unique and irreplaceable resources, benefits, and  
19 values of statewide importance;

- 1           (B) contribute to the protection and conservation of wildlife habitat,  
2           air, water, and soil resources of the State;
- 3           (C) mitigate the effects of climate change; and
- 4           (D) result in general benefit to the health and welfare of the people of  
5           the State.
- 6           (2) The forest products industry, including maple sap collection:
- 7           (A) is a major contributor to and is valuable to the State's economy  
8           by providing jobs to its citizens;
- 9           (B) is essential to the manufacture of forest products that are used  
10           and enjoyed by the people of the State; and
- 11           (C) benefits the general welfare of the people of the State.
- 12           (3) Private and public forestlands are critical for and contribute  
13           significantly to the State's outdoor recreation and tourism economies.
- 14           (4) The economic management of public and private forestlands  
15           contributes to sustaining long-term forest health, integrity, and productivity.
- 16           (5) Forestry operations are adversely impacted by the encroachment of  
17           urban, commercial, and residential land uses throughout the State that result in  
18           forest fragmentation and conversion and erode the health and sustainability of  
19           remaining forests.
- 20           (6) As a result of encroachment on forests, conflicts have arisen between  
21           traditional forestry land uses and urban, commercial, and residential land uses

1 that threaten to permanently convert forestland to other uses, resulting in an  
2 adverse impact to the economy and natural environment of the State.

3 (7) The encouragement, development, improvement, and preservation of  
4 forestry operations will result in a general benefit to the health and welfare of  
5 the people of the State and the State's economy.

6 (8) The forest products industry, in order to survive, likely will need to  
7 change, adopt new technologies, and diversify into new products.

8 (9) Forestry operations, including logging, transportation, and  
9 processing of on-site-derived forest products may be subject to lawsuits based  
10 on the theory of nuisance. Nuisance suits could encourage and result in the  
11 conversion of forestland and loss of the forest products industry.

12 (10) It is in the public interest of the people of the State to ensure that  
13 forestry operations that are conducted in accordance with the following are  
14 protected and encouraged and are not subject to public and private nuisance  
15 actions arising out of conflicts between forestry operations and urban,  
16 commercial, and residential uses:

17 (A) the Acceptable Management Practices for Protecting Water  
18 Quality on Logging Jobs in Vermont, as adopted by the Commissioner of  
19 Forests, Parks and Recreation;

20 (B) accepted silvicultural practices as defined by the Commissioner  
21 of Forests, Parks and Recreation; and

22 (C) the requirements of this subchapter.

1     § 5756. DEFINITIONS

2             As used in this chapter:

3             (1) “Close out” means all activities conducted after cessation of  
4             harvesting that are necessary to stabilize areas impacted by forestry operations.  
5             Closeout includes the maintenance of landings, logging roads, skid trails, and  
6             stream crossings and removal of logging slash and material from roads and  
7             landings in compliance with the Acceptable Management Practices for  
8             Maintaining Water Quality on Logging Jobs in Vermont as adopted by the  
9             Commissioner.

10            (2) “Commissioner” means the Commissioner of Forests, Parks and  
11            Recreation.

12            (3) “Forest product” means logs, pulpwood, wood chips, maple sap, or  
13            bark.

14            (4) “Forestry operation” means activities related to the management of  
15            forests, including timber harvests; pruning; planting; reforestation; pest,  
16            disease, and invasive species control; wildlife habitat management; and  
17            fertilization. “Forestry operation” includes the primary processing of forest  
18            products on a parcel where a timber harvest occurs.

19            (5) “Timber” means trees, saplings, bushes, seedlings, shrubs, and  
20            sprouts from which trees, of every size, nature, kind, and description, may  
21            grow.

1           (6) “Timber harvest” means a forestry operation involving the harvest of  
2 timber.

