

[Second Reprint]

**SENATE, No. 2505**

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**STATE OF NEW JERSEY**  
**218th LEGISLATURE**

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INTRODUCED APRIL 16, 2018

**Sponsored by:**

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**District 24 (Morris, Sussex and Warren)**

**Senator PAUL A. SARLO**

**District 36 (Bergen and Passaic)**

**Co-Sponsored by:**

**Senator Ruiz**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

As amended by the Senate on October 29, 2018.



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

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) <sup>1</sup>a. The Legislature finds and declares that:  
12 <sup>1</sup>[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 <sup>1</sup>[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 <sup>1</sup>[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 <sup>1</sup>(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.<sup>1</sup>

31 <sup>1</sup>[d.] b.<sup>1</sup> The Legislature therefore determines that it is  
32 necessary to authorize electric public utilities to maintain, remove,  
33 and replace dangerous vegetation to prevent power disruptions and  
34 preserve the uninterrupted transmission and distribution of power in  
35 this State.

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

40 <sup>1</sup>“ANSI” means the American National Standards Institute.<sup>1</sup>

41 “Board” means the Board of Public Utilities.

42 “Dangerous vegetation” means a tree, shrub, plant, or any other  
43 vegetation growing in, near, or adjacent to the electric public

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:

<sup>1</sup>Senate SBA committee amendments adopted October 22, 2018.

<sup>2</sup>Senate floor amendments adopted October 29, 2018.

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

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

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

14

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

21 a. <sup>1</sup>**Utilize** utilize<sup>1</sup> all <sup>1</sup>reasonably<sup>1</sup> available methods  
 22 <sup>1</sup>**including** according to ANSI A300 tree care standards and  
 23 pursuant to board rules and regulations, which may include<sup>1</sup>, but  
 24 not <sup>1</sup>be<sup>1</sup> limited to, clearing, moving, cutting, or destroying to  
 25 remove, replace <sup>2</sup>as reasonable and necessary<sup>2</sup>, or maintain  
 26 dangerous vegetation; and

27 b. <sup>1</sup>**Establish** establish<sup>1</sup> a program <sup>1</sup>**with a municipality**<sup>1</sup> to  
 28 develop effective strategies to implement the provisions of this  
 29 section <sup>1</sup>, as appropriate<sup>1</sup>.

30

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

33 5. a. There is established in the department a Community  
 34 Forestry Council, which shall consist of 20 members, appointed by  
 35 the State Forester, all of whom shall be citizens with expertise or  
 36 interest in trees, forestry, or tree or forest management,  
 37 maintenance, or care. <sup>1</sup>Upon the occurrence of a vacancy on the  
 38 council after the effective date of P.L. , c. (C. ) (pending  
 39 before the Legislature as this bill), the State Forester shall appoint a  
 40 New Jersey electric public utility employee who is an electric  
 41 public utility approved forester to represent the electric public  
 42 utility on the council until such time as there are at least two  
 43 members serving on the council meeting that description.<sup>1</sup> Each of  
 44 the members appointed shall serve for a term of three years and  
 45 until a successor is appointed and qualified, except that of the  
 46 members first appointed, seven shall serve terms of one year and  
 47 seven shall serve terms of two years. All vacancies, except those

1 created through the expiration of term, shall be filled for the  
2 unexpired term only, and in the same manner as the original  
3 appointment. Each member shall be eligible for reappointment, but  
4 may be removed by the commissioner or the State Forester for  
5 cause.

6 b. A majority of the membership of the council shall constitute  
7 a quorum for the transaction of council business. Action may be  
8 taken and motions and resolutions adopted by the council at any  
9 meeting thereof by the affirmative vote of a majority of the full  
10 membership of the council.

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

14 d. The State Forester shall appoint a chairperson and vice-  
15 chairperson and the council may elect such other officers as may be  
16 necessary. The council may appoint such staff or hire such experts  
17 as it may require within the limits of appropriations made for these  
18 purposes.

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

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

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

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

38  
39 6. R.S.40:37-5 is amended to read as follows:

40 40:37-5. Except as hereinafter provided and as provided in  
41 subsection h. of section 5 of P.L. c. (C. ) (pending before  
42 the Legislature as this bill <sup>1</sup><sub>2</sub><sup>1</sup>, the shade tree commission may  
43 exercise exclusive control over the regulation, planting, and care of  
44 shade and ornamental trees and shrubbery now situate or which may  
45 hereafter be planted **[in]** along any public road, street, highway,  
46 **[park]** or parkway or in any public park of the county, including:

47 a. The planting, trimming, spraying, care, and protection  
48 thereof;

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

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

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

7 e. The encouragement of arboriculture.

