

# STATE OF NEW YORK

296

2019-2020 Regular Sessions

## IN ASSEMBLY

(Prefiled)

January 9, 2019

Introduced by M. of A. ABINANTI -- 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:

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

### ARTICLE 3

#### TREE CUTTING, TOPPING AND REMOVAL

#### ALONG ELECTRICITY DISTRIBUTION

#### LINES

#### Section 55. Legislative findings.

##### 56. Definitions.

##### 57. Prohibition.

##### 58. Notification.

##### 59. Regulations.

##### 60. Enforcement.

##### 61. Severability.

§ 55. Legislative findings. The legislature hereby recognizes the need for the reliable delivery of electric power to the residents and businesses of this state. Trees and tree limbs, if not properly maintained, may endanger such reliable delivery of electric power, thus making the cutting and/or removal of trees a necessity.

However, the legislature also recognizes that trees provide various benefits to the people of the state, including prevention of floods, purification of water, reduction of soil erosion, removal of carbon dioxide from the air, protection from the elements, and enhancement of community character and individual property values.

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

LBD04874-01-9

1 The purpose of this article is to regulate tree cutting and removal by  
2 electric corporations and municipalities by requiring:

- 3 1. advance notice of cutting to property owners and municipalities;
- 4 2. adherence to regulations established by the commission;
- 5 3. reasonable efforts to minimize and mitigate possible environmental  
6 damage from any necessary tree removal, such as planting of new trees  
7 compatible with the character of the community and the electric lines;  
8 and
- 9 4. municipal input in determining when, which and how trees are to be  
10 cut.

11 § 56. Definitions. As used in this article, the following terms shall  
12 mean:

13 1. "Arborist" means any person engaged in the practice of arboricul-  
14 ture who, through experience, education and training, possesses the  
15 competence to provide for or supervise the management of trees.

16 2. "Cut" or "cutting" means the removal of any part of a tree.

17 3. "Distribution line" means any electric line which distributes or  
18 which is intended to distribute electric power to one or more residen-  
19 tial and/or commercial customers.

20 4. "Pruning" means the selective cutting of tree parts to meet specif-  
21 ic goals and objectives.

22 5. "Right of way" means an easement or other right of way granted to  
23 an electric corporation or municipality and upon which a distribution  
24 line or service line is situate.

25 6. "Service line" means an electric line used to connect a distrib-  
26 ution line to an individual customer's meter or other point of attach-  
27 ment.

28 7. "Tree" means any self-supporting woody plant of a species that  
29 grows at maturity to an overall height of not less than ten feet, has a  
30 single trunk or multiple trunks which in the aggregate are not less than  
31 six inches in diameter, as measured four and one-half feet above the  
32 ground.

33 8. "Topping" means the cutting of most of the canopy of a tree for the  
34 purpose of producing branch stubs.

35 § 57. Prohibition. No electric corporation or municipality shall cut a  
36 tree within a right of way, except as provided pursuant to this article.

37 § 58. Notification. 1. No electric corporation or municipality shall  
38 cut a tree within a right of way unless it provides written notice of  
39 the proposed tree cutting to the governing body of the municipality  
40 where the tree is situate, the grantor of the right of way or his or her  
41 successor in interest, and, if the right of way was granted by a govern-  
42 mental entity, to each owner of the property immediately adjacent there-  
43 to.

44 2. The notices required by subdivision one of this section shall be  
45 delivered by personal service or first class mail not less than fifteen  
46 days nor more than thirty days prior to the date the proposed tree  
47 cutting is to occur.

48 3. Each such notice shall include the names of the specific streets  
49 upon which trees will be cut; the approximate date or dates upon which  
50 trees will be cut within specific rights of way; the name and telephone  
51 number of the electric corporation's or municipality's contact person  
52 for the specific right of way; and a summary of the provisions of this  
53 article.

54 § 59. Regulations. No electric corporation or municipality shall cut a  
55 tree within a right of way, except as provided in this section.

1 1. Pruning. (a) Every electric corporation and municipality shall be  
2 subject to rules and regulations promulgated by the commission relating  
3 to pruning. Such rules and regulations, to the extent practicable, shall  
4 reflect the most recent edition of the American National Standards  
5 Institute A-300 (Part 1) standard, "Tree, Scrub and Other Woody Plant  
6 Maintenance - Standard Practices (Pruning)".

