

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

ASSEMBLY, No. 2558

**STATE OF NEW JERSEY
218th LEGISLATURE**

DATED: DECEMBER 19, 2018

SUMMARY

- Synopsis:** “Vegetation Management Response Act”; concerns vegetation management related to electric public utility infrastructure.
- Type of Impact:** Indeterminate decrease in local revenue.
- Agencies Affected:** County and municipal shade tree commissions.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
Local Revenue	Indeterminate Decrease		

- The Office of Legislative Services (OLS) estimates that the enactment of the bill would result in an indeterminate marginal decrease in local revenues associated with the reduced collection of fines by county and municipal shade tree commissions.
- The bill exempts public utilities and cable television companies from county and municipal shade tree commission fines, with certain exceptions, when cutting or removing dangerous vegetation at certain locations for the purpose of installing, altering, or maintaining any structures necessary for the supply of electricity, communication, or cable television services.
- As a result, a county shade tree commission would experience a loss in revenue that is approximately equal to: (1) the number of all instances in which a public utility or cable television company cuts or removes certain vegetation, as authorized in the bill, when those actions would have otherwise violated the rules and regulations of the commission; multiplied by (2) the amount of the fine, not to exceed \$200, that would have been imposed for each action.
- The reduction in municipal shade tree commission fine revenues would be approximately equal to: (1) the number of instances in which a public utility or cable television company cuts or removes certain vegetation *located upon a public right-of-way*, as authorized in the

bill, when those actions would have otherwise violated the rules and regulations of the commission; multiplied by (2) the amount of the fine, not to exceed \$1,500, and replacement assessment, as determined by the commission, that would have been imposed for each action.

- The OLS notes that public utilities and cable television companies are currently exempt from municipal shade tree commission fines and assessments, with certain exceptions, when the actions referenced in the bill are undertaken on lands in which it has acquired an easement or right-of-way, but not upon a public right-of-way. This exemption currently does not apply for those actions undertaken upon a public right-of-way.

BILL DESCRIPTION

The bill authorizes an electric public utility to use all reasonably available methods, according to the American National Standards Institute's tree care standards and the Board of Public Utilities' rules and regulations, to remove, replace as reasonable and necessary, or maintain dangerous vegetation in order to ensure the continued, reliable supply of electricity in the State. However, the electric public utility would be required to provide written notice to affected customers, property owners, and government entities prior to performing any vegetation management activity. Under the bill, a county or municipal shade tree commission, and the Community Forestry Council, may not prevent an electric public utility from removing, replacing, or maintaining dangerous vegetation. The bill also authorizes an electric public utility to establish a program with a municipality to develop effective strategies to implement the provisions of the bill.

Specifically, the bill defines "dangerous vegetation" as any tree, shrub, plant, or other vegetation growing in, near, or adjacent to the electric public utility's right of way, and the electric distribution and transmission line, but not including a service line to an individual customer, that may fall into, touch, or otherwise interfere with an electric distribution line, as determined by the electric public utility or local government entity having control of the right of way.

The bill also provides that a public utility, as defined in R.S.48:2-13, or cable television company, as defined in section 3 of P.L.1972, c.186 (C.48:5A-3), is not required to: (1) receive the permission of any county or municipal shade tree commission; or (2) pay any penalty imposed by a county or municipal shade tree commission, with certain exceptions, when clearing, moving, cutting, or destroying any 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 any lands in which it has acquired an easement or right-of-way or upon a public right-of-way. Public utilities and cable television companies are currently exempt from penalty fees imposed by a municipal shade tree commission when conducting *most* of these activities.

In addition, the bill provides that upon the next vacancy on the Community Forestry Council following the enactment of the bill, the State Forester is required to appoint a New Jersey electric public utility employee, who is an electric public utility approved forester, to represent the electric public utility on the council. The bill requires the State Forester to make these appointments until there are at least two members serving on the council meeting that description.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that the enactment of the bill would result in an indeterminate marginal decrease in local revenues associated with the reduced collection of fines by county and municipal shade tree commissions.

County and Municipal Shade Tree Commission Fines

Under current law, county and municipal shade tree commissions are authorized to make rules and regulations for the protection and care of the trees and vegetation within the highways, parks, and public places under their jurisdiction. The shade tree commissions are also authorized to impose fines for the violation of each rule or regulation. Pursuant to R.S.40:37-6, a county shade tree commission may impose a fine of not more than \$200 for each violation. Currently, the law governing county shade tree commissions does not provide a fine exemption for certain public utility or cable television company actions.

Under R.S.40:64-12, a municipal shade tree commission may impose: (1) a fine of not more than \$1,500 for each violation; and (2) a replacement assessment for the removal or destruction of a tree, in violation of a municipal ordinance, in an amount equal to: (i) the value of the tree as appraised by a trained forester or Certified Tree Expert; or (ii) the amount determined by a formula, adopted by the commission, that is based on the cross section of the tree trunk, in inches, multiplied by an amount not to exceed \$27 per square inch. Current law also provides that any public utility or cable television company that cuts or removes any vegetation for the purpose of installing, altering, or maintaining any structures or fixtures necessary for the supply of electricity, communication, or cable television services would not be subject to a fine or replacement assessment, if the actions occurred on lands in which it acquired an easement or right-of-way. However, this exemption currently does not apply for those actions undertaken upon a public right-of-way.

Impact of A-2558 (2R) on Shade Tree Commission Revenues

The enactment of the bill is expected to result in a marginal decrease in county and municipal shade tree commission fine revenues. Most notably, the bill provides that a public utility or cable television company would not be subject to certain penalty fees imposed by a county or municipal shade tree commission when cutting or removing any vegetation for the purpose of installing, altering, or maintaining any structures or fixtures necessary for the supply of electricity, communication, or cable television services, provided that those actions occurred upon a public right-of-way or lands in which it has acquired an easement or right-of-way.

As a result, a county shade tree commission would experience a loss in revenue that is approximately equal to: (1) the number of all instances in which a public utility or cable television company cuts or removes certain vegetation, as authorized in the bill, when those actions would have otherwise violated the rules and regulations of the commission; multiplied by (2) the amount of the fine, not to exceed \$200, that would have been imposed for each action.

In contrast, the reduction in municipal shade tree commission fine and replacement assessment revenues would be approximately equal to: (1) the number of instances in which a

public utility or cable television company cuts or removes certain vegetation *located upon a public right-of-way*, as authorized in the bill, when those actions would have otherwise violated the rules and regulations of the commission; multiplied by (2) the amount of the fine, not to exceed \$1,500, and replacement assessment, as determined by the commission, that would have been imposed for each action.

The OLS is unable to predict: (1) the number of instances in which a public utility or cable television company will undertake the actions authorized in the bill, and (2) whether those actions would have otherwise violated the rules and regulations of a county or municipal shade tree commission, and thereby subject the public utility or cable television company to a fine or replacement assessment. Therefore, the OLS is unable to quantify the decrease in local revenues that is expected to result from the enactment of the bill.

Section: Local Government

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This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).