

SENATE, No. 2505

STATE OF NEW JERSEY 218th LEGISLATURE

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Sponsored by:

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District 24 (Morris, Sussex and Warren)

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District 36 (Bergen and Passaic)

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SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 10/23/2018)

S2505 OROHO, SARLO

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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) The Legislature finds and declares that:

12 a. Unprecedented damage was inflicted on the State and its
13 citizens by Superstorm Sandy, Hurricane Irene, the June 2012
14 Derecho, and the October 2011 snow storm.

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

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

25 d. The Legislature therefore determines that it is necessary to
26 authorize electric public utilities to maintain, remove, and replace
27 dangerous vegetation to prevent power disruptions and preserve the
28 uninterrupted transmission and distribution of power in this State.

29
30 3. (New section) As used in section 1 through 4 and section
31 10 of P.L. , c. (C.) (pending before the Legislature as this
32 bill):

33 “Board” means the Board of Public Utilities.

34 “Dangerous vegetation” means a tree, shrub, plant, or any other
35 vegetation growing in, near, or adjacent to the electric public
36 utility’s right of way, and the electric distribution and transmission
37 system, but not including a service line to an individual customer,
38 which may fall into, touch, affect, or otherwise interfere with an
39 electrical distribution line, as determined by the electric public
40 utility or local government entity having control of the right of way.

41 “Electric distribution line” means a wire, line, pole, and other
42 structure and facility which carries electricity from an electric
43 public utility substation to customers, but not including a service
44 line to an individual customer.

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.

1 "Electric public utility" means a public utility, as that term is
2 defined in R.S.48:2-13, that is under the jurisdiction of the Board of
3 Public Utilities, is investor-owned, and transmits and distributes
4 electricity to end users within this State.

5
6 4. (New section) Notwithstanding the provisions of the "New
7 Jersey Shade Tree and Community Forestry Assistance Act,"
8 P.L.1996, c.135 (C.13:1L-17.1 et al.) or any other provision of law,
9 rule, regulation, or order to the contrary, to ensure the continued
10 reliable supply of electricity in this State, an electric public utility is
11 authorized to:

12 a. Utilize all available methods, including, but not limited to,
13 clearing, moving, cutting, or destroying to remove, replace, or
14 maintain dangerous vegetation; and

15 b. Establish a program with a municipality to develop effective
16 strategies to implement the provisions of this section.

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

20 5. a. There is established in the department a Community
21 Forestry Council, which shall consist of 20 members, appointed by
22 the State Forester, all of whom shall be citizens with expertise or
23 interest in trees, forestry, or tree or forest management,
24 maintenance, or care. Each of the members appointed shall serve
25 for a term of three years and until a successor is appointed and
26 qualified, except that of the members first appointed, seven shall
27 serve terms of one year and seven shall serve terms of two years.
28 All vacancies, except those created through the expiration of term,
29 shall be filled for the unexpired term only, and in the same manner
30 as the original appointment. Each member shall be eligible for
31 reappointment, but may be removed by the commissioner or the
32 State Forester for cause.

33 b. A majority of the membership of the council shall constitute
34 a quorum for the transaction of council business. Action may be
35 taken and motions and resolutions adopted by the council at any
36 meeting thereof by the affirmative vote of a majority of the full
37 membership of the council.

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

41 d. The State Forester shall appoint a chairperson and vice-
42 chairperson and the council may elect such other officers as may be
43 necessary. The council may appoint such staff or hire such experts
44 as it may require within the limits of appropriations made for these
45 purposes.

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

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

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

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

17

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

19 40:37-5. Except as hereinafter provided and as provided in
20 subsection h. of section 5 of P.L. c. (C.) (pending before
21 the Legislature as this bill, the shade tree commission may exercise
22 exclusive control over the regulation, planting, and care of shade
23 and ornamental trees and shrubbery now situate or which may
24 hereafter be planted [in] along any public road, street, highway,
25 [park] or parkway or in any public park of the county, including:

26 a. The planting, trimming, spraying, care, and protection
27 thereof;

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

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

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

34 e. The encouragement of arboriculture.

