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2    Introduced by Representatives Partridge of Windham, Bock of Chester, Fegard
3    of Berkshire, Graham of Williamstown, and Strong of Albany
4    Referred to Committee on
5    Date:
6    Subject: Municipal and county government; municipal officers; tree wardens
7    Statement of purpose of bill as introduced: This bill proposes to grant local
8    tree wardens the authority to manage all public trees within a public place or
9    public way and establish notice and hearing procedures related to the cutting of
10   public trees by a tree warden.
11
12   An act relating to tree wardens
13
14   It is hereby enacted by the General Assembly of the State of Vermont:
15
16   Sec. 1. 24 V.S.A. § 871 is amended to read:
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18   § 871. ORGANIZATION OF SELECTBOARD; APPOINTMENTS
19   (a) Forthwith after its election and qualification, the selectboard shall
20   organize and elect a chair and, if so voted, a clerk from among its number, and
21   file a certificate of such election for record in the office of the town clerk.
22   (b) The selectboard shall thereupon appoint from among the registered
23   voters a tree warden and may thereupon appoint from among the registered
24   voters the following officers who shall serve until their successors are
appointed and qualified, and shall certify such appointments to the town clerk
who shall record the same:

* * *

(c) The selectboard may appoint a tree warden who is not a registered voter
of the municipality, provided that the selectboard determines that the
appointment is necessary and appropriate.

(d) After the appointment of a tree warden, the clerk of the municipality
shall provide notice of the appointment to the Commissioner of Forest, Parks
and Recreation. The notice shall include contact information for the appointed
tree warden.

Sec. 2. 24 V.S.A. chapter 67 is amended to read:

CHAPTER 67. PARKS AND SHADE PUBLIC TREES

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§ 2501a. DEFINITIONS

As used in this chapter:

(1) “Hazard tree” means a tree with a visible defect indicating the tree
has a potential for failing and striking a person or property.

(2) “Public place” means improved municipal property, including a
municipal park, a recreation area, or a municipal building. “Public place” shall
not include a municipal forest or other undeveloped forestland.
(3) “Public tree” means a tree within, or on the boundary of, a public
way or public place.

(4) “Public way” means a public right-of-way held in easement or in fee,
including a town highway.

§ 2502. TREE WARDENS AND PRESERVATION OF SHADE PUBLIC
TREES

(a) Shade and ornamental trees within the limits of public ways and places
shall be under the control of the tree warden shall have control of all
public trees within a municipality, except as provided in subsection 2504(b) of
this chapter.

(b) The tree warden, with the approval of the selectboard, may plan and
implement a town or community shade public tree preservation program for
the purpose of shading and beautifying public ways and places by and
providing public health and safety benefits. The plan may include the planting
of new trees and shrubs; by maintaining practices to maintain the health,
appearance, and safety of existing trees, through feeding, pruning, and
protecting them including practices to protect trees from noxious insect and
disease pests; and by removing the removal of diseased, dying, or dead trees
which that create a hazard to public safety or threaten the effectiveness of
disease or insect control programs.
(c) When making a determination concerning the removal, protection, or maintenance of a tree, the tree warden shall consider the public interest and the interest of any landowner encumbered by or abutting the public way or place where the tree is located. The tree warden shall also consider the needs of any abutting working agriculture and forestlands.

* * *

§ 2504. REMOVAL OF PUBLIC TREES; EXCEPTION

(a) The tree warden may remove or cause to be removed from the public ways or places all any public trees and other plants upon which noxious insects or tree diseases naturally breed that are infested with or infected by a tree pest or that constitute a public hazard. However, where an owner or lessee of abutting real estate property shall annually, to the satisfaction of such the warden, control all insect pests or tree diseases upon the trees and other plants within the limits of a highway public way or place abutting such real estate the property, such the trees and plants shall not be removed.

(b) The owner of land encumbered by a public right-of-way easement may remove, without approval of the tree warden or selectboard, any public tree that is less than six inches in diameter measured at one foot above the ground. This subsection shall not apply to any tree that was intentionally planted by the municipality. Removal of trees under this subsection shall not be subject to section 2509 of this chapter.
§ 2505. DEPUTY TREE WARDENS

A tree warden The Selectboard may appoint a deputy tree warden and dismiss them at pleasure warden who shall serve under the direction of the tree warden and shall have the same duties and authority as the tree warden. The selectboard may dismiss the deputy tree warden at its pleasure.

