

**ASSEMBLY, No. 3736**  
**STATE OF NEW JERSEY**  
**215th LEGISLATURE**

INTRODUCED FEBRUARY 7, 2013

**Sponsored by:**

**Assemblywoman AMY H. HANDLIN**

**District 13 (Monmouth)**

**Assemblyman SCOTT T. RUMANA**

**District 40 (Bergen, Essex, Morris and Passaic)**

**SYNOPSIS**

Requires electric public utilities to undertake vegetation management practices near power lines.

**CURRENT VERSION OF TEXT**

As introduced.

**AN ACT** concerning electric public utility vegetation management practices near power lines, supplementing Title 48 of the Revised Statutes, and amending various sections of the Revised Statutes.

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

1. (New section) As used in P.L. , c. (C. ) (pending before the Legislature as this bill):

“ANSI” means the American National Standards Institute.

"Arboriculture" means the cultivation of trees, shrubs, or other woody plants.

"Agricultural crop" means a plant that is grown in significant quantities to be harvested as food, livestock fodder, or for another economic purpose and shall include, but is not limited to, landscape nursery stock and Christmas tree plantation stock.

“Board” means the Board of Public Utilities or any successor agency.

"Border zone" means the space from the edge of a transmission line wire zone to the outer boundary of a right of way.

"Contractor" means a person or entity, other than the board, with which an electric public utility contracts to perform work, furnish information, or materials, or both, and shall include all subcontractors engaged by a contractor to perform any of the obligations required by a contract.

“Department” means the Department of Environmental Protection.

"Distribution line" means a primary electric voltage line, wire, or cable including supporting structures and appurtenant facilities, which delivers electricity from transformation points on the transmission system to points of connection at a customer's premises and is not considered a transmission line.

"Electric public utility" means a public utility, as that term is defined in R.S.48:2-13, that transmits or distributes electricity to end users within this State.

"Electric public utility arborist" means a person employed by an electric public utility, who is certified as a utility specialist and a certified arborist by the ISA, and as a Tree Expert by the Board of Tree Experts in the Department of Environmental Protection.

"Energized conductor" means an electric circuit or piece of equipment through which electricity is flowing or usually flows, including distribution and transmission lines, circuits, and equipment.

"Grass" means a type of plant with jointed stems, slender flat leaves, and spike like flowers.

"Inactive transmission line corridor" means the unused part of the right of way that does not have transmission towers or transmission lines overhead.

"Integrated vegetation management" means a system of managing plant communities whereby vegetation managers set objectives, identify compatible and incompatible vegetation, consider action thresholds, and evaluate, select, and implement the most appropriate vegetation control methods to achieve those objectives based on the methods' environmental impact and anticipated effectiveness, along with site characteristics, security, economics, current land use, and other factors.

“ISA” means the International Society of Arboriculture. “Major event” means a natural or humanly caused occurrence arising from conditions beyond the control of the utility, including, but not limited to, a terrorist attack, thunderstorm, tornado, hurricane, flood, heat wave, snow storm, ice storm,

or an earthquake, which results in: (1) a sustained interruption of electric public utility service to at least 10 percent of the customers in an operating area or 10 percent of the utility's customers within a municipality or county located in an operating area; or (2) the declaration of a state of emergency or disaster by the State or by the federal government.

"NERC" means the North American Electric Reliability Corporation.

"Right of way" means less than fee interest in property, which gives an electric public utility a limited right to use the land owned by another person or entity for the purpose of transmitting or distributing electricity, typically memorialized in an easement, and includes the parcel of land for which an electric public utility holds a right of way or easement.

"Soil conservation district" means any soil conservation district organized pursuant to chapter 24 of Title 4 of the Revised Statutes.

"Transmission line" means an electrical line, wire, or cable, including the supporting structures and appurtenant facilities, which transmits electricity from a generating plant to electric distribution lines with a rating usually exceeding 69 kilovolts.

"Tree" means a tall perennial woody plant with a main trunk and branches forming a distinct elevated crown.

"Vegetation" means trees and other plants.

