

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2014

Bill Number: H.606 Name of Bill: An act relating to the recreational use of land in the Use Value Appraisal Program

Who Introduced this bill? Representatives Winters,, Brennan, Clarkson, Condon and Sharpe

Agency/Dept.: Forests, Parks & Recreation Author of Bill Review: Steven Sinclair

Date of Bill Review: 1/16/14 Status of Bill (check one):

☒ Upon Introduction ☐ As passed by 1st body ☐ As passed by both bodies ☐ Fiscal

Recommended Position:

☐ Support ☒ Oppose ☐ Remain Neutral ☐ Support with modifications identified in #8 below

Analysis of Bill

1. Summary of bill and issue it addresses. *Describe what the bill is intended to accomplish and why.*

This bill proposes to reduce the current use benefit for all landowners enrolled in the Use Value Appraisal Program (forest land and agricultural land) who do not make their land available for public recreational uses. The reduction is twenty percent of use value. The owner would be required to self-certify with the town clerk on an annual basis that their land was open for public recreational uses, including hunting. However, "recreational uses" does not include the use of snowmobiles, all-terrain vehicles, or other motorized recreational vehicles on the owner's land.

2. Is there a need for this bill? *Please explain why or why not.* No. Although the Department of Forests, Parks and Recreation supports encouraging landowners to keep their land open for public recreational uses, there are many unintended consequences associated with this proposal. Allowing/restricting public access is a right of property ownership. In order to legally restrict public use, particularly for hunting, one must post their land according to the statutory requirements. There is no evidence that UVA enrolled land is more likely to be legally posted than non-enrolled land. Also, there is a statutory limitation on landowners who open their land to public recreation without charging a fee for such access, the purpose of which is to encourage landowners to keep their land open for public recreational use. This protection equally applies to UVA enrolled lands and non-enrolled land. Although this bill provides for landowner self-certification, there will need to be programmatic oversight including inspection and enforcement by the State (PVR, FPR or the Agency of Agriculture).

3. What are likely to be the fiscal and programmatic implications of this bill for this Department?

There will need to be some oversight on the self-certifying of landowners to ensure that self-certification is occurring. There will also need to be inspection requirements to verify those that self-certified that their land was open to public recreation actually did have their land open and to investigate those landowners who did not self-certify. This bill does not specify which state agency will have this obligation. As the requirement applies to all UVA enrolled lands, it may make sense for PVR to have this oversight responsibility, but ANR and Agriculture have staff in the field so the burden could fall on us. Currently, the UVA forest land program requires the FPR County Foresters to conduct inspections of UVA land and forest management plans once every ten years so annual inspections for recreational use purposes will

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significantly increase the amount of time County Foresters would spend visiting properties, taking away time they should be spending on implementation of the actual UVA program requirements related to forestry. Procedures would need to be implemented addressing oversight and inspection. Also, a process would need to be established to address potential landowner appeals from a decision that a landowner did not have its land open. It appears that any appeal would have to be heard by PVR as there is not specific language granting authority to FPR or Agriculture and Markets. Issues such as partial posting of UVA land would need to be addressed - does this require a 20% increase based upon the total enrolled acreage or only the acreage posted? Would temporary posting for safety reasons be allowed under this bill, for example during logging operations? FPR does not have the staff time to address all of these implementation and oversight, inspection and enforcement issues that will result from this bill.

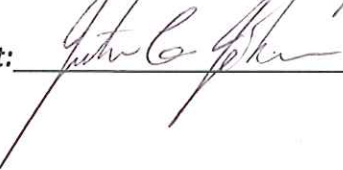
Another programmatic issue is the definition of "public recreational uses." The bill does specifically state that motorized recreational vehicles, ATVs and snowmobiles are not included as "public recreational uses." However, does this include mountain bikes, cross country skiing, hiking and the trails required for and associated with such uses? Also, once the state is requiring landowners enrolled in UVA to keep their lands open for public recreational uses in order to receive full benefits, that landowner may be subject to the Americans with Disabilities Act requirements, namely that wherever dispersed public recreation is allowed, wheelchairs cannot be prohibited and wherever there are recreational facilities, such as trails, Other Power Driven Mobility Devices cannot be excluded when used by persons with mobility disabilities. This could create a burden on landowners.

4. **What might be the fiscal and programmatic implications of this bill for other departments in state government, and what is likely to be their perspective on it?** PVR in the Department of Taxes would need to collect data from the towns and calculate reductions to adjust tax bills (see discussion above). There would be added administrative costs and implications for Agency of Agriculture and PVR as discussed above. Department of Fish and Wildlife might have oversight and monitoring responsibilities as it relates to posting of land and access for hunting.
5. **What might be the fiscal and programmatic implications of this bill for others, and what is likely to be their perspective on it?** *(for example: public, municipalities, organizations, business, regulated entities, etc.)*
Some landowners enrolled in UVA would see a reduction in their UVA reimbursement if they elect to post their land. Town clerks and local assessors would need to collect certification forms and readjust tax bills. Trail organizations might see a backlash from property owners upset over the changes. PVR would have an increased burden on their staff.
6. **Other Stakeholders:**
 - 6.1 **Who else is likely to support the proposal and why?** Trail organizations, Fish and Game clubs
 - 6.2 **Who else is likely to oppose the proposal and why?** Forest Products sector and property rights advocates.
7. **Rationale for recommendation:** *Justify recommendation stated above.* Although landowners enrolled in UVA are receiving a perceived 'benefit' from the state, this approach, to penalize those who restrict access on their land is inappropriate. For this program.
8. **Specific modifications that would be needed to recommend support of this bill:** *Not meant to rewrite bill, but rather, an opportunity to identify simple modifications that would change recommended position.*

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The bill should be amended to create an incentive to landowners who do not post their land to hunting and fowling, consistent with the Vermont Constitution and other uses. This would be no different from any other landowner who does not post their land - dispersed public recreation and hunting would be allowed, without tying it to a state program and creating unintended implications. Motor vehicle use, snowmobile and ATV use would not be allowed merely because the land is not posted.

Commissioner has reviewed this document:  Date: 1/29/14

Secretary has reviewed this document:  Date: 1/30/2014