

[Second Reprint]

ASSEMBLY, No. 2558

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED FEBRUARY 1, 2018

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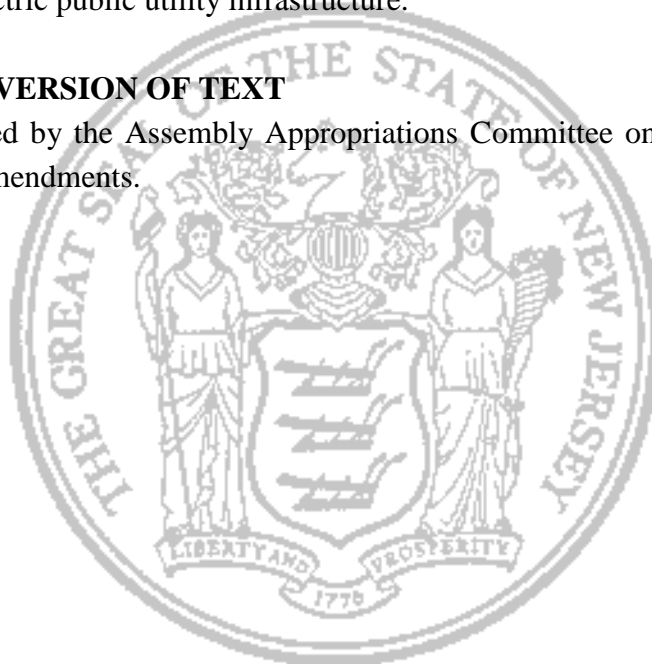
**Assemblywoman B.DeCroce, Assemblyman DePhillips and
Assemblywoman Murphy**

SYNOPSIS

“Vegetation Management Response Act”; concerns vegetation management related to electric public utility infrastructure.

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on December 10, 2018, with amendments.



(Sponsorship Updated As Of: 12/18/2018)

1 AN ACT concerning vegetation management related to electric
2 utility infrastructure, supplementing Title 48 of the Revised
3 Statutes, and amending various parts of the statutory law.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. (New section) This act shall be known and may be cited as
9 the “Vegetation Management Response Act.”

10
11 2. (New section) ¹a. The Legislature finds and declares that:
12 ¹[a.] (1) Unprecedented damage was inflicted on the State and
13 its citizens by Superstorm Sandy, Hurricane Irene, the June 2012
14 Derecho, and the October 2011 snow storm.

15 ¹[b.] (2) Estimated damage from these storms includes
16 approximately 11,400 downed or damaged utility poles, 155,000
17 downed trees, 60 flooded substations, and six million customer
18 outages.

19 ¹[c.] (3) Superstorm Sandy alone led to the loss of
20 approximately 116 overhead electric transmission lines and 117,000
21 trees and damage to over 71 percent of all electric distribution
22 circuits and approximately 5,000 overhead and pad mounted
23 electric transformers. The destruction caused by Superstorm Sandy
24 required assistance from more than 20,000 out-of-State electric
25 public utility workers.

26 ¹(4) The March 2018 nor’easters left hundreds of thousands of
27 New Jersey residents and businesses without power and, as a result,
28 the Board of Public Utilities ordered the State’s four electric public
29 utilities to undertake additional efforts to better prepare electric
30 public utilities for any major weather event in the future.¹

31 b. The Legislature therefore determines that it is necessary to
32 authorize electric public utilities to maintain, remove, and replace
33 dangerous vegetation to prevent power disruptions and preserve the
34 uninterrupted transmission and distribution of power in this State.

35
36 3. (New section) As used in section 1 through 4 and section 10
37 of P.L. , c. (C.) (pending before the Legislature as this
38 bill):

39 ¹“ANSI” means the American National Standards Institute.¹

40 “Board” means the Board of Public Utilities.

41 “Dangerous vegetation” means a tree, shrub, plant, or any other
42 vegetation growing in, near, or adjacent to the electric public
43 utility’s right of way, and the electric distribution and transmission

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ATU committee amendments adopted September 24, 2018.

²Assembly AAP committee amendments adopted December 10, 2018.

1 system, but not including a service line to an individual customer,
2 which may fall into, touch, affect, or otherwise interfere with an
3 ²~~electrical~~ electric² distribution line, as determined by the electric
4 public utility or local government entity having control of the right
5 of way.

