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S.101

Introduced by Senators Rodgers, Branagan, Collamore, Degree, and Starr

Referred to Committee on

Date:

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

Statement of purpose of bill as introduced: This bill proposes to provide that
certain forestry operations would not be subject to liability as a public or
private nuisance.

An act relating to the conduct of forestry operations

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

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

CHAPTER 196. VERMONT RIGHT TO CONDUCT FORESTRY

OPERATIONS

§ 5755. FINDINGS

The General Assembly finds that:

(1) Private and public forestlands:

(A) constitute unique and irreplaceable resources, benefits, and
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) Conventional forestry practices, including logging, transportation,
9 and processing of on-site-derived forest products may be subject to lawsuits
10 based on the theory of nuisance. Nuisance suits could encourage and result in
11 the 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 lawfully conducted conventional forestry practices are protected and
14 encouraged and are not subject to public and private nuisance actions arising
15 out of conflicts between forestry operations and urban, commercial, and
16 residential uses.

17 § 5756. DEFINITIONS

18 As used in this chapter:

19 (1) "Commissioner" means the Commissioner of Forests, Parks and
20 Recreation.

21 (2) "Conventional forestry practices" mean:

1 (A) forestry operations;

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

4 (C) cessation or interruption of a forestry operation or a change in a
5 forestry operation, including a change in the type of a forestry operation;

6 (D) enrollment in governmental forestry or conservation programs;

7 (E) adoption of new forestry technology;

8 (F) construction, maintenance, and repair of log landings, logging
9 roads, and skid trails;

10 (G) visual changes due to the removal, storage, or stockpiling of
11 vegetation or forest products; or

12 (H) noise from forestry equipment used as part of a normal forestry
13 operation.

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

16 (4) “Forestry operation” means activities related to the management of
17 forests, including timber harvests; removal, storage, or stockpiling of
18 vegetation or timber; pruning; planting; reforestation; pest, disease, and
19 invasive species control; wildlife habitat management; and fertilization.

20 “Forestry operation” includes the primary processing of forest products on a
21 parcel where a timber harvest occurs.

1 (5) “Timber” means trees, saplings, seedlings, and sprouts from which
2 trees of every size, nature, kind, and description may grow.

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

5 § 5757. FORESTRY OPERATIONS; PROTECTION FROM NUISANCE

6 LAWSUITS

7 (a) Conventional forestry practices shall be entitled to a rebuttable
8 presumption that the activity does not constitute a public or private nuisance if
9 the conventional forestry practices are conducted in compliance with the
10 Acceptable Management Practices for Maintaining Water Quality on Logging
11 Jobs in Vermont as adopted by the Commissioner; and other applicable law.

12 (b) The presumption under subsection (a) of this section that a conventional
13 forestry practice does not constitute a nuisance may be rebutted by showing
14 that a nuisance resulted from:

15 (1) the negligent operation of the conventional forestry practice; or

16 (2) violation of State or federal law during the conduct of the
17 conventional forestry practice.

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

20 Sec. 2. EFFECTIVE DATE

21 This act shall take effect on July 1, 2017.