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S.101

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

Referred to Committee on Judiciary

Date: February 28, 2017

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

21 between traditional forestry land uses and urban, commercial, and residential

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

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

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

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

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

18 § 5756. DEFINITIONS

19 As used in this chapter:

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

- 1 (2) "Conventional forestry practices" mean:
- 2 (A) forestry operations;
- 3 (B) a change in ownership or size of a parcel on which a forestry
4 operation is being conducted;
- 5 (C) cessation or interruption of a forestry operation or a change in a
6 forestry operation, including a change in the type of a forestry operation;
- 7 (D) enrollment in governmental forestry or conservation programs;
- 8 (E) adoption of new forestry technology;
- 9 (F) construction, maintenance, and repair of log landings, logging
10 roads, and skid trails;
- 11 (G) visual changes due to the removal, storage, or stockpiling of
12 vegetation or forest products; or
- 13 (H) noise from forestry equipment used as part of a normal forestry
14 operation.
- 15 (3) "Forest product" means logs, pulpwood, wood chips, maple sap, or
16 bark.
- 17 (4) "Forestry operation" means activities related to the management of
18 forests, including timber harvests; removal, storage, or stockpiling of
19 vegetation or timber; pruning; planting; reforestation; pest, disease, and
20 invasive species control; wildlife habitat management; and fertilization.
- 21 "Forestry operation" includes the primary processing of forest products on a

1 ~~parcel where a timber harvest occurs.~~

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

4 (6) "Timber harvest" means a forestry operation involving the harvest of
5 timber.

6 § 5757. FORESTRY OPERATIONS; PROTECTION FROM NUISANCE

7 LAWSUITS

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

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

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

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

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

21 Sec. 2. EFFECTIVE DATE

1

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

~~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;~~

~~(B) contribute to the protection and conservation of wildlife, wildlife habitat, air, water, and soil resources of the State;~~

~~(C) provide a resource for the State constitutional right to hunt, fish, and trap;~~

~~(D) mitigate the effects of climate change; and~~

~~(E) result in general benefit to the health and welfare of the people of the State.~~

~~(2) The forest products industry, including maple sap collection:~~

~~(A) is a major contributor to and is valuable to the State's economy by providing jobs to its citizens;~~

~~(B) is essential to the manufacture of forest products that are used and enjoyed by the people of the State; and~~

~~(C) benefits the general welfare of the people of the State.~~

~~(3) Private and public forestlands are critical for and contribute significantly to the State's outdoor recreation and tourism economies.~~

~~(4) The economic management of public and private forestlands contributes to sustaining long-term forest health, integrity, and productivity.~~

~~(5) Forestry operations are adversely impacted by the encroachment of urban, commercial, and residential land uses throughout the State that result in forest fragmentation and conversion and erode the health and sustainability of remaining forests.~~

~~(6) As a result of encroachment on forests, conflicts have arisen between traditional forestry land uses and urban, commercial, and residential land uses that threaten to permanently convert forestland to other uses, resulting in an adverse impact to the economy and natural environment of the State.~~

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

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

~~(9) Conventional forestry practices, including logging, transportation, and processing of forest products may be subject to unnecessary or adversarial lawsuits based on the theory of nuisance. Nuisance suits could encourage and result in the conversion of forestland and loss of the forest products industry.~~

~~(10) It is in the public interest of the people of the State to ensure that lawfully conducted conventional forestry practices are protected and encouraged and are not subject to public and private nuisance actions arising out of conflicts between forestry operations and urban, commercial, and residential uses.~~

§ 5756. DEFINITIONS

As used in this chapter:

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

~~(2) "Conventional forestry practices" means:~~

~~(A) forestry operations;~~

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

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

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

~~(E) adoption of new forestry technology;~~

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

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

~~(H) noise from forestry equipment used as part of a normal forestry operation; or~~

~~(I) the transport or trucking of forest products or of equipment on, to, or from the site of a forestry operation.~~

~~(3) "Forest product" means logs; pulpwood; veneer; bolt wood; wood~~

~~chips; stud wood; poles; pilings; biomass; fuel wood; maple sap; or bark.~~

~~(4) “Forestry operation” means activities related to the management of forests, including timber harvests; removal, storage, or stockpiling of vegetation or timber; pruning; planting; lumber processing with portable sawmills; reforestation; pest, disease, and invasive species control; wildlife habitat management; and fertilization. “Forestry operation” includes one or both of the following:~~

~~(A) the primary processing of forest products on a parcel where a timber harvest occurs; and~~

~~(B) the primary processing of forest products at a site that is not the harvest site, provided that:~~

~~(i) the person conducting the forestry operations owns or has permission to use the site for the forestry operation;~~

~~(ii) the forestry operation was established prior to surrounding activities that are not forestry operations;~~

~~(iii) the site is used by the forestry operation for 12 or fewer months in any two-year period or 24 or fewer months in any five-year period;~~

~~(iv) the forestry operation complies with all applicable law; and~~

~~(v) only portable, nonpermanent equipment is used to process the forest products at the site.~~

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

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

~~§ 5757. FORESTRY OPERATIONS; PROTECTION FROM NUISANCE
LAWSUITS~~

~~(a) Except as provided for under subsections (b) and (c) of this section, a person conducting a conventional forestry practice shall be entitled to a rebuttable presumption that the conventional forestry practice does not constitute a public or private nuisance if the person conducts the conventional forestry practice in compliance with the following:~~

~~(1) the Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont as adopted by the Commissioner under 10 V.S.A. § 2622; and~~

