

[First Reprint]

ASSEMBLY, No. 2558

STATE OF NEW JERSEY

218th LEGISLATURE

INTRODUCED FEBRUARY 1, 2018

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:

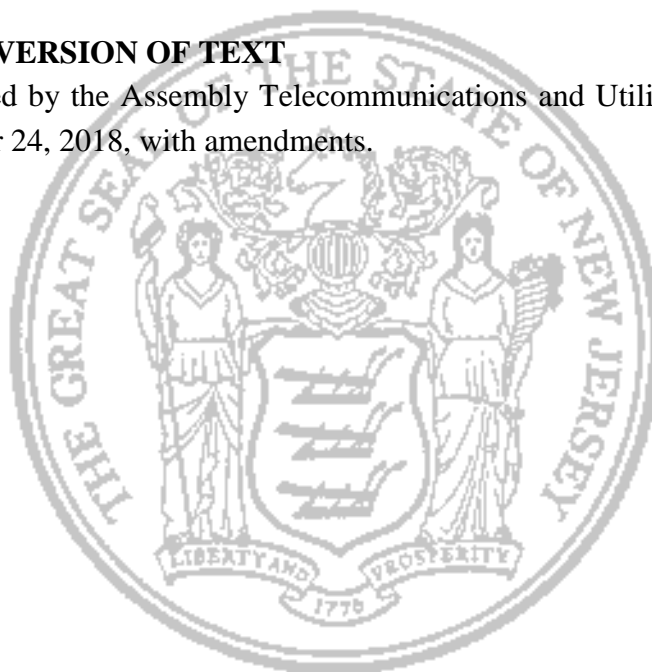
Assemblywoman B.DeCroce

SYNOPSIS

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

CURRENT VERSION OF TEXT

As reported by the Assembly Telecommunications and Utilities Committee on September 24, 2018, with amendments.



(Sponsorship Updated As Of: 9/28/2018)

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) ¹a.¹ The Legislature finds and declares that:
12 ¹**[a.]** (1)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)¹ 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)¹ 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 b. The Legislature therefore determines that it is necessary to
32 authorize electric public utilities to maintain, remove, and replace
33 dangerous vegetation to prevent power disruptions and preserve the
34 uninterrupted transmission and distribution of power in this State.
35

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

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

40 “Board” means the Board of Public Utilities.

41 “Dangerous vegetation” means a tree, shrub, plant, or any other
42 vegetation growing in, near, or adjacent to the electric public
43 utility’s right of way, and the electric distribution and transmission
44 system, but not including a service 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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ATU committee amendments adopted September 24, 2018.

1 which may fall into, touch, affect, or otherwise interfere with an
2 electrical distribution line, as determined by the electric public
3 utility or local government entity having control of the right of way.

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

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

12

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

19 a. ¹**Utilize** utilize¹ all ¹reasonably¹ available methods
20 ¹**including** according to ANSI A300 tree care standards and
21 pursuant to board rules and regulations, which may include¹, but
22 not ¹be¹ limited to, clearing, moving, cutting, or destroying to
23 remove, replace, or maintain dangerous vegetation; and

24 b. ¹**Establish** establish¹ a program ¹**with a municipality**¹ to
25 develop effective strategies to implement the provisions of this
26 section ¹, as appropriate¹.

27

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

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

1 may be removed by the commissioner or the State Forester for
2 cause.

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

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

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

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

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

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

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

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

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

44 a. The planting, trimming, spraying, care, and protection
45 thereof;

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

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

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

4 e. The encouragement of arboriculture.

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

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

8 40:37-6. ~~【The】~~ a. Except as provided in subsection b. of this
9 section, the shade tree commission, with the consent of the board of
10 chosen freeholders, may make rules and regulations for the
11 protection and care of the trees, shrubbery, or ornamental material
12 planted or growing naturally within the highways and parks under
13 its jurisdiction, as provided in this article; and with the consent of
14 the board may prescribe a suitable fine for the violation of each rule
15 or regulation, in an amount not exceeding ~~【\$200.00】~~ \$200 for each
16 violation.

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

46 As used in this subsection, "vegetation management" means to
47 clear, move, cut, or destroy any dangerous vegetation to erect,
48 install, move, remove, alter, protect, or maintain any structures or

1 fixtures, necessary for the supply of electric light, heat, power, or
2 communication, or cable television service.

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

4
5 8. R.S.40:64-5 is amended to read as follows:

6 40:64-5. Except as provided in subsection h. of section 5 of
7 P.L. c. (C.) (pending before the Legislature as this bill a
8 **【A】** shade tree commission organized under this chapter shall have
9 power to:

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

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

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

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

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

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

37
38 9. R.S.40:64-12 is amended to read as follows:

39 40:64-12. a. The commission may prescribe a fine for the
40 violation of each of its ordinances in an amount not exceeding
41 **【\$1500.00】** \$1,500 for each violation, and the courts which now or
42 hereafter shall have jurisdiction over actions for the violation of
43 ordinances of the municipality in which the commission has been or
44 shall be appointed shall have jurisdiction in actions for the violation
45 of such ordinances as the commission shall enact. The ordinances
46 shall be enforced by like proceedings and process and the practice
47 for the enforcement thereof shall be the same as that provided by
48 law for the enforcement of the ordinances of the municipality in

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

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

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

1 order of the board, or any national or federal standard applicable to
2 a public utility or cable television company in this State. ¹A public
3 utility or cable television company, that is acting in good faith, with
4 due diligence and reasonable judgement, in its performance of
5 vegetation management pursuant to the provisions of P.L. _____,
6 c. (C. _____) (pending before the Legislature as this bill) and any
7 board rules or regulations, shall not be held liable, penalized, or
8 otherwise subject to undue hardship by a governing body of a
9 municipality or a commission.¹

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

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

16

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

21

22 11. This act shall take effect immediately.