"Vegetation management" means the removal of vegetation or the prevention of vegetative growth, to maintain safe conditions around energized conductors and ensure reliable electric public utility service and shall consist of biological, chemical, cultural, manual, and mechanical methods to control vegetation in order to prevent hazards caused by the encroachment of vegetation on energized conductors, and to provide electric public utility access to energized conductors.

"Vegetation manager" means an electric public utility arborist, who is employed by an electric public utility to supervise and ensure the electric public utility's compliance with P.L. , c. (C. ) (pending before the Legislature as this bill).

"Wire zone" means the land located directly under the widest portion of a transmission line. For a horizontal transmission line, the wire zone shall be bounded on each side by a location on the ground that is directly under the outermost transmission wire or the transmission tower, whichever is wider. For a vertical transmission array, the width of the wire zone shall be determined using the minimum safe distance specified in NERC Standard FAC 003-1.

"Woody plant" means any vascular plant that has a perennial woody stem and supports continued vegetative growth above ground from year to year and includes trees.

2. (New section) Pursuant to the "Administrative Procedure Act" P.L.1968, c.410 (C.52:14B-1 et seq.), the board shall promulgate rules and regulations, necessary to effectuate the provisions of P.L. , c. (C. ) (pending before the Legislature as this bill), which an electric public utility shall follow in managing vegetation in proximity to an energized conductor of the electric public utility in order to ensure public safety and the efficient and reliable supply of electric power.

3. (New section) a. Consistent with federal law, an electric public utility shall ensure that vegetation

management is conducted in accordance with P.L. , c. (C. ) (pending before the Legislature as this bill) near any energized conductors of 600 volts and higher, whether for distribution or transmission, that the electric public utility owns, in whole or in part.

b. Except within three months after any declaration of a State of emergency or disaster by the State or by the federal government, each electric public utility shall obtain, and shall ensure that its contractors obtain, all required permits and licenses prior to commencement of vegetation management.

c. An electric public utility that utilizes chemical or biological agents in vegetation management shall comply with all laws or regulations governing the use of those biological and chemical agents.

d. Each electric public utility shall employ a vegetation manager who is an electric public utility arborist. The vegetation manager shall be an employee of the electric public utility. The electric public utility shall provide the vegetation manager with the authority and the resources to administer all aspects of the electric public utility's vegetation management program, and the vegetation manager shall ensure that the electric public utility complies with P.L. , c. (C. ) (pending before the Legislature as this bill). The manager's name and contact information shall be posted on the electric public utility's web site and shall be included on all notifications provided pursuant to the notice requirements in section 7 of P.L. , c. (C. ) (pending before the Legislature as this bill).

e. Each electric public utility shall ensure that all contractors hired to perform vegetation management inform their employees of all applicable federal and State laws, rules, or regulations that apply to the work performed under P.L. , c. (C. ) (pending before the Legislature as this bill). The electric public utility shall also ensure that all contractors comply with each applicable requirement of P.L. , c. (C. ) (pending before the Legislature as this bill) and all other applicable law.

f. An electric public utility that performs vegetation management, other than vegetation management required under P.L. , c. (C. ) (pending before the Legislature as this bill), at the request of a municipality or government agency may require the requesting party to pay any incremental cost above the electric public utility's cost to perform the vegetation management required by P.L. , c. (C. ) (pending before the Legislature as this bill). An electric public utility shall not perform such additional vegetation management if the additional vegetation management would decrease the reliability or safety of an energized conductor.

g. Upon a written request from a municipality, an electric public utility may, but shall not be required to, temporarily suspend compliance with one or more of the vegetation management requirements of P.L. , c. (C. ) (pending before the Legislature as this bill), within the following limits:

(1) The suspension of compliance shall apply only to the distribution system, and shall not apply to transmission line vegetation management required under section 5 of P.L. , c. (C. ) (pending before the Legislature as this bill);

(2) The suspension of compliance shall apply only to those portions of a distribution system that are located within the municipality, and that do not affect service to any adjacent municipality;

