

H.673 – An act relating to tree wardens

Bill Overview

Introduction

- H. 673, an act relating to tree wardens, was introduced in the House Agriculture and Forestry Committee in January 2020 to amend the existing statutes that were adopted in 1904 and have become outdated, unclear, and with many significant conflicts internally and with other statutes. The intent was to modernize with clear language that addresses modern municipal tree management needs and recognizes the needs of private landowners and municipalities to manage roadside vegetation in balance with public interests including road safety.
- Roadside, street, and community trees play an essential role in protecting our natural environment, promoting public health, and enhancing scenic beauty. Vermont's tree wardens also play an important role in caring for public trees and green spaces in our communities. The tree warden must balance the health and future of municipal trees with the town's vision of its public spaces, including its requirements for safe passage of vehicles and pedestrians, stormwater management, historical markers, aesthetic quality, and finally, private property rights.
- After several weeks of testimony, discussion, and substantial edits to the language in the bill as introduced, H.673 was voted out of the house on May 20. The bill looks very different than the version introduced in the House in January and has considered the interests of municipal government (VLCT supported this version), landowners, the Agency of Transportation, and – of course – tree wardens.

Anticipated Questions

- ***What is the jurisdiction of a tree warden?*** The tree warden will have control over shade trees in municipal public ways and places. Shade trees are trees that were either intentionally planted by the municipality or designated through a public process to adopt a shade tree preservation plan.
- ***As a landowner, will I be able to remove trees on my property that are in the municipal right-of-way?*** In most cases, yes. However, if the tree is a designated shade tree, you will need to get permission from the tree warden.
- ***Will municipalities be able to remove trees in the town right-of-way without the tree warden's approval?*** Again, in most cases, yes. Unless a tree is designated as a shade tree than the tree warden would need to be involved in approving or supporting a public input process.
- ***To remove shade trees, will the municipality have to hold a public hearing?*** Not necessarily. A public hearing is only required if the tree(s) to be removed are healthy and someone within the municipality appeals to the public notice of shade tree removal.

- ***With emerald ash borer (EAB) in Vermont, will municipalities be able to manage ash trees without holding a public hearing?*** Yes, if the tree is infested with EAB or located in the area mapped as infested by FPR, municipalities can take proactive steps to manage ash trees.

Section-by-Section Bill Overview

Sec. 1 24 V.S.A. § 871: Appointments

What the language fixes:

- Municipalities can appoint town staff who do not live in town, or a volunteer from another municipality, as the tree warden.
 - Adds a reporting element to the Department of Forests, Parks & Recreation to enhance communication with tree wardens to offer technical assistance, resources, notification of changes in tree pest infestations, and educational workshops and networking opportunities.
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Sec. 2 24 V.S.A. chapter 67: Parks and Shade Trees

§ 2501: Definitions

What the language fixes:

- Adds a definitions section in the existing statutes.
 - **Public places** and **public ways** are explicitly established as being municipal properties (parks, recreation areas, and buildings) and rights-of-way.
 - **Public places** are explicitly established to exclude municipal forestland (town forests, for example).
 - **Shade trees, over which tree warden will have jurisdiction**, are defined as those that have been planted by a municipality or that are otherwise designated by the municipality through an established process – development of a shade tree preservation plan.
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§ 2502: Tree Wardens and Preservation of Shade Trees

What the language fixes:

- Establishes the shade tree preservation plan as a mechanism for documenting a community's tree program, the jurisdiction of the tree warden, and any municipality-specific processes for shade tree removal.
 - Municipalities may, but are not required to, adopt a shade tree preservation plan. If they choose to do so, the bill's language provides clear guidelines about what should be included in the plan.
 - For a municipality to adopt a shade tree preservation plan, there must be at least one public hearing to gather public input about the plan and the plan will need to be published at least ten days before the hearing.
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§ 2503: Appropriations

What the language fixes:

- Removes language about appropriations if a tree warden is not appointed.
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§ 2504: Removal of Shade Trees; Exception

What the language fixes:

- Clarifies if the tree warden determines that a shade tree constitutes a public hazard, or if it is infested with or infected by a tree pest, the tree warden can remove the shade tree without posting public notice or holding a public hearing.
 - Clarifies the process by which a tree warden may work with landowners in situations where the abutting landowner is controlling a tree pest or disease to preserve the tree.
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§ 2505: Deputy Tree Wardens

What the language fixes:

- Gives authority to the legislative body of the municipality to appoint and dismiss deputy tree wardens (opposed to the tree warden, in the existing statutes).
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§ 2506: Regulations for Protection of Shade Trees

What the language fixes:

- Requires the involvement of the legislative body of the municipality in the establishment of rules, ordinances, and regulations for local tree programs.
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§ 2507: Cooperation

What the language fixes:

- Requires the consent of the legislative body of the municipality in any financial or other agreements into which the tree warden may enter to implement the municipality's shade tree preservation plan.
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§ 2508: Cutting Shade Trees Prohibited

What the language fixes:

- Aligns 24 V.S.A. chapter 67 (Tree Wardens) with 19 V.S.A. chapter 9 (Town Highways) and eliminates conflicts between the statutes.
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§ 2509: Cutting Shade Trees; Notice and Hearing

What the language fixes:

- Establishes a process and the rules for public notice and hearing regarding shade tree removal in a municipality.
 - Clarifies that a public hearing is only required if triggered by an appeal to the public notice of shade tree removal.
 - Clarifies that an appeal to the planned removal of a shade tree can only be received from landowners or residents of the municipality.
 - Transfers the authority of final decision about shade tree removals from the tree warden in the existing statutes to the legislative body of the municipality.
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§ 2510: Penalty

What the language fixes:

- Establishes penalties for unauthorized shade tree removal based on the size of the tree, opposed to a static fee (\$500.00 in existing statutes).
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§ 2511: Control of Infestations

What the language fixes:

- Updates state governance to be consistent with other statutes by adding the Commissioner of Forests, Parks and Recreation to the tree warden statutes.
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Sec. 3 19 V.S.A. chapter 9, subchapter 1: General Duties of Towns

§ 901: Removal of Roadside Growth

What the language fixes:

- Addresses a conflict in language between Title 19 (Town Highways) and Title 24 (Tree Wardens) to recognize shade trees and requiring involvement with the tree warden to remove them.

- Maintains the municipality and the abutting landowner's ability to maintain and remove trees that are not designated as shade trees without the consent of the tree warden.
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§ 902: Penalty for Removal

What the language fixes:

- Establishes consistent penalties for unauthorized shade tree removal based on the size of the tree.
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§ 904: Tree and Brush Removal

What the language fixes:

- Recognizes that designated shade trees along town highways should not be removed, pursuant to the tree warden statutes, in regular road maintenance practices.