

# HOUSE BILL ANALYSIS

## SSB 5154

---

---

**Title:** An act relating to limiting the liability of electric utilities for efforts undertaken to protect their facilities from damage that might be caused by vegetation.

**Brief Description:** Limiting the liability of electric utilities.

**Sponsors:** Senate Committee on Judiciary (originally sponsored by Senators Hargrove, McCaslin, Goings and Heavey).

### Brief Summary of Bill

- Grants electric utility companies immunity from civil actions for treble damages for cutting or removing vegetation on another person's property under certain conditions.

---

### HOUSE COMMITTEE ON JUDICIARY

**Staff:** Trudes Hutcheson (786-7384).

#### Background:

When a person trespasses on another's land and injures, cuts, or removes trees, timber, or shrubs, the landowner may bring an action for treble damages against the trespasser. Treble damages will be awarded if the trespass is willful. Treble damages are not available if the trespass was casual or involuntary, if the trespass was based on a mistaken belief of ownership, or when the vegetation is removed from open woodlands in order to repair a public highway or bridge on adjoining land. Damages are measured in various ways depending upon the type of vegetation affected, including stumpage value, production value, lost profits, and replacement value. Damages may also include damages for emotional distress.

A person who wrongfully causes waste or injury to personal property or improvements on another person's land is liable to the injured party for treble damages. The person acts wrongfully— if the person intentionally and unreasonably commits the act while knowing that he or she lacks authority to act. In addition to treble damages, the person must pay the injured party's reasonable costs and attorney fees.

By statute, corporations have the right to appropriate real estate and other property for rights-of-way for the purposes of manufacturing or transmitting electric power for

public use. The corporation must compensate the person whose land is being appropriated.

**Summary of Bill:**

Electric utilities are granted immunity from actions for damages for cutting or removing vegetation on or originating from another person's land when the vegetation:

- has come in contact with or caused damage to electric facilities;
- poses a hazard to the general public, and the electric utility makes a reasonable effort to notify and secure an agreement from the property owner or resident; or
- poses a potential threat to damage electric facilities, and the electric utility attempts to provide written notice by mail and secures an agreement with the property owner. If the property owner fails to respond within two weeks, the electric utility may secure an agreement with the resident.

Vegetation "poses a hazard to the general public" if the vegetation has encroached upon electric facilities by overhanging or growing in close proximity to overhead electric facilities and it constitutes an electrical hazard under applicable electrical construction codes. A hazard also exists if the vegetation is diseased or dying, and a qualified arborist or expert determines that trimming or removal is necessary to avoid contact between the vegetation and electric facility. When determining the extent of trimming necessary, the electric utility must consider certain factors.

Vegetation poses "a potential threat to damage electric facilities" when vegetation is of such size, condition, and proximity to electric facilities that it is reasonably expected to cause damage, and a qualified expert determines that the vegetation poses a potential threat.

Electric facilities— include, among other things, real estate, easements acquired by title or implied consent, routes used, operated, owned, maintained, or controlled under written or implied agreements, and all devices and apparatus used, operated, owned, or controlled by an electric utility for the purposes of manufacturing, transforming, transmitting, distributing, selling, or furnishing electricity.

**Fiscal Note:** Not requested.

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

Office of Program Research