(3) The electric public utility shall not suspend compliance with any requirement if the suspension would result in danger to the public; and

(4) If the suspension results in additional costs to the electric public utility due to lack of tree

trimming or other vegetation management, the municipality shall reimburse the electric public utility for these costs.

h. An electric public utility may petition the board for recovery of vegetation management program costs required under P.L. , c. (C. ) (pending before the Legislature as this bill) in any base rate proceeding.

i. Each electric public utility shall perform vegetation management on a pro rata basis over the four-year cycle identified in section 4 of P.L. , c. (C. ) (pending before the Legislature as this bill) to achieve full compliance with the provisions of P.L. , c. (C. ) (pending before the Legislature as this bill).

4. (New section) a. An electric public utility shall annually perform a visual inspection of all energized conductors that are associated with its transmission lines, to determine whether vegetation management is needed. The visual inspection may be performed from the ground except in cases where the conductor is not visible from the ground. The electric public utility shall take into account the height of the vegetation, the distance of the vegetation from the energized conductor, and the type and nature of weather events that occur in this State, in determining whether vegetation management is needed.

b. An electric public utility shall perform vegetation management on vegetation that is close enough to pose a threat to energized conductors of its transmission lines at least once every four years. An electric public utility shall perform vegetation management on vegetation that is close enough to pose a threat to energized conductors of its distribution lines at least once every three years.

c. In addition to the vegetation management required in subsection b. of this section, if an electric public utility becomes aware at any time of any vegetation close enough to its energized conductor to affect reliability or safety prior to the next required vegetation management, the electric public utility shall ensure that necessary vegetation management is promptly performed as required under section 5 of P.L. , c. (C. ) (pending before the Legislature as this bill).

d. If the electric public utility determines that vegetation described under subsection c. of this section poses an immediate safety hazard, the electric public utility shall not be subject to the notice requirements of section 5 of P.L. , c. (C. ) (pending before the Legislature as this bill); however, the electric public utility shall, to the extent practicable, make a reasonable effort to notify the customers and property owners as required in section 7 of P.L. , c. (C. ) (pending before the Legislature as this bill) prior to performing the vegetation management.

5. (New section) a. Each electric public utility shall ensure that vegetation management conducted on its energized conductors is performed pursuant to the standards and accepted procedures set forth in vegetation management and electric safety publications determined by the board, including, but not limited to, publications of the ANSI, the Edison Electric Institute Vegetation Management Task Force, the ISA, and the Institute of Electrical and Electronics Engineers, Inc.

b. Where multiple standards established in subsection a. of this section would apply or conflict, the vegetation manager or the vegetation manager's designee shall select the most appropriate method of vegetation management applicable to the situation.

c. Each electric public utility shall develop its own vegetation management standards and guidelines, which shall be consistent with P.L. , c. (C. ) (pending before the Legislature as this bill). In developing these standards and guidelines, an electric public utility shall prioritize vegetation management based upon:

- (1) The extent of the potential for vegetation to interfere with the energized conductor;
- (2) The voltage of the affected energized conductor; and
- (3) The relative importance of the affected energized conductor in maintaining safety and reliability.

d. Each electric public utility shall provide a copy of its vegetation management plan's standards and guidelines to the board as a chapter in any Annual System Performance Report of the electric public utility as may be required by the board. If an electric public utility makes a change in its vegetation management plan's standards and guidelines, the electric public utility shall provide the board with a copy of the change no later than 30 days prior to implementing the change.

e. Each electric public utility's vegetation management plan's standards and guidelines shall cover, at a minimum, the following activities:

- (1) Tree pruning and removal;
- (2) Vegetation control around poles, substations, and other energized conductors;
- (3) Manual, mechanical, or chemical control of vegetation along rights of way;
- (4) Inspection of vegetation before and after the vegetation management is performed;
- (5) Research and development of improved vegetation management practices; and
- (6) Public education.

f. Among the factors the electric public utility shall consider in determining the extent of vegetation management to be performed at a particular site are:

