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Sponsored by:

Assemblyman WAYNE P. DEANGELO

District 14 (Mercer and Middlesex)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning vegetation management related to electric utility infrastructure, supplementing Title 48 of the Revised Statutes, and amending various parts of the statutory law.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. (New section) This act shall be known and may be cited as the “Vegetation Management Response Act.”

2. (New section) The Legislature finds and declares that:

a. Unprecedented damage was inflicted on the State and its citizens by Superstorm Sandy, Hurricane Irene, the June 2012 Derecho, and the October 2011 snow storm.

b. Estimated damage from these storms includes approximately 11,400 downed or damaged utility poles, 155,000 downed trees, 60 flooded substations, and six million customer outages.

c. Superstorm Sandy alone led to the loss of approximately 116 overhead electric transmission lines and 117,000 trees and damage to over 71 percent of all electric distribution circuits and approximately 5,000 overhead and pad mounted electric transformers. The destruction caused by Superstorm Sandy required assistance from more than 20,000 out-of-State electric public utility workers.

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

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

“Board” means the Board of Public Utilities.

“Dangerous vegetation” means a tree, shrub, plant, or any other vegetation growing in, near, or adjacent to the electric public utility’s right of way, and the electric distribution and transmission system, but not including a service line to an individual customer, which may fall into, touch, affect, or otherwise interfere with an electrical distribution line, as determined by the electric public utility or local government entity having control of the right of way.

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

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

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

a. Utilize all available methods, including, but not limited to, clearing, moving, cutting, or destroying to remove, replace, or maintain dangerous vegetation; and

b. Establish a program with a municipality to develop effective strategies to implement the provisions of this section.

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

5. a. There is established in the department a Community Forestry Council, which shall consist of 20 members, appointed by the State Forester, all of whom shall be citizens with expertise or interest in trees, forestry, or tree or forest management, maintenance, or care. Each of the members appointed shall serve for a term of three years and until a successor is appointed and qualified, except that of the members first appointed, seven shall serve terms of one year and seven shall serve terms of two years. All vacancies, except those created through the expiration of term, shall be filled for the unexpired term only, and in the same manner as the original appointment. Each member shall be eligible for reappointment, but may be removed by the commissioner or the State Forester for cause.

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

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

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

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

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

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

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

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

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

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

- a. The planting, trimming, spraying, care, and protection thereof;
- b. The regulation and control of the use of the ground surrounding the same so far as may be necessary for their proper growth, care, and protection;
- c. The moving or requiring the removal of any tree or part thereof, dangerous to public safety;
- d. The care and control of the parks and parkways; and
- e. The encouragement of arboriculture.

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

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

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

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

management work conducted by the public utility or cable television company 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 public utility or cable television company in this State.

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

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

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

40:64-5. Except as provided in subsection h. of section 5 of P.L. c, (C.) (pending before the Legislature as this bill a [A] shade tree commission organized under this chapter shall have power to:

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

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

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

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

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

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

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

40:64-12. a. The commission may prescribe a fine for the violation of each of its ordinances in an amount not exceeding [~~\$1500.00~~] \$1,500 for each violation, and the courts which now or hereafter shall have jurisdiction over actions for the violation of ordinances of the municipality in which the commission has been or shall be appointed shall have jurisdiction in actions for the violation of such ordinances as the commission shall enact. The ordinances shall be enforced by like proceedings and process and the practice for the enforcement thereof shall be the same as that provided by law for the enforcement of the ordinances of the municipality in which the commission exists. The officers authorized by law to serve and execute process in the aforementioned courts shall be the officers to serve and execute any process issued out of any court under this chapter. A copy of any ordinance of the commission, certified to under the hand of its secretary [.] or chairman shall be received in any court of this State as full and legal proof of the existence of the ordinance, and that all requirements of law in relation to the ordaining, publishing, and making of the same, so as to make it legal and binding, have been complied with, unless the contrary be shown.

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

c. Any public utility as defined pursuant to R.S.48:2-13 or cable television company as defined pursuant to section 3 of P.L.1972, c.186 (C.48:5A-3) that clears, moves, cuts, or destroys any trees, shrubs, or plants for the purpose of erecting, installing, moving, removing, altering, protecting, or maintaining any structures or fixtures, necessary for the supply of electric light, heat, or power, communication, or cable television services upon any lands in which it has acquired an

easement or right-of-way or upon a public right-of-way, shall not be required to receive the permission of a commission to undertake such work or be subject to any penalty imposed by a commission pursuant to subsections a. or b. of this section. This subsection shall not exempt any such public utility or cable television company from any penalty or replacement assessment imposed as result of damage to a tree, shrub, or plant caused by the public utility's or cable television company's non-compliance with any such rule or regulation of the commission, provided that such rule or regulation does not interfere with or restrict any vegetation management work conducted by the public utility or cable television company 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 public utility or cable television company in this State.

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

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

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

11. This act shall take effect immediately.

STATEMENT

This bill authorizes an electric public utility to utilize all available methods including, but not limited to, clearing, moving, cutting, or destroying to remove, replace, or maintain dangerous vegetation and to establish a program with a municipality to develop effective strategies to implement the provisions of this bill. Dangerous vegetation is defined to mean a tree, shrub, plant, or any other vegetation growing in, near, or adjacent to the electric public utility's right of way, and the electric distribution and transmission system, but not including a service line to an individual customer, which may fall into, touch, affect, or otherwise interfere with an electrical

distribution line, as determined by the electric public utility or local government entity having control of the right-of-way.

The bill provides that the neither the Community Forestry Council nor any county or municipal shade tree commission interfere with or restrict an electric public utility's removal, replacement, or maintenance of dangerous vegetation.

The bill also provides that, in order to allow an electric public utility or cable television company to clear, move, cut, or destroy trees, shrubs, or plants for the purpose of erecting, installing, moving, removing, altering, protecting, or maintaining any structures or fixtures necessary for the supply of electric light, heat, power, or communication or cable television services upon any lands in which it has acquired an easement or right-of-way or upon any public right-of-way, an electric public utility or cable television company is not required to receive the permission of any county or municipal shade tree commission to undertake such work and is not subject to any penalty imposed by any commission as provided by law. Under the bill, an electric public utility or cable television company 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 such rule or regulation of a county or municipal shade tree commission, provided that such rule or regulation does not interfere with or restrict any vegetation management work conducted by the electric public utility or cable television company 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 public utility or cable television company.