

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Resolve Differences in the Laws Regarding Public Shade Trees

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 30-A MRSA §3281, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C, §106 and as amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is repealed and the following enacted in its place:

§ 3281. Public shade trees

The Legislature has determined that, in addition to beautifying our highways, trees growing within the right-of-way serve important environmental and economic purposes in that they release oxygen into the air, absorb carbon dioxide and reduce energy costs by providing shade in warm weather and protection against cold winter winds. Public shade trees also promote public safety by protecting pedestrian traffic and enhance the aesthetic and historical characteristics of the community. All trees within or upon the limits of any public highway are public shade trees.

Sec. 2. 30-A MRSA §3282, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C, §106 and as amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is further amended to read:

§ 3282. Appointment and duties of municipal arborists or tree wardens

The municipal officers of municipalities ~~which~~that have not appointed conservation commissioners under subchapter ~~H2~~ may annually appoint a municipal arborist or one or more tree wardens who have the care and control of all public shade trees upon and along the highways and in the parks of the municipality and all streets within any village limits. They shall enforce all laws relating to the preservation of those trees.

Sec. 3. 30-A MRSA §3283, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C, §106 and as amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is further amended to read:

§ 3283. Planting, maintenance and removal of trees

Public shade trees may be planted, trimmed, cut down or removed by ~~the owner of the land only with the consent of a~~ municipal arborist, a tree warden or the conservation commission. ~~Public shade trees may be trimmed, cut down or removed by a tree warden or conservation commissioner only with the consent of the landowner.~~

1. Planting, trimming, cutting or removal authorized. ~~This section does not prevent the trimming, cutting or removal of~~authorizes a municipality to plant, trim, cut and remove public shade trees when the planting, trimming, cutting or removal is properly ordered by proper authority to:

- A. Lay out, alter or widen the location of highways;
- B. Lessen the danger of travel on highways; ~~or~~

- C. Suppress tree pests or insects;
- D. Remove dead or dying trees or branches;
- E. Remove trees or branches that interfere with public works projects; or
- F. Promote pedestrian safety on public walkways.

2. Notice; review. At least 21 days before planting, trimming, cutting or removing public shade trees in a right-of-way, a municipality shall notify the abutting property owner of the proposal to plant, trim, cut or remove trees.

- A. Within 10 days of receiving the notice, the abutting property owner may request review of the municipality's decision. The property owner may request that the municipal arborist, tree warden or conservation commission, as appropriate, review the proposal. The property owner must be given an opportunity to express the property owner's concerns with the proposal and to negotiate an appropriate change.
- B. If the property owner is dissatisfied with the result of the review under paragraph A, the property owner may appeal the proposal and the review to the municipal officers.
- C. A municipality shall adopt standards for review and approval of proposals under this subsection consistent with the findings set forth in section 3281.

3. Exception for emergency situations. Subsection 2 does not apply to emergency situations.

4. Action by property owner. An abutting property owner may request permission from the municipal arborist, tree warden or conservation commission, as applicable, to plant, trim, cut or remove trees in a right-of-way. If there is no municipal arborist, tree warden or conservation commission, the municipality shall designate a municipal official to receive and respond to property owner requests.

5. Municipal standards. A municipality shall adopt standards governing:

A. When planting, trimming, cutting and removal of trees in rights-of-way by a property owner is permissible. The standards must:

- (1) Address the planting, trimming, cutting and removal of shrubs and herbaceous plants; and
- (2) Address setbacks from utility poles, sidewalks, other trees and other objects in or near the right-of-way;

B. The review and approval of a utility's plan to trim, cut or remove by cutting trees located within the public right-of-way of a public way and trim or cut portions of trees encroaching upon the public right-of-way when necessary to ensure safe and reliable service under Title 35-A, section 2522; and

C. The manner in which cutting and trimming is performed by utilities, including supervision by licensed arborists or others knowledgeable in the field.