7 (b) An electric corporation or municipality may prune a tree within a  
8 right of way only when an arborist, designated by the department of  
9 agriculture and markets, certifies that the part of the tree to be  
10 pruned is dead, diseased, a broken branch, resting against a service or  
11 distribution line, or poses or could reasonably be expected to pose a  
12 danger to a service or distribution line.

13 (c) No electric corporation or municipality shall engage in the  
14 topping of a tree in a right of way so as to remove more than twenty-  
15 five percent of the foliage within an annual growing season.

16 (d) An electric corporation or municipality may by agreement with the  
17 grantor of a right of way or his or her successor in interest, prune or  
18 contract for the pruning of a tree within such right of way in accord-  
19 ance with the rules of the commission promulgated pursuant to paragraph  
20 (a) of this subdivision.

21 2. Removal. (a) An electric corporation or municipality may remove a  
22 tree from a right of way only when an arborist, designated by the  
23 department of agriculture and markets, certifies that the tree to be  
24 removed is dead, diseased, broken, that its branches are so entangled  
25 with a service or distribution line that pruning cannot be reasonably  
26 expected to prevent interference with such line, its trunk is touching  
27 such a line, or otherwise poses a danger to a service or distribution  
28 line if not removed.

29 (b) No electric corporation or municipality shall remove a tree within  
30 a right of way unless it shall have provided written notice thereof and  
31 the certification of an arborist pursuant to paragraph (a) of this  
32 subdivision, as provided in section fifty-eight of this article, and  
33 shall have received the written consent of each party to which notice is  
34 required to be provided not less than five days prior to the removal of  
35 the tree.

36 3. Emergencies. Nothing in this article shall be deemed to prohibit  
37 any electric corporation or municipality from cutting, pruning, topping  
38 or removing any tree that has fallen on a service or distribution line,  
39 or is in imminent danger of doing so.

40 4. Tree plantings. (a) If requested by the grantor of a right of way  
41 or his or her successor in interest or the appropriate city, town or  
42 village, an electric corporation or municipality shall plant a replace-  
43 ment tree for each tree that it removed within a right of way.

44 (b) Each replacement tree shall be planted in close proximity to the  
45 tree it replaces and shall be a tree native to the region of the state  
46 in which it is planted, as determined by the department of agriculture  
47 and markets. All other terms and conditions of the planting of a  
48 replacement tree shall be as agreed upon in writing by the electric  
49 corporation or municipality and the person or entity requesting such  
50 planting; provided, that if no such agreement is reached, within forty-  
51 five days, upon such terms and conditions as shall be determined by the  
52 commission.

53 (c) In any instance in which the owner of a right of way, or his or  
54 her successor in interest, fails to request the planting of a replace-  
55 ment tree, the commission shall require the electric corporation or  
56 municipality to:

1 (i) take such action as is necessary to insure against adverse envi-  
2 ronmental effects, including soil erosion and drainage in the vicinity  
3 of the removed tree; or

4 (ii) contribute a sum of money for use by the appropriate city, town  
5 or village for the planting of trees.

6 5. Regulations. (a) The commission shall promulgate any and all rules  
7 and regulations necessary to implement the provisions of this article.

8 (b) The commission shall establish and conduct an ongoing public  
9 education program on the provisions of this article.

10 § 60. Enforcement. 1. The commission, upon receipt of a complaint of a  
11 violation of this article, may issue a stop work order or may seek  
12 injunctive relief in a court of competent jurisdiction to restrain any  
13 such violation and/or compel the restoration of the premises affected by  
14 such violation.

15 2. The grantor of a right of way or his or her successor in interest  
16 may bring a civil cause of action for damages incurred as the result of  
17 a violation of this article.

18 3. Any electric corporation or municipality found by the commission to  
19 have violated any provision of this article shall be subject to a civil  
20 penalty of not less than five hundred dollars per tree that is damaged.

21 § 61. Severability. If any clause, sentence, paragraph, section or  
22 part of this article shall be adjudged by any court of competent juris-  
23 isdiction to be invalid, such judgment shall not affect, impair, or inval-  
24 idate the remainder thereof, but shall be confined in its operation to  
25 the clause, sentence, paragraph, section, or part thereof directly  
26 involved in the controversy in which such judgment shall have been  
27 rendered.

28 § 2. This act shall take effect on the one hundred eightieth day after  
29 it shall have become a law. Effective immediately any rules and regu-  
30 lations necessary to implement the provisions of this act on its effec-  
31 tive date are authorized to be made and completed on or before such  
32 date.