

ASSEMBLY, No. 260

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman WAYNE P. DEANGELO

District 14 (Mercer and Middlesex)

Assemblyman HAROLD "HAL" J. WIRTHS

District 24 (Morris, Sussex and Warren)

Assemblyman PARKER SPACE

District 24 (Morris, Sussex and Warren)

Co-Sponsored by:

Assemblywoman B.DeCroce, Assemblyman DePhillips, Assemblywomen

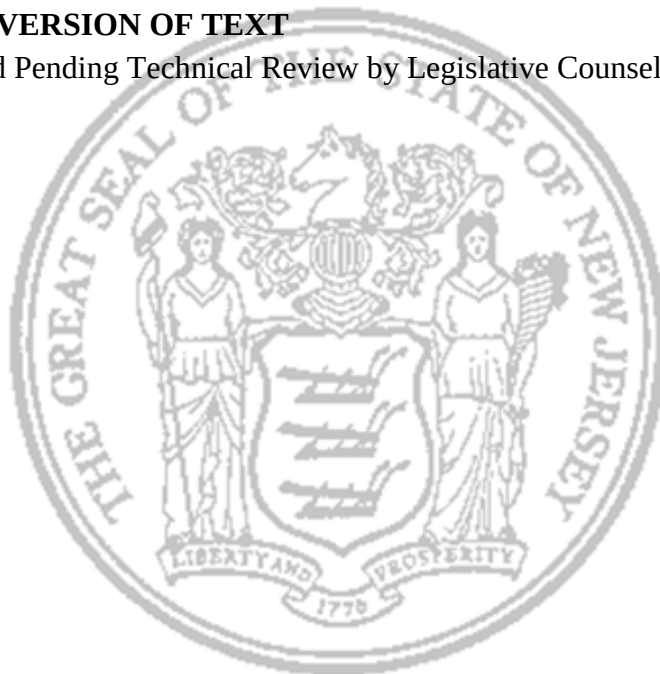
Murphy, Dunn and Assemblyman Dancer

SYNOPSIS

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

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 8/13/2020)

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) a. The Legislature finds and declares that:

12 (1) 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 (2) 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 (3) 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 (4) The March 2018 nor’easters left hundreds of thousands of
26 New Jersey residents and businesses without power and, as a result,
27 the Board of Public Utilities ordered the State’s four electric public
28 utilities to undertake additional efforts to better prepare electric
29 public utilities for any major weather event in the future.

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

34
35 3. (New section) As used in section 1 through 4 and section 10
36 of P.L. , c. (C.) (pending before the Legislature as this
37 bill):

38 “ANSI” means the American National Standards Institute.

39 “Board” means the Board of Public Utilities.

40 “Dangerous vegetation” means a tree, shrub, plant, or any other
41 vegetation growing in, near, or adjacent to the electric public
42 utility’s right of way, and the electric distribution and transmission
43 system, but not including a service line to an individual customer,
44 which may electric distribution line, as determined by the electric

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 public utility or local government entity having control of the right
2 of way.

3 “Distribution line” means a wire, line, pole, and other structure
4 and facility which carries electricity from an electric public utility
5 substation to customers, but not including a service line to an
6 individual customer.

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

11 “Transmission line” means a line or cable, including the
12 supporting structures and appurtenant facilities, which carries
13 electricity from a generating plant to an electric substation.

14 “Vegetation management” means the clearing, moving, cutting,
15 or destroying to remove, replace as reasonable and necessary, or
16 maintain dangerous vegetation.

17

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

24 (1) utilize all reasonably available methods according to ANSI
25 A300 tree care standards and pursuant to board rules and
26 regulations, which may include, but not be limited to, clearing,
27 moving, cutting, or destroying to remove, replace as reasonable and
28 necessary, or maintain dangerous vegetation; and

29 (2) establish, upon receipt of board approval, a program to
30 develop effective strategies to implement the provisions of this
31 section, as appropriate.

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

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

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

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

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

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

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

14 For the purposes of subparagraph (a) of this paragraph, a United
15 States Post Office receipt of mailing shall constitute proof of
16 compliance.

