

- 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~~ shade trees within a
- 9 public place or public way and establish notice and hearing procedures related to the
- 10 cutting of ~~public~~ shade 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

Commented [1]:
Highlighting that tree wardens are appointed by the selectboard. There has been some confusion that they work independently and not under the direction of the legislative body.

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 SHADE TREES

13 * * *

14. § 2501a. DEFINITIONS

15. As used in this chapter:

1. ~~(1) "Hazard tree" means a tree with a visible defect indicating the tree~~
2. ~~has a potential for failing and striking a person or property.~~
3. ~~(21) "Public place" means improved municipal property, including a~~
4. ~~municipal park, a recreation area, or a municipal building. "Public place" shall~~
5. ~~not include a municipal forest or other municipally owned undeveloped forestland, or~~
6. ~~property that the Agency of Transportation has any permanent interest in, including~~
7. ~~but not limited to fees, easements, and rights-of-ways.~~
8. ~~(32) "Public Shade tree" means a shade or ornamental tree located in whole or in part~~
9. ~~within the limits or on the boundary of a public way or public place that was~~
10. ~~intentionally planted by the municipality or that the municipality has designated as~~
11. ~~an important community resource for its size, age, historic significance, aesthetics, or~~
12. ~~location.~~
13. ~~(3) "Public way" means a public right-of-way held in easement right-of-way held~~
14. ~~by a municipality or in fee, including a town highway.~~
15. § 2502. TREE WARDENS AND PRESERVATION OF ~~SHADE~~ **PUBLIC SHADE**

Commented [2]:
Removed as 'hazard tree' is not referenced in the bill.

Commented [3]:
Language added by VTrans

Commented [4]:
Amended back to 'shade tree' since we are proposing to limit the scope of the tree warden's authority.

Shade trees includes intentionally planted trees and trees the town designates for certain values. We would like to work with VLTC to come up with a designation process.

All other trees would not be under the control of the tree warden. The municipality would still have the management rights but would not need to work with the tree warden to remove them. The tree warden's role would be to support the municipality in planning and caring for trees that municipality invested in or are providing a specific community value.

Commented [5]:
Language added by VTrans.

16. TREES

1. (a) ~~Shade and ornamental trees within the limits of public ways and places~~
2. ~~shall be under the control of the~~ The tree warden shall have control of all
3. ~~public shade trees within a public way or place municipality, except~~
4. ~~as provided in subsection 2504(b) of this chapter.~~
5. (b) The tree warden, with the approval of the ~~selectboard legislative body of the~~
6. ~~municipality,~~ may plan and implement a ~~town or community municipal shade public~~
7. ~~shade~~ tree preservation program for the purpose of shading and
8. beautifying public ways and places ~~by~~ and providing public health and safety
9. benefits. The plan may include the planting of new ~~shade~~ trees and
10. shrubs; ~~by maintaining~~ practices to maintain the health, appearance, and safety of
11. existing ~~shade~~ trees, ~~through feeding, pruning, and protecting them~~
12. including practices to protect ~~shade trees~~ from noxious insect and
13. disease pests; and ~~by removing~~ the removal of diseased, dying, or dead ~~shade~~

Commented [6]:
Removed the 6-inch vegetation threshold. No longer needed with the new definition of 'shade tree'

Commented [7]:
Amended 'selectboard' throughout chapter 67 to 'legislative body of the municipality'

14. ~~trees which that~~ create a hazard to public safety or threaten the
1. effectiveness of disease or insect control programs.
2. (c) When making a determination concerning the ~~designation~~, removal, protection, or
3. maintenance of a ~~shade~~ tree, the tree warden shall consider the public
4. interest and the interest of any landowner encumbered by or abutting the public way
5. or place where the tree is located. The tree warden shall also consider the ~~needs~~
6. ~~interests~~ of any abutting working agriculture and forestlands.
7. * * *
8. § 2504. REMOVAL OF ~~PUBLIC SHADE~~ TREES; EXCEPTION
9. (a) The tree warden may remove or cause to be removed from the public
10. ways or places ~~all any public shade~~ trees ~~and other plants upon~~
11. ~~which noxious insects or tree diseases naturally breed~~ that are infested with or
12. infected by a tree pest or that constitute a public hazard ~~and no notice or hearing is~~
13. required as set forth in 2504 of this chapter. However, where an owner
14. or lessee of abutting ~~real estate~~ property shall annually, to the satisfaction of ~~such the~~

