

6486

2011-2012 Regular Sessions

I N A S S E M B L Y

March 21, 2011

Introduced by M. of A. CASTELLI -- read once and referred to the Committee on Energy

AN ACT to amend the public service law, in relation to tree cutting, topping and removal along electricity distribution lines

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The public service law is amended by adding a new article 3
2 to read as follows:

3 ARTICLE 3

4 TREE CUTTING, TOPPING AND REMOVAL
5 ALONG ELECTRICITY DISTRIBUTION
6 LINES

7 SECTION 55. LEGISLATIVE FINDINGS.

8 56. DEFINITIONS.

9 57. PROHIBITION.

10 58. NOTIFICATION.

11 59. REGULATIONS.

12 60. ENFORCEMENT.

13 61. SEVERABILITY.

14 S 55. LEGISLATIVE FINDINGS. THE LEGISLATURE HEREBY RECOGNIZES THE NEED
15 FOR THE RELIABLE DELIVERY OF ELECTRIC POWER TO THE RESIDENTS AND BUSI-
16 NESSES OF THIS STATE. TREES AND TREE LIMBS, IF NOT PROPERLY MAINTAINED,
17 MAY ENDANGER SUCH RELIABLE DELIVERY OF ELECTRIC POWER, THUS MAKING THE
18 CUTTING AND/OR REMOVAL OF TREES A NECESSITY.

19 HOWEVER, THE LEGISLATURE ALSO RECOGNIZES THAT TREES PROVIDE VARIOUS
20 BENEFITS TO THE PEOPLE OF THE STATE, INCLUDING PREVENTION OF FLOODS,
21 PURIFICATION OF WATER, REDUCTION OF SOIL EROSION, REMOVAL OF CARBON
22 DIOXIDE FROM THE AIR, PROTECTION FROM THE ELEMENTS, AND ENHANCEMENT OF
23 COMMUNITY CHARACTER AND INDIVIDUAL PROPERTY VALUES.

24 THE PURPOSE OF THIS ARTICLE IS TO REGULATE TREE CUTTING AND REMOVAL BY
25 ELECTRIC CORPORATIONS AND MUNICIPALITIES BY REQUIRING:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD08928-01-1

1 1. ADVANCE NOTICE OF CUTTING TO PROPERTY OWNERS AND MUNICIPALITIES;
2 2. ADHERENCE TO REGULATIONS ESTABLISHED BY THE COMMISSION;
3 3. REASONABLE EFFORTS TO MINIMIZE AND MITIGATE POSSIBLE ENVIRONMENTAL
4 DAMAGE FROM ANY NECESSARY TREE REMOVAL, SUCH AS PLANTING OF NEW TREES
5 COMPATIBLE WITH THE CHARACTER OF THE COMMUNITY AND THE ELECTRIC LINES;
6 AND

7 4. MUNICIPAL INPUT IN DETERMINING WHEN, WHICH AND HOW TREES ARE TO BE
8 CUT.

9 S 56. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS SHALL
10 MEAN:

11 1. "ARBORIST" MEANS ANY PERSON ENGAGED IN THE PRACTICE OF ARBORICUL-
12 TURE WHO, THROUGH EXPERIENCE, EDUCATION AND TRAINING, POSSESSES THE
13 COMPETENCE TO PROVIDE FOR OR SUPERVISE THE MANAGEMENT OF TREES.

14 2. "CUT" OR "CUTTING" MEANS THE REMOVAL OF ANY PART OF A TREE.

15 3. "DISTRIBUTION LINE" MEANS ANY ELECTRIC LINE WHICH DISTRIBUTES OR
16 WHICH IS INTENDED TO DISTRIBUTE ELECTRIC POWER TO ONE OR MORE RESIDEN-
17 TIAL AND/OR COMMERCIAL CUSTOMERS.

18 4. "PRUNING" MEANS THE SELECTIVE CUTTING OF TREE PARTS TO MEET SPECIF-
19 IC GOALS AND OBJECTIVES.

20 5. "RIGHT OF WAY" MEANS AN EASEMENT OR OTHER RIGHT OF WAY GRANTED TO
21 AN ELECTRIC CORPORATION OR MUNICIPALITY AND UPON WHICH A DISTRIBUTION
22 LINE OR SERVICE LINE IS SITUATE.

