

HOUSE BILL REPORT

SSB 5154

As Passed House - Amended:

April 14, 1999

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 History:

Committee Activity:

Judiciary: 4/1/99 [DPA].

Floor Activity:

Passed House - Amended: 4/14/99, 94-1.

Brief Summary of Substitute Bill (As Amended by House Committee)

- 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

Majority Report: Do pass as amended. Signed by 12 members: Representatives Carrell, Republican Co-Chair; Constantine, Democratic Co-Chair; Hurst, Democratic Vice Chair; Lambert, Republican Vice Chair; Cox; Dickerson; Esser; Kastama; Lantz; Lovick; McDonald and Schindler.

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.

Summary of Amended Bill:

Electric utilities are immune from liability 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;
- the vegetation poses an imminent hazard to the general public, and the electric utility provides notice and makes a reasonable effort to obtain an agreement from the resident or property owner on the property. Notice may be given by posting a flier in a conspicuous location on the property. The notice must contain certain information, and the electric utility may act without agreement if the resident or owner fails to respond. The electric utility may act without any notice and agreement if it is necessary to protect life, property, or restore electric service; or
- the vegetation poses a potential threat to damage electric facilities, and the electric utility attempts to provide written notice by mail indicating the intent to remove vegetation 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. The notice must contain certain information.

A hazard exists to the general public if the vegetation has encroached upon electric facilities by overhanging or growing in close proximity to overhead electric facilities that 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 employed with the electric utility 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.

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

The term "electric facilities" is defined, and includes 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.

Amended Bill Compared to Substitute Bill: The striking amendment made the following changes: (a) requires that the hazard to the general public which the vegetation poses be an "imminent" hazard; (b) requires that the notice sent to the property owner include a brief statement of the need and nature of the work to be done, a good faith estimate of the time frame in which the work will occur, and how the property owner can contact the utility company regarding the removal of vegetation; (c) narrows the definition of electric facilities by removing references to easements, real estate, and other property; and (d) clarifies that electric utilities are immune from liability for cutting and removing trees and not immune from wrongfully injuring personal property on the land or causing waste.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: This is a reasonable bill. It is difficult for electric utilities to perform maintenance duties because of fear of liability for cutting and trimming vegetation. This will help with worker and property owner safety by letting maintenance crews do effective trimming. Currently, there are a maze of different types of damages the electric utility could be liable for. This bill is a good effort to balance the interests of the property owner and the interests of the utility companies.

Testimony Against: None.

Testified: Collins Sprague and Don Stone, Avista Corporation; Jean Leonard, in behalf of Mike Tracy (Puget Sound Energy); and Donna Roberson, Chelan County Public Utility District.