

SENATE ECONOMIC GROWTH COMMITTEE

STATEMENT TO

SENATE, No. 434

with committee amendments

STATE OF NEW JERSEY

DATED: SEPTEMBER 17, 2020

The Senate Economic Growth Committee reports favorably and with committee amendments Senate Bill No. 434.

As amended and reported, this bill broadens the authority of electric public utilities to engage in vegetation management relative to electric public utility (utility) infrastructure.

Specifically, the bill authorizes a utility to utilize all available methods per ANSI A300 tree care standards, in accordance with Board of Public Utilities (board) rules and regulations, which may include, but not be limited to, clearing, moving, cutting, trimming, pruning, or maintaining to remove, replace as reasonable and necessary, or maintain hazard vegetation for the purpose of the safe and reliable transmission and distribution of electric light, heat, or power. The bill permits a utility, upon receipt of board approval, to establish a program to develop effective strategies to effectuate the broadened authority provided under the bill. In addition to existing statutory notification requirements, a utility is required to make a diligent attempt to notify all customers, property owners, and government entities that may be affected by planned vegetation management activity, including, for government entities, providing notice at least 60 days of the planned dates and locations of the vegetation management activity and written in a manner sufficient to explain the utility's procedures and easement rights. Lastly, a utility is required to conduct an annual public education program to inform its customers and government entities of the importance of vegetation management and of its role and responsibility in performing vegetation management. The term "hazard vegetation" means a tree, shrub, plant, or any other vegetation growing in the utility's right of way and the electric transmission and distribution system, but not including a service line to an individual customer, which is deemed, upon on-site inspection, to pose a high likelihood of failure or in growth within a normal return inspection cycle or maintenance return interval, that the vegetation may fall onto or otherwise affect service with a transmission or distribution line, as determined by the utility forester or the local government entity having control of the right of way and as confirmed by a licensed tree care operator, licensed tree expert, or licensed

landscape architect who is trained and experienced in the evaluation of hazard vegetation.

The Community Forestry Council (council), as well as a county or municipal shade tree commission, cannot restrict a utility's removal, replacement, or maintenance of hazard vegetation when the utility is doing so in an acquired easement or right-of-way and shall not be required to receive permission or be subject to penalty as long as the work is done by the utility to comply with any federal law, rule, regulation, any vegetation management rule, regulation, or order of the board, or any national or federal standard applicable to a utility in this State and the utility is acting in good faith, with due diligence and reasonable judgement. In the event of a vacancy on the council occurring after the date the bill is enacted into law, the State Forester is to appoint a utility employee who is a utility-approved forester to represent the utility on the council until such time as there are at least two members serving on the council who meet that criteria.

A utility is not exempt from any penalty or replacement assessment imposed as a result of damage to a tree, shrub, or plant caused by non-compliance with any rule or regulation of a county or municipal shade tree commission, provided that the rule or regulation does not interfere with or restrict any vegetation management work conducted by the utility to comply with any federal rule, regulation, or law, any vegetation management rule, regulation, or order of the board, or any national or federal standard applicable to a utility. A utility, acting in good faith with due diligence and reasonable judgment in its performance of vegetation management pursuant to the bill's provisions and the board's rules and regulations, cannot be held liable, penalized, or otherwise subject to undue hardship by a governing body of a county or municipality or a shade tree commission.

The bill also increases the maximum size of penalties and fines that a shade tree commission may impose to \$3,000 for violations of commission rules, regulations, or ordinances. The bill also provides the ability for a municipality to opt out of allowing a utility to perform vegetation management by clarifying that the protections provided to utilities in this bill for vegetation management are not to alter or supersede the provisions of an ordinance enacted pursuant to law by a municipality concerning the performance of vegetation management on hazard vegetation by that municipality.

The bill also provides for a process to resolve any dispute between a public utility and a customer, property owners, or government entity over planned vegetation management activity. In the event of an objection or disagreement by a customer, property owner, or governmental entity that may be affected by the planned vegetation management activity of a utility, the utility is to first attempt to resolve the dispute. In the event that the dispute cannot be resolved, then any party to the dispute may appeal the dispute to the board.

The bill prohibits a utility from performing vegetation management on any property of the New Jersey Turnpike Authority or the South Jersey Transportation Authority without the approval of those authorities.

The committee amended the bill to remove references in the bill to dangerous vegetation, and replace them with hazard vegetation, and to clarify that destruction of vegetation is not part of the definition of vegetation management, and to generally frame the definitions of both hazard vegetation and vegetation management more generally in terms of relative potential harm to the electric light, heat, or power systems, specifically as determined by experts. The amendments also remove cable television and other communications companies from the provisions that apply to utilities.

The amendments provide for a board supervised resolution process if a utility has a dispute with a customer, property owner, or government entity over planned vegetation management activity.

The amendments increase the maximum size of shade tree commission fines to \$3,000. They also allow these commissions to require permits for vegetation management work by utilities and allow those permit requirements to be waived when a state of emergency is declared. The amendments also provide the ability for a municipality to opt out of allowing a utility to perform vegetation management by clarifying that the provisions of this bill do not alter or supersede municipal ordinances concerning vegetation management on hazard vegetation or the enforcement of those ordinances.

The amendments prohibit a utility from performing vegetation management on any property of the New Jersey Turnpike Authority or the South Jersey Transportation Authority without the approval of those authorities.

The amendments add information on the effects of Tropical Storm Isaias to the findings and declarations section of the bill.

This bill was pre-filed for introduction in the 2020-2021 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.