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

36

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

38 [The] 40:37-6. a. Except as provided in subsection b. of this
39 section, the shade tree commission, with the consent of the board of
40 chosen freeholders, may make rules and regulations for the
41 protection and care of the trees, shrubbery, or ornamental material
42 planted or growing naturally within the highways and parks under
43 its jurisdiction, as provided in this article; and with the consent of
44 the board may prescribe a suitable fine for the violation of each rule
45 or regulation, in an amount not exceeding [\\$200.00] \$200 for each
46 violation.

47 b. Any public utility, as defined pursuant to R.S.48:2-13, or a
48 cable television company, as defined pursuant to section 3 of

1 P.L.1972, c.186 (C.48:5A-3), that clears, moves, cuts, or destroys
2 any trees, shrubs, or plants for the purpose of erecting, installing,
3 moving, removing, altering, protecting, or maintaining any
4 structures or fixtures, necessary for the supply of electric light, heat,
5 or power, communication, or cable television services upon any
6 lands in which it has acquired an easement or right-of-way or upon
7 a public right-of-way, shall not be required to receive the
8 permission of a commission to undertake such work or be subject to
9 any penalty imposed by a shade tree commission pursuant to
10 subsection a. of this section. This subsection shall not exempt any
11 such public utility or cable television company from any penalty or
12 replacement assessment imposed as a result of damage to a tree,
13 shrub, or plant caused by the public utility's or cable television
14 company's non-compliance with any such rule or regulation of the
15 shade tree commission, provided that such rule or regulation does
16 not interfere with or restrict any vegetation management work
17 conducted by the public utility or cable television company to
18 comply with any federal law, rule, regulation, any vegetation
19 management rule, regulation, or order of the board, or any national
20 or federal standard applicable to a public utility or cable television
21 company in this State.

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

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

28

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

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

34 a. Exercise full and exclusive control over the regulation,
35 planting, and care of shade and ornamental trees and shrubbery now
36 located, or which may hereafter be planted **【in】** along any public
37 road, street, highway, 【park】 or parkway or in any public park of
38 the municipality, except such as are excluded pursuant to section
39 40:64-1 of this Title in the municipality for which it was created,
40 including the planting, trimming, spraying, care, and protection
41 thereof;

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

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

47 d. Care for and control such parks and parkways; encourage
48 arboriculture; make, alter, amend, and repeal, in the manner

S2505 OROHO, SARLO

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1 prescribed for the passage, alteration, amendment, and repeal of
2 ordinances by the governing body of the municipality, any and all
3 ordinances necessary or proper for carrying out the provisions
4 hereof; and

5 e. Administer treatment to, or remove, any tree situate upon
6 private property which is believed to harbour a disease or insects
7 readily communicable to neighboring healthy trees in the care of the
8 municipality and enter upon private property for that purpose, with
9 the consent of the owner thereof, provided the suspected condition
10 is first confirmed by certificate issued by or on behalf of the
11 Department of Agriculture.

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

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

15 40:64-12. a. The commission may prescribe a fine for the
16 violation of each of its ordinances in an amount not exceeding
17 ~~[\$1500.00]~~ \$1,500 for each violation, and the courts which now or
18 hereafter shall have jurisdiction over actions for the violation of
19 ordinances of the municipality in which the commission has been or
20 shall be appointed shall have jurisdiction in actions for the violation
21 of such ordinances as the commission shall enact. The ordinances
22 shall be enforced by like proceedings and process and the practice
23 for the enforcement thereof shall be the same as that provided by
24 law for the enforcement of the ordinances of the municipality in
25 which the commission exists. The officers authorized by law to
26 serve and execute process in the aforementioned courts shall be the
27 officers to serve and execute any process issued out of any court
28 under this chapter. A copy of any ordinance of the commission,
29 certified to under the hand of its secretary ~~[,]~~ or chairman shall be
30 received in any court of this State as full and legal proof of the
31 existence of the ordinance, and that all requirements of law in
32 relation to the ordaining, publishing, and making of the same, so as
33 to make it legal and binding, have been complied with, unless the
34 contrary be shown.