6 ²~~“Electric distribution”~~ “Distribution”² line” means a wire, line,
7 pole, and other structure and facility which carries electricity from
8 an electric public utility substation to customers, but not including a
9 service line to an individual customer.

10 “Electric public utility” ²or “utility”² means a public utility, as
11 that term is defined in R.S.48:2-13, that is under the jurisdiction of
12 the Board of Public Utilities, is investor-owned, and transmits and
13 distributes electricity to end users within this State.

14 ²“Transmission line” means a line or cable, including the
15 supporting structures and appurtenant facilities, which carries
16 electricity from a generating plant to an electric substation.

17 “Vegetation management” means the clearing, moving, cutting,
18 or destroying to remove, replace as reasonable and necessary, or
19 maintain dangerous vegetation.²

20

21 4. (New section) ²a.² Notwithstanding the provisions of the
22 “New Jersey Shade Tree and Community Forestry Assistance Act,”
23 P.L.1996, c.135 (C.13:1L-17.1 et al.) or any other provision of law,
24 rule, regulation, or order to the contrary, to ensure the continued
25 reliable supply of electricity in this State, an electric public utility is
26 authorized to:

27 ²~~a.] (1)~~² ¹~~Utilize~~ utilize¹ all ¹reasonably¹ available methods
28 ¹~~], including~~ according to ANSI A300 tree care standards and
29 pursuant to board rules and regulations, which may include¹, but
30 not ¹be¹ limited to, clearing, moving, cutting, or destroying to
31 remove, replace ²as reasonable and necessary², or maintain
32 dangerous vegetation; and

33 ²~~b.] (2)~~² ¹~~Establish~~ establish¹ ², upon receipt of board
34 approval,² a program ¹~~with a municipality~~¹ to develop effective
35 strategies to implement the provisions of this section ¹, as
36 appropriate¹.

37 ²b. An electric public utility shall make a diligent attempt to
38 notify all customers, property owners, and local and other
39 government entities that may be affected by planned vegetation
40 management activity along the utility's distribution or transmission
41 system. This requirement shall be satisfied if the utility provides
42 written notice to customers and property owners pursuant to
43 paragraphs (1) and (2) of this subsection, at least seven days, but
44 not more than 45 days, prior to performing any vegetation
45 management activity, and provides notice to local and other
46 government entities pursuant to paragraph (3) of this subsection.

1 (1) For a distribution line, the electric public utility shall
2 provide notice to the following customers and property owners by
3 separate direct mailing, door hanger, or any other method approved
4 by the board:

5 (a) a customer of the utility upon whose property runs any
6 portion of the right-of-way or easement that will be maintained by
7 the utility; and

8 (b) a property owner where there is no customer of the utility
9 located on the property and the property includes a portion of the
10 right-of-way or easement that will be maintained by the utility.

11 (2) For a transmission line, the electric public utility shall
12 provide notice as follows:

13 (a) for persons described in subparagraphs (a) and (b) of
14 paragraph (1) of this subsection, through a direct mailing by
15 certified mail, return receipt requested, or by another method
16 approved by the board; and

17 (b) by publishing at least seven days, but not more than 45 days,
18 prior to performing any vegetation management activity, a notice in
19 two newspapers that serve the area where the vegetation
20 management activity is to be performed.

21 For the purposes of subparagraph (a) of this paragraph, a United
22 States Post Office receipt of mailing shall constitute proof of
23 compliance.

24 (3) (a) An electric public utility shall notify all local and other
25 government entities that may be affected by vegetation management
26 activity. For local and other government entities, a utility shall
27 provide written notice of any pending vegetation management
28 activity to a primary contact at that entity. For a municipality, the
29 mayor, municipal clerk, or other person or position mutually agreed
30 upon by the utility and the municipality shall be the primary
31 contact. For other government entities, the primary contact shall be
32 selected by mutual agreement in writing between the utility and the
33 other government entity.

34 (b) The electric public utility shall provide written notice to the
35 primary contact, designated pursuant to subparagraph (a) of this
36 paragraph, at least two months in advance of the planned vegetation
37 management activity. The notice shall include the planned dates
38 and locations of the vegetation management activity, and shall be
39 written in a manner sufficient to explain the utility's procedures and
40 easement rights. The utility shall provide a telephone number of its
41 vegetation manager to provide answers to any questions from the
42 primary contact relating to the notice. If a utility provides notice,
43 pursuant to this paragraph, through a contractor or agent, the notice
44 shall bear the name and logo of the utility only and not of the
45 contractor or agent. The utility shall maintain a record of the dates,
46 locations, and activities contained in notice provided to municipal
47 and other government entities, pursuant to this paragraph, for a
48 period of five years after notice is sent.

