

ASSEMBLY, No. 926

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 Shade Tree and Community
2 Forestry Program, providing for the issuance of certain license
3 plates dedicated to the support and funding of the program,
4 supplementing Title 13 and chapter 3 of Title 39 of the Revised
5 Statutes and chapter 4 of Title 59 of the New Jersey Statutes, and
6 amending R.S.40:64-14 and P.L.1958, c.41.

7

8 **BE IT ENACTED** by the Senate and General Assembly of the State
9 of New Jersey:

10

11 1. (New section) Sections 1 through 9 of this act shall be known
12 and may be cited as the "New Jersey Shade Tree and Community
13 Forestry Assistance Act."

14

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

30 The Legislature therefore determines that it is appropriate for the
31 State to encourage, promote and assist in the establishment, retention
32 and enhancement of shade tree and community forestry programs by

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 local governments; and that it is altogether fitting and proper to
2 establish a shade tree and community forest preservation license plate,
3 the revenues from which would be dedicated to the support of a State
4 community forestry program.

5

6 3. (New section) As used in sections 1 through 9 of this act:

7 "Commissioner" means the Commissioner of Environmental
8 Protection;

9 "Community forestry" means the planting, protection, care and
10 management of trees and other related natural resources within a
11 municipality or county;

12 "Department" means the Department of Environmental Protection;

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

15 "Shade tree commission" means a municipal body created pursuant
16 to R.S.40:64-1 et seq. or a county body created pursuant to
17 R.S.40:37-1 et seq.; and

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

20

21 4. (New section) There is established in the Division of Parks and
22 Forestry in the Department of Environmental Protection, under the
23 supervision of the State Forester, the "New Jersey Shade Tree and
24 Community Forestry Program," the purposes of which shall be to:

25 a. Assist local governments and shade tree commissions in
26 establishing and maintaining community forestry programs and in
27 encouraging persons to engage in appropriate and approved practices
28 with respect to tree management and care;

29 b. Advise local governments and shade tree commissions in the
30 development and coordination of policies, programs and activities for
31 the promotion of community forestry;

32 c. Provide grants to local governments and shade tree commissions
33 applying for assistance in the development and implementation of a
34 comprehensive community forestry plan approved pursuant to section
35 7 of P.L. , c. (C.) (now before the Legislature as this bill), to
36 the extent monies are appropriated or otherwise made available
37 therefor;

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

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

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

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

1 5. (New section) a. There is established in the department a
2 Community Forestry Council, which shall consist of 20 members,
3 appointed by the State Forester, all of whom shall be citizens with
4 expertise or interest in trees, forestry, or tree or forest management,
5 maintenance or care. Each of the members appointed shall serve for
6 a term of three years and until a successor is appointed and qualified,
7 except that of the members first appointed, seven shall serve terms of
8 one year and seven shall serve terms of two years. All vacancies,
9 except those created through the expiration of term, shall be filled for
10 the unexpired term only, and in the same manner as the original
11 appointment. Each member shall be eligible for reappointment, but
12 may be removed by the commissioner or the State Forester for cause.

13 b. A majority of the membership of the council shall constitute a
14 quorum for the transaction of council business. Action may be taken
15 and motions and resolutions adopted by the council at any meeting
16 thereof by the affirmative vote of a majority of the full membership of
17 the council.

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

21 d. The State Forester shall appoint a chairperson and
22 vice-chairperson and the council may elect such other officers as may
23 be necessary. The council may appoint such staff or hire such experts
24 as it may require within the limits of appropriations made for these
25 purposes.

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

29 f. The council may adopt, pursuant to the "Administrative
30 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), and in
31 consultation with the department, any rules and regulations necessary
32 to carry out its responsibilities pursuant to P.L. , c. (C.) (now
33 before the Legislature as this bill).

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

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

1 7. (New section) a. The State Forester, with the advice and
2 assistance of the council, shall develop and make available to local
3 governments and shade tree commissions a list of guideline elements
4 found within a comprehensive community forestry plan. These
5 guidelines shall establish but not limit the basic framework of an
6 approved plan. The State Forester, with the advice and assistance of
7 the council, shall develop and make available to local governments and
8 shade tree commissions a procedure for submitting for approval a
9 comprehensive community forestry plan.