3           § 5757. FORESTRY OPERATIONS; PROTECTION FROM NUISANCE  
4                   LAWSUITS

5           (a) The following activities shall be entitled to a rebuttable presumption  
6 that the activity does not constitute a public or private nuisance if the activities  
7 are conducted in substantial compliance with the Acceptable Management  
8 Practices for Maintaining Water Quality on Logging Jobs in Vermont as  
9 adopted by the Commissioner, accepted silvicultural practices as defined by  
10 the Commissioner, and other applicable law:

11           (1) a forestry operation;

12           (2) a change in ownership or size of a parcel on which a forestry  
13 operation is being conducted;

14           (3) cessation or interruption of a forestry operation;

15           (4) enrollment in governmental forestry or conservation programs;

16           (5) adoption of new forestry technology;

17           (6) a change in a forestry operation, including a change in the type of a  
18 forestry operation;

19           (7) construction, maintenance, and repair of log landings, logging roads,  
20 and skid trails;

21           (8) removal, storage, or stockpiling of vegetation or timber;

1           (9) visual changes due to the removal, storage, or stockpiling of  
2           vegetation or forest products;

3           (10) noise from forestry equipment used in normal, generally accepted  
4           forestry operations; or

5           (11) the use of chemicals normally utilized in forestry operations and  
6           applied in accordance with all State and federal requirements.

7           (b) The presumption under subsection (a) of this section that a listed  
8           forestry operation or other activity does not constitute a nuisance may be  
9           rebutted by a showing that the forestry operation or other activity has a  
10           substantial adverse effect on health, safety, or welfare, or has a noxious and  
11           significant interference with the use and enjoyment of the neighboring  
12           property.

13           (c) Nothing in this section shall be construed to limit the authority of State  
14           or local boards of health to abate nuisances affecting the public health.

15           § 5758. RECOVERY OF COSTS AND ATTORNEY'S FEES

16           If a court determines that a nuisance action brought against a person  
17           conducting a forestry operation or other activity listed under subsection  
18           5757(a) of this title must be dismissed because the forestry operation or other  
19           activity does not constitute a public or private nuisance under section 5757 of  
20           this title, the person conducting the forestry operation or other activity shall be  
21           awarded the actual amount of costs and expenses reasonably incurred in

1 connection with the defense of the action, including reasonable attorney's fees.

2 No costs or attorney's fees shall be assessed or awarded against the State.

3 Sec. 2. 24 V.S.A. § 4413(d) is amended to read:

4 (d)(1) A bylaw under this chapter shall not regulate:

5 (A) required agricultural practices, including the construction of farm  
6 structures, as those practices are defined by the Secretary of Agriculture, Food  
7 and Markets ~~or~~;

8 (B) accepted silvicultural practices, as defined by the Commissioner  
9 of Forests, Parks and Recreation, including practices which are in compliance  
10 with the Acceptable Management Practices for Maintaining Water Quality on  
11 Logging Jobs in Vermont, as adopted by the Commissioner of Forests, Parks  
12 and Recreation; or

13 (C) forestry operations.

14 ~~(1)(2) For purposes of~~ As used in this section;

15 (A) "~~farm~~ Farm structure" means a building, enclosure, or fence for  
16 housing livestock, raising horticultural or agronomic plants, or carrying out  
17 other practices associated with accepted agricultural or farming practices,  
18 including a silo, as "farming" is defined in 10 V.S.A. § 6001(22), but excludes  
19 a dwelling for human habitation.

20 (B) "Forestry operations" has the same meaning as in 10 V.S.A.  
21 § 2602.

1           ~~(2)~~(3) A person shall notify a municipality of the intent to build a farm  
2 structure and shall abide by setbacks approved by the Secretary of Agriculture,  
3 Food and Markets. No municipal permit for a farm structure shall be required.

4           ~~(3) A municipality may enact a bylaw that imposes forest management~~  
5 ~~practices resulting in a change in a forest management plan for land enrolled in~~  
6 ~~the use value appraisal program pursuant to 32 V.S.A. chapter 124 only to the~~  
7 ~~extent that those changes are silviculturally sound, as determined by the~~  
8 ~~Commissioner of Forests, Parks and Recreation, and protect specific natural,~~  
9 ~~conservation, aesthetic, or wildlife features in properly designated zoning~~  
10 ~~districts. These changes also must be compatible with 32 V.S.A. § 3755.~~

11           (4) This subsection does not prevent an appropriate municipal panel,  
12 when issuing a decision on an application for land development over which the  
13 panel otherwise has jurisdiction under this chapter, from imposing reasonable  
14 conditions under subsection 4464(b) of this title to protect wildlife habitat,  
15 threatened or endangered species, or other natural, historic, or scenic resources  
16 and does not prevent the municipality from enforcing such conditions,  
17 provided that the reasonable conditions do not restrict or regulate forestry  
18 operations unrelated to land development.

19       Sec. 3. EFFECTIVE DATE

20           This act shall take effect on July 1, 2016.