

1 H.673

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 An act relating to tree wardens

12 It is hereby enacted by the General Assembly of the State of Vermont:

13 Sec. 1. 24 V.S.A. § 871 is amended to read:

14 § 871. ORGANIZATION OF SELECTBOARD; APPOINTMENTS

15 (a) Forthwith after its election and qualification, the selectboard shall
16 organize and elect a chair and, if so voted, a clerk from among its number, and
17 file a certificate of such election for record in the office of the town clerk.

18 (b) The selectboard shall ~~thereupon~~ appoint from among the registered
19 voters a tree warden and may ~~thereupon~~ appoint from among the registered
20 voters the following officers who shall serve until their successors are

1 appointed and qualified, and shall certify such appointments to the town clerk
2 who shall record the same:

3 * * *

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

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

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

12 CHAPTER 67. PARKS AND ~~SHADE~~ PUBLIC TREES

13 * * *

14 § 2501a. DEFINITIONS

15 As used in this chapter:

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

18 (2) “Public place” means improved municipal property, including a
19 municipal park, a recreation area, or a municipal building. “Public place” shall
20 not include a municipal forest or other undeveloped forestland.

1 (3) “Public tree” means a tree within, or on the boundary of, a public
2 way or public place.

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

5 § 2502. TREE WARDENS AND PRESERVATION OF ~~SHADE~~ PUBLIC
6 TREES

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

11 ~~(b) The tree warden, with the approval of the selectboard, may plan and~~
12 ~~implement a town or community shade public tree preservation program for~~
13 ~~the purpose of shading and beautifying public ways and places by and~~
14 ~~providing public health and safety benefits. The plan may include the planting~~
15 ~~of new trees and shrubs; by maintaining practices to maintain the health,~~
16 ~~appearance, and safety of existing trees, through feeding, pruning, and~~
17 ~~protecting them including practices to protect trees from noxious insect and~~
18 ~~disease pests; and by removing the removal of diseased, dying, or dead trees~~
19 ~~which that create a hazard to public safety or threaten the effectiveness of~~
20 ~~disease or insect control programs.~~

1 § 2505. DEPUTY TREE WARDENS

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

6 § 2506. REGULATIONS FOR PROTECTION OF PUBLIC TREES

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

13 § 2507. COOPERATION

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

1 § 2508. CUTTING ~~SHADE~~ PUBLIC TREES; REGULATIONS

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

7 § 2509. CUTTING ~~SHADE~~ PUBLIC TREES; HEARING

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

19 (1) infested with or infected by, or at risk to become infested with or
20 infected by, a tree pest and are located in a designated infestation area by the

1 Agency of Agriculture, Food and Markets and Department of Forests, Parks
2 and Recreation;

3 (2) a hazard to public safety; or

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

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

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

19 (d)(1) Any person who is aggrieved by the intent of the tree warden to cut
20 or remove in its entirety a public tree may appeal in writing to the selectboard

1 within 15 days after the posting of public notice. The selectboard shall give
2 notice of the appeal to the tree warden.

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

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

8 § 2510. PENALTY

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

12 (b) Any person who, willfully, critically injures or cuts down a public
13 ~~shade~~ tree without written permission of the tree warden or the legislative body
14 of the municipality shall be fined ~~not more than \$500.00~~ pursuant to 13 V.S.A.
15 § 3602 for each tree so injured or cut, for the use of the municipality.

16 § 2511. CONTROL OF INFESTATIONS

17 When an insect or disease pest infestation upon or in ~~public or private shade~~
18 trees threatens other public or private trees, is considered detrimental to a
19 community ~~shade~~ tree preservation program, or threatens the public safety, the
20 tree warden may request surveys and recommendations for control action from
21 the Secretary of Agriculture, Food and Markets and Commissioner of Forests,

1 Parks and Recreation. ~~On recommendation~~ Upon authorization of the
2 Secretary of Agriculture, Food and Markets or Commissioner of Forests, Parks
3 and Recreation, the tree warden may designate areas threatened or affected in
4 which control measures are to be applied and shall publish notice of the
5 proposal in one or more newspapers having a general circulation in the area in
6 which control measures are to be undertaken. ~~On recommendation~~ Upon
7 authorization of the Secretary of Agriculture, Food and Markets or
8 Commissioner of Forests, Parks and Recreation, the tree warden may apply
9 measures of infestation control on ~~public and~~ private land to any trees, shrubs,
10 or plants thereon harboring or which may harbor the threatening insect or
11 disease pest. He or she may enter into agreements with owners of ~~such~~ the
12 lands covering the control work on their lands, but the failure of the tree
13 warden to negotiate with any owner shall not impair his or her right to enter on
14 the lands of ~~said~~ the owner to conduct recommended control measures, the cost
15 of which shall be paid by the municipality.

16 * * *

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

18 Subchapter 1. General Duties of Towns

19 § 901. REMOVAL OF ROADSIDE GROWTH

20 Except for work that is part of the Transportation Program under section
21 10g of this title:

1 § 904. BRUSH REMOVAL

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

14 * * *

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

16 § 2506. TREES NOT TO BE INJURED; EXCEPTION; PENALTY

17 A tree within a street or highway right-of-way shall not be cut or injured in
18 constructing, maintaining, or repairing a line of wires, without the written
19 consent of the tree warden pursuant to 24 V.S.A. chapter 67 or the adjoining
20 owner or occupant, unless the Transportation Board or the ~~selectboard~~
21 legislative body of the ~~town~~ municipality in which the tree is situated, after due

1 notice to the parties and upon hearing, shall decide that ~~such~~ the cutting or
2 injury is necessary. A person or corporation cutting or injuring ~~such~~ the trees
3 shall pay the damages, if any, awarded on such hearing, before cutting or
4 injuring the trees. A person or corporation that violates a provision of this
5 section shall be fined ~~not more than \$50.00 nor less than \$5.00~~ pursuant to
6 13 V.S.A. § 3602 for each tree so cut or injured.

7 Sec. 5. 30 V.S.A. § 2527 is amended to read:

8 § 2527. PENALTIES; INJURIES TO TREES

9 A person or corporation maintaining or operating a line of wires, that cuts
10 down, mutilates, or injures the trees standing upon the lands of another, or a
11 person or corporation that affixes or causes to be affixed to the property of
12 another, a post, structure, fixture, wire, or other apparatus for telephonic,
13 telegraphic, or other electrical communication, without first procuring the right
14 to do so by application to and determination of the Transportation Board or the
15 ~~selectboard~~ legislative body of the ~~town~~ municipality, agreeably to this
16 chapter, or first obtaining the consent of the owner or lawful agent of the
17 owner of such property, shall be fined ~~not more than \$100.00~~ pursuant to
18 13 V.S.A. § 3602 for each tree so cut or injured.

19 Sec. 6. EFFECTIVE DATE

20 This act shall take effect on July 1, 2020.