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

13 c. The State Forester, after review and comment by the council,
14 shall approve a comprehensive community forestry plan if all required
15 parts of the plan adequately address the needs of the community and
16 the tree resource.

17
18 8. (New section) The commissioner, with advice from the State
19 Forester, shall prepare an annual report on the status of the New
20 Jersey Shade Tree and Community Forestry Program established
21 pursuant to section 4 of P.L. , c. (C.) (now before the
22 Legislature as this bill), which shall also include any recommendations
23 for legislative or administrative action to improve implementation of
24 that act, and transmit that report to the Governor, the President of the
25 Senate, the Speaker of the General Assembly, and the chairpersons of
26 the Senate Natural Resources, Trade and Economic Development
27 Committee, the Senate Budget and Appropriations Committee, the
28 Assembly Environment and Energy Committee, and the Assembly
29 Appropriations Committee, or the successors of those committees as
30 designated respectively by the President of the Senate and the Speaker
31 of the General Assembly.

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33 9. (New section) The department shall adopt, pursuant to the
34 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
35 seq.), such rules and regulations as may be necessary to implement
36 P.L. , c. (C.) (now before the Legislature as this bill), including
37 establishment of:

38 a. Guidelines for development of a comprehensive community
39 forestry plan;

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

41 c. Procedures to accept and evaluate submitted comprehensive
42 community forestry plans;

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

45 e. Guidelines for the provision of technical assistance under the
46 program to local governments and shade tree commissions in the

1 formation of comprehensive community forestry plans; and
2 f. Criteria for ranking grant applications received from local
3 governments and shade tree commissions applying for assistance in the
4 development and implementation of comprehensive community
5 forestry plans.

6
7 10. (New section) The Director of the Division of Motor Vehicles
8 in the Department of Transportation shall, upon proper application
9 therefor, issue shade tree and community forest preservation license
10 plates for any motor vehicle owned or leased and registered in the
11 State. In addition to the registration number and other markings or
12 identification otherwise prescribed by law, a shade tree and community
13 forest preservation license plate shall display words or a slogan and an
14 emblem indicating support for, or an interest in, shade tree and
15 community forest preservation. The words or slogan and emblem shall
16 be chosen by the director; however, the director shall solicit, in
17 conjunction with the Legislature, input from the general public on the
18 design of the plate and shall review the submissions prior to choosing
19 the design. Issuance of shade tree and community forest preservation
20 license plates in accordance with this section shall be subject to the
21 provisions of chapter 3 of Title 39 of the Revised Statutes, except as
22 hereinafter otherwise specifically provided.

23
24 11. (New section) a. Application for issuance of a shade tree and
25 community forest preservation license plate shall be made to the
26 Division of Motor Vehicles on forms and in a manner as may be
27 prescribed by the director. In order to be deemed complete, an
28 application shall be accompanied by a fee of \$50 payable to the
29 Division of Motor Vehicles, which fee shall be in addition to all fees
30 otherwise required by law for the registration of the motor vehicle.

31 b. The annual fee for the registration certificate of a motor vehicle
32 that has been issued a shade tree and community forest preservation
33 license plate pursuant to the provisions of P.L. , c. (C.) (now
34 before the Legislature as this bill) shall include in each year
35 subsequent to the year of issuance a fee in the amount of \$10, which
36 fee shall be in addition to all fees otherwise required by law for the
37 renewal of the registration of the motor vehicle and shall be collected
38 by the Division of Motor Vehicles and deposited in the Shade Tree and
39 Community Forest Preservation License Plate Fund created pursuant
40 to section 12 of P.L. , c. (C.) (now before the Legislature as
41 this bill).