1 c. (1) An electric public utility shall conduct an annual public
2 education program to inform its customers and local and other
3 government entities in the utility's service territory of the
4 importance of vegetation management and of the utility's role and
5 responsibility in performing vegetation management near
6 distribution and transmission lines. The public education program
7 required pursuant to this paragraph shall be implemented by direct
8 mail or another method approved by the board.

9 (2) An electric public utility shall post materials of its public
10 education program, developed pursuant to paragraph (1) of this
11 subsection, on its website. The posted materials shall include
12 illustrations of typical configurations of transmission lines and
13 easements, as necessary to comply with the requirements of this
14 section, to inform the public regarding the utility's responsibilities
15 in performing vegetation management pursuant to this section.²

16
17 5. Section 5 of P.L.1996, c.135 (C.13:1L-17.5) is amended to
18 read as follows:

19 5. a. There is established in the department a Community
20 Forestry Council, which shall consist of 20 members, appointed by
21 the State Forester, all of whom shall be citizens with expertise or
22 interest in trees, forestry, or tree or forest management,
23 maintenance, or care. ¹Upon the occurrence of a vacancy on the
24 council after the effective date of P.L. , c. (C.) (pending
25 before the Legislature as this bill), the State Forester shall appoint a
26 New Jersey electric public utility employee who is an electric
27 public utility approved forester to represent the electric public
28 utility on the council until such time as there are at least two
29 members serving on the council meeting that description.¹ Each of
30 the members appointed shall serve for a term of three years and
31 until a successor is appointed and qualified, except that of the
32 members first appointed, seven shall serve terms of one year and
33 seven shall serve terms of two years. All vacancies, except those
34 created through the expiration of term, shall be filled for the
35 unexpired term only, and in the same manner as the original
36 appointment. Each member shall be eligible for reappointment, but
37 may be removed by the commissioner or the State Forester for
38 cause.

39 b. A majority of the membership of the council shall constitute
40 a quorum for the transaction of council business. Action may be
41 taken and motions and resolutions adopted by the council at any
42 meeting thereof by the affirmative vote of a majority of the full
43 membership of the council.

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

47 d. The State Forester shall appoint a chairperson and vice-
48 chairperson and the council may elect such other officers as may be

1 necessary. The council may appoint such staff or hire such experts
2 as it may require within the limits of appropriations made for these
3 purposes.

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

7 f. The council may adopt, pursuant to the "Administrative
8 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), and in
9 consultation with the department, any rules and regulations
10 necessary to carry out its responsibilities pursuant to P.L.1996,
11 c.135 (C.13:1L-17.1 et al.).

12 g. The council shall advise the State Forester, the Division of
13 Parks and Forestry, and the department on issues concerning
14 community forestry and assist with such other functions as may be
15 authorized pursuant to P.L.1996, c.135 (C.13:1L-17.1 et al.) or any
16 other law.

17 h. The council, a shade tree commission, and any entity
18 empowered pursuant to this chapter, shall not interfere with or
19 restrict an electric public utility's removal, replacement, or
20 maintenance of dangerous vegetation pursuant to the provisions of
21 P.L. , c. (C.) (pending before the Legislature as this bill).
22 (cf: P.L.1996, c.135, s.5)

23

24 6. R.S.40:37-5 is amended to read as follows:

25 40:37-5. Except as hereinafter provided and as provided in
26 subsection h. of section 5 of P.L. c. (C.) (pending before
27 the Legislature as this bill), the shade tree commission may exercise
28 exclusive control over the regulation, planting, and care of shade
29 and ornamental trees and shrubbery now situate or which may
30 hereafter be planted **[in]** along any public road, street, highway,
31 **[park]** or parkway or in any public park of the county, including:

32 a. The planting, trimming, spraying, care, and protection
33 thereof;

34 b. The regulation and control of the use of the ground
35 surrounding the same so far as may be necessary for their proper
36 growth, care, and protection;

37 c. The moving or requiring the removal of any tree or part
38 thereof, dangerous to public safety;

39 d. The care and control of the parks and parkways; and

40 e. The encouragement of arboriculture.