35 b. In addition to the penalties authorized by subsection a. of
36 this section, the commission may require a person who removes or
37 otherwise destroys a tree in violation of a municipal ordinance to
38 pay a replacement assessment to the municipality. The replacement
39 assessment shall be the value of the tree as determined by the
40 appraisal of a trained forester or Certified Tree Expert retained by
41 the commission for that purpose. In lieu of an appraisal, the
42 commission may adopt a formula and schedule based upon the
43 number of square inches contained in a cross section of the trunk of
44 the tree multiplied by a predetermined value per square inch, not to
45 exceed ~~[\$27.00]~~ \$27 per square inch. The square inch cross section
46 shall be calculated from the diameter at breast height and, if there is
47 a multiple stem tree, then each trunk shall be measured and an
48 average shall be determined for the tree. For the purposes of this

1 section, "diameter at breast height" shall mean the diameter of the
2 tree taken at a point 4-1/2 feet above ground level. The commission
3 shall modify the value of the tree based upon its species variety,
4 location, and its condition at the time of removal or destruction.

5 c. Any public utility as defined pursuant to R.S.48:2-13 or
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 commission pursuant to subsections a. or
16 b. of this section. This subsection shall not exempt any such public
17 utility or cable television company from any penalty or replacement
18 assessment imposed as result of damage to a tree, shrub, or plant
19 caused by the public utility's or cable television company's non-
20 compliance with any such rule or regulation of the commission,
21 provided that such rule or regulation does not interfere with or
22 restrict any vegetation management work conducted by the public
23 utility or cable television company to comply with any federal law,
24 rule, regulation, any vegetation management rule, regulation, or
25 order of the board, or any national or federal standard applicable to
26 a public utility or cable television company in this State.

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

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

33

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

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39 11. This act shall take effect immediately.

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STATEMENT

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44 This bill authorizes an electric public utility to utilize all
45 available methods including, but not limited to, clearing, moving,
46 cutting, or destroying to remove, replace, or maintain dangerous
47 vegetation and to establish a program with a municipality to
48 develop effective strategies to implement the provisions of this bill.

1 Dangerous vegetation is defined to mean a tree, shrub, plant, or any
2 other vegetation growing in, near, or adjacent to the electric public
3 utility's right of way, and the electric distribution and transmission
4 system, but not including a service line to an individual customer,
5 which may fall into, touch, affect, or otherwise interfere with an
6 electrical distribution line, as determined by the electric public
7 utility or local government entity having control of the right-of-
8 way.

9 The bill provides that the neither the Community Forestry
10 Council nor any county or municipal shade tree commission
11 interfere with or restrict an electric public utility's removal,
12 replacement, or maintenance of dangerous vegetation.

13 The bill also provides that, in order to allow an electric public
14 utility or cable television company to clear, move, cut, or destroy
15 trees, shrubs, or plants for the purpose of erecting, installing,
16 moving, removing, altering, protecting, or maintaining any
17 structures or fixtures necessary for the supply of electric light, heat,
18 power, or communication or cable television services upon any
19 lands in which it has acquired an easement or right-of-way or upon
20 any public right-of-way, an electric public utility or cable television
21 company is not required to receive the permission of any county or
22 municipal shade tree commission to undertake such work and is not
23 subject to any penalty imposed by any commission as provided by
24 law. Under the bill, an electric public utility or cable television
25 company is not exempt from any penalty or replacement assessment
26 imposed as a result of damage to a tree, shrub, or plant caused by
27 non-compliance with any such rule or regulation of a county or
28 municipal shade tree commission, provided that such rule or
29 regulation does not interfere with or restrict any vegetation
30 management work conducted by the electric public utility or cable
31 television company to comply with any federal rule, regulation, or
32 law, any vegetation management rule, regulation, or order of the
33 board, or any national or federal standard applicable to a public
34 utility or cable television company.