- (1) The rate at which each species of vegetation is likely to grow back;
- (2) The voltage of the energized conductor, with higher voltages requiring larger clearances;
- (3) The potential movement of the energized conductor during various weather conditions;
- (4) The potential movement of trees or other vegetation during various weather conditions; and
- (5) The utility's legal rights to access the area.

g. The electric public utility shall remove all trimmings and cut vegetation resulting from vegetation management that are part of the electric public utility's regular maintenance cycle, within five business days after the vegetation was cut, unless a state of emergency or disaster is declared by the State or by the federal government where the removal shall be done by the electric public utility within two weeks after such declaration, except if the electric public utility obtains consent to leave the trimmings or cut vegetation, from the owner of the property upon which the trimmings or cut vegetation are located.

h. Each electric public utility shall meet the requirements for minimum clearances between any transmission line and the closest vegetation, which are set forth in NERC Standard FAC-003.

i. Except as provided in subsection l. of this section, the following shall apply in a wire zone:

(1) An electric public utility shall allow woody plants that are agricultural crops that naturally mature at 12 feet or less;

(2) Except as provided paragraph (1) of this subsection, the electric public utility shall not allow woody plants that mature above three feet tall to grow in a wire zone, and the preferred growth shall be

grasses or a low-growing, compatible, scrub-shrub plant community to obtain a grass meadow landscape environment where possible.

j. Except as provided in subsection l. of this section, the electric public utility shall apply integrated vegetation management in a border zone as conveyed in the applicable publications of the ANSI and ISA.

k. In addition to meeting the other requirements in this section, each electric public utility shall ensure that the following requirements for transmission lines are met, except for those instances established in subsection l. of this section:

(1) Clearing under transmission lines shall be wide enough within the electric public utility's right of way so that vegetation or parts of vegetation shall not grow or fall into a transmission line;

(2) Only grass vegetation not exceeding a height of 18 inches shall be permitted to grow within three feet of any structure;

(3) Where an electric public utility has cleared a right of way of vegetation and bare soil is exposed, the electric public utility shall comply with the soil erosion requirements of the applicable soil conservation district in order to prevent soil erosion;

(4) To the extent that any plant species identified as invasive and non-indigenous to New Jersey poses a threat to the maintenance of the right of way or a hazard to an energized conductor of transmission line, the electric public utility shall not plant that species in the right of way, and shall make reasonable efforts to actively eliminate from the entire right of way the species identified as invasive and non-indigenous by the department. In doing so, the electric public utility shall use the best integrated vegetation management practices available and practical; and

(5) Each year in the March billing cycle, or two months prior to the commencement of vegetation management on a particular property, whichever is earlier, each electric public utility shall advise customers of the requirements in this subsection, through a direct notification.

l. Notwithstanding the provisions of subsections j. and k. of this section, an electric public utility may leave trees and other woody vegetation within the transmission right of way under any of the following conditions:

(1) The right of way document, easement, indenture, deed, or other written land rights, executed before Jan 1, 2007, expressly permit vegetation to be located within the transmission right of way;

(2) The slope of the topography exceeds 30 degrees and the transmission right of way is such that the tree or other vegetation at mature height will allow a space of more than 150 percent of the clearance requirements for an electrical path to ground, as pursuant to the National Electric Safety Code in sections 232 through sections 235; or

(3) Trees are located within an inactive transmission corridor and at mature height allowing a space of more than 150 percent of the clearance requirements for an electrical path to ground as pursuant to the National Electric Safety Code in sections 232 through sections 235.

m. For the purposes of this section, the mature height of all vegetation, including agricultural crops, shall be determined in accordance with the publications determined by the board pursuant to subsection a. of section 5 of P.L. , c. (C. ) (pending before the Legislature as this bill), or equivalent publications. Each electric public utility shall provide lists of acceptable species on its website or in a publication provided free of charge upon request by a customer.

n. Each year, by May 31, the electric public utility shall develop a schedule for transmission and distribution line vegetation management, which shall be included in any annual system performance report as required by the board. The schedule shall:

(1) List the transmission lines planned for vegetation management for the next four years and list the distribution lines planned for vegetation management for the next three years;

(2) Ensure that vegetation management on transmission lines is performed prior to vegetation becoming a threat to safety or service reliability; and

(3) List the municipalities and the year when vegetation management is anticipated to be done in each municipality.

o. The electric public utility shall post the transmission and distribution line vegetation management schedules required pursuant to subsection h. of this section on its website and distribute the schedules to affected municipalities and public authorities pursuant to section 7 of P.L. , c. (C. ) (pending before the Legislature as this bill).