Sec. 4. 30-A MRSA §3284, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C, §106 and as amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is further amended to read:

§ 3284. Injury or destruction to trees; penalty

~~Whoever~~A person who trims, cuts or otherwise damages or destroys a public shade tree in violation of section 3283 commits a civil violation for which a forfeiture of not less than \$5 nor more than \$25 civil penalty may be adjudged. The forfeiture shall civil penalty must be paid to the municipality in which the offense is was committed and expended by that municipality for the purposes specified in this subchapter and section 3263. If the municipality is the prevailing party, it must be awarded reasonable attorney's fees, expert witness fees and costs.

Sec. 5. 30-A MRSA c. 157, sub-c. 5, as amended, is repealed.

Sec. 6. 35-A MRSA §2522, as corrected by RR 1993, c. 1, §103 and as amended by PL 1999, c. 398, Pt. A, §39 as affected by §§104 and 105, is further amended to read:

§ 2522. Maintenance of utility facilities

Notwithstanding any other provision of law, a transmission and distribution utility or telephone utility may trim, cut or remove by cutting trees located within the public right-of-way of a public way and may trim or cut portions of trees encroaching upon the public right-of-way when necessary to ensure safe and reliable service if:

1. Notice to applicable licensing authority. Notice is provided by the utility to the applicable licensing authority, as defined in section 2502, at least 30 days before the trimming, cutting or removal of trees;

1-A. Notice to utility customers. Notice is provided by the utility to the utility's customers in the municipality in which the cutting, trimming or removal is planned at least 30 days before the trimming, cutting or removal of trees. The notice must indicate that the applicable municipal licensing authority or, if none, the municipal officers may elect to hold a public hearing on the utility's proposal;

2. Consultation with applicable licensing authority. Upon request of the applicable licensing authority, the utility consults with the applicable licensing authority before the trimming, cutting or removal of trees. Notice must be sent to each municipality in which trimming, cutting or removal of trees is to be conducted and the utility shall consult with the applicable municipal licensing authority or, if none, the municipal officers before commencing operations. The municipal licensing authority or, if none, the municipal officers may elect to hold a public hearing on the utility's proposal and, if so, the utility may not commence operations until after the public hearing has been held;

3. Public notice. Public notice is placed in at least 2 newspapers with circulation in the area where trimming, cutting or removal of trees is scheduled to occur at least 30 days before the trimming, cutting or removal of those trees. The notice must state that customers may request to be placed on the list, required under subsection 4, of persons who have requested to be personally consulted before the trimming, cutting or removal of trees. The notice must also be posted at the municipal office;

4. Customer notice list. Before the trimming, cutting or removal of trees, the utility confers with any person who requests personal consultation concerning the trimming, cutting or removal of trees on property in which the person has a legal interest. The utility shall keep a list of persons who have requested personal consultation under this subsection. The utility shall notify annually, in the form of a bill insert, all of the utility's customers of the opportunity to be on the list required under this subsection; ~~and~~

5. Shade and ornamental trees. Before removing or trimming a shade or ornamental tree, the utility consults with the owner of the land upon which the tree is located. For purposes of this subsection, "owner" includes a person who owns the underlying fee interest in land encumbered with a public easement. If the owner of the land does not agree with the utility's proposal, the utility and owner shall negotiate to reach an agreement to modify the proposal. If no agreement is reached, the owner may appeal to the municipal officers; and

6. Compliance with municipal standards. The utility complies with the standards adopted by the municipality under Title 30-A, section 3283.

This section does not apply to trimming, cutting or removal of trees undertaken in emergency situations.

SUMMARY

The purpose of this bill is to resolve the conflicts in current law concerning public shade trees.

This bill gives municipalities the authority to plant, trim, cut and remove trees in the right-of-way, after giving notice to the abutting property owners. The property owners have the opportunity to appeal the decision and negotiate changes. Municipalities retain the authority to cut and remove trees without notice in emergency situations.

The abutting property owners may seek permits to plant, trim, cut or remove trees in the right-of-way.

Municipalities are required to adopt standards governing many aspects of maintaining trees in the right-of-way, including setbacks and utilities' plans to trim, cut and remove trees.

This bill requires utilities to give customers in the municipality notice of the utility's plan to cut, trim or remove trees in the right-of-way or that encroach on the right-of-way. It also requires that the notice be posted at the municipal office. It also requires notice to abutting landowners and an opportunity for them to be heard regarding the utility's proposal.