15. warden, control all insect pests or tree diseases upon the trees ~~and other plants~~
1. within the limits of a ~~highway~~ public way or place abutting ~~such real estate~~ the
2. property, ~~such the~~ trees ~~and plants~~ shall not be removed.
3. ~~(b) The owner of land encumbered by a public right of way easement may~~
4. ~~remove, without approval of the tree warden or selectboard, any public tree~~
5. ~~that is less than six inches in diameter measured at one foot above the ground.~~
6. ~~This subsection shall not apply to any tree that was intentionally planted by the~~
7. ~~municipality. Removal of trees under this subsection shall not be subject to~~
8. ~~section 2509 of this chapter.~~
9. § 2505. DEPUTY TREE WARDENS
10. ~~A tree warden~~ The ~~selectboard~~ legislative body of the municipality may appoint ~~a~~
11. deputy tree wardens and dismiss them at pleasure wardens who shall serve under the
12. direction of the tree warden and shall have the same duties and authority as the tree
13. warden. The ~~selectboard~~ legislative body of the municipality may dismiss ~~the~~ deputy

Commented [8]:
Removed 6-inch tree threshold reference.

Commented [9]:
Allows for the appointment of more than one deputy.

14. tree wardens at its pleasure.

15. § 2506. REGULATIONS FOR PROTECTION OF PUBLIC SHADE TREES

1. A tree warden shall enforce all laws relating to public shade shade
2. trees and may ~~prescribe such~~ propose to the selectboard legislative body of the
3. municipality the rules ~~and~~, ordinances, or regulations for the designating, planting,
4. protection, care, or removal of public shade shade trees as he or
5. she deems expedient. ~~Such~~ The selectboard legislative body of the municipality may
6. adopt the rules, ordinances, or regulations shall become effective pursuant to the
7. provisions of chapter 59 of this title.

8. § 2507. COOPERATION

9. The tree warden may enter into financial or other agreements with the
10. owners of land adjoining or facing public ways and places for the purpose of
11. encouraging and effecting a community wide municipal shade public shade tree
12. planting and preservation program. He or she may cooperate with
13. federal, State, county, or other municipal governments, agencies, or other public or

14. private organizations or individuals and may accept ~~such~~ on behalf of the town any
15. funds, equipment, supplies, or services from organizations and individuals, or others,
1. as deemed appropriate for use in carrying out the purposes of this chapter.

2. § 2508. CUTTING SHADE ~~SHADE~~ PUBLIC SHADE TREES; REGULATIONS
3. ~~Unless otherwise provided~~ Notwithstanding any other provision of the law,
4. a ~~public shade~~ shade tree shall not be cut or removed, in whole or in
5. part, except by a tree warden or his or her deputy, ~~or~~ or by a person having the
6. written permission of a tree warden, ~~or by an owner of land encumbered by a public~~
7. ~~right of way easement as set forth in subsection 2504(b) of this chapter.~~

- 8.
9. § 2509. CUTTING SHADE ~~SHADE~~ PUBLIC SHADE TREES;
10. NOTICE AND HEARING

- 11.(a) ~~A public shade tree within the residential part of a municipality shall~~
12. ~~not be felled without a public hearing by the tree warden, except that when it is~~
13. ~~infested with or infected by a recognized tree pest, or when it constitutes a~~
14. ~~hazard to public safety, no hearing shall be required. The tree warden shall post~~
15. public notice of the intent to cut or remove, in its entirety, a public shade tree that is,

Commented [10]:
Remove 6-inch tree threshold reference.

