

ASSEMBLY, No. 913

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman ROCCO

1 AN ACT establishing a New Jersey Community Forestry Program to
2 assist local governments, amending R.S.40:64-14 and P.L.1958,
3 c.41, and supplementing Title 13 of the Revised Statutes and Title
4 59 of the New Jersey Statutes.

5
6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

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9 1. (New section) This act shall be known and may be cited as the
10 "New Jersey Community Forestry Assistance Act."
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12 2. (New section) The Legislature finds and declares that trees and
13 forests are a necessary and important part of community and urban
14 environments, and are critical to the environmental, social and
15 economic welfare of the State; that the ability of all county and
16 municipal governments to care for and manage their shade trees could
17 be enhanced through technical assistance from a State community
18 forestry program; that local governments have experienced recurring
19 and damaging exposure to litigation due to the drastic decline and
20 poor condition of the State's community tree resource; that properly
21 planned and implemented local community forestry programs can
22 provide the necessary basis for local governments to reduce or
23 eliminate liability associated with local tree care programs and shade
24 tree commissions; and that the viability of county and municipal shade
25 tree commissions is essential to the preservation and enhancement of
26 the State's community tree resource.

27 The Legislature therefore concludes that it is appropriate for the
28 State to encourage, promote and assist in the establishment, retention
29 and enhancement of community forestry programs by local
30 governments.

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32 3. (New section) As used in this act:

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 "Commissioner" means the Commissioner of the Department of
2 Environmental Protection;

3 "Community forestry" means the planting, protection, care and
4 management of trees and other related natural resources within a
5 municipality or county;

6 "Department" means the Department of Environmental Protection;

7 "Local government" means a municipality, county or other political
8 subdivision of the State, or any agency thereof;

9 "Shade tree commission" means a municipal body created pursuant
10 to R.S.40:64-1 et seq. or a county body created pursuant to
11 R.S.40:37-1 et seq.;

12 "State Forester" means the State Forester designated pursuant to
13 section 17 of P.L.1983, c.324 (C.13:1L-17).

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15 4. (New section) There is established in the Division of Parks and
16 Forestry in the Department of Environmental Protection, under the
17 supervision of the State Forester, the "New Jersey Community
18 Forestry Program," the purposes of which shall be to:

19 a. Assist local governments and shade tree commissions in
20 establishing and maintaining community forestry programs and in
21 encouraging persons to engage in appropriate and approved practices
22 with respect to tree management and care;

23 b. Advise local governments and shade tree commissions in the
24 development and coordination of policies, programs and activities for
25 the promotion of community forestry;

26 c. Provide grants to local governments and shade tree commissions
27 applying for assistance in the development and implementation of a
28 comprehensive community forestry plan approved pursuant to section
29 7 of P.L. , c. (C.)(now before the Legislature as this bill), to the
30 extent monies are appropriated or otherwise made available therefor;

31 d. Educate citizens on the importance of trees and forests and their
32 role in the maintenance of a clean and healthy environment;

33 e. Provide technical assistance, planning and analysis for projects
34 related to community forestry;

35 f. Provide training assistance to local governments and shade tree
36 commissions regarding community forestry issues such as tree
37 diseases, insect programs and tree planting and maintenance; and

38 g. Provide volunteer opportunities for the State's citizens and
39 organizations interested in community forestry activities.

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41 5. (New section) a. There is established in the department a State
42 Forester's Community Forestry Council, which shall consist of 20
43 members, appointed by the State Forester, all of whom shall be
44 citizens with expertise or interest in trees, forestry, or tree or forest
45 management, maintenance or care. Each of the members appointed
46 shall serve for a term of three years and until a successor is appointed

1 and qualified, except that of the members first appointed, seven shall
2 serve terms of one year and seven shall serve terms of two years. All
3 vacancies, except those created through the expiration of term, shall
4 be filled for the unexpired term only, and in the same manner as the
5 original appointment. Each member shall be eligible for
6 reappointment, but may be removed by the commissioner or the State
7 Forester for cause.