§ 2506. REGULATIONS FOR PROTECTION OF PUBLIC TREES

A tree warden shall enforce all laws relating to public shade trees and may prescribe such propose to the selectboard the rules and ordinances, or regulations for the planting, protection, care, or removal of public shade trees as he or she deems expedient. Such The selectboard may adopt the rules, ordinances, or regulations shall become effective pursuant to the provisions of chapter 59 of this title.

§ 2507. COOPERATION

The tree warden may enter into financial or other agreements with the owners of land adjoining or facing public ways and places for the purpose of encouraging and effecting a community-wide shade public tree planting and preservation program. He or she may cooperate with federal, State, county, or other municipal governments, agencies, or other public or private organizations or individuals and may accept such on behalf of the town any funds, equipment, supplies, or services from organizations and individuals, or others, as deemed appropriate for use in carrying out the purposes of this chapter.
§ 2508. CUTTING SHADE PUBLIC TREES; REGULATIONS

Unless otherwise provided, notwithstanding any other provision of the law, a public shade tree shall not be cut or removed, in whole or in part, except by a tree warden or his or her deputy, or by a person having the written permission of a tree warden, or by an owner of land encumbered by a public right-of-way easement as set forth in subsection 2504(b) of this chapter.

§ 2509. CUTTING SHADE PUBLIC TREES; HEARING

(a) A public shade tree within the residential part of a municipality shall not be felled without a public hearing by the tree warden, except that when it is infested with or infected by a recognized tree pest, or when it constitutes a hazard to public safety, no hearing shall be required. The tree warden shall post public notice of the intent to cut or remove, in its entirety, a public tree that is, or clearly delineated group of trees that are, six inches or greater in diameter measured one foot above the ground level. The notice shall be posted a minimum of 15 days prior to cutting or removing the tree or group of trees. If the cutting or removal is appealed pursuant to subsection (d) of this section, the tree warden shall hold a public hearing. This subsection shall not apply to the cutting or removal of a public tree or trees that are:

(1) infested with or infected by, or at risk to become infested with or infected by, a tree pest and are located in a designated infestation area by the
Agency of Agriculture, Food and Markets and Department of Forests, Parks and Recreation;

(2) a hazard to public safety; or

(3) less than six inches in diameter measured at one foot above ground level and are proposed to be cut or removed by a landowner pursuant to subsection 2504(b) of this chapter.

(b) In all cases the decision of the tree warden shall be final, except that when the tree warden is an interested party or when a party in interest so requests in writing, such final decision shall be made by the legislative body of the municipality. The tree warden shall post public notice of the intent to cut or remove a public tree or group of trees pursuant to subsection (a) of this section in at least two conspicuous locations within the town. The tree warden shall post the public notice in or near the office of the town clerk and shall notify any abutting landowner at the landowner’s address of record.

(c) The tree warden and the owner of land encumbered by a public right-of-way easement with the tree warden may remove limbs or perform other partial removal associated with regular and proper maintenance of a tree without posting the notice required by this section.

(d)(1) Any person who is aggrieved by the intent of the tree warden to cut or remove in its entirety a public tree may appeal in writing to the selectboard
within 15 days after the posting of public notice. The selectboard shall give
notice of the appeal to the tree warden.

(2) The selectboard shall hold a public hearing with the tree warden to
receive public comment on the proposed cutting or removal of the public tree
within 10 days after the appeal period. The tree warden shall stay action on the
proposed removal until the selectboard renders a final decision on the appeal.

(e) In all cases, the decision of the selectboard shall be final.

§ 2510. PENALTY

(a) Whoever shall, willfully, mar or deface a public shade tree without the
written permission of a tree warden or legislative body of the municipality
shall be fined not more than $50.00 for the use of the municipality.

(b) Any person who, willfully, critically injures or cuts down a public
shade tree without written permission of the tree warden or the legislative body
of the municipality shall be fined not more than $500.00 pursuant to 13 V.S.A.
§ 3602 for each tree so injured or cut, for the use of the municipality.