16. ~~or clearly delineated group of trees that are, six inches or~~
17. ~~greater in diameter measured one foot above the ground level.~~ The notice shall be
18. posted a minimum of 15 days prior to cutting or removing the tree ~~or group of trees.~~

Commented [11]:
Removed 6-inch tree threshold reference.

1. If the cutting or removal is appealed pursuant to subsection (d) of this section, the
2. ~~tree warden selectboard~~ legislative body of the municipality shall hold a public
3. hearing. This subsection shall not apply to the cutting or removal of a ~~public shade~~
4. tree or trees that are:

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

9. (2) a hazard to public safety; ~~or~~

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

Commented [12]:
Removed 6-inch tree threshold reference.

13. (b) In all cases the decision of the tree warden shall be final, except that

14. ~~when the tree warden is an interested party or when a party in interest so~~
1. ~~requests in writing, such final decision shall be made by the legislative body of~~
2. ~~the municipality.~~
3. The tree warden shall post public notice of the intent to cut or remove a ~~public shade~~
4. tree ~~or group of trees~~ pursuant to subsection (d) of this section in at
5. least two conspicuous locations within the town. ~~The tree warden~~ One location shall
6. ~~be post the public notice~~ in or near the office of the town clerk. ~~and~~ The tree warden
7. shall notify any abutting landowner at the landowner's address of record.
1. ~~(e) The tree warden and the owner of land encumbered by a public right of~~
2. ~~way easement with the tree warden may remove limbs or perform other partial~~
3. ~~removal associated with regular and proper maintenance of a tree without~~
4. ~~posting the notice required by this section.~~
5. (d)(1) Any person who is aggrieved by the intent of the tree warden to cut
6. or remove in its entirety a ~~public shade~~ tree may appeal in writing to

Commented [13]:
Clarified number of postings.

Commented [14]:
Removed as landowners would now be able to remove and manage all trees except 'shade trees'

7. the ~~selectboard~~ legislative body of the municipality within 15 days after the posting

8. of public notice. The ~~selectboard~~ legislative body of the municipality shall give

9. notice of the appeal to the tree warden.

1. (2) The ~~selectboard~~ legislative body of the municipality shall hold a public hearing

2. with the tree warden to receive public comment on the proposed cutting or removal

3. of the ~~public shade~~ tree within 10 days after the appeal period. The

4. tree warden shall stay action on the proposed removal until the ~~selectboard~~

5. legislative body of the municipality renders a final decision on the appeal.

6. (e) In all cases, the decision of the ~~selectboard~~ legislative body of the municipality

7. shall be final.

8.

9. § 2510. PENALTY

10. (a) Whoever shall, willfully, mar or deface a ~~public shade~~ shade tree

11. without the written permission of a tree warden or legislative body of the

12. municipality shall be fined not more than \$50.00 for the use of the municipality.

13. (b) Any person who, willfully, critically injures or cuts down a ~~public shade~~ shade

tree without written permission of the tree warden or the

14. legislative body of the municipality shall be fined ~~not more than \$500.00~~ pursuant to

15. 13 V.S.A. § 3602 for each tree so injured or cut, for the use of the municipality.

16.

17. § 2511. CONTROL OF INFESTATIONS

18. When an insect or disease pest infestation upon or in ~~public or shade~~

19. ~~or private shade~~ trees threatens other ~~public shade~~ or private trees, is

20. considered detrimental to a ~~community-municipal shade shade~~ tree

21. preservation program, or threatens the public safety, the tree warden may request

22. surveys and recommendations for control action from the Secretary of Agriculture,

23. Food and Markets ~~and or~~ Commissioner of Forests, Parks and Recreation ~~in~~

24. ~~accordance with 6 V.S.A. Chapter 84, On recommendation Upon authorization of the~~

25. ~~Secretary of Agriculture, Food and Markets or Commissioner of Forests, Parks~~