~~(2) other applicable law.~~

~~(b) The presumption under subsection (a) of this section that a person~~

~~conducting a conventional forestry practice does not constitute a nuisance may be rebutted by showing that a nuisance resulted from:~~

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

~~(2) a violation of State, federal, or other applicable law during the conduct of the conventional forestry practice.~~

~~(c) Upon motion of a complaining party, there shall be no presumption under subsection (a) of this section that conventional forestry practice does not constitute a nuisance, if a court determines that the conventional forestry practice has a substantial adverse effect on health, safety, or welfare, or has a noxious and significant interference with the use and enjoyment of the property that the complaining party owns or controls.~~

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

Sec. 2. EFFECTIVE DATE

~~This act shall take effect on passage.~~

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;

(B) contribute to the protection and conservation of wildlife, wildlife habitat, air, water, and soil resources of the State;

(C) provide a resource for the State constitutional right to hunt, fish, and trap;

(D) mitigate the effects of climate change; and

(E) result in general benefit to the health and welfare of the people of the State.

(2) The forest products industry, including maple sap collection:

(A) is a major contributor to and is valuable to the State's economy by providing jobs to its citizens;

(B) is essential to the manufacture of forest products that are used

and enjoyed by the people of the State; and

(C) benefits the general welfare of the people of the State.

(3) Private and public forestlands are critical for and contribute significantly to the State's outdoor recreation and tourism economies.

(4) The economic management of public and private forestlands contributes to sustaining long-term forest health, integrity, and productivity.

(5) Forestry operations are adversely impacted by the encroachment of urban, commercial, and residential land uses throughout the State that result in forest fragmentation and conversion and erode the health and sustainability of remaining forests.

(6) As a result of encroachment on forests, conflicts have arisen between traditional forestry land uses and urban, commercial, and residential land uses that threaten to permanently convert forestland to other uses, resulting in an adverse impact to the economy and natural environment of the State.

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

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

(9) Conventional forestry practices, including logging, transportation, and processing of forest products may be subject to unnecessary or adversarial lawsuits based on the theory of nuisance. Nuisance suits could encourage and result in the conversion of forestland and loss of the forest products industry.

(10) It is in the public interest of the people of the State to ensure that lawfully conducted conventional forestry practices are protected and encouraged and are not subject to public and private nuisance actions arising out of conflicts between forestry operations and urban, commercial, and residential uses.

§ 5756. DEFINITIONS

As used in this chapter:

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

(2) "Conventional forestry practices" means:

(A) forestry operations;

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

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

(D) enrollment in governmental forestry or conservation programs;

(E) adoption of new forestry technology;

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

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

(H) noise from forestry equipment used as part of a forestry operation; or

(I) the transport or trucking of forest products or of equipment on, to, or from the site of a forestry operation.

(3) "Forest product" means logs; pulpwood; veneer; bolt wood; wood chips; stud wood; poles; pilings; biomass; fuel wood; maple sap; or bark.

(4) "Forestry operation" means activities related to the management of forests, including timber harvests; removal, storage, or stockpiling of vegetation or timber; pruning; planting; lumber processing with portable sawmills; reforestation; pest, disease, and invasive species control; wildlife habitat management; and fertilization. "Forestry operation" includes one or both of the following:

(A) the primary processing of forest products on a parcel where a timber harvest occurs; and

(B) the primary processing of forest products at a site that is not the harvest site, provided that:

(i) the person conducting the forestry operations owns or has permission to use the site for the forestry operation;

(ii) the forestry operation was established prior to surrounding activities that are not forestry operations;

(iii) the site is used by the forestry operation for 12 or fewer months in any two-year period or 24 or fewer months in any five-year period;

(iv) the forestry operation complies with all applicable law; and

(v) only portable, nonpermanent equipment is used to process the forest products at the site.

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

(6) "Timber harvest" means a forestry operation involving the harvesting of timber.

~~§ 5757. FORESTRY OPERATIONS; PROTECTION FROM NUISANCE
LAWSUITS~~

~~(a) Except as provided for under subsections (b) and (c) of this section, a person conducting a conventional forestry practice shall be entitled to a rebuttable presumption that the conventional forestry practice does not constitute a public or private nuisance if the person conducts the conventional forestry practice in compliance with the following:~~

~~(1) the Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont as adopted by the Commissioner under 10 V.S.A. § 2622; and~~

~~(2) other applicable law.~~

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

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

~~(2) a violation of State, federal, or other applicable law during the conduct of the conventional forestry practice.~~

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

~~§ 5757. FORESTRY OPERATIONS; PROTECTION FROM NUISANCE
LAWSUITS~~

~~(a) Except as provided for under subsections (b) and (c) of this section, a person conducting a conventional forestry practice shall be entitled to a rebuttable presumption that the conventional forestry practice does not constitute a public or private nuisance if the person conducts the conventional forestry practice in compliance with the following:~~

~~(1) the Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont as adopted by the Commissioner under 10 V.S.A. § 2622; and~~

~~(2) other applicable law.~~

~~(b) The presumption under subsection (a) of this section that a person conducting a conventional forestry practice does not constitute a nuisance may be rebutted by showing:~~

~~(1) a nuisance resulted from the negligent operation of the conventional~~

forestry practice;

(2) a nuisance resulted from a violation of State, federal, or other applicable law during the conduct of the conventional forestry practice; or

(3) clear and convincing evidence that the conventional forestry practice has a substantial adverse effect on the health, safety, or welfare of the complaining party.

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

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.