23 6. "SERVICE LINE" MEANS AN ELECTRIC LINE USED TO CONNECT A DISTRIB-
24 UTION LINE TO AN INDIVIDUAL CUSTOMER'S METER OR OTHER POINT OF ATTACH-
25 MENT.

26 7. "TREE" MEANS ANY SELF-SUPPORTING WOODY PLANT OF A SPECIES THAT
27 GROWS AT MATURITY TO AN OVERALL HEIGHT OF NOT LESS THAN TEN FEET, HAS A
28 SINGLE TRUNK OR MULTIPLE TRUNKS WHICH IN THE AGGREGATE ARE NOT LESS THAN
29 SIX INCHES IN DIAMETER, AS MEASURED FOUR AND ONE-HALF FEET ABOVE THE
30 GROUND.

31 8. "TOPPING" MEANS THE CUTTING OF MOST OF THE CANOPY OF A TREE FOR THE
32 PURPOSE OF PRODUCING BRANCH STUBS.

33 S 57. PROHIBITION. NO ELECTRIC CORPORATION OR MUNICIPALITY SHALL CUT A
34 TREE WITHIN A RIGHT OF WAY, EXCEPT AS PROVIDED PURSUANT TO THIS ARTICLE.

35 S 58. NOTIFICATION. 1. NO ELECTRIC CORPORATION OR MUNICIPALITY SHALL
36 CUT A TREE WITHIN A RIGHT OF WAY UNLESS IT PROVIDES WRITTEN NOTICE OF
37 THE PROPOSED TREE CUTTING TO THE GOVERNING BODY OF THE MUNICIPALITY
38 WHERE THE TREE IS SITUATE, THE GRANTOR OF THE RIGHT OF WAY OR HIS OR HER
39 SUCCESSOR IN INTEREST, AND, IF THE RIGHT OF WAY WAS GRANTED BY A GOVERN-
40 MENTAL ENTITY, TO EACH OWNER OF THE PROPERTY IMMEDIATELY ADJACENT THERE-
41 TO.

42 2. THE NOTICES REQUIRED BY SUBDIVISION ONE OF THIS SECTION SHALL BE
43 DELIVERED BY PERSONAL SERVICE OR FIRST CLASS MAIL NOT LESS THAN FIFTEEN
44 DAYS NOR MORE THAN THIRTY DAYS PRIOR TO THE DATE THE PROPOSED TREE
45 CUTTING IS TO OCCUR.

46 3. EACH SUCH NOTICE SHALL INCLUDE THE NAMES OF THE SPECIFIC STREETS
47 UPON WHICH TREES WILL BE CUT; THE APPROXIMATE DATE OR DATES UPON WHICH
48 TREES WILL BE CUT WITHIN SPECIFIC RIGHTS OF WAY; THE NAME AND TELEPHONE
49 NUMBER OF THE ELECTRIC CORPORATION'S OR MUNICIPALITY'S CONTACT PERSON
50 FOR THE SPECIFIC RIGHT OF WAY; AND A SUMMARY OF THE PROVISIONS OF THIS
51 ARTICLE.

52 S 59. REGULATIONS. NO ELECTRIC CORPORATION OR MUNICIPALITY SHALL CUT A
53 TREE WITHIN A RIGHT OF WAY, EXCEPT AS PROVIDED IN THIS SECTION.

54 1. PRUNING. (A) EVERY ELECTRIC CORPORATION AND MUNICIPALITY SHALL BE
55 SUBJECT TO RULES AND REGULATIONS PROMULGATED BY THE COMMISSION RELATING
56 TO PRUNING. SUCH RULES AND REGULATIONS, TO THE EXTENT PRACTICABLE, SHALL

1 REFLECT THE MOST RECENT EDITION OF THE AMERICAN NATIONAL STANDARDS
2 INSTITUTE A-300 (PART 1) STANDARD, "TREE, SCRUB AND OTHER WOODY PLANT
3 MAINTENANCE - STANDARD PRACTICES (PRUNING)".