26. ~~and Recreation, the tree warden may designate areas threatened or affected in~~

27. ~~which control measures are to be applied and shall publish notice of the~~

28. ~~proposal in one or more newspapers having a general circulation in the area in~~

29. ~~which control measures are to be undertaken. On recommendation Upon~~

30. ~~authorization of the Secretary of Agriculture, Food and Markets or~~

31. ~~Commissioner of Forests, Parks and Recreation, the tree warden may apply~~

32. ~~measures of infestation control on public and public and private land to any trees,~~

33. ~~shrubs, or plants thereon harboring or which may harbor the threatening insect or~~

34. ~~disease pest. He or she may enter into agreements with owners of such the~~

35. ~~lands covering the control work on their lands, but the failure of the tree~~

Commented [15]:
Changed after committee feedback.

Commented [16]:
Removed to reflect modern practices.

36. ~~warden to negotiate with any owner shall not impair his or her right to enter on~~
37. ~~the lands of said the owner to conduct recommended control measures, the cost~~
38. ~~of which shall be paid by the municipality.~~

39. * * *

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

2. Subchapter 1. General Duties of Towns

3. § 901. REMOVAL OF ROADSIDE GROWTH

4. Except for work that is part of the Transportation Program under section

5. 10g of this title:

6. (1) ~~Shade t~~rees located in whole or in part within the limits of a

7. town highway or right-of-way shall not be removed without the prior approval of the

8. tree warden in accordance with 24 V.S.A. chapter 67.

9. (2) A person, other than the abutting landowner or municipality, shall

10. not cut, trim, remove, or otherwise damage any grasses, shrubs, ~~or vines, or trees, or~~

11. ~~trees~~ growing within the limits of a ~~state or~~ town highway, without first having

12. obtained the consent of the ~~agency for state highways or the board of~~

Commented [17]:
This adds back in the ability of the abutting landowner to manage and remove right-of-way trees unless they are identified as a 'shade tree'

13. ~~selectmen~~ legislative body for town highways.

14. (3) A person, other than the Agency of Transportation or the abutting landowner,

Commented [18]:
Language provided by VTTrans.

15. shall not cut, trim, remove, or otherwise damage any grasses, shrubs, vines, or trees

16. growing within the limits of ~~a State highway lands that the Agency of Transportation~~

17. ~~has any permanent interest in, including but not limited to fees, easements, and~~

18. ~~rights-of-ways,~~ without first obtaining the written consent of the Agency.

19. § 902. PENALTY FOR REMOVAL

20. A person, ~~other than the Agency of Transportation, the abutting landowner,~~

Commented [19]:
Amended this section to add clarity about who can cut/remove trees.

21. ~~municipality, or the tree warden,~~ who ~~wilfully~~ willfully or maliciously cuts, trims,

22. removes, or otherwise damages trees within the limits of a State highway or municipal

23. right-of-way shall be fined pursuant to 13 V.S.A. § 3602, ~~unless such person has~~

24. ~~obtained prior written consent from the Agency of Transportation, municipality, or~~

25. ~~tree warden. A person, other than the Agency of Transportation, the abutting~~

26. ~~landowner, or municipality~~ who willfully or maliciously cuts, trims, removes, or

27. ~~otherwise damages grasses, shrubs, or vines, or trees~~ within highway limits in

28. violation of section 901 of this title shall be fined not more than \$100.00 nor less than

29. \$10.00, for each offense ~~unless such person has obtained prior written consent from~~

30. the Agency of Transportation, or municipality.

31. * * *

32. § 904. TREE AND BRUSH REMOVAL

33. The ~~selectmen~~ legislative body of a ~~town~~ municipality, ~~if necessary~~ with the

34. approval of the tree warden pursuant to 24 V.S.A. chapter 67, shall cause to be

1. cut and burned, or removed from within the limits of the highways under their

2. care, trees and bushes that are not shade trees as defined in 24 V.S.A.