41 (cf: P.L.1958, c.41, s.2)

42

43 7. R.S.40:37-6 is amended to read as follows:

44 40:37-6. **[The]** a. Except as provided in subsection b. of this
45 section, the shade tree commission, with the consent of the board of
46 chosen freeholders, may make rules and regulations for the
47 protection and care of the trees, shrubbery, or ornamental material
48 planted or growing naturally within the highways and parks under

1 its jurisdiction, as provided in this article; and with the consent of
2 the board may prescribe a suitable fine for the violation of each rule
3 or regulation, in an amount not exceeding ~~【\$200.00】~~ \$200 for each
4 violation.

5 b. Any public utility, as defined pursuant to R.S.48:2-13, or a
6 cable television company, as defined pursuant to section 3 of
7 P.L.1972, c.186 (C.48:5A-3), that clears, moves, cuts, or destroys
8 any trees, shrubs, or plants for the purpose of erecting, installing,
9 moving, removing, altering, protecting, or maintaining any
10 structures or fixtures, necessary for the supply of electric light, heat,
11 or power, communication, or cable television services upon any
12 lands in which it has acquired an easement or right-of-way or upon
13 a public right-of-way, shall not be required to receive the
14 permission of a commission to undertake such work or be subject to
15 any penalty imposed by a shade tree commission pursuant to
16 subsection a. of this section. This subsection shall not exempt any
17 such public utility or cable television company from any penalty or
18 replacement assessment imposed as a result of damage to a tree,
19 shrub, or plant caused by the public utility's or cable television
20 company's non-compliance with any such rule or regulation of the
21 shade tree commission, provided that such rule or regulation does
22 not interfere with or restrict any vegetation management work
23 conducted by the public utility or cable television company to
24 comply with any federal law, rule, regulation, any vegetation
25 management rule, regulation, or order of the board, or any national
26 or federal standard applicable to a public utility or cable television
27 company in this State. ¹A public utility or cable television
28 company, that is acting in good faith, with due diligence and
29 reasonable judgement, in its performance of vegetation management
30 pursuant to the provisions of P.L. , c. (C.) (pending before
31 the Legislature as this bill) and any board rules or regulations, shall
32 not be held liable, penalized, or otherwise subject to undue hardship
33 by a governing body of a county or a commission.¹

34 As used in this subsection, "vegetation management" means to
35 clear, move, cut, or destroy any dangerous vegetation to erect,
36 install, move, remove, alter, protect, or maintain any structures or
37 fixtures, necessary for the supply of electric light, heat, power, or
38 communication, or cable television service.

39 (cf: P.L.1958, c.41, s.3)

40

41 8. R.S.40:64-5 is amended to read as follows:

42 40:64-5. **【A】** Except as provided in subsection h. of section 5
43 of P.L. c. (C.) (pending before the Legislature as this bill)
44 a shade tree commission organized under this chapter shall have
45 power to:

46 a. Exercise full and exclusive control over the regulation,
47 planting, and care of shade and ornamental trees and shrubbery now

1 located, or which may hereafter be planted **[in]** along any public
2 road, street, highway, [park] or parkway or in any public park of
3 the municipality, except such as are excluded pursuant to section
4 40:64-1 of this Title in the municipality for which it was created,
5 including the planting, trimming, spraying, care, and protection
6 thereof;

7 b. Regulate and control the use of the ground surrounding the
8 same, so far as may be necessary for their proper growth, care, and
9 protection;

10 c. Move or require the removal of any tree, or part thereof,
11 dangerous to public safety;

12 d. Care for and control such parks and parkways; encourage
13 arboriculture; make, alter, amend, and repeal, in the manner
14 prescribed for the passage, alteration, amendment, and repeal of
15 ordinances by the governing body of the municipality, any and all
16 ordinances necessary or proper for carrying out the provisions
17 hereof; and

18 e. Administer treatment to, or remove, any tree situate upon
19 private property which is believed to harbour a disease or insects
20 readily communicable to neighboring healthy trees in the care of the
21 municipality and enter upon private property for that purpose, with
22 the consent of the owner thereof, provided the suspected condition
23 is first confirmed by certificate issued by or on behalf of the
24 Department of Agriculture.

