

APPENDIX C

## New Hampshire Revised Statutes Pertaining to Vegetation

### Chapter Structure

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## **A. INTRODUCTION**

The delivery of electricity over power lines is an extremely important aspect of modern day life. Two options for reducing power system outages in future storms similar to the December 2008 Ice Storm:

- Placement of the power lines underground
- Better control of vegetation management

Appendix C shows the revised statutes in New Hampshire that pertain to vegetation. Most of these statutes apply to roads, but do not apply directly to the electric utility industry. However, after the December 2008 ice storm the New Hampshire legislature took the responsibility to see that additional rights are extended to electric utilities by amending RSA 231:145 and RSA 231:172. These amendments were passed on July 16, 2009 and enacted on September 14, 2009.

## **B. SUMMARY OF VEGETATION MANAGEMENT RELATED LAWS**

### **RSA 231-139 Tree Wardens**

- The selectmen or other citizens of any town may nominate for appointment by the director, division of forest and lands, department of resources and economic development, as town tree warden one or more persons by them known to be interested in planting, pruning and preservation of shade and ornamental trees and shrubs in public ways, parks and grounds. After investigation the director may choose and appoint from the persons recommended as above prescribed one competent person to be the tree warden for said town who shall serve for one year or until a successor is appointed as hereinbefore provided. The director shall have the power in the exercise of his discretion to remove any tree warden from office. It shall be the business of the tree warden to perform the duties hereinafter specified and he shall be allowed such compensation for services and expenses as the selectmen may deem reasonable.

### **RSA 231-140 Control of Trees**

- Towns shall have control of all shade or ornamental trees situated within the limits of their highways which have been or may be acquired by gift or purchase, or planting by or with the advice of the tree warden, or by condemnation by the tree warden.

### **RSA 231:141 Acquisition of Trees**

- It shall be the duty of the tree warden to examine the trees growing within the limits of highways and to designate from time to time such as may be reasonably necessary for the purpose of shade or ornamentation and to acquire them in the name of the municipality as hereinafter provided, if it can be done, either by gift or by purchase if at a fair price and funds either public or private are available. Failing in this, he may take said trees,

including the right to maintain the same as shade trees, for the use of the town or city by appraising the fair value of the same and by causing to be served upon the owner thereof a notice of such taking, which notice shall state the number of each variety of tree so taken, the location of the same as near as practicable, and the value thereof as fixed by him, or by a committee selected for the purpose, and also by filing a copy of such notice as attested by him with the town clerk. If the owner shall be satisfied with the value stated in such notice, the tree warden shall cause the same to be paid to him forthwith. If the owner shall be dissatisfied, he may, within 30 days after said notice has been served upon him, but not afterwards, apply to the selectmen to assess his damages. Such proceedings shall thereupon be had, including the right of appeal, as are provided in the case of assessment of damages in laying out of highways by selectmen; and thereupon such damages, if any, may be awarded as shall be legally and justly due to the landowner.

**RSA 231:142 Marking of Trees Acquired**

- The trees so acquired shall be marked for identification in such manner as the state forestry commission shall approve. The tree warden shall keep a record of such trees, such record to show the approximate location, name of abutting landowner, variety and approximate diameter and date of acquisition. The tree warden or his authorized agent shall represent the interest of the public at any hearing whenever a public service corporation shall desire to cut or remove any shade or ornamental tree in accordance with RSA 231:172, or may have caused damage to such trees.

**RSA 231:143 Appropriation**

- Such sums of money as the town may appropriate, or as are available, may be used to carry out the provisions of RSA 231:139-142.

**RSA 231:144 Removal of Trees**

- Whoever desires the cutting and removal in whole or in part of any public shade or ornamental tree may apply to the tree warden, who shall give a public hearing, upon the application, at some suitable time and place, after publishing and posting notices of the hearing in 2 or more public places in town and also upon the tree or trees which it is desired to cut and remove; provided, that the tree warden may, if he deems it expedient, grant permission for such cutting or removal, without a hearing, if the tree in question is on a public way outside of the residential part of the town limits, such residential part to be determined by him. No tree within such residential limit shall be cut by him, except to trim it, or removed by him, without such hearing. The decision of the tree warden shall be subject to review by the selectmen of towns or the governing bodies of cities.