4 (B) AN ELECTRIC CORPORATION OR MUNICIPALITY MAY PRUNE A TREE WITHIN A
5 RIGHT OF WAY ONLY WHEN AN ARBORIST, DESIGNATED BY THE DEPARTMENT OF
6 AGRICULTURE AND MARKETS, CERTIFIES THAT THE PART OF THE TREE TO BE
7 PRUNED IS DEAD, DISEASED, A BROKEN BRANCH, RESTING AGAINST A SERVICE OR
8 DISTRIBUTION LINE, OR POSES OR COULD REASONABLY BE EXPECTED TO POSE A
9 DANGER TO A SERVICE OR DISTRIBUTION LINE.

10 (C) NO ELECTRIC CORPORATION OR MUNICIPALITY SHALL ENGAGE IN THE
11 TOPPING OF A TREE IN A RIGHT OF WAY SO AS TO REMOVE MORE THAN
12 TWENTY-FIVE PERCENT OF THE FOLIAGE WITHIN AN ANNUAL GROWING SEASON.

13 (D) AN ELECTRIC CORPORATION OR MUNICIPALITY MAY BY AGREEMENT WITH THE
14 GRANTOR OF A RIGHT OF WAY OR HIS OR HER SUCCESSOR IN INTEREST, PRUNE OR
15 CONTRACT FOR THE PRUNING OF A TREE WITHIN SUCH RIGHT OF WAY IN ACCORD-
16 ANCE WITH THE RULES OF THE COMMISSION PROMULGATED PURSUANT TO PARAGRAPH
17 (A) OF THIS SUBDIVISION.

18 2. REMOVAL. (A) AN ELECTRIC CORPORATION OR MUNICIPALITY MAY REMOVE A
19 TREE FROM A RIGHT OF WAY ONLY WHEN AN ARBORIST, DESIGNATED BY THE
20 DEPARTMENT OF AGRICULTURE AND MARKETS, CERTIFIES THAT THE TREE TO BE
21 REMOVED IS DEAD, DISEASED, BROKEN, THAT ITS BRANCHES ARE SO ENTANGLED
22 WITH A SERVICE OR DISTRIBUTION LINE THAT PRUNING CANNOT BE REASONABLY
23 EXPECTED TO PREVENT INTERFERENCE WITH SUCH LINE, ITS TRUNK IS TOUCHING
24 SUCH A LINE, OR OTHERWISE POSES A DANGER TO A SERVICE OR DISTRIBUTION
25 LINE IF NOT REMOVED.

26 (B) NO ELECTRIC CORPORATION OR MUNICIPALITY SHALL REMOVE A TREE WITHIN
27 A RIGHT OF WAY UNLESS IT SHALL HAVE PROVIDED WRITTEN NOTICE THEREOF AND
28 THE CERTIFICATION OF AN ARBORIST PURSUANT TO PARAGRAPH (A) OF THIS
29 SUBDIVISION, AS PROVIDED IN SECTION FIFTY-EIGHT OF THIS ARTICLE, AND
30 SHALL HAVE RECEIVED THE WRITTEN CONSENT OF EACH PARTY TO WHICH NOTICE IS
31 REQUIRED TO BE PROVIDED NOT LESS THAN FIVE DAYS PRIOR TO THE REMOVAL OF
32 THE TREE.

33 3. EMERGENCIES. NOTHING IN THIS ARTICLE SHALL BE DEEMED TO PROHIBIT
34 ANY ELECTRIC CORPORATION OR MUNICIPALITY FROM CUTTING, PRUNING, TOPPING
35 OR REMOVING ANY TREE THAT HAS FALLEN ON A SERVICE OR DISTRIBUTION LINE,
36 OR IS IN IMMINENT DANGER OF DOING SO.

37 4. TREE PLANTINGS. (A) IF REQUESTED BY THE GRANTOR OF A RIGHT OF WAY
38 OR HIS OR HER SUCCESSOR IN INTEREST OR THE APPROPRIATE CITY, TOWN OR
39 VILLAGE, AN ELECTRIC CORPORATION OR MUNICIPALITY SHALL PLANT A REPLACE-
40 MENT TREE FOR EACH TREE THAT IT REMOVED WITHIN A RIGHT OF WAY.

