

New Jersey Shade Tree Federation

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Hello Shade Tree Federation Members,

PLEASE ACT NOW

As a federation, we are an educational organization that educates the municipalities and the public in order to maintain and conserve the tree canopy resource. I ask that you contact your representatives and community network to inform and improve legislation in process.

I am writing to make sure you are aware of a bill re-introduced with amendments in the NJ State Senate (S2505) with a companion bill in the State Assembly (A2558). This bill, known as the "Vegetation Management Response Act," authorizes an electric public utility (EPU) to remove, replace, or maintain dangerous vegetation which may "fall into, touch, affect, or otherwise interfere with" an electrical distribution line. The bill further provides that a public utility (as defined at N.J.S.A 48:2-3, which includes more than just EPU's) or cable television company **requires no prior permission from any county or municipal shade tree commission to clear, move, cut, or destroy trees**, shrubs, or plants for the purpose of erecting, installing, moving, removing, altering, protecting, or maintaining structures or fixtures necessary for the supply of electric light, heat, power, or communication or cable television services upon any lands in which it has acquired an easement or right-of-way or upon any public right-of-way. This bill passed in the NJ Assembly on Monday December 17, 2018.

The bill uses the terms "dangerous vegetation" and "danger tree". These are not accepted terms of practice in the professional tree community. A tree that is tall enough to touch (not damage, but touch) a wire could be condemned by a person as a general directive without observing the tree or site. The person does not need to have any expertise to determine a tree as a "danger tree" for the purposes of a cable TV line **with no recourse** by a community or a private property owner. This is not limited to the ROW specifically, but to what might be able to reach a ROW if falling. That is a much broader scope of authority. While tree care professionals will be in place for the work of implementation of a decision, there is no requirement to have this perspective or knowledge in the development of a work order, nor any recourse to question the work order by the affected community.

The proposed legislation defines vegetation management solely with respect to dangerous vegetation, or in short, management is about removal (clear, move, cut or destroy). In the language of this legislation the word "prune" is not used, yet ANSI A-300 tree care standards are used as the reference authority to clear, move, cut or destroy, suggesting that the term "pruning" would have been used if the objective was pruning rather than removal. The terminology used in this proposed legislation also suggests a lack of understanding of the referenced standards for tree care practices.

This is poorly developed, but easily improved policy in that the only aspect of management considered is removal on an overly broad definition of risk without regard for other tangible values of the tree or consequence for its removal beyond an above-ground infrastructure line. Indeed, much of this process for electric utilities is already in place within the existing BPU regulations, and in many communities your utility representatives are already working with your commissions for the safe, effective and efficient distribution of energy to the best of their ability. That is not necessarily the same case for cable providers and telecom provision.

The legislation has specific impact on members of the NJ Shade Tree Federation. As written, the legislation will:

- Prohibit the Community Forestry Council, a shade tree commission, or any entity empowered by the NJ Shade Tree and Community Forestry Assistance Act, to interfere with or restrict an EPU's removal, replacement, or maintenance of dangerous vegetation in accordance with this legislation.
- Exempt EPU's and cable television companies from the requirement to obtain permission of a commission to clear, move, cut, or destroy trees, shrubs, or plants for the purpose of erecting, installing, moving, removing, altering, protecting, or maintaining any structures or fixtures necessary for the supply of electric light, heat or power, communication, or cable television services upon lands which it has acquired an easement or right-of-way or upon a public right-of-way.

- Exempt EPU's and cable television companies doing work as described in the bullet above from any penalty imposed by a shade tree commission. This penalty exemption does not apply if the damage caused by an EPU or cable company's failure to comply with a shade tree commission rule provided the shade tree commission's rule does not interfere with the EPU or cable company's compliance with federal regulations, NJBPU orders, or other applicable federal standards.
- Provide that an EPU or cable television company acting diligently and in good faith in the performance of its vegetative management responsibilities shall not be held liable, penalized, or otherwise subject to undue hardship by a governing body of a county or commission.

In the poorly chosen wording of the scope of the act;
 in the fundamental misunderstanding (or misapplication) of the word "management";
 in the removal of any authority of the community;
 in the basic lack of understanding to use correct terminology in referencing the standards cited by the legislation;

it is our opinion that this is a poorly-formed document that runs contrary to the educational information released by the federation. It also erodes the authority of the Mayor or a community to challenge a choice for work in their community.

Many of our communities are rather densely populated with small lots punctuated by large trees, larger in height than in distances between ROWs for energy or entertainment provision. In those cases, **this bill has direct impact on almost every tree in large areas of many communities.** It becomes an issue larger than the shade tree commission to the large groups of general population, which is a voting public with specific demographic character and explicit community value.

I STRONGLY ADVISE that you read the bill for yourselves and provide comment to your legislative representatives AS SOON AS POSSIBLE. Whether you are for or against this legislation, the time to comment is now. The bill can be found in its entirety at the link below. From this website you can also link to the assembly version and see the voting results.

<https://www.njleg.state.nj.us/bills/BillView.asp?BillNumber=S2505>

YOU NEED TO ACT NOW, as it has the potential for significant impact to your public tree resource and those of all of your neighbors. Contact your senator and your mayor as soon as possible. Here are a few suggested comments to make:

- WE ASK FOR corrections on the bill, as we respect the intention of safe, reliable and effective services tasked of the many utilities that are also impacted by this act. They are ultimately PUBLIC utilities, and thus need to consider the more complicated aspects of "public" in the discussion, since there are multiple values in play to consider.
- We DEMAND a change in the language specifically targeted to totally negate the community shade tree commissions and related agents in their role for their communities. We understand there is a desire to engage a proactive process to cause a change in public utility reliability metrics. There is already a working system in place. We insist that risk avoidance is more wasteful and damaging than risk management. This legislation is for risk avoidance and the disenfranchisement of communities committed to environmental conservation values in a public space with shared needs.
- We plainly state that the expansion of the ROW to include any tree able to fall into a ROW is a taking of tangible value not warranted, demanded or defended by any rule or substantive evidence. It can have long term detrimental consequence to communities and their elected leadership if the act is deployed by a poorly informed or a poorly motivated entity.
- We SUGGEST a REQUIREMENT that a NJ Licensed Tree Expert make on-site choices with communities who wish to engage rather than an office "letting" a contract to execute orders that issue announcements without any community power to question a decision.

Sincerely,

Jason Grabosky
 President
 NJ Shade Tree Federation