**RSA 231:145 Removal of Certain Hazardous Trees**

- **Before July 16, 2009:** Notwithstanding the provisions of other sections of this subdivision or any other provision of law, the commissioner of transportation on class I and III highways, and state maintained portions of class II highways, and the mayors of cities and the selectmen of towns and the county commissioners for unorganized places on class IV, V and VI highways and town maintained portions of class II highways may declare any tree, either alive or dead, situated within the limits of highways, roads, or streets to be a public nuisance by reason of danger to the traveling public or spread of tree disease. After such declaration by such authority and notice to the abutting landowner on whose property such tree is located the said authority shall within a reasonable time remove the same without compensation or cost to the abutter. However, no such declaration and notice shall be required when the delay entailed by such declaration and notice would pose an imminent threat to safety or property. The provisions of this section shall not apply to public shade or ornamental trees. Nothing in this subdivision shall be construed to relieve the public utility companies of their accepted responsibility of tree trimming and tree removal for the protection of their lines, or for the construction of new lines, or to alter the provisions of RSA 231:150-182 in any manner. The aforesaid state and municipal authorities may require of the public utilities owning lines which pass through or near a tree or trees which are condemned for removal as a public nuisance to assist in their removal at their expense by either the temporary removal of their lines or by causing to be removed at their expense the top portion of said tree or trees from a point below their lines.
- **After July 16, 2009:** Notwithstanding the provisions of other sections of this subdivision and subject to the provisions of RSA 231:157 and RSA 231:158, the commissioner of transportation on class I and III highways, and state maintained portions of class II highways, and the mayors of cities and the selectmen of towns and the county commissioners for unorganized places on class IV, V, and VI highways and town maintained portions of class II highways may declare any tree, either alive or dead, situated within the limits of highways, roads, or streets to be a public nuisance by reason of unreasonable danger to the traveling public, spread of tree disease, or the reliability of equipment installed at or upon utility facilities authorized under RSA 231:160 or RSA 231:160-a. After such declaration by such authority and notice to the abutting landowner on whose property such tree is located the said authority shall within a reasonable time remove the same without compensation or cost to the abutter. However, no such declaration and notice shall be required when the delay entailed by such declaration and notice would pose an imminent threat to safety or property. Nothing in this subdivision shall be construed to relieve the public utility companies of their accepted responsibility of tree trimming and tree removal for the protection of their lines, or for the construction of new lines, or to alter the provisions of RSA 231:150-182 in any manner. The aforesaid

state and municipal authorities may require of the public utilities owning lines which pass through or near a tree or trees which are condemned for removal as a public nuisance to assist in their removal at their expense by either the temporary removal of their lines or by causing to be removed at their expense the top portion of said tree or trees from a point below their lines.

**RSA 231:146 Notice**

- Notice to the abutting landowner of a tree declared a public nuisance shall be given by delivery at his place of residence or by sending by registered mail to his last known address and it shall clearly state the intention of removal of such tree. He may appeal to the superior court as to the validity of such declaration within 30 days of delivery or mailing of said notice, and shall be entitled to a speedy hearing. The final judgment upon every appeal shall be a decree dismissing the appeal, or vacating the declaration complained of in whole or in part, as the case may be; but in case such declaration is wholly or partly vacated the court may also, at its discretion, remand the matter to the said department, city, county, or town for such further proceedings, not inconsistent with the decree, as justice may require. Following expiration of the aforesaid 30-day period of appeal, or following waiver of said right of appeal, the abutting landowner is relieved of any liability or responsibility in connection with the tree or trees declared a public nuisance and similarly is relieved of any liability or responsibility in connection with any stump or stumps left remaining.

**RSA 231:147 Injury or Defacement of Trees**

- It shall be unlawful to cut, destroy, injure, deface, or break any public shade or ornamental tree; or to affix to any such tree a play bill, picture, announcement, notice, advertisement, political or otherwise, or other device or thing, or to paint or mark such tree, except for the purpose of protecting it and under a written permit from the tree warden; or to negligently or carelessly suffer any horse or other beast to break down, injure or destroy a shade or ornamental tree within the limits of any public way or place.

**RSA 231:148 Trees Donated**

- Whenever any party, at a proper time of the year, shall present to a town well grown nursery trees, the tree wardens may set out such trees in the highways, cemeteries, commons, schoolhouse yards and other public places, as indicated by the donor, and protect the same at the expense of the town.

**RSA 231:149 Public Ownership**

- Any young shade or ornamental tree planted within the limits of a public highway by the tree wardens or by any other person or persons, with the approval of the selectmen or the

mayor, or any young seedling tree or sprout left within the limits of the highway as specified in RSA 231:150 and designated by the tree warden to be preserved for its future value as a shade tree, shall become the property of the municipality; provided, that the abutting landowner, having been notified of the intention of the town to take and preserve such young tree, shall make no written objection to the tree warden within 30 days from the date of such notification.

