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Testimony of Eric Hammerling, Executive Director, Connecticut Forest & Park Association

Legislation before the Judiciary Committee on March 4, 2013	Support/ Oppose
RAISED BILL 987: AN ACT CONCERNING THE MAINTENANCE OF TREES BY HOMEOWNERS.	Oppose
RAISED BILL 6487: AN ACT CONCERNING A PROPERTY OWNER'S LIABILITY FOR THE EXPENSES OF REMOVING A FALLEN TREE OR LIMB.	Oppose

The Connecticut Forest & Park Association (CFPA) is the first conservation organization established in Connecticut in 1895. CFPA has offered testimony before the General Assembly every year since 1897 on issues such as sustainable forestry, state parks and forests, trail recreation, natural resource protection, and land conservation.

In 2012, the Commissioner of the Department of Energy & Environmental Protection commissioned the State Vegetation Management Task Force (Task Force) "to develop standards for road side tree care in Connecticut, vegetation management practices and schedules for utility rights of way, right tree/right place standards, standards for tree wardens, municipal tree inventories and pruning schedules." As Chair of this Task Force which offered its final report on August 28, 2012, I feel obligated to note matters that were considered by the Task Force and were included in our final report. **That being said, I oppose these raised bills on behalf of CFPA, not the Task Force.**

Although the emphasis of the Task Force was on roadside trees, the Task Force was provided legal background, not advice, on the following issues (excerpted from bullets on pages 34-36 of Final Task Force Report):

- According to interpretations of the relevant statutes and extensive case law, "... should the tree fail and cause damage, the private owner of the tree would not bear any financial responsibility for those damages."
- "... placing the full burden of responsibility for maintenance of roadside trees owned by private property owners is also very likely to be an ineffective solution, for a variety of reasons ..."
- The Task Force, however, was unable to decide upon a mechanism by which this should occur.
- The Task Force did find that there may be circumstances where there are trees on private property that do not extend into the public right of way and hence are not under the care and control of the tree warden, but that would nonetheless have the potential to fail and impact the public safety. These trees should be maintained as a part of responsible stewardship by the owners of those trees.

- In general, the Task Force reached agreement that it would favor a system that would:
 - encourage private property owner responsibility for privately owned trees.
 - encourage public oversight, through the tree wardens, over trees on private property that pose risks to the public, the public right-of-way and utility infrastructure.
 - foster public-private collaboration in a way that encourages proactive tree management, such that risks to the public would be mitigated before they became severe and that the municipality would also have the clear authority to intervene once risks are determined to have become severe.

While this may provide some helpful background, it does not get to the root of CFPA's opposition to Raised Bills 987 and 6487. In short, we believe both of these bills are overly broad and would muddle and not clarify existing case law. Simply put, it is incredibly difficult and not advisable to attempt to legislatively require positive stewardship or to mandate being a good neighbor.

R.B. 987 would open a hornet's nest of problems. It does not specify that a professional arborist or tree warden should inspect trees to see whether they are unhealthy. Should everyone have the legal right to make this determination and send a certified letter? Even if the bill did specify that tree experts should make the tree health determinations, arborists can disagree significantly over whether a tree is in a "potentially dangerous condition." Extreme weather events over the past 2 years provide numerous examples of trees that would have been classified as "healthy" that then fell and caused damage.

R.B. 6487 is more carefully constructed, but is both unnecessary and biased. It is unnecessary because tree wardens already advise landowners to work with an arborist to conduct tree risk management if circumstances require. For the most part, landowner conflicts should be worked out by neighbors in a less legal and more amicable way. 6487 is biased because it would provide unfair leverage to neighbors able to afford an arborist determination, and work against landowners who couldn't afford to hire an arborist or afford the expenses associated with tree or limb removal. This bill leaves no right to appeal the recommendation of an arborist hired by your neighbor. Arborists are not infallible, and similar to R.B. 987, "likely to fall" can be just as debatable as "potentially dangerous condition."

We ask the Committee to vote against both of these unnecessary bills and leave in place centuries of case law on tree-related disputes.

Thank you for the opportunity to testify on this bill, and I am glad to respond to any questions you may have.