25 (cf: P.L.1958, c.42, s.4)

26

27 9. R.S.40:64-12 is amended to read as follows:

28 40:64-12. a. The commission may prescribe a fine for the
29 violation of each of its ordinances in an amount not exceeding
30 [\$1500.00] \$1,500 for each violation, and the courts which now or
31 hereafter shall have jurisdiction over actions for the violation of
32 ordinances of the municipality in which the commission has been or
33 shall be appointed shall have jurisdiction in actions for the violation
34 of such ordinances as the commission shall enact. The ordinances
35 shall be enforced by like proceedings and process and the practice
36 for the enforcement thereof shall be the same as that provided by
37 law for the enforcement of the ordinances of the municipality in
38 which the commission exists. The officers authorized by law to
39 serve and execute process in the aforementioned courts shall be the
40 officers to serve and execute any process issued out of any court
41 under this chapter. A copy of any ordinance of the commission,
42 certified to under the hand of its secretary [,] or chairman shall be
43 received in any court of this State as full and legal proof of the
44 existence of the ordinance, and that all requirements of law in
45 relation to the ordaining, publishing, and making of the same, so as
46 to make it legal and binding, have been complied with, unless the
47 contrary be shown.

1 b. In addition to the penalties authorized by subsection a. of
2 this section, the commission may require a person who removes or
3 otherwise destroys a tree in violation of a municipal ordinance to
4 pay a replacement assessment to the municipality. The replacement
5 assessment shall be the value of the tree as determined by the
6 appraisal of a trained forester or Certified Tree Expert retained by
7 the commission for that purpose. In lieu of an appraisal, the
8 commission may adopt a formula and schedule based upon the
9 number of square inches contained in a cross section of the trunk of
10 the tree multiplied by a predetermined value per square inch, not to
11 exceed [\$27.00] \$27 per square inch. The square inch cross section
12 shall be calculated from the diameter at breast height and, if there is
13 a multiple stem tree, then each trunk shall be measured and an
14 average shall be determined for the tree. For the purposes of this
15 section, "diameter at breast height" shall mean the diameter of the
16 tree taken at a point 4-1/2 feet above ground level. The commission
17 shall modify the value of the tree based upon its species variety,
18 location, and its condition at the time of removal or destruction.

19 c. Any public utility as defined pursuant to R.S.48:2-13 or
20 cable television company as defined pursuant to section 3 of
21 P.L.1972, c.186 (C.48:5A-3) that clears, moves, cuts, or destroys
22 any trees, shrubs, or plants for the purpose of erecting, installing,
23 moving, removing, altering, protecting, or maintaining any
24 structures or fixtures, necessary for the supply of electric light, heat,
25 or power, communication, or cable television services upon any
26 lands in which it has acquired an easement or right-of-way or upon
27 a public right-of-way, shall not be required to receive the
28 permission of a commission to undertake such work or be subject to
29 any penalty imposed by a commission pursuant to subsections a. or
30 b. of this section. This subsection shall not exempt any such public
31 utility or cable television company from any penalty or replacement
32 assessment imposed ²[for negligent actions]² as result of damage to
33 a tree, shrub, or plant caused by the public utility' s or cable
34 television company' s non-compliance with any such rule or
35 regulation of the commission, provided that such rule or regulation
36 does not interfere with or restrict any vegetation management work
37 conducted by the public utility or cable television company to
38 comply with any federal law, rule, regulation, any vegetation
39 management rule, regulation, or order of the board, or any national
40 or federal standard applicable to a public utility or cable television
41 company in this State. ¹A public utility or cable television
42 company, that is acting in good faith, with due diligence and
43 reasonable judgement, in its performance of vegetation management
44 pursuant to the provisions of P.L. , c. (C.) (pending before
45 the Legislature as this bill) and any board rules or regulations, shall
46 not be held liable, penalized, or otherwise subject to undue hardship
47 by a governing body of a municipality or a commission.¹

1 As used in this subsection, “ vegetation management” means to
2 clear, move, cut, or destroy any dangerous vegetation to erect,
3 install, move, remove, alter, protect, or maintain any structures or
4 fixtures, necessary for the supply of electric light, heat, power, or
5 communication, or cable television service.

6 (cf: P.L.1991, c.396, s.1)

7

8 10. The board shall adopt pursuant to the "Administrative
9 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and
10 regulations necessary to effectuate the provisions of
11 P.L. , c. (C.) (pending before the Legislature as this bill).

12

13 11. This act shall take effect immediately.