

SENATE SUBSTITUTE FOR

HOUSE BILL NO. 5953

(As amended by the Senate, December 12, 2002)

A bill to provide for circumstances under which certain forestry operations shall not be found to be a public or private nuisance; to provide for certain forestry management practices; to provide for certain powers and duties for certain state agencies and departments; and to provide remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "right to forest act".

3 Sec. 2. The legislature finds:

4 (a) That forestry operations are valuable to the state's
5 economy, provide jobs to its citizens, can be an effective wild-
6 life management tool, are essential to the manufacture of for-
7 estry products that are used and enjoyed by the people of the
8 state, and benefit the general welfare of the people of the
9 state.

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1 (b) That forestry operations are adversely affected by the
2 random encroachment of urban and residential land uses throughout
3 rural areas of the state.

4 (c) That, as a result of random encroachment, conflicts have
5 arisen between traditional forestry land uses and urban and resi-
6 dential land uses.

7 (d) That conflicts between forestry and urban land uses
8 threaten to permanently convert forestland to other uses, whereby
9 the forestland resources are permanently lost to the economy and
10 the human and physical environments of the state.

11 (e) That it is in the best interest of the state to ensure
12 that forestry operations using generally accepted forestry man-
13 agement practices are not subject to public and private nuisance
14 actions arising out of conflicts between the forestry operations
15 and urban and residential land uses.

16 Sec. 3. As used in this act:

17 (a) "Commission" means the commission of natural resources.

18 (b) "Department" means the department of natural resources.

19 (c) "Forest" means a tract of land that is at least 10%
20 stocked by trees of any size, whether of commercial or noncommer-
21 cial species, or formerly having tree cover and not currently
22 developed for nonforest use, including woodlands, woodlots, wind-
23 breaks, and shelter belts.

24 (d) "Forestry operations" means activities related to the
25 harvesting, reforestation, and other management activities,
26 including, but not limited to, thinning, pest control,

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1 fertilization, and wildlife management, that are consistent with
2 principles of sustainable forestry.

3 (e) "Generally accepted forestry management practices" means
4 those forest management practices as prescribed by the
5 commission. In prescribing generally accepted forestry manage-
6 ment practices, the commission shall give due consideration to
7 available department information, written recommendations, and
8 comments from the department and other interested persons that
9 may include, but are not limited to, all of the following:

10 (i) The department of agriculture.

11 (ii) The Michigan state university extension.

12 (iii) The United States department of agriculture agencies,
13 services, and programs.

14 (iv) College and university forestry programs.

15 (v) Professional, industry, and conservation organizations.

16 (f) "Landowner" means the possessor of a fee interest in
17 land or a tenant, lessee, occupant, or other person in lawful
18 control of land.

19 (g) "Sustainable forestry" means forestry practices that are
20 designed to meet present and future wood product needs by employ-
21 ing a land stewardship ethic that integrates the reforestation,
22 managing, growing, nurturing, and harvesting of trees for useful
23 products with the conservation of soil, air and water quality,
24 wildlife and fish habitat, and visual changes.

25 (h) "Timber" means live or dead trees, including, but not
26 limited to, bark, foliage, wood, and firewood.

1 Sec. 4. (1) Forestry operations shall not be found to be a
2 public or private nuisance if the forestry operations alleged to
3 be a nuisance conform to generally accepted forestry management
4 practices. Generally accepted forestry management practices
5 shall be reviewed annually by the commission and revised as con-
6 sidered necessary.

7 (2) Forestry operations voluntarily using sustainable forestry
8 practices
9 as approved by the commission shall not be found to be a public
10 or private nuisance if the forestry operations existed before a
11 change in the land use or occupancy of land within 1 mile of the
12 boundaries of the forestland, and if before that change in land
13 use or occupancy, the forestry operations would not have been a
14 nuisance.

15 (3) Forestry operations that are in conformance with gener-
16 ally accepted forestry management practices shall not be found to
17 be a public or private nuisance as a result of any of the
18 following:

19 (a) A change in ownership or size.

20 (b) Cessation or interruption of forestry operations.

21 (c) Enrollment in governmental forestry or conservation
22 programs.

23 (d) Adoption of new forestry technology.

24 (4) As used in this section, a public or private nuisance
25 includes, but is not limited to, allegations of nuisance based on
26 any of the following:

27 (a) Visual changes due to the removal of vegetation or
timber.

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1 (b) Noise from forestry equipment used in normal, generally
2 accepted forestry management practices.

3 (c) Removal of vegetation or timber on a forest adjoining
4 the property of another landowner.

5 (d) The use of chemicals normally utilized in forestry oper-
6 ations, and applied under generally accepted forestry management
7 practices.

8 Sec. 5. In any nuisance action in which forestry operations
9 are alleged to be a nuisance, if the defendant landowner or for-
10 estry operation prevails, the landowner or forestry operation may
11 recover from the plaintiff the actual amount of costs and
12 expenses determined by the court to have been reasonably incurred
13 by the landowner or forestry operation in connection with the
14 defense of the action, together with reasonable and actual attor-
15 ney fees.

16 Sec. 6. This act does not supersede, negate, or determine
17 any protection of land, farms, or farming operations that are
18 subject to the Michigan right to farm act, 1981 PA 93,
19 MCL 286.471 to 286.474.