6. (New section) a. Each electric public utility shall ensure that:

(1) Electric public utility line clearance employees or contractors qualified under standards of the federal Occupational Safety and Health Administration and the ANSI to perform vegetation management for the electric public utility;

(2) All such employees or contractors are trained in the proper care of trees and other woody plants in order to provide safe and reliable electric service; and

(3) All such employees or contractors are knowledgeable regarding safety practices and line clearance techniques.

b. Each electric public utility shall ensure that records are kept of all persons used by the electric public utility or its contractor to perform vegetation management on behalf of the electric public utility, including the dates and types of training that each such person has received.

c. The electric public utility shall monitor and document all vegetation management and any related activity. Documentation shall be retained for five years and shall include, but shall not be limited to:

(1) The municipality in which the work was performed;

(2) Identification of the circuit and substation where vegetation management was performed;

(3) The type of vegetation management performed including removal, trimming, and spraying and the methods used;

(4) The crew size and supervisor's name;

(5) The date of activity;

(6) Any safety hazards encountered;

(7) Any unexpected occurrence or accident resulting in death, life-threatening, or serious injury to a person assigned to perform vegetation management or the public; and

(8) Vegetation management planned for the following year.

d. Each electric public utility shall include a summary of the information required in subsection c. of this section about its vegetation management during the past year, and planned activities for the following year in any Annual System Performance Report required to be filed with the board by May 31 of each

year. This information shall include, at a minimum, the name of each municipality in which the electric public utility conducted vegetation management during the preceding year, and all circuits affected.

7. (New section) a. Unless specifically stated elsewhere in P.L. , c. (C. ) (pending before the Legislature as this bill), each electric public utility shall make a diligent attempt to notify all municipal governments, customers, and property owners that may be affected by planned vegetation management on the electric public utility's distribution or transmission system. This requirement shall be satisfied if the electric public utility provides written notice to customers and property owners in accordance with subsections b. and c. of this subsection at least seven days, but not more than 45 days, prior to performing vegetation management; and provides notice to municipal governments pursuant to subsections f. and g. of this section.

b. For distribution circuits, the electric public utility shall provide notice to the following customers and property owners by separate direct mailing, door hanger, or any other board-approved method:

(1) All customers upon whose property runs any portion of the right of way or easement that will be maintained; and

(2) Any owner of a property that meets both of the following:

(a) The property is not served by the electric public utility, that is, there is no customer located on the property; and

(b) The property includes a portion of the right of way or easement that shall be maintained.

c. For transmission circuits, notice shall be provided through both of the following:

(1) The electric public utility shall notify the persons described at paragraphs (1) and (2) of subsection b. of this section through a direct mailing by certified mail, return receipt requested, or by another board-approved method; and

(2) The electric public utility shall publish a notice in two newspapers that serve the area, within the timeframe set forth in subsection a. of this section.

d. For the purposes of paragraph (1) of subsection c. of this section, the United States Post Office receipt of mailing, which the United States Post Office provides upon the mailing of an item certified mail return receipt requested, shall constitute proof of compliance.

e. Each electric public utility shall maintain a record of the dates, locations, and activities contained in the notices, which were provided to the municipal government under this section, for a period of five years after notices are sent.

f. For municipal governments, each electric public utility shall provide written notice of any pending vegetation management to a primary contact. For a municipality, the mayor, municipal clerk, or other person or position mutually agreed upon shall be the primary contact. For other government entities and for public authorities, the primary contact shall be selected by mutual agreement between the electric public utility and the entity or authority.