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

9

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

11 **【The】** 40:37-6. a. Except as provided in subsection b. of this  
12 section, the shade tree commission, with the consent of the board of  
13 chosen freeholders, may make rules and regulations for the  
14 protection and care of the trees, shrubbery, or ornamental material  
15 planted or growing naturally within the highways and parks under  
16 its jurisdiction, as provided in this article; and with the consent of  
17 the board may prescribe a suitable fine for the violation of each rule  
18 or regulation, in an amount not exceeding **【\$200.00】** \$200 for each  
19 violation.

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

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.1958, c.41, s.3)

7

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

9 **【A】** 40:64-5. Except as provided in subsection h. of section 5  
10 of P.L. c. (C. ) (pending before the Legislature as this  
11 bill <sup>1</sup>)<sup>1</sup> a shade tree commission organized under this chapter shall  
12 have power to:

13 a. Exercise full and exclusive control over the regulation,  
14 planting, and care of shade and ornamental trees and shrubbery now  
15 located, or which may hereafter be planted **【in】** along any public  
16 road, street, highway, 【park】 or parkway or in any public park of  
17 the municipality, except such as are excluded pursuant to section  
18 40:64-1 of this Title in the municipality for which it was created,  
19 including the planting, trimming, spraying, care, and protection  
20 thereof;

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

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

26 d. Care for and control such parks and parkways; encourage  
27 arboriculture; make, alter, amend, and repeal, in the manner  
28 prescribed for the passage, alteration, amendment, and repeal of  
29 ordinances by the governing body of the municipality, any and all  
30 ordinances necessary or proper for carrying out the provisions  
31 hereof; and

32 e. Administer treatment to, or remove, any tree situate upon  
33 private property which is believed to harbour a disease or insects  
34 readily communicable to neighboring healthy trees in the care of the  
35 municipality and enter upon private property for that purpose, with  
36 the consent of the owner thereof, provided the suspected condition  
37 is first confirmed by certificate issued by or on behalf of the  
38 Department of Agriculture.

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

40

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

42 40:64-12. a. The commission may prescribe a fine for the  
43 violation of each of its ordinances in an amount not exceeding  
44 **【\$1500.00】** \$1,500 for each violation, and the courts which now or  
45 hereafter shall have jurisdiction over actions for the violation of  
46 ordinances of the municipality in which the commission has been or  
47 shall be appointed shall have jurisdiction in actions for the violation

1 of such ordinances as the commission shall enact. The ordinances  
2 shall be enforced by like proceedings and process and the practice  
3 for the enforcement thereof shall be the same as that provided by  
4 law for the enforcement of the ordinances of the municipality in  
5 which the commission exists. The officers authorized by law to  
6 serve and execute process in the aforementioned courts shall be the  
7 officers to serve and execute any process issued out of any court  
8 under this chapter. A copy of any ordinance of the commission,  
9 certified to under the hand of its secretary [.] or chairman shall be  
10 received in any court of this State as full and legal proof of the  
11 existence of the ordinance, and that all requirements of law in  
12 relation to the ordaining, publishing, and making of the same, so as  
13 to make it legal and binding, have been complied with, unless the  
14 contrary be shown.

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

33 c. Any public utility as defined pursuant to R.S.48:2-13 or  
34 cable television company as defined pursuant to section 3 of  
35 P.L.1972, c.186 (C.48:5A-3) that clears, moves, cuts, or destroys  
36 any trees, shrubs, or plants for the purpose of erecting, installing,  
37 moving, removing, altering, protecting, or maintaining any  
38 structures or fixtures, necessary for the supply of electric light, heat,  
39 or power, communication, or cable television services upon any  
40 lands in which it has acquired an easement or right-of-way or upon  
41 a public right-of-way, shall not be required to receive the  
42 permission of a commission to undertake such work or be subject to  
43 any penalty imposed by a commission pursuant to subsections a. or  
44 b. of this section. This subsection shall not exempt any such public  
45 utility or cable television company from any penalty or replacement  
46 assessment imposed <sup>1</sup>[for negligent actions]<sup>1</sup> as result of damage to  
47 a tree, shrub, or plant caused by the public utility's or cable  
48 television company's non-compliance with any such rule or

1 regulation of the commission, provided that such rule or regulation  
2 does not interfere with or restrict any vegetation management work  
3 conducted by the public utility or cable television company to  
4 comply with any federal law, rule, regulation, any vegetation  
5 management rule, regulation, or order of the board, or any national  
6 or federal standard applicable to a public utility or cable television  
7 company in this State. <sup>1</sup>A public utility or cable television  
8 company, that is acting in good faith, with due diligence and  
9 reasonable judgement, in its performance of vegetation management  
10 pursuant to the provisions of P.L. , c. (C. ) (pending before  
11 the Legislature as this bill) and any board rules or regulations, shall  
12 not be held liable, penalized, or otherwise subject to undue hardship  
13 by a governing body of a municipality or a commission.<sup>1</sup>

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

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

20

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

25

26 11. This act shall take effect immediately.