

# SENATE, No. 434

## STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

**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**

Introduced Pending Technical Review by Legislative Counsel.



S434 OROHO, SARLO

2

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 fall into, touch, affect, or otherwise interfere with an  
45 electric distribution line, as determined by the electric public utility

**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 or local government entity having control of the right of way.

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

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

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

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

16

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

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

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

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

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

45 (a) a customer of the utility upon whose property runs any  
46 portion of the right-of-way or easement that will be maintained by  
47 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 television  
27 company's non-compliance with any such rule or regulation of the  
28 commission, provided that such rule or regulation does not interfere  
29 with or restrict any vegetation management work conducted by the  
30 public utility or cable television company to comply with any  
31 federal law, rule, regulation, any vegetation management rule,  
32 regulation, or order of the board, or any national or federal standard  
33 applicable to a public utility or cable television company in this  
34 State. A public utility or cable television company, that is acting in  
35 good faith, with due diligence and reasonable judgement, in its  
36 performance of vegetation management pursuant to the provisions  
37 of P.L. , c. (C. ) (pending before the Legislature as this bill)  
38 and any board rules or regulations, shall not be held liable,  
39 penalized, or otherwise subject to undue hardship by a governing  
40 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 10. The board shall adopt pursuant to the "Administrative  
2 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and  
3 regulations necessary to effectuate the provisions of  
4 P.L. , c. (C. ) (pending before the Legislature as this bill).

5  
6 11. This act shall take effect immediately.

7  
8  
9 STATEMENT

10  
11 This bill broadens the authority of public utilities, as well as  
12 cable television providers, to engage in vegetation management  
13 relative to public utility infrastructure.

14 Specifically, the bill authorizes an electric public utility to utilize  
15 all available methods per ANSI A300 tree care standards, in  
16 accordance with Board of Public Utility ("board") rules and  
17 regulations, which may include, but not be limited to, clearing,  
18 moving, cutting, or destroying to remove, replace, or maintain  
19 dangerous vegetation. The bill permits an electric public utility,  
20 upon receipt of board approval, to establish a program to develop  
21 effective strategies to effectuate the broadened authority provided  
22 under the bill. An electric public utility is required to make a  
23 diligent attempt to notify all customers, property owners, and  
24 government entities that may be affected by planned vegetation  
25 management activity, including, for government entities, providing  
26 notice at least two months of the planned dates and locations of the  
27 vegetation management activity and written in a manner sufficient  
28 to explain the electric public utility's procedures and easement  
29 rights. Lastly, an electric public utility is required to conduct an  
30 annual public education program to inform its customers and  
31 government entities of the importance of vegetation management  
32 and of its role and responsibility in performing vegetation  
33 management. The term "dangerous vegetation" means a tree, shrub,  
34 plant, or any other vegetation growing in, near, or adjacent to the  
35 electric public utility's right of way, and the electric distribution  
36 and transmission system, but not including a service line to an  
37 individual customer, which may fall into, touch, affect, or otherwise  
38 interfere with an electrical distribution line, as determined by the  
39 electric public utility or local government entity having control of  
40 the right-of-way.

41 The Community Forestry Council (the "Council"), as well as a  
42 county or municipal shade tree commission, cannot restrict an  
43 electric public utility's removal, replacement, or maintenance of  
44 dangerous vegetation. In the event of a vacancy on the Council  
45 occurring after the date the bill is enacted into law, the State  
46 Forester is to appoint a New Jersey electric public utility employee  
47 who is an electric public utility-approved forester to represent the

1 electric public utility on the council until such time as there are at  
2 least two members serving on the council who meet that criteria.  
3 The bill also provides that, in order to allow a public utility or  
4 cable television company to clear, move, cut, or destroy dangerous  
5 vegetation upon any lands in which it has acquired an easement or  
6 right-of-way or upon any public right-of-way, a public utility or  
7 cable television company is not required to receive the permission  
8 of any county or municipal shade tree commission to undertake that  
9 work and is not subject to any penalty imposed by any commission  
10 as provided by law. A public utility or cable television company is  
11 not exempt from any penalty or replacement assessment imposed as  
12 a result of damage to a tree, shrub, or plant caused by non-  
13 compliance with any rule or regulation of a county or municipal  
14 shade tree commission, provided that the rule or regulation does not  
15 interfere with or restrict any vegetation management work  
16 conducted by the public utility or cable television company to  
17 comply with any federal rule, regulation, or law, any vegetation  
18 management rule, regulation, or order of the board, or any national  
19 or federal standard applicable to a public utility or cable television  
20 company. A public utility or cable television company, acting in  
21 good faith with due diligence and reasonable judgment in its  
22 performance of vegetation management pursuant to the bill's  
23 provisions and BPU's rules and regulations, cannot be held liable,  
24 penalized, or otherwise subject to undue hardship by a governing  
25 body of a county or municipality or a shade tree commission.