#### **RSA 231:150 Clearing Highways**

- Mayors of cities, selectmen of towns and county commissioners for unorganized places shall annually, and at other times when advisable, cause to be cut and disposed of from within the limits of town maintained highways all trees and bushes that may cause damage or pose a safety hazard to such highways or to the traveling public; provided however that no tree which has a circumference of 15 inches or more at a point 4 feet from the ground shall be removed in the absence of notice to the abutter in the same manner as provided in RSA 231:145 and 231:146, except when the delay entailed by such notice would pose an imminent threat to safety or property. Shade and fruit trees that have been set out or marked by the abutting landowners or by the town tree wardens, and young trees standing at a proper distance from the highway and from each other, shall be preserved, as well as banks and hedges of bushes that serve as a protection of the highway, or that add to the beauty of the roadside.

#### **RSA 231:151 Improvements by Abutter**

- The selectmen of a town or the highway department of a city may contract with any owner of land abutting a public highway to cut, trim and improve the roadside growth along said owner's property, and for all such work properly done in carrying out the provisions of RSA 231:150 and approved by the tree wardens, may allow and cause to be paid to such owner such sums as in their judgment, with the advice of the tree wardens, justly represent the value to the town of the improved condition of the roadside.

#### **RSA 231:152 Burning Brush**

- Whenever any trees or brush cut along the highway are disposed of by burning, the cut trees or brush shall be removed a safe distance from any adjoining woodland or from any tree or hedge designated or desirable for preservation, and such burning shall be done with the permission of the forest fire warden. All trees or brush thus cut from within the limits of the highway shall be disposed of within 30 days from the cutting thereof.

#### **RSA 231:153 Disposal of Brush**

- If any cut brush has been left within the limits of any public highway for a longer period than 30 days the director, division of forests and lands, department of resources and

economic development, may complete the removal or disposal of such brush and assess the costs thereof against the party authorizing or causing such nuisance. If the said costs are not paid within a reasonable time they may be recovered in an action brought by the attorney general upon complaint of the director.

**RSA 231:154 Taking Tree Rights**

- When any highway shall be laid out damages may be assessed to the abutting owners to provide for the maintenance or planting, from time to time, within the limits of such highway, of such shade and ornamental trees as may be necessary for the preservation and improvement of such highway. Damages may be assessed to abutting owners on any existing highway upon petition therefore, and such proceedings had as in the laying out of highways by selectmen to provide for the maintenance and planting from time to time, of such trees within the limits of such highways as may be necessary for the preservation and improvement of the same. When such damage shall be assessed and paid there shall be, in addition to the right of travel over such highway, a public easement to protect, preserve and renew the growth thereon for the purposes aforesaid.

**RSA 231:155 State Supervision**

- On all class I and III highways, and state maintained portions of class II highways, the commissioner of transportation shall have under his supervision the planting, acquisition, maintenance and removal of all trees and vegetation and the same powers relative thereto as conferred by this subdivision or any other law upon the cities and towns on highways under their jurisdiction. The commissioner shall make such rules and regulations for the purposes hereof as shall, in his judgment, seem for the best interests of the state.

**RSA 231:156 Penalty**

- Any person who violates any provision of this subdivision or any rule or regulation thereunder made by the commissioner of transportation shall be guilty of a violation if a natural person, or guilty of a misdemeanor if any other person. Any person shall be liable for all damage occasioned thereby.

**RSA 231:157 Scenic Roads; Designation**

- Any road in a town, other than a class I or class II highway, may be designated as a scenic road in the following manner. Upon petition of 10 persons who are either voters of the town or who own land which abuts a road mentioned in the petition (even though not voters of the town), the voters of such town at any annual or special meeting may designate such road as a scenic road. Such petitioners shall be responsible for providing the town clerk with a list of known property owners whose land abuts any of the roads mentioned in the petition. The town clerk shall notify by regular mail within 10 days of

the filing all abutters along the road that lies within the town that a scenic road petition has been filed for and that an article to designate such road as a scenic road will appear in the warrant at the next town meeting. The voters at a regular town meeting may rescind in like manner their designation of a scenic road upon petition as provided above. Notice to the abutting landowners shall also be given as provided above. Each town shall maintain and make available to the public a list of all roads or highways or portions thereof within the town which have been designated as scenic roads. Such list shall be kept current by updating not less than annually and shall contain sufficient information to permit ready identification of the location and extent of each scenic road or portion thereof, by reference to a town map or otherwise.

### **RSA 231:158 Effect of Designation as Scenic Road**

I. As used in this subdivision, "tree" means any woody plant which has a circumference of 15 inches or more at a point 4 feet from the ground.

