



Third Party Management of Vegetation in ROW

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Overview

From the fifty states within the United States, thirty-two make provisions for some kind of third-party management of vegetation in state owned highway right of way (ROW). What constitutes as management varies from state to state, ranging from only allowing pruning and trimming to allowing clear cutting of trees.

Authority

Thirty-nine states either prohibit or allow vegetation management through statute. Of those thirty-nine, thirty allow vegetation management and nine do not; collectively, twenty-two promulgate rules to enforce their vegetation control statutes.

Only the states of Wyoming and New Mexico do not reference specific statutes in regards to vegetation yet maintain administrative rules on the subject. Both states prohibit ROW vegetation control.

Only three states, Arkansas, Illinois, and Indiana have neither statute nor rule that address vegetation management. All three of these states allow the practice solely through departmental policy.

Visibility Area

The states that allow for vegetation management have different methods for determining the area to be manipulated. The approaches can be set into four categories:

- Most of the smaller states or states with sparse vegetation do not define work areas for vegetation management. Each applicant makes a request and the state sets the scope of work on a case-by-case basis.
- A small number of states define the work area as the section of ROW adjacent to the property on which the sign/business is located. These states typically have one method that is shared between signs and other commercial activities.
- A large number of states allow cutting a defined distance before the sign/business. These distances can range from as little as 300 feet to as large as 1,000 feet. This creates a rectangular section of ROW that is managed.
- In states with the most developed programs, the work area is defined as a triangular section of ROW measured from the sign/business. These systems are typically used in states with large amounts of vegetation, such as Georgia. These systems can be as simple as three points to as complex as five points (North Carolina).

Another common practice with visibility areas is having the size of the area vary with either roadway type or the legal posted speed limit.

Other Requirements

Nearly all states that participate in some level of vegetation control require that all applicants be bonded. A smaller number of states also require that the applicant have liability insurance.

Most states restrict the type or quality of vegetation that can be removed or pruned. Almost all states protect their state tree from being removed, with some protecting cutting as well.

Nearly all states require that work be performed by an arborist or in accordance with either national or state guidelines for plant cutting and removal.

In Relation to Outdoor Advertising Signs

Of the thirty-two states that allow for vegetation management, thirty-one allow for ROW vegetation to be manipulated to increase visibility to Outdoor Advertising (ODA) signs. These states typically make similar requirements of their signs, but the specific requirements are rarely the same. Below is a list of common restrictions placed on ODA signs:

- Ten states (FL, GA, IL, KS, MS, MO, NE, NC, SC, and WI) require that signs be in place for a number of years before being eligible for vegetation management, with two years as the lowest requirement and five as the highest.
- All states require that signs applying be permitted and legal. Conformity is not always taken into account, and non-conforming signs are either ineligible for vegetation management or have their ability or applicable scope of work reduced.

Some of these restrictions are also in place for vegetation management when used to improve visibility to non-sign entities.

Height

Only two states, Georgia and South Carolina, incorporate sign height into their vegetation management regulations. Both states set a maximum allowable height for vegetation management eligibility, and both allow sign owners to lower their sign to the maximum height in order to become eligible. South Carolina requires the sign lowered to the maximum 50 ft. or to half the original height of the sign, whichever is lower, and waives any vegetation management fees for ten years. Georgia only maintains that the signs be lowered to a height of 75 ft.

In Relation to Other Entities fronting the ROW

Twenty-three states allow for third parties that are not Outdoor Advertising sign owners to remove vegetation from the state ROW. Of these, only eleven (CA, KY, MI, MS, NC, NJ, NY, PA, RI, SC, and WI) issue a separate permit or have enumerated requirements for non-sign vegetation management. The remaining either permit all vegetation work under a general use permit or, less commonly, will include signs and other businesses in the same “commercial” category.

The notable outliers in this section are Colorado and New Hampshire. Colorado is the only state that allows for third party ROW vegetation management that does not allow for billboard operators to participate in a form of the program. New Hampshire does not control vegetation at all on the state level, and instead devolves these duties onto Tree Wardens, which are elected for every municipality. It is not clear if New Hampshire allows for vegetation management outside of cities.

Conclusion

From these findings, the typical state would address vegetation control thus:

- Vegetation Control in state ROW by third parties would be allowed,
 - By Statute,
 - By Rule, and
 - For all commercial activities, including outdoor advertising signs.
- Only sign owners would have specialized permits, and non-sign applicants would seek vegetation control through general ROW permits.
- In a heavily vegetated state, the area of ROW wherein work can be done would be triangular in shape; otherwise the work area would be an entire section of ROW before the site seeking visibility.
- The applicant would be subject to bonding and other such requirements.

Due to the organizational differences from each state, more specific information cannot be provided for this “generic state”, as not enough of a consensus exists at such fine levels.