g. An electric public utility shall notify all municipalities and public authorities that may be affected by vegetation management. The notice shall be made in writing to the primary contact, designated under subsection f. of this section, at least two months in advance of the planned vegetation management. The notice shall include the planned dates and locations of the vegetation management. In addition, the notice of vegetation management shall be in a manner sufficient to explain each electric public utility's procedures and easement rights. The electric public utility shall provide a telephone number of the

vegetation manager to enable questions to be answered.

h. If any notice required under this section is provided by the electric public utility through a contractor or agent, the notice shall bear the name and logo of the electric public utility only, and not of the contractor or agent.

8. (New section) a. Each electric public utility shall conduct an annual public education program to inform its customers, as well as the municipalities and public agencies in the electric public utility's service territory, of the importance of vegetation management, and of the electric public utility's role and responsibility in managing vegetation near electric lines.

b. The public education program required pursuant to this section shall be implemented by direct mail or another method approved by the board.

c. Each electric public utility shall post its public education materials on its website.

d. As part of its education program pursuant to this section, the electric public utility shall provide on its website illustrations of typical configurations of transmission lines and easements, as necessary to comply with the requirement in subsection a. of this section, to inform the public regarding the electric public utility's responsibilities in performing vegetation management under P.L. , c. (C. ) (pending before the Legislature as this bill).

9. (New section) a. Failure to comply with any provision of sections 1 through 8 of P.L. , c. (C. ) (pending before the Legislature as this bill) shall subject the violator to penalties in accordance with the board's regulatory and statutory authority under Title 48 of the Revised Statutes.

b. An electric public utility that violates any provision of sections 1 through 8 of P.L. , c. (C. ) (pending before the Legislature as this bill) may be subject to penalties of up to \$100 per day per violation, for each day the violation occurs. The board shall notify the electric public utility of the violation in writing. Upon receipt of the written notice of violation, the electric public utility shall have five business days to correct the violation. Any failure to correct the violation shall subject the electric public utility to penalties of \$100 per day for each violation, calculated from the day such written notice was received by the electric public utility.

c. Penalties imposed under any provision of P.L. , c. (C. ) (pending before the Legislature as this bill) shall be in addition to, and not a replacement for, other fines or penalties, or both, that apply under any federal or State laws or regulations.

d. In determining the appropriate sanction for a violation of any provision of P.L. , c. (C. ) (pending before the Legislature as this bill), the board shall consider the following criteria, and any other factors deemed appropriate and material to the electric public utility's failure to comply:

(1) The good faith efforts, if any, of the electric public utility charged in attempting to achieve compliance;

(2) The gravity of the violation or the failure to comply;

(3) The number of past violations by the electric public utility charged, including violations of any provision of P.L. , c. (C. ) (pending before the Legislature as this bill) as well as any other standards adopted by the board pursuant to P.L. , c. (C. ) (pending before the

Legislature as this bill);

- (4) The appropriateness of the penalty to the size of the electric public utility charged;
- (5) Events judged to be beyond the violator's control; and
- (6) The good faith efforts on the part of the electric public utility to resolve any violations of the requirements contained in P.L. , c. (C. ) (pending before the Legislature as this bill).

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

40:37-5. a. Except as hereinafter provided and consistent with the provisions of subsection b. of this section, 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.] (1) The planting, trimming, spraying, care, and protection thereof;

[b.] (2) 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.] (3) The moving or requiring the removal of any tree or part thereof, dangerous to public safety;

[d.] (4) The care and control of the parks and parkways; and

[e.] (5) The encouragement of arboriculture.

b. Consistent with applicable State or federal law, an electric public utility, as defined pursuant to section 1 of P.L. , c. (C. ) (pending before the Legislature as this bill), may clear, move, cut, or destroy any shade or ornamental tree or shrubbery for the purpose of erecting, installing, moving, removing, altering, or maintaining any structures or fixtures, necessary for the supply of electric light, heat, or power upon any lands in which it has acquired an easement or right-of-way.