8 b. A majority of the membership of the council shall constitute a
9 quorum for the transaction of council business. Action may be taken
10 and motions and resolutions adopted by the council at any meeting
11 thereof by the affirmative vote of a majority of the full membership of
12 the council.

13 c. Members of the council shall serve without compensation, but
14 may be reimbursed for expenses necessarily incurred in the discharge
15 of their official duties.

16 d. The State Forester shall appoint a chairperson and
17 vice-chairperson and the council may elect such other officers as may
18 be necessary. The council may appoint such staff or hire such experts
19 as it may require within the limits of appropriations made for these
20 purposes.

21 e. The council may call to its assistance such employees as are
22 necessary and made available to it from any agency or department of
23 the State or its political subdivisions.

24 f. The council may adopt, pursuant to the "Administrative
25 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) and in
26 consultation with the department, any rules and regulations necessary
27 to carry out its responsibilities pursuant to this act.

28 g. The council shall advise the State Forester, the Division of Parks
29 and Forestry and the department on issues concerning community
30 forestry and assist with such other functions as may be authorized
31 pursuant to P.L. , c. (C.)(now before the Legislature as this bill)
32 or any other law.

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34 6. (New section) The State Forester, with the advice and assistance
35 of the council, shall establish minimum standards, and provide a
36 training skills and accreditation program, for representatives of local
37 governments and shade tree commissions, the content of which shall
38 be the appropriate and approved methods for the planting, protection,
39 care and management of trees and other related natural resources
40 under their control.

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42 7. (New section) a. The State Forester, with the advice and
43 assistance of the council, shall develop and make available to local
44 governments and shade tree commissions a list of guideline elements
45 found within a comprehensive community forestry plan. These
46 guidelines shall establish but not limit the basic framework of an

1 approved plan. The State Forester, with the advice and assistance of
2 the council, shall develop and make available to local governments and
3 shade tree commissions a procedure for submitting for approval a
4 comprehensive community forestry plan.

5 b. A local government may develop and submit to the State
6 Forester for approval a comprehensive community forestry plan
7 according to procedures established by the department.

8 c. The State Forester shall, after review and comment by the
9 council, approve a comprehensive community forestry plan if all
10 required parts of the plan adequately address the needs of the
11 community and the tree resource.

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13 8. (New section) The commissioner, with advice from the State
14 Forester, shall prepare an annual report on the status of the New
15 Jersey Community Forestry Program established pursuant to P.L. ,

16 c. (C.)(now before the Legislature as this bill), which shall also
17 include any recommendations for legislative or administrative action
18 to improve implementation of this act, and transmit that report to the
19 Governor, the President of the Senate, the Speaker of the General
20 Assembly, and the chairpersons of the Senate Natural Resources,
21 Trade and Economic Development Committee, the Senate
22 Environment Committee, the Senate Budget and Appropriations
23 Committee, the Assembly Environment and Energy Committee, and
24 the Assembly Appropriations Committee, or the successors of those
25 committees as designated respectively by the President of the Senate
26 and the Speaker of the General Assembly.

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28 9. (New section) The department shall adopt, pursuant to the
29 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
30 seq.), such rules and regulations as may be necessary to implement this
31 act, including establishment of:

32 a. Guidelines for development of a comprehensive community
33 forestry plan;

34 b. Criteria for proper selection, planting and care of trees;

35 c. Procedures to accept and evaluate submitted comprehensive
36 community forestry plans;

37 d. Procedures for the review and approval of training skills and
38 accreditation programs in tree care and management for local officials;

39 e. Guidelines for the provision of technical assistance under the
40 program to local governments and shade tree commissions in the
41 formation of comprehensive community forestry plans; and

42 f. Criteria for ranking grant applications received from local
43 governments and shade tree commissions applying for assistance in the
44 development and implementation of comprehensive community
45 forestry plans.