§ 2511. CONTROL OF INFESTATIONS

When an insect or disease pest infestation upon or in public or private shade
trees threatens other public or private trees, is considered detrimental to a
community shade tree preservation program, or threatens the public safety, the
tree warden may request surveys and recommendations for control action from
the Secretary of Agriculture, Food and Markets and Commissioner of Forests.
Parks and Recreation. On recommendation Upon authorization of the Secretary of Agriculture, Food and Markets or Commissioner of Forests, Parks and Recreation, the tree warden may designate areas threatened or affected in which control measures are to be applied and shall publish notice of the proposal in one or more newspapers having a general circulation in the area in which control measures are to be undertaken. On recommendation Upon authorization of the Secretary of Agriculture, Food and Markets or Commissioner of Forests, Parks and Recreation, the tree warden may apply measures of infestation control on public and private land to any trees, shrubs, or plants thereon harboring or which may harbor the threatening insect or disease pest. He or she may enter into agreements with owners of such the lands covering the control work on their lands, but the failure of the tree warden to negotiate with any owner shall not impair his or her right to enter on the lands of said the owner to conduct recommended control measures, the cost of which shall be paid by the municipality.

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Sec. 3. 19 V.S.A. chapter 9, subchapter 1 is amended to read:

Subchapter 1. General Duties of Towns § 901. REMOVAL OF ROADSIDE GROWTH

Except for work that is part of the Transportation Program under section 10g of this title:
(1) Trees located in whole or in part within the limits of a town highway or right-of-way shall not be removed without the prior approval of the tree warden in accordance with 24 V.S.A. chapter 67.

(2) A person, other than the abutting landowner or municipality, shall not cut, trim, remove, or otherwise damage any grasses, shrubs, or vines, or trees growing within the limits of a state or town highway, without first having obtained the consent of the agency for state highways or the board of selectmen legislative body for town highways.

(3) A person, other than the Agency or the abutting landowner, shall not cut, trim, remove, or otherwise damage any grasses, shrubs, vines, or trees growing within the limits of a State highway without first obtaining the consent of the Agency.

§ 902. PENALTY FOR REMOVAL

A person who willfully or maliciously cuts, trims, removes, or otherwise damages trees within the limits of a State highway or municipal right-of-way shall be fined pursuant to 13 V.S.A. § 3602. A person who willfully or maliciously cuts, trims, removes, or otherwise damages grasses, shrubs, or vines, or trees within highway limits in violation of section 901 of this title shall be fined not more than $100.00 nor less than $10.00, for each offense.

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§ 904. BRUSH REMOVAL

The selectmen legislative body of a town municipality, if necessary with the approval of the tree warden pursuant to 24 V.S.A. chapter 67, shall cause to be cut and burned, or removed from within the limits of the highways under their care, trees and bushes which obstruct the view of the highway ahead or that cause damage to the highway or that are objectionable from a material or scenic standpoint. Shade and fruit Public trees that have been set out or marked by the abutting landowners shall be preserved if the usefulness or safety of the highway is not impaired. Young trees standing at a proper distance from the roadbed and from each other, and banks and hedges of bushes that serve as a protection to the highway or add beauty to the roadside, shall be preserved. On state State highways, the secretary Secretary shall have the same authority as the selectmen legislative body.

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Sec. 4. 30 V.S.A. § 2506 is amended to read:

§ 2506. TREES NOT TO BE INJURED; EXCEPTION; PENALTY

A tree within a street or highway right-of-way shall not be cut or injured in constructing, maintaining, or repairing a line of wires, without the written consent of the tree warden pursuant to 24 V.S.A. chapter 67 or the adjoining owner or occupant, unless the Transportation Board or the selectboard legislative body of the town municipality in which the tree is situated, after due
notice to the parties and upon hearing, shall decide that such the cutting or
injury is necessary. A person or corporation cutting or injuring such the trees
shall pay the damages, if any, awarded on such hearing, before cutting or
injuring the trees. A person or corporation that violates a provision of this
section shall be fined not more than $50.00 nor less than $5.00 pursuant to
13 V.S.A. § 3602 for each tree so cut or injured.

Sec. 5. 30 V.S.A. § 2527 is amended to read:
§ 2527. PENALTIES; INJURIES TO TREES
A person or corporation maintaining or operating a line of wires, that cuts
down, mutilates, or injures the trees standing upon the lands of another, or a
person or corporation that affixes or causes to be affixed to the property of
another, a post, structure, fixture, wire, or other apparatus for telephonic,
telegraphic, or other electrical communication, without first procuring the right
to do so by application to and determination of the Transportation Board or the
selectboard legislative body of the town municipality, agreeably to this
chapter, or first obtaining the consent of the owner or lawful agent of the
owner of such property, shall be fined not more than $100.00 pursuant to
13 V.S.A. § 3602 for each tree so cut or injured.

Sec. 6. EFFECTIVE DATE
This act shall take effect on July 1, 2020.