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

11. 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, 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, shall not 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 for negligent actions.

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

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

40:64-5. 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; provided, however, consistent with applicable State or federal law, where an electric public utility, as defined pursuant to section 1 of P.L. , c. (C. ) (pending before the Legislature as this bill), is required to clear, move, cut, or destroy any shade or ornamental tree or shrubbery for the purpose of erecting, installing, moving, removing, altering, or maintaining any structures or fixtures, necessary for the supply of electric light, heat, or power upon any lands in which it has acquired an easement or right-of-way, shall to that extent, be exempt from the shade tree commission's exercise of such control;
- 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)

13. 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, 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, shall not 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 for negligent actions.

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

14. This act shall take effect immediately, but shall remain inoperative for 60 days following the date of enactment.

## STATEMENT

This bill requires an electric public utility (utility) transmitting or distributing electricity in a public right of way or easement using any energized conductor of 600 volts and higher, whether for distribution or transmission, to manage vegetation (i.e., trees, bushes and shrubs) along those areas.

In doing so, the utility is required to employ a vegetation manager who is a utility arborist. The vegetation manager shall be a utility employee, not a contractor. The utility shall provide the vegetation manager with the authority and the resources to administer all aspects of the utility's vegetation

management (VM) program, and the vegetation manager shall ensure that the utility complies with the provisions of the bill. The vegetation manager's name and contact information shall be posted on the utility's web site and shall be included on all notifications provided to all municipal governments, customers, and property owners that may be affected by planned VM activity on the utility's distribution or transmission system. The bill allows a utility to temporarily suspend compliance with one or more of the VM requirements of the bill, within the following limits: 1) the suspension of compliance shall apply only to the distribution system, and shall not apply to transmission line VM; 2) the suspension of compliance shall apply only to those portions of a distribution system that are located within the municipality, and that do not affect service to any adjacent municipality; 3) the utility shall not suspend compliance with any requirement if the suspension would result in danger to the public; and 4) if the suspension results in additional costs to the utility due to lack of tree trimming or other VM, the municipality shall reimburse the utility for these costs.

The bill requires the utility to perform an annual visual inspection of all energized conductors that are associated with a transmission line, to determine whether VM is needed. A utility shall perform VM on vegetation that is close enough to pose a threat to energized conductors of its transmission lines at least once every four years and of its distribution lines at least once every three years. If a utility becomes aware at any time of any vegetation close enough to its energized conductor to affect reliability or safety prior to the next required VM activity, the utility shall ensure that necessary VM is promptly performed. If the utility determines that vegetation poses an immediate safety hazard, the utility shall not be subject to the above notice requirements; however, the utility shall, to the extent practicable, make a reasonable effort to notify the customers and property owners prior to performing the VM.

The bill requires each utility to ensure that VM conducted near its energized conductors is performed pursuant to the standards and accepted procedures set forth in VM and electric safety publications determined by the Board of Public Utilities (BPU). Each utility shall develop its own VM standards and guidelines. In developing these standards and guidelines, a utility shall prioritize VM based upon: 1) the extent of the potential for vegetation to interfere with the energized conductor; 2) the voltage of the affected energized conductor; and 3) the relative importance of the affected energized conductor in maintaining safety and reliability. Each utility shall provide a copy of its VM plan's standards and guidelines to the BPU as a chapter in any annual system performance report of the utility as may be required by the BPU.

Each utility's VM plan's standards and guidelines shall cover, at a minimum, the following activities: 1) tree pruning and removal; 2) vegetation control around poles, substations, and other energized conductors; 3) manual, mechanical, or chemical control of vegetation along rights of way; 4) inspection of vegetation both before and after VM is performed; 5) research and development of improved VM activities and practices; and 6) public education.

Among the factors the utility shall consider in determining the extent of VM to be performed at a particular site are: 1) the rate at which each species of vegetation is likely to grow back; 2) the voltage of the energized conductor, with higher voltages requiring larger clearances; 3) the potential movement of the energized conductor during various weather conditions; 4) the potential movement of trees or other vegetation during various weather conditions; and 5) the utility's legal rights to access the area.