1 10. R.S.40:64-14 is amended to read as follows:

2 40:64-14. No liability for death or injury. Nothing in this chapter
3 contained shall be construed to make any shade tree commission or
4 any member thereof, or any municipality or governing body member
5 or employee thereof creating a shade tree commission, responsible for
6 the death or injury of any person, or for an injury to any property or
7 highway tree or shrub. Liability for any such death or injury shall be
8 governed by the provisions of section 12 of P.L. , c. (C.)(now
9 before the Legislature as this bill) and any other relevant provisions of
10 the "New Jersey Tort Claims Act," N.J.S.59:1-1 et seq.

11 (cf. P.L.1958, c.42, s.11)

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13 11. Section 7 of P.L.1958, c.41 (C.40:37-10.2) is amended to read
14 as follows:

15 7. Nothing in this article contained shall be construed to make any
16 shade tree commission or a member thereof, or any county or
17 governing body member or employee thereof creating a shade tree
18 commission, responsible for the death or injury of any person, or for
19 an injury to any property or highway tree or shrub. Liability for any
20 such death or injury shall be governed by the provisions of section 12
21 of P.L. , c. (C.)(now before the Legislature as this bill) and any
22 other relevant provisions of the "New Jersey Tort Claims Act,"
23 N.J.S.59:1-1 et seq.

24 (cf. P.L.1958, c.41, s.7)

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26 12. (New section) a. Neither a public entity nor a public employee
27 is liable for an injury caused by a tree or shrub, or any part thereof, if:

28 (1) the tree or shrub, or pertinent part thereof, is on public
29 property or on a public easement or right-of-way, or the tree or shrub,
30 regardless of its location, is regulated, planted, cared for, controlled,
31 or maintained by the public entity; and

32 (2) the public entity, or a public entity created by that public entity,
33 has participated in and successfully completed a training skills and
34 accreditation program established pursuant to section 6 of P.L. ,
35 c. (C.)(now before the Legislature as this bill) and has a
36 comprehensive community forestry plan approved pursuant to section
37 7 of P.L. , c. (C.)(now before the Legislature as this bill).

38 b. The existence of a municipal shade tree commission established
39 pursuant to R.S.40:64-1 et seq. or a county shade tree commission
40 established pursuant to R.S.40:37-1 et seq., or the fact that a
41 municipality or county has otherwise provided for the regulation,
42 planting, care, control, or maintenance of trees or shrubs within its
43 jurisdiction, shall not be cause to immunize a private person from
44 liability for an injury caused by a tree or shrub, or any part thereof,
45 who otherwise would be liable for that injury.

1 13. This act shall take effect immediately.

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STATEMENT

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6 This bill would establish, in the Division of Parks and Forestry in
7 the Department of Environmental Protection (DEP), a "New Jersey
8 Community Forestry Program." The program would assist county and
9 municipal governments in the planning and management of local tree
10 care programs. Specifically, the program would be authorized to
11 award grants to local governments applying for assistance in the
12 development and implementation of a comprehensive community
13 forestry plan, the guidelines of which would be established by the State
14 Forester.

15 The bill would also supplement the "New Jersey Tort Claims Act"
16 (N.J.S.59:1-1 et seq.) to provide that a public entity with an approved
17 comprehensive community forestry plan and which had successfully
18 completed a training skills and accreditation program administered by
19 the State Forester would be immune from liability due to tree-related
20 injuries. A public employee whose conduct was outside the scope of
21 his employment or which constituted a crime, actual fraud, actual
22 malice, or willful misconduct would still be liable for damages under
23 existing language in the "New Jersey Tort Claims Act"
24 (N.J.S.59:3-14).

25 Recent case law suggests that the existence of a shade tree
26 commission may increase local government liability resulting from
27 tree-related injuries. The recent increased fear of liability has caused
28 many local governments to abolish their shade tree commissions and,
29 in the process, decrease significantly their tree maintenance programs.
30 This bill, if enacted, would attempt to address that problem.

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35 Establishes "New Jersey Community Forestry Program" to assist local
36 governments.