42
43 12. (New section) a. There is created in the Department of
44 Environmental Protection a special non-lapsing fund to be known as
45 the "Shade Tree and Community Forest Preservation License Plate
46 Fund." There shall be deposited in the fund the amount collected from

1 all license plate fees collected pursuant to section 11 of P.L. , c.
2 (C.) (now before the Legislature as this bill), less the amounts
3 necessary to reimburse the Division of Motor Vehicles for all costs
4 authorized pursuant to section 13 of P.L. , c. (C.) (now before
5 the Legislature as this bill). Monies deposited in the fund shall be
6 dedicated for support and funding of projects and programs concerned
7 with shade tree and community forest preservation, including but not
8 limited to the awarding of grants for such purposes to municipal shade
9 tree commissions created pursuant to R.S.40:64-1 et seq., county
10 shade tree commissions created pursuant to R.S.40:37-1 et seq.,
11 municipalities, and counties. Monies in the fund may also be awarded
12 as grants to local governments and shade tree commissions pursuant
13 to subsection c. of section 4 of P.L. , c. (C.) (now before the
14 Legislature as this bill). Monies deposited in the fund shall be held in
15 interest-bearing accounts in public depositories as defined pursuant to
16 section 1 of P.L.1970, c.236 (C.17:9-41), and may be invested or
17 reinvested in such securities as are approved by the State Treasurer.
18 Interest or other income earned on monies deposited in the fund, and
19 any monies which may be appropriated or otherwise become available
20 for the purposes of the fund, shall be credited to and deposited in the
21 fund for use as set forth in P.L. , c. (C.) (now before the
22 Legislature as this bill).

23 b. The Division of Parks and Forestry in the Department of
24 Environmental Protection shall administer the fund and the distribution
25 of grants pursuant to this section. The Division of Parks and Forestry
26 shall, by rule or regulation adopted pursuant to the "Administrative
27 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), establish
28 qualifications for determining grant eligibility, criteria for ranking
29 grant applications, and standards and authorized purposes for the use
30 of such grants.

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32 13. (New section) a. Prior to the deposit of license plate fees
33 collected pursuant to section 11 of P.L. , c. (C.) (now before
34 the Legislature as this bill) into the fund, amounts thereof as are
35 necessary shall be used to reimburse the Division of Motor Vehicles
36 for all costs reasonably and actually incurred, as stipulated by the
37 director, for:

38 (1) producing, issuing, renewing, and publicizing the availability of
39 shade tree and community forest preservation license plates; and

40 (2) any initial computer programming changes that may be
41 necessary to implement the shade tree and community forest
42 preservation license plate program established by P.L. , c. (C.)
43 (now before the Legislature as this bill).

44 b. The Director of the Division of Motor Vehicles shall annually
45 certify to the Commissioner of Environmental Protection the average
46 cost per license plate incurred in the immediately preceding year by the

1 Division of Motor Vehicles in producing, issuing, renewing, and
2 publicizing the availability of shade tree and community forest
3 preservation license plates. The annual certification of the average
4 cost per license plate shall be approved by the Joint Budget Oversight
5 Committee, or its successor.

6 c. In the event that the average cost per license plate as certified by
7 the director and approved by the Joint Budget Oversight Committee,
8 or its successor, is greater than the \$50 application fee established in
9 subsection a. of section 11 of P.L. , c. (C.) (now before the
10 Legislature as this bill) in two consecutive fiscal years, the director
11 may discontinue the issuance of shade tree and community forest
12 preservation license plates.

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14 14. (New section) The Director of the Division of Motor Vehicles
15 shall notify eligible motorists of the opportunity to obtain shade tree
16 and community forest preservation license plates by including a notice
17 with all motor vehicle registration renewals, and by posting
18 appropriate posters or signs in all facilities and offices of the Division
19 of Motor Vehicles. The notices, posters, and signs shall be designed
20 by the Commissioner of Environmental Protection. The designs shall
21 be subject to the approval of the director, and the Commissioner of
22 Environmental Protection shall supply the Division of Motor Vehicles
23 with the notices, posters, and signs to be circulated or posted by that
24 division.

25

26 15. (New section) The Commissioner of Environmental Protection,
27 the Director of the Division of Motor Vehicles, and the State
28 Treasurer shall develop and enter into an interagency memorandum of
29 agreement setting forth the procedures to be followed by the
30 departments and the Division of Motor Vehicles in carrying out their
31 respective responsibilities under P.L. , c. (C.) (now before the
32 Legislature as this bill).