The bill requires an utility to remove all trimmings and cut vegetation resulting from VM that are part of the utility's regular maintenance cycle, within five business days after the vegetation was cut, unless a state of emergency or disaster is declared by the State or by the federal government where the removal shall be done by the utility within two weeks after such declaration, except if the utility obtains consent to leave the trimmings or cut vegetation, from the owner of the property upon which the trimmings or cut vegetation are located. Each year, by May 31, the utility shall develop a schedule for transmission and distribution line VM, which shall be included in any annual system performance report as required by the BPU. The schedule shall: 1) list the transmission lines planned for VM for the next four years and list the distribution lines planned for VM for the next three years; 2) ensure that VM on transmission lines is performed prior to vegetation becoming a threat to safety or service reliability; and 3) list the municipalities and the year when VM is anticipated to be done in each municipality. The schedules shall be posted on the utility's website and be distributed to affected municipalities and public authorities.

The bill requires each utility to monitor and document all VM related activity. Documentation shall be retained for five years and shall include, but shall not be limited to: 1) the municipality in which the work was performed; 2) identification of the circuit and substation where VM was performed; 3) the type of VM performed including removal, trimming, and spraying and the methods used; 4) the crew size and supervisor's name; 5) the date of activity; 6) any safety hazards encountered; 7) any unexpected occurrence or accident resulting in death, life-threatening or serious injury to a person assigned to perform VM or the public; and 8) VM planned for the following year.

The bill requires each utility to make a diligent attempt to notify all municipal governments, customers, and property owners that may be affected by planned VM on the utility's distribution or transmission system. This requirement shall be satisfied if the utility provides written notice to customers and property owners at least seven days, but not more than 45 days, prior to performing any VM activity; and provides notice to a mutually agreed upon primary contact in municipal government two months in advance of any planned VM.

The bill requires each utility to conduct an annual VM public education program, by direct mail or another method approved by the BPU, to inform its customers, as well as the municipalities and public agencies in the utility's service territory, of the importance of VM, and of the utility's role and responsibility in managing vegetation near electric lines. Each utility shall post its public education materials on its website and include illustrations of typical configurations of transmission lines and easements to inform the public regarding the utility's responsibilities in performing VM.

Violators of the provisions of sections 1 through 8 of the bill shall be subject to penalties in accordance with the BPU's regulatory and statutory authority under Title 48 of the Revised Statutes and could be subject to penalties of up to \$100 per day per violation for each day the violation occurs, and any such penalties shall be in addition to, and not a replacement for, other fines or penalties, or both, that apply under any federal or State laws or regulations. In determining the appropriate sanction for a violation of sections 1 through 8 of the bill, the BPU shall consider the following criteria, and any other factors deemed appropriate and material to the utility's failure to comply: 1) the good faith efforts, if any, of the utility charged in attempting to achieve compliance; 2) the gravity of the violation or the failure to comply; 3) the number of past violations by the utility charged, including violations of any provision of

the bill as well as any other standards adopted by the BPU pursuant to the bill; 4) the appropriateness of the penalty to the size of the utility charged; 5) events judged to be beyond the violator's control; and 6) the good faith efforts on the part of the utility to resolve any violations of the requirements contained in the bill.

Finally, the bill provides that, in order to allow utilities to clear, move, cut, or destroy trees, shrubs, or plants for the purpose of erecting, installing, moving, removing, altering, or maintaining any structures or fixtures, necessary for the supply of electric light, heat, or power upon any lands in which it has acquired an easement or right-of-way, utilities would not be required to receive the permission of any county or municipal shade tree commission to undertake such work and would not be subject to any penalty imposed by any such commission as provided by law. The bill also exempts telephone utilities and cable television companies providing communication or cable television services from paying those penalties; however, all of those entities would not be exempt from any penalty or replacement assessment imposed for negligent actions. Further, telephone utilities and cable television companies are required to receive the permission of a county or municipal shade tree commission to undertake such work.