

HOUSE BILL No. 5953

April 23, 2002, Introduced by Reps. Bradstreet, Vear, Drolet, Shackleton, DeVuyst, DeRossett, Sheltroun, Neumann, Rich Brown, Bovin, Adamini, Tabor, Allen, Julian, Rivet, Gilbert, Meyer and Ehardt and referred to the Committee on Agriculture and Resource Management.

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 procedures; 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, are essential to the manu-
6 facture of forestry products that are used and enjoyed by the
7 people of the state, and benefit the general welfare of the
8 people of the state.

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 procedures are not subject to public and private nuisance
14 actions arising out of conflicts between forestry operations and
15 urban and residential land uses.

16 Sec. 3. As used in this act:

17 (a) "Department" means the department of natural resources.

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

23 (c) "Forestry operations" means activities related to the
24 harvesting, reforestation, and other management activities,
25 including, but not limited to, thinning, pest control, and fer-
26 tilization, that are consistent with principles of sustainable
27 forestry.

1 (d) "Landowner" means the possessor of a fee interest in
2 land or a tenant, lessee, occupant, or other person in lawful
3 control of land.

4 (e) "Sustainable forestry" means forestry practices that are
5 designed to meet present and future wood product needs by employ-
6 ing a land stewardship ethic that integrates the reforestation,
7 managing, growing, nurturing, and harvesting of trees for the
8 useful products with the conservation of soil, air and water
9 quality, wildlife and fish habitat, and aesthetics.

10 (f) "Timber" means live or dead trees and the profit in any
11 live or dead trees, including, but not limited to, bark, foliage,
12 wood, and firewood.

13 (g) "Timber owner" means any person who owns the right to
14 cut or harvest timber at the time the timber is to be cut or har-
15 vested, or who legally owns the severed timber.

16 Sec. 4. (1) Forestry operations shall not be found to be a
17 public or private nuisance if the forestry operations alleged to
18 be a nuisance conform to generally accepted forestry management
19 procedures according to policy determined by the department.
20 Generally accepted forestry management procedures shall be
21 reviewed annually by the department and revised as considered
22 necessary.

23 (2) Forestry operations shall not be found to be a public or
24 private nuisance if the forestry operations existed before a
25 change in the land use or occupancy of land within 1 mile of the
26 boundaries of the forestland, and if before that change in land

1 use or occupancy, the forestry operations would not have been a
2 nuisance.

3 (3) Forestry operations that are in conformance with gener-
4 ally accepted forestry management procedures described in
5 subsection (1) shall not be found to be a public or private nui-
6 sance as a result of any of the following:

7 (a) A change in ownership or size.

8 (b) Cessation or interruption of forestry operations.

9 (c) Enrollment in governmental forestry or conservation
10 programs.

11 (d) Adoption of new forestry technology.

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

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

17 (b) Noise from forestry equipment used in normal, generally
18 accepted forestry management procedures.

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

21 (d) The use of chemicals normally utilized in forestry oper-
22 ations, and applied under generally accepted forestry management
23 procedures.

24 Sec. 5. In any nuisance action in which forestry operations
25 are alleged to be a nuisance, if the defendant landowner or
26 timber owner prevails, the landowner or timber owner may recover
27 from the plaintiff the actual amount of costs and expenses

1 determined by the court to have been reasonably incurred by the
2 landowner or timber owner in connection with the defense of the
3 action, together with reasonable and actual attorney fees.