

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2016

Bill Number: 854 ~~H.584~~ Name of Bill: Timber Trespass

Agency/ Dept: FPR Author of Bill Review: Meghan Purvee

Date of Bill Review: 4/26/16 Related Bills and Key Players: _____

Status of Bill: (check one): _____ Upon Introduction As passed by Senate As passed by 1st body _____ As passed by both

Recommended Position:

Support _____ Oppose _____ Remain Neutral _____ Support with modifications identified in #8 below

Analysis of Bill

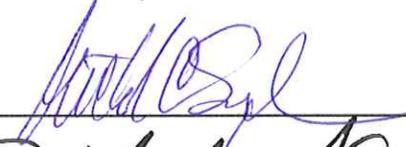
1. **Summary of bill and issue it addresses.** *Describe what the bill is intended to accomplish and why.* This bill proposes amendments to the existing timber trespass statute, 13 V.S.A. chapter 77. This current version is the Senate's amendments to the original bill introduced in the House. The bill proposes the following amendments: section 3601 to add a definition for "forest products" and "timber"; section 3602 is amended to be entitled "Valuation of Trees or Timber" and provides clarification that timber or trees may be valued by a specific valuation provided by the owner or injured party, not a law enforcement officer, or value may be determined by use of the valuations provided in section 3601, which are proposed to be increased; section 3603, Marking of Harvest Units is amended to make it a best management practice that is suggested, rather than a requirement; section 2604, exemptions, is amended to clarify that activities related to vegetation clearing conducted by VTrans, utilities, railroads or licensed land surveyors are exempt from civil and criminal action; section 3606 is amended to clarify that a civil action exists for treble damages for the cutting, felling, or damaging of timber or forest products unless the defendant can prove by a preponderance of the evidence that they had good reason to believe the timber or forest products belonged to them or that they had a legal right to conduct the actions, in which case, single damages can be recovered, and that damages include any damage to land resulting from the removal, injuring or damaging of the timber or forest products; a new section 3606a is proposed to create a criminal penalty when any person knowingly or recklessly cuts down, removes, injures, fells, damages or defaces any timber or forest products without permission from the owner with penalties for a first offense being imprisonment for not more than one year or a \$20,000 fine or both and for a second or subsequent offense, imprisonment for not more than two years, a fine of \$50,000 or both; and 4 V.S.A. 1102(b) is amended to remove jurisdiction of the judicial bureau over timber trespass actions.

2. **Is there a need for this bill?** *Please explain why or why not.* Yes. Timber trespass has increased, but enforcement under the existing statutes has not always been successful due to a lack of clarity of the role of law enforcement officers in valuation and the jurisdiction of the judicial bureau. The clarifying amendments will assist landowners bringing civil actions for damages and creates a new criminal action with significant penalties which should serve as a deterrent. Many landowners have not been successful in recovering damages even if they proceeded with a timber trespass action and the criminal charge will provide for enforcement against timber trespass.

3. **What are likely to be the fiscal and programmatic implications of this bill for this Department?**
The Department may be requested to assist with criminal prosecution of timber trespass actions by the States Attorneys office or the Office of the Attorney General. Civil actions are a private cause of action that the Department would not participate in as an expert witness, but could be required to be a factual witness.

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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? The State's Attorneys office and the Office of the Attorney General may receive more referrals and requests for criminal prosecution of timber trespass.
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) There should not be a fiscal or programmatic impact on any person or private or public entity that engages in forest management and timber harvesting activities if they are currently undertaking such activities in a careful and prudent way ensuring that they have permission and know where their property boundaries exist.
6. Other Stakeholders:
- 6.1 Who else is likely to support the proposal and why? Landowners who own forest land or who have been subject of timber trespass in the past.
- 6.2 Who else is likely to oppose the proposal and why? Some members of the forest products industry have opposed these amendments because they feel it subjects loggers and foresters to potential legal action. However, the potential for legal action already exists, even criminal action, but in the form of unlawful mischief or larceny actions, not specifically timber trespass.
7. Rationale for recommendation: *Justify recommendation stated above.* The increase in reported timber trespass across the state, including state lands, requires these amendments to clarify the legal causes of action for private and public landowners and to create a specific criminal offense for timber trespass such that legal action may proceed against those few unscrupulous loggers that persist in timber trespass.
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.*
None
9. Will this bill create a new board or commission AND/OR add or remove appointees to an existing one? If so, which one and how many? No

Commissioner has reviewed this document:  Date: 4/26/16

Secretary has reviewed this document:  Date: 4-26-16