3. chapter 67 which obstruct the view of the highway ahead, ~~or~~ that cause damage to the

4. highway, ~~or~~ that are objectionable from a material or scenic standpoint, or interfere

5. with road drainage system. Before removing trees, the municipality shall provide

6. seven calendar days' notice and opportunity to be heard for all property owners

7. abutting such proposed tree removal. If a request for a hearing is filed by an abutting

8. property owner, the legislative body shall call a quasi- judicial hearing for the

9. purpose of hearing from the abutting property owner why such tree(s) should be

10. preserved. Abutting property owners requesting such hearing shall be provided with

11. at least seven days' notice of the date of the hearing. In all cases, the decision of the

Commented [20]:
Amendments include:

Added authority to remove trees to manage stormwater runoff. This has been raised as a need with new stormwater regulations.

Added notification and hearing process to abutting landowner for healthy tree removals only. If a tree is a hazard to public safety, no notification is required.

This section would benefit from VLTC input.

12. ~~legislative body shall be final. When the tree constitutes a hazard to the public safety~~

13. ~~no notice or hearing shall be required.~~

14. ~~Shade and fruit T~~rees that have been set out or marked by the abutting landowners
15. shall be preserved if the usefulness or safety of the highway is not impaired. Young
16. trees standing at a proper distance from the roadbed and from each other, and banks
17. and hedges of bushes that serve as a protection to the highway or add beauty to the
18. roadside, shall be preserved. On ~~state~~ State highways, the ~~secretary~~ Secretary shall
1. have the same authority as the ~~selectmen~~ legislative body.

2. * * *

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

4. ~~§ 2506. TREES NOT TO BE INJURED; EXCEPTION; PENALTY~~

5. ~~A tree within a street or highway right of way shall not be cut or injured in~~

6. ~~constructing, maintaining, or repairing a line of wires, without the written~~

7. ~~consent of the tree warden pursuant to 24 V.S.A. chapter 67 or the adjoining~~

8. ~~owner or occupant, unless the Transportation Board or the selectboard~~

9. ~~legislative body of the town municipality in which the tree is situated, after due~~

Commented [21]:
Removed the following two sections regarding utilities to focus on tree warden conflicts and limit the scope of the bill.

10. ~~notice to the parties and upon hearing, shall decide that such the cutting or~~
11. ~~injury is necessary. A shade and ornamental trees located in whole or in part within~~
12. ~~a public place or way shall not be removed without the prior approval of the~~
13. ~~tree warden in accordance with 24 V.S.A. chapter 67. A person or corporation~~
14. ~~cutting or injuring such the trees shall pay the damages, if any, awarded on such~~
15. ~~hearing, before cutting or injuring the trees. A person or corporation that violates a~~
1. ~~provision of this section shall be fined not more than \$50.00 nor less than \$5.00~~
2. ~~pursuant to 13 V.S.A. § 3602 for each tree so cut or injured.~~
3. ~~Sec. 5. 30 V.S.A. § 2527 is amended to read:~~
4. ~~§ 2527. PENALTIES; INJURIES TO TREES~~
5. ~~A person or corporation maintaining or operating a line of wires, that cuts~~
6. ~~down, mutilates, or injures shade and ornamental trees or the trees standing upon the~~
7. ~~lands of another, or a person or corporation that affixes or causes to be affixed to the~~
8. ~~property of another, a post, structure, fixture, wire, or other apparatus for telephonic,~~
9. ~~telegraphic, or other electrical communication, without first procuring the right~~

10. ~~to do so by application to and determination of the Transportation Board or the~~
11. ~~selectboard legislative body of the town municipality, agreeably to this~~
12. ~~chapter, or first obtaining the consent of the owner or lawful agent of the~~
13. ~~owner of such property, shall be fined not more than \$100.00 pursuant to 13 V.S.A. §~~
14. ~~3602 for each tree so cut or injured.~~
15. Sec. 6. EFFECTIVE DATE
16. This act shall take effect on July 1, 2020.