

# HOUSE BILL REPORT

## SHB 2941

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### As Passed Legislature

**Title:** An act relating to limiting the liability of utilities for efforts undertaken to protect their facilities from adjacent vegetation.

**Brief Description:** Limiting liability for utilities in protecting their facilities.

**Sponsors:** By House Committee on Law & Justice (originally sponsored by Representatives Sheahan, Kessler, Crouse, Lantz and Bush).

**Brief History:**

**Committee Activity:**

Law & Justice: 2/5/98 [DPS].

**Floor Activity:**

Passed House: 2/13/98, 97-1.

Senate Amended.

House Concurred.

Passed Legislature.

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### HOUSE COMMITTEE ON LAW & JUSTICE

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Sheahan, Chairman; McDonald, Vice Chairman; Sterk, Vice Chairman; Costa, Ranking Minority Member; Carrell; Cody; Kenney; Lambert; Lantz; Mulliken; Robertson and Sherstad.

**Minority Report:** Do not pass. Signed by 1 member: Representative Constantine, Assistant Ranking Minority Member.

**Staff:** Elizabeth Chambers (786-7291); Trudes Hutcheson (786-7384).

**Background:** When a person trespasses on another's land and injures or removes trees, timber, or shrubs, the owner of the land may bring an action for treble damages. In August 1997, the Washington Supreme Court found that, in addition to treble damages, emotional distress may also be awarded for an intentional interference with property interests such as trees and vegetation. Birchler v. Castello Land Co., Inc.

This treble damage remedy is only available when the trespass is "willful," not "casual or involuntary," or based on a mistaken belief of ownership of the land. In addition, when the tree or timber is removed from open woodlands in order to repair any public highway or bridge on adjoining land, the remedy for the timber trespass is for single damages, and is thus exempted from treble damages.

**Summary of Bill:** The Legislature finds that utilities provide an important public service, and vegetation growth can damage utility facilities and threaten public safety. The Legislature declares that when utilities remove vegetation from adjacent properties to maintain service and protect the public; utilities should be immune from liability, including emotional distress, for removing vegetation once the utility has given appropriate notice and opportunity to the land owner or resident.

A utility is immune from liability for cutting or removing vegetation when the utility provides notice and/or secures agreement from the property owner or resident any of three situations. First, when a utility cuts or removes vegetation that damages utility facilities, it must make a reasonable effort as soon as practical to notify and secure agreement regarding the disposal of any vegetation that has been cut or removed. Second, when a utility cuts or removes vegetation that poses an imminent threat to damage utility facilities, it must make a reasonable effort to notify and secure agreement regarding the cutting or removal and disposal of any vegetation on the land adjacent to the utility facilities. Finally, when vegetation encroaches upon utility facilities, the utility must secure an agreement regarding the cutting or removal and disposal of any vegetation on the land adjacent to the utility facilities.

When damages are awarded for natural vegetation, they are limited to stumpage value only. In no event are utilities liable for emotional distress damages for cutting or removing trees, timber, or shrubs located on adjacent land.

A utility facility includes any property or easement controlled by an electric, water, or sewer utility, natural gas, or telecommunications company, for the purposes of manufacturing, transmitting, distributing, selling or furnishing electricity, water, sewer, natural gas, or telecommunications services. Natural vegetation is any tree indigenous to the area that grew naturally and was not planted for aesthetic or commercial purposes.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** This bill resolves the confusion about the appropriate amount of damages that should be awarded for vegetation removed by utilities. The bill will give

utilities a leg up by removing or reducing liability when utilities must cut or remove neighboring vegetation in order to maintain or repair utility lands and easements.

**Testimony Against:** None.

**Testified:** Collins Sprague, Washington Water Power (pro); Aaron Jones, Washington Rural Electric Co-op Association (pro); and Tim Boyd, Washington Forest Protection Association (pro).