

MAINE STATE LEGISLATURE

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No. 1264

H.P. 892

House of Representatives, March 8, 2007

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

Reference to the Committee on State and Local Government suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative WAGNER of Lewiston.
Cosponsored by Representatives: BEAULIEU of Auburn, DUCHESNE of Hudson,
HASKELL of Portland, MAKAS of Lewiston, McDONOUGH of Scarborough, PRATT of
Eddington, SAMSON of Auburn, Senator: BOWMAN of York.

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

2 **Sec. 1. 30-A MRSA §3281**, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C,
3 §106 and as amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is repealed
4 and the following enacted in its place:

5 **§3281. Public shade trees**

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

13 **Sec. 2. 30-A MRSA §3282**, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C,
14 §106 and as amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is further
15 amended to read:

16 **§3282. Appointment and duties of municipal arborists or tree wardens**

17 The municipal officers of municipalities ~~which~~ that have not appointed conservation
18 commissioners under subchapter H 2 may annually appoint a municipal arborist or one or
19 more tree wardens who have the care and control of all public shade trees upon and along
20 the highways and in the parks of the municipality and all streets within any village limits.
21 They shall enforce all laws relating to the preservation of those trees.

22 **Sec. 3. 30-A MRSA §3283**, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C,
23 §106 and as amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is further
24 amended to read:

25 **§3283. Planting, maintenance and removal of trees**

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

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

- 34 A. Lay out, alter or widen the location of highways;
- 35 B. Lessen the danger of travel on highways; ~~or~~
- 36 C. Suppress tree pests or insects;
- 37 D. Remove dead or dying trees or branches;

1 E. Remove trees or branches that interfere with public works projects; or

2 F. Promote pedestrian safety on public walkways.

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

6 A. Within 10 days of receiving the notice, the abutting property owner may request
7 review of the municipality's decision. The property owner may request that the
8 municipal arborist, tree warden or conservation commission, as appropriate, review
9 the proposal. The property owner must be given an opportunity to express the
10 property owner's concerns with the proposal and to negotiate an appropriate change.

11 B. If the property owner is dissatisfied with the result of the review under paragraph
12 A, the property owner may appeal the proposal and the review to the municipal
13 officers.

14 C. A municipality shall adopt standards for review and approval of proposals under
15 this subsection consistent with the findings set forth in section 3281.

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

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

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

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

26 (1) Address the planting, trimming, cutting and removal of shrubs and
27 herbaceous plants; and

28 (2) Address setbacks from utility poles, sidewalks, other trees and other objects
29 in or near the right-of-way;

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

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

36 Sec. 4. 30-A MRSA §3284, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C,
37 §106 and as amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is further
38 amended to read:

1 **§3284. Injury or destruction to trees; penalty**

2 ~~Whoever~~ A person who trims, cuts or otherwise damages or destroys a public shade
3 tree in violation of section 3283 commits a civil violation for which a ~~forfeiture of not~~
4 ~~less than \$5 nor more than \$25~~ civil penalty may be adjudged. The ~~forfeiture shall~~ civil
5 penalty must be paid to the municipality in which the offense is was committed ~~and~~
6 ~~expended by that municipality for the purposes specified in this subchapter and section~~
7 ~~3263. If the municipality is the prevailing party, it must be awarded reasonable attorney's~~
8 ~~fees, expert witness fees and costs.~~

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

10 **Sec. 6. 35-A MRSA §2522**, as corrected by RR 1993, c. 1, §103 and as enacted by
11 PL 1993, c. 399, §1 and as affected by PL 1999, c. 398, Pt. A, §§104 and 105 and as
12 amended by c. 398, Pt. A, §39, is further amended to read:

13 **§2522. Maintenance of utility facilities**

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

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

21 **1-A. Notice to utility customers.** Notice is provided by the utility to the utility's
22 customers in the municipality in which the cutting, trimming or removal is planned at
23 least 30 days before the trimming, cutting or removal of trees. The notice must indicate
24 that the applicable municipal licensing authority or, if none, the municipal officers may
25 elect to hold a public hearing on the utility's proposal;

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

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