33

34 16. (New section) a. Except as provided pursuant to
35 N.J.S.59:3-14, a public entity, including but not limited to a shade tree
36 commission, or a public employee, including but not limited to a
37 member of a shade tree commission, is not liable for an injury caused
38 directly or indirectly by a tree or shrub, or any part thereof, if:

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

43 (2) the public entity, or a public entity created by that public entity,
44 has participated in and successfully completed a training skills and
45 accreditation program established pursuant to section 6 of P.L. ,
46 c. (C.) (now before the Legislature as this bill) and has a

1 comprehensive community forestry plan approved pursuant to section
2 7 of that act.

3 b. The existence of a municipal shade tree commission established
4 pursuant to R.S.40:64-1 et seq. or a county shade tree commission
5 established pursuant to R.S.40:37-1 et seq., or the fact that a
6 municipality or county has otherwise provided for the regulation,
7 planting, care, control, or maintenance of trees or shrubs within its
8 jurisdiction, shall not be cause to immunize a private person from
9 liability for an injury caused directly or indirectly by a tree or shrub, or
10 any part thereof, who otherwise would be liable for that injury.

11

12 17. R.S.40:64-14 is amended to read as follows:

13 40:64-14. No liability for death or injury. Nothing in this chapter
14 contained shall be construed to make any shade tree commission or
15 any member thereof, or any municipality or governing body member
16 or employee thereof creating a shade tree commission, responsible for
17 the death or injury of any person, or for an injury to any property or
18 highway tree or shrub. Liability for any such death or injury shall be
19 governed by the provisions of section 16 of P.L. , c. (C.)(now
20 before the Legislature as this bill) and any other relevant provisions of
21 the "New Jersey Tort Claims Act," N.J.S.59:1-1 et seq.

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

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

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

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

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37 19. Sections 1 through 9 and sections 15 through 18 shall take
38 effect immediately. Sections 10 through 14 shall take effect on the
39 180th day after enactment, but the Commissioner of Environmental
40 Protection, the State Treasurer, and the Director of the Division of
41 Motor Vehicles may take such anticipatory acts in advance of that date
42 as may be necessary for the timely implementation of the provisions of
43 those sections of this act upon the effective date thereof.

STATEMENT

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This bill would establish, in the Division of Parks and Forestry in the Department of Environmental Protection (DEP), a "New Jersey Shade Tree and Community Forestry Program." The program would assist county and municipal governments in the planning and management of local tree care programs. The program would be authorized to award grants to local governments for projects and programs concerned with shade tree and community forest preservation, including the development and implementation of a comprehensive community forestry plan.

The bill would also provide for the establishment and issuance of a shade tree and community forest preservation license plate, the revenues from which would be deposited in a Shade Tree and Community Forest Preservation License Plate Fund. A fee of \$50 would be charged by the Division of Motor Vehicles for the purchase of each plate, and an annual renewal fee of \$10 would be subsequently assessed. Monies in the fund would be dedicated to the support of projects and programs concerned with shade tree and community forest preservation at the municipal and county levels. The Division of Parks and Forestry in the DEP would administer the fund and the awarding of grants utilizing monies in the fund.

The bill would also supplement the "New Jersey Tort Claims Act" (N.J.S.59:1-1 et seq.) to provide that a public entity with an approved comprehensive community forestry plan and which had successfully completed a training skills and accreditation program administered by the State Forester would be immune from liability for an injury caused directly or indirectly by a tree or shrub located on public property or on a public easement or right-of-way, or by a tree or shrub under the regulation or control of the public entity. A public employee whose conduct was outside the scope of his employment or which constituted a crime, actual fraud, actual malice or willful misconduct would still be liable for damages under existing language in the "New Jersey Tort Claims Act" (N.J.S.59:3-14).

Establishes "New Jersey Shade Tree and Community Forestry Program" to assist local governments; establishes new license plate to fund program.