II. Upon a road being designated as a scenic road as provided in RSA 231:157, any repair, maintenance, reconstruction, or paving work done with respect thereto by the state or municipality, or any action taken by any utility or other person acting to erect, install or maintain poles, conduits, cables, wires, pipes or other structures pursuant to RSA 231:159-189 shall not involve the cutting, damage or removal of trees, or the tearing down or destruction of stone walls, or portions thereof, except with the prior written consent of the planning board, or any other official municipal body designated by the meeting to implement the provisions of this subdivision, after a public hearing duly advertised as to time, date, place and purpose, 2 times in a newspaper of general circulation in the area, the last publication to occur at least 7 days prior to such hearing, provided, however, that a road agent or his designee may, without such hearing, but only with the written permission of the selectmen, remove trees or portions of trees which have been declared a public nuisance pursuant to RSA 231:145 and 231:146, when such trees or portions of such trees pose an imminent threat to safety or property, and provided, further, that a public utility when involved in the emergency restoration of service, may without such hearing or permission of the selectmen, perform such work as is necessary for the prompt restoration of utility service which has been interrupted by facility damage and when requested, shall thereafter inform the selectmen of the nature of the emergency and the work performed, in such manner as the selectmen may require.

III. Designation of a road as scenic shall not affect the eligibility of the town to receive construction, maintenance or reconstruction aid pursuant to the provisions of RSA 235 for such road.

IV. Designation of a road as a scenic road shall not affect the rights of any landowner with respect to work on his own property, except to the extent that trees have been acquired by the municipality as shade or ornamental trees pursuant to RSA 231:139-156, and except that RSA 472:6 limits the removal or alteration of boundary markers

including stone walls.

V. A town may, as part of a scenic road designation under RSA 231:157 or as an amendment to such designation adopted in the same manner, impose provisions with respect to such road which are different from or in addition to those set forth in this section. Such provisions may include, but are not limited to, decisional criteria for the granting of consent by the planning board or other designated municipal body under paragraph II, or protections for trees smaller than those described in paragraph I, designated for the purpose of establishing regenerative growth along the scenic road.

VI. Any person who violates this section or any local provision adopted under this section shall be guilty of a violation and shall be liable for all damages resulting therefrom.

### **RSA 231:172 Cutting Trees**

- **Before July 16, 2009:** No such licensee shall have the right to cut, mutilate or injure any shade or ornamental tree, for the purpose of erecting or maintaining poles or structures or installing wires or other attachments or appurtenances thereto, without obtaining the consent of the owner of the land on which such tree grows or the payment or tender in full of damages therefore determined as provided in this section. If the consent of such owner cannot be obtained, the selectmen, upon petition, after notice to the owner and hearing, shall determine whether the cutting or mutilation is necessary and if determined to be necessary, they shall assess the damages that will be occasioned to the owner thereby. Upon highways which have been designated scenic roads pursuant to RSA 231:157 and RSA 231:158, cutting shall be further restricted as set forth in those sections or any local provisions adopted thereunder.
- **After July 16, 2009:** I. No licensee shall have the right to cut, prune, or remove any shade or ornamental tree, for the purpose of erecting or maintaining poles or structures or installing wires or other attachments or appurtenances thereto, without obtaining the consent of the owner of the land on which such tree grows. The receipt of a license to erect and maintain such equipment pursuant to RSA 231:160 and RSA 231:160-a includes consent to cut, prune, or remove shade or ornamental trees growing on land located within the public right-of-way that pose an unreasonable danger to the reliability of equipment installed at or upon licensed utility facilities. Nothing in this section shall affect the right of the landowner to the cordwood or timber that results from the activities of a licensee under this subdivision.  
II. A licensee shall provide notice in writing at least 45 days in advance of any non-emergency cutting, pruning, or removal of shade or ornamental trees that is scheduled to take place on a landowner's property. The notice shall, at the option of the licensee, be given in person, or sent separately by ordinary mail, and not included in or as a part of a utility bill or other regular communication, to owners of affected land using the name and address that appears on municipal tax records for the property, or sent separately by

electronic mail, and not included in or a part of a utility bill or other regular communication, if the landowner has established regular electronic mail communication with the licensee.

(a) The notice shall provide the name and contact information of a representative of the licensee who may be contacted to schedule personal consultation regarding the activities.

(b) For the purposes of this section, the owner shall be deemed to have consented to the activities if he or she fails to affirmatively request personal consultation within 45 days of the mailing of such notice.

(c) If, after personal consultation with the licensee, the owner refuses to consent to the activities, the selectmen, upon petition, after notice to the owner and licensee, and hearing, shall determine whether the cutting, pruning, or removal is necessary and, if determined to be necessary, assess the damage to the owner.

III. Upon highways which have been designated scenic roads pursuant to RSA 231:157 and RSA 231:158, cutting, pruning, or removal shall be further restricted as set forth in those sections or any local provisions adopted thereunder.

IV. Nothing in this section shall be construed to require notice to or consent from the owner of land in the event that the owner, or a predecessor of the owner, has granted an easement which provides legal authority for the utility to remove, cut, prune, or trim trees or vegetation on the owner's land.