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

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

42 c. (1) An electric public utility shall conduct an annual public
43 education program to inform its customers and local and other
44 government entities in the utility's service territory of the
45 importance of vegetation management and of the utility's role and
46 responsibility in performing vegetation management near
47 distribution and transmission lines. The public education program

1 required pursuant to this paragraph shall be implemented by direct
2 mail or another method approved by the board.

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

10

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

13 5. a. There is established in the department a Community
14 Forestry Council, which shall consist of 20 members, appointed by
15 the State Forester, all of whom shall be citizens with expertise or
16 interest in trees, forestry, or tree or forest management,
17 maintenance, or care. Upon the occurrence of a vacancy on the
18 council after the effective date of P.L. , c. (C.) (pending
19 before the Legislature as this bill), the State Forester shall appoint a
20 New Jersey electric public utility employee who is an electric
21 public utility approved forester to represent the electric public
22 utility on the council until such time as there are at least two
23 members serving on the council meeting that description. Each of
24 the members appointed shall serve for a term of three years and
25 until a successor is appointed and qualified, except that of the
26 members first appointed, seven shall serve terms of one year and
27 seven shall serve terms of two years. All vacancies, except those
28 created through the expiration of term, shall be filled for the
29 unexpired term only, and in the same manner as the original
30 appointment. Each member shall be eligible for reappointment, but
31 may be removed by the commissioner or the State Forester for
32 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 40:37-6. **[The]** 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. A public utility or cable television company,
22 that is acting in good faith, with due diligence and reasonable
23 judgement, in its performance of vegetation management pursuant
24 to the provisions of P.L. , c. (C.) (pending before the
25 Legislature as this bill) and any board rules or regulations, shall not
26 be held liable, penalized, or otherwise subject to undue hardship by
27 a governing body of a county or a commission.

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

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

34
35 8. R.S.40:64-5 is amended to read as follows:

36 40:64-5. **【A】** Except as provided in subsection h. of section 5
37 of P.L. c. (C.) (pending before the Legislature as this bill)
38 a shade tree commission organized under this chapter shall have
39 power to:

40 a. Exercise full and exclusive control over the regulation,
41 planting, and care of shade and ornamental trees and shrubbery now
42 located, or which may hereafter be planted **【in】** along any public
43 road, street, highway, 【park】 or parkway or in any public park of
44 the municipality, except such as are excluded pursuant to section
45 40:64-1 of this Title in the municipality for which it was created,
46 including the planting, trimming, spraying, care, and protection
47 thereof;

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

1 commission may adopt a formula and schedule based upon the
2 number of square inches contained in a cross section of the trunk of
3 the tree multiplied by a predetermined value per square inch, not to
4 exceed ~~【\$27.00】~~ \$27 per square inch. The square inch cross section
5 shall be calculated from the diameter at breast height and, if there is
6 a multiple stem tree, then each trunk shall be measured and an
7 average shall be determined for the tree. For the purposes of this
8 section, "diameter at breast height" shall mean the diameter of the
9 tree taken at a point 4-1/2 feet above ground level. The commission
10 shall modify the value of the tree based upon its species variety,
11 location, and its condition at the time of removal or destruction.

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

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

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

1 penalty imposed by any commission as provided by law. Under the
2 bill, a public utility or cable television company is not exempt from
3 any penalty or replacement assessment imposed as a result of
4 damage to a tree, shrub, or plant caused by non-compliance with
5 any rule or regulation of a commission, provided that the rule or
6 regulation does not interfere with or restrict any vegetation
7 management work conducted by the public utility or cable
8 television company from complying with any federal rule,
9 regulation, or law, any vegetation management rule, regulation, or
10 order of the BPU, or any national or federal standard applicable to a
11 public utility or cable television company. The bill provides that a
12 public utility or cable television company, that is acting in good
13 faith, with due diligence and reasonable judgment, in its
14 performance of vegetation management pursuant to the bill's
15 provisions and any board rules or regulations, is not to be held
16 liable, penalized, or otherwise subject to undue hardship by a
17 governing body of a county or municipality or a commission.