

# SENATE BILL REPORT

## SSB 5154

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As Passed Senate, March 11, 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: 2/10/99, 2/17/99 [DPS].  
Passed Senate, 3/11/99, 42-4.

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### SENATE COMMITTEE ON JUDICIARY

**Majority Report:** That Substitute Senate Bill No. 5154 be substituted therefor, and the substitute bill do pass.

Signed by Senators Heavey, Chair; Kline, Vice Chair; Costa, Goings, Hargrove, Haugen, Johnson, Long, McCaslin and Zarelli.

**Staff:** Penny Nerup (786-7484)

**Background:** Currently, property owners may bring an action seeking damages when an electric utility worker trespasses on their land and injures or removes trees, timber or shrubs. Triple damages may be awarded if the trespass is "willful." There are three mitigating circumstances when triple damages are not available: (1) when the trespass was "casual or involuntary;" (2) when the trespass was based upon a mistaken belief of ownership of the land; or (3) when the vegetation is removed from open woodlands in order to repair any public highway or bridge on adjoining land. Under those three circumstances, the remedy for the trespass is single or compensatory damages. Damages are measured in various ways depending upon the type of vegetation affected, including stumpage value, production value, lost profits, and restoration/replacement value.

Electric utilities are also liable for damages for emotional distress for intentional interference with property interests, such as trees and other vegetation. *Birchler v. Castello Land Co., Inc.*, 133 Wn.2d 106 (1997).

Electric utilities are concerned about increasing liability when their workers go onto private land to remove or trim vegetation that poses an imminent hazard or potential threat to disrupt electrical service to the public.

**Summary of Bill:** Electric utilities are granted immunity from liability for damages, including damages for emotional distress, when their workers cut or remove vegetation that poses an imminent hazard or potential threat to damage their facilities. A hazard occurs

when there is an imminent threat to damage the electric facility. A potential threat occurs when the vegetation can be reasonably expected to damage electric facilities.

In case of a hazard, the utility must make a reasonable effort to notify and obtain agreement from the property owner or the resident of the property before cutting or trimming vegetation. Where there is a potential threat, the utility must notify the property owner and, if there is no response within two weeks, the utility may obtain agreement for cutting or trimming the vegetation from the resident of the property.

Electric utilities are released from liability for damages, including emotional distress, when their workers go onto property to cut or trim vegetation that creates either an imminent hazard or a potential threat of damage to electric facilities.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** There is a smorgasbord of potential damage issues when workers for an electric utility try to keep up with vegetation that creates an actual hazard or potential damage to electric facilities. Further, changes in the electrical safety code provide for additional safeguards and protections for electric utility workers. Immunity from suit is necessary so that electric utilities can continue to address problems with vegetation near their facilities without concern about lawsuits.

**Testimony Against:** None.

**Testified:** PRO: Collins Sprague, AVISTA, Corp; Don Stone, Esq., Paine Hamblen.

**House Amendment(s):** Electric utilities are allowed to cut or remove vegetation without a landowner's agreement if the vegetation poses an imminent hazard to electric facilities. The notice to landowners concerning proposed removal of vegetation that poses a potential threat to electric facilities provides more information to the landowner. A technical correction is made that merges a separate short subsection into another sentence.