41 (B) EACH REPLACEMENT TREE SHALL BE PLANTED IN CLOSE PROXIMITY TO THE
42 TREE IT REPLACES AND SHALL BE A TREE NATIVE TO THE REGION OF THE STATE
43 IN WHICH IT IS PLANTED, AS DETERMINED BY THE DEPARTMENT OF AGRICULTURE
44 AND MARKETS. ALL OTHER TERMS AND CONDITIONS OF THE PLANTING OF A
45 REPLACEMENT TREE SHALL BE AS AGREED UPON IN WRITING BY THE ELECTRIC
46 CORPORATION OR MUNICIPALITY AND THE PERSON OR ENTITY REQUESTING SUCH
47 PLANTING; PROVIDED, THAT IF NO SUCH AGREEMENT IS REACHED, WITHIN FORTY-
48 FIVE DAYS, UPON SUCH TERMS AND CONDITIONS AS SHALL BE DETERMINED BY THE
49 COMMISSION.

50 (C) IN ANY INSTANCE IN WHICH THE OWNER OF A RIGHT OF WAY, OR HIS OR
51 HER SUCCESSOR IN INTEREST, FAILS TO REQUEST THE PLANTING OF A REPLACE-
52 MENT TREE, THE COMMISSION SHALL REQUIRE THE ELECTRIC CORPORATION OR
53 MUNICIPALITY TO:

54 (I) TAKE SUCH ACTION AS IS NECESSARY TO INSURE AGAINST ADVERSE ENVI-
55 RONMENTAL EFFECTS, INCLUDING SOIL EROSION AND DRAINAGE IN THE VICINITY
56 OF THE REMOVED TREE; OR

1 (II) CONTRIBUTE A SUM OF MONEY FOR USE BY THE APPROPRIATE CITY, TOWN
2 OR VILLAGE FOR THE PLANTING OF TREES.

3 5. REGULATIONS. (A) THE COMMISSION SHALL PROMULGATE ANY AND ALL RULES
4 AND REGULATIONS NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS ARTICLE.

5 (B) THE COMMISSION SHALL ESTABLISH AND CONDUCT AN ONGOING PUBLIC
6 EDUCATION PROGRAM ON THE PROVISIONS OF THIS ARTICLE.

7 S 60. ENFORCEMENT. 1. THE COMMISSION, UPON RECEIPT OF A COMPLAINT OF A
8 VIOLATION OF THIS ARTICLE, MAY ISSUE A STOP WORK ORDER OR MAY SEEK
9 INJUNCTIVE RELIEF IN A COURT OF COMPETENT JURISDICTION TO RESTRAIN ANY
10 SUCH VIOLATION AND/OR COMPEL THE RESTORATION OF THE PREMISES AFFECTED BY
11 SUCH VIOLATION.

12 2. THE GRANTOR OF A RIGHT OF WAY OR HIS OR HER SUCCESSOR IN INTEREST
13 MAY BRING A CIVIL CAUSE OF ACTION FOR DAMAGES INCURRED AS THE RESULT OF
14 A VIOLATION OF THIS ARTICLE.

15 3. ANY ELECTRIC CORPORATION OR MUNICIPALITY FOUND BY THE COMMISSION TO
16 HAVE VIOLATED ANY PROVISION OF THIS ARTICLE SHALL BE SUBJECT TO A CIVIL
17 PENALTY OF NOT LESS THAN FIVE HUNDRED DOLLARS PER TREE THAT IS DAMAGED.

18 S 61. SEVERABILITY. IF ANY CLAUSE, SENTENCE, PARAGRAPH, SECTION OR
19 PART OF THIS ARTICLE SHALL BE ADJUDGED BY ANY COURT OF COMPETENT JURIS-
20 DICTION TO BE INVALID, SUCH JUDGMENT SHALL NOT AFFECT, IMPAIR, OR INVAL-
21 IDATE THE REMAINDER THEREOF, BUT SHALL BE CONFINED IN ITS OPERATION TO
22 THE CLAUSE, SENTENCE, PARAGRAPH, SECTION, OR PART THEREOF DIRECTLY
23 INVOLVED IN THE CONTROVERSY IN WHICH SUCH JUDGMENT SHALL HAVE BEEN
24 RENDERED.

25 S 2. This act shall take effect on the one hundred eightieth day after
26 it shall have become a law, provided, that effective immediately any
27 rules and regulations necessary to implement the provisions of this act
28 on its effective date are authorized and directed to be completed on or
29 before such date.