

[Third Reprint]

SENATE, No. 2505

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED APRIL 16, 2018

Sponsored by:

Senator STEVEN V. OROHO

District 24 (Morris, Sussex and Warren)

Senator PAUL A. SARLO

District 36 (Bergen and Passaic)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As amended by the Senate on December 17, 2018.



(Sponsorship Updated As Of: 8/26/2019)

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 ¹[d.] b.¹ 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 10
38 of P.L. , c. (C.) (pending before the Legislature as this
39 bill):

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

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:

¹Senate SBA committee amendments adopted October 22, 2018.

²Senate floor amendments adopted October 29, 2018.

³Senate floor amendments adopted December 17, 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 ³**["electrical] electric³** distribution line, as determined by the electric
 5 public utility or local government entity having control of the right
 6 of way.

7 ³**["Electric distribution] "Distribution³ line"** means a wire, line,
 8 pole, and other structure and facility which carries electricity from
 9 an electric public utility substation to customers, but not including a
 10 service line to an individual customer.

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

15 ³"Transmission line" means a line or cable, including the
 16 supporting structures and appurtenant facilities, which carries
 17 electricity from a generating plant to an electric substation.

18 "Vegetation management" means the clearing, moving, cutting,
 19 or destroying to remove, replace as reasonable and necessary, or
 20 maintain dangerous vegetation.³

21

22 4. (New section) ³a.³ Notwithstanding the provisions of the
 23 "New Jersey Shade Tree and Community Forestry Assistance Act,"
 24 P.L.1996, c.135 (C.13:1L-17.1 et al.) or any other provision of law,
 25 rule, regulation, or order to the contrary, to ensure the continued
 26 reliable supply of electricity in this State, an electric public utility is
 27 authorized to:

28 ³**["a.] (1)³ ¹["Utilize] utilize¹ all ¹reasonably¹ available methods**
 29 **¹["], including] according to ANSI A300 tree care standards and**
 30 **pursuant to board rules and regulations, which may include¹, but**
 31 **not ¹be¹ limited to, clearing, moving, cutting, or destroying to**
 32 **remove, replace ²as reasonable and necessary², or maintain**
 33 **dangerous vegetation; and**

34 ³**["b.] (2)³ ¹["Establish] establish¹ ³, upon receipt of board**
 35 **approval,³ a program ¹["with a municipality]¹ to develop effective**
 36 **strategies to implement the provisions of this section ¹, as**
 37 **appropriate¹.**

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

1 management activity, and provides notice to local and other
2 government entities pursuant to paragraph (3) of this subsection.

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

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

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

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

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

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

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

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

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

1 and other government entities, pursuant to this paragraph, for a
2 period of five years after notice is sent.

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

11 (2) An electric public utility shall post materials of its public
12 education program, developed pursuant to paragraph (1) of this
13 subsection, on its website. The posted materials shall include
14 illustrations of typical configurations of transmission lines and
15 easements, as necessary to comply with the requirements of this
16 section, to inform the public regarding the utility's responsibilities
17 in performing vegetation management pursuant to this section.³

18

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

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

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

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

1 d. The State Forester shall appoint a chairperson and vice-
2 chairperson and the council may elect such other officers as may be
3 necessary. The council may appoint such staff or hire such experts
4 as it may require within the limits of appropriations made for these
5 purposes.

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

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

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

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

24 (cf: P.L.1996, c.135, s.5)

25
26 6. R.S.40:37-5 is amended to read as follows:

27 40:37-5. Except as hereinafter provided and as provided in
28 subsection h. of section 5 of P.L. c. (C.) (pending before
29 the Legislature as this bill ¹)¹, the shade tree commission may
30 exercise exclusive control over the regulation, planting, and care of
31 shade and ornamental trees and shrubbery now situate or which may
32 hereafter be planted **[in]** along any public road, street, highway,
33 **[park]** or parkway or in any public park of the county, including:

34 a. The planting, trimming, spraying, care, and protection
35 thereof;

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

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

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

42 e. The encouragement of arboriculture.

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

44
45 7. R.S.40:37-6 is amended to read as follows:

46 40:37-6. **[The]** a. Except as provided in subsection b. of this
47 section, the shade tree commission, with the consent of the board of
48 chosen freeholders, may make rules and regulations for the

1 protection and care of the trees, shrubbery, or ornamental material
 2 planted or growing naturally within the highways and parks under
 3 its jurisdiction, as provided in this article; and with the consent of
 4 the board may prescribe a suitable fine for the violation of each rule
 5 or regulation, in an amount not exceeding ~~【\$200.00】~~ \$200 for each
 6 violation.

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

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

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

42
 43 8. R.S.40:64-5 is amended to read as follows:

44 40:64-5. **【A】** Except as provided in subsection h. of section 5
 45 of P.L. c. (C.) (pending before the Legislature as this
 46 bill ¹)¹ a shade tree commission organized under this chapter shall
 47 have power to:

- 1 a. Exercise full and exclusive control over the regulation,
2 planting, and care of shade and ornamental trees and shrubbery now
3 located, or which may hereafter be planted **[in]** along any public
4 road, street, highway, [park] or parkway or in any public park of
5 the municipality, except such as are excluded pursuant to section
6 40:64-1 of this Title in the municipality for which it was created,
7 including the planting, trimming, spraying, care, and protection
8 thereof;
- 9 b. Regulate and control the use of the ground surrounding the
10 same, so far as may be necessary for their proper growth, care, and
11 protection;
- 12 c. Move or require the removal of any tree, or part thereof,
13 dangerous to public safety;
- 14 d. Care for and control such parks and parkways; encourage
15 arboriculture; make, alter, amend, and repeal, in the manner
16 prescribed for the passage, alteration, amendment, and repeal of
17 ordinances by the governing body of the municipality, any and all
18 ordinances necessary or proper for carrying out the provisions
19 hereof; and
- 20 e. Administer treatment to, or remove, any tree situate upon
21 private property which is believed to harbour a disease or insects
22 readily communicable to neighboring healthy trees in the care of the
23 municipality and enter upon private property for that purpose, with
24 the consent of the owner thereof, provided the suspected condition
25 is first confirmed by certificate issued by or on behalf of the
26 Department of Agriculture.
27 (cf: P.L.1958, c.42, s.4)
28
- 29 9. R.S.40:64-12 is amended to read as follows:
30 40:64-12. a. The commission may prescribe a fine for the
31 violation of each of its ordinances in an amount not exceeding
32 **[\$1500.00]** \$1,500 for each violation, and the courts which now or
33 hereafter shall have jurisdiction over actions for the violation of
34 ordinances of the municipality in which the commission has been or
35 shall be appointed shall have jurisdiction in actions for the violation
36 of such ordinances as the commission shall enact. The ordinances
37 shall be enforced by like proceedings and process and the practice
38 for the enforcement thereof shall be the same as that provided by
39 law for the enforcement of the ordinances of the municipality in
40 which the commission exists. The officers authorized by law to
41 serve and execute process in the aforementioned courts shall be the
42 officers to serve and execute any process issued out of any court
43 under this chapter. A copy of any ordinance of the commission,
44 certified to under the hand of its secretary **[,]** or chairman shall be
45 received in any court of this State as full and legal proof of the
46 existence of the ordinance, and that all requirements of law in
47 relation to the ordaining, publishing, and making of the same, so as

1 to make it legal and binding, have been complied with, unless the
2 contrary be shown.

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

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

1 not be held liable, penalized, or otherwise subject to undue hardship
2 by a governing body of a municipality or a commission.¹

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

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

9

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

14

15 11. This act shall take effect immediately.