

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5154

Chapter 248, Laws of 1999

56th Legislature
1999 Regular Session

ELECTRIC UTILITIES--LIABILITY FOR REMOVING VEGETATION

EFFECTIVE DATE: 7/25/99

Passed by the Senate April 20, 1999
YEAS 41 NAYS 1

BRAD OWEN
President of the Senate

Passed by the House April 14, 1999
YEAS 94 NAYS 1

CLYDE BALLARD
**Speaker of the
House of Representatives**

FRANK CHOPP
**Speaker of the
House of Representatives**

Approved May 10, 1999

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

I, Tony M. Cook, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5154** as passed by the Senate and the House of Representatives on the dates hereon set forth.

TONY M. COOK
Secretary

FILED

May 10, 1999 - 4:38 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5154

AS AMENDED BY THE HOUSE

Passed Legislature - 1999 Regular Session

State of Washington 56th Legislature 1999 Regular Session

By Senate Committee on Judiciary (originally sponsored by Senators Hargrove, McCaslin, Goings and Heavey)

Read first time 02/18/1999.

1 AN ACT Relating to limiting the liability of electric utilities for
2 efforts undertaken to protect their facilities from damage that might
3 be caused by vegetation; amending RCW 4.24.630; and adding a new
4 section to chapter 64.12 RCW.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 64.12 RCW
7 to read as follows:

8 (1) An electric utility is immune from liability under RCW
9 64.12.030, 64.12.040, and 4.24.630 and any claims for general or
10 special damages, including claims of emotional distress, for cutting or
11 removing vegetation located on or originating from land or property
12 adjacent to electric facilities that:

13 (a) Has come in contact with or caused damage to electric
14 facilities;

15 (b) Poses an imminent hazard to the general public health, safety,
16 or welfare and the electric utility provides notice and makes a
17 reasonable effort to obtain an agreement from the resident or property
18 owner present on the property to trim or remove such hazard. For
19 purposes of this subsection (1)(b), notice may be provided by posting

1 a notice or flier in a conspicuous location on the affected property
2 that gives a good faith estimate of the time frame in which the
3 electric utility's trimming or removal work must occur, specifies how
4 the electric utility may be contacted, and explains the responsibility
5 of the resident or property owner to respond pursuant to the
6 requirements of the notice. An electric utility may act without
7 agreement if the resident or property owner fails to respond pursuant
8 to the requirements of the notice. No notice or agreement is necessary
9 if the electric utility's action is necessary to protect life,
10 property, or restore electric service; or

11 (c) Poses a potential threat to damage electric facilities and the
12 electric utility attempts written notice by mail to the last known
13 address of record indicating the intent to act or remove vegetation and
14 secures agreement from the affected property owner of record for the
15 cutting, removing, and disposition of the vegetation. Such notice
16 shall include a brief statement of the need and nature of the work
17 intended that will impact the owner's property or vegetation, a good
18 faith estimate of the time frame in which such work will occur, and how
19 the utility can be contacted regarding the cutting or removal of
20 vegetation. If the affected property owner fails to respond to a
21 notice from the electric utility within two weeks of the date the
22 electric utility provided notice, the electric utility may secure
23 agreement from a resident of the affected property for the cutting,
24 removing, and disposition of vegetation.

25 (2)(a) A hazard to the general public health, safety, or welfare is
26 deemed to exist when:

27 (i) Vegetation has encroached upon electric facilities by
28 overhanging or growing in such close proximity to overhead electric
29 facilities that it constitutes an electrical hazard under applicable
30 electrical construction codes or state and federal health and safety
31 regulations governing persons who are employed or retained by, or on
32 behalf of, an electric utility to construct, maintain, inspect, and
33 repair electric facilities or to trim or remove vegetation; or

34 (ii) Vegetation is visibly diseased, dead, or dying and has been
35 determined by a qualified forester or certified arborist employed or
36 retained by, or on behalf of, an electric utility to be of such
37 proximity to electric facilities that trimming or removal of the
38 vegetation is necessary to avoid contact between the vegetation and
39 electric facilities.

1 (b) The factors to be considered in determining the extent of
2 trimming required to remove a hazard to the general public health,
3 safety, or welfare may include normal tree growth, the combined
4 movement of trees and conductors under adverse weather conditions,
5 voltage, and sagging of conductors at elevated temperatures.

6 (3) A potential threat to damage electric facilities exists when
7 vegetation is of such size, condition, and proximity to electric
8 facilities that it can be reasonably expected to cause damage to
9 electric facilities and, based upon this standard, the vegetation has
10 been determined to pose a potential threat by a qualified forester or
11 certified arborist employed or retained by or on behalf of an electric
12 utility.

13 (4) For the purposes of this section:

14 (a) "Electric facilities" means lines, conduits, ducts, poles,
15 wires, pipes, conductors, cables, cross-arms, receivers, transmitters,
16 transformers, instruments, machines, appliances, instrumentalities, and
17 all devices and apparatus used, operated, owned, or controlled by an
18 electric utility, for the purposes of manufacturing, transforming,
19 transmitting, distributing, selling, or furnishing electricity.

20 (b) "Electric utility" means an electrical company, as defined
21 under RCW 80.04.010, a municipal electric utility formed under Title 35
22 RCW, a public utility district formed under Title 54 RCW, an irrigation
23 district formed under chapter 87.03 RCW, a cooperative formed under
24 chapter 23.86 RCW, and a mutual corporation or association formed under
25 chapter 24.06 RCW, that is engaged in the business of distributing
26 electricity in the state.

27 (c) "Vegetation" means trees, timber, or shrubs.

28 **Sec. 2.** RCW 4.24.630 and 1994 c 280 s 1 are each amended to read
29 as follows:

30 (1) Every person who goes onto the land of another and who removes
31 timber, crops, minerals, or other similar valuable property from the
32 land, or wrongfully causes waste or injury to the land, or wrongfully
33 injures personal property or improvements to real estate on the land,
34 is liable to the injured party for treble the amount of the damages
35 caused by the removal, waste, or injury. For purposes of this section,
36 a person acts "wrongfully" if the person intentionally and unreasonably
37 commits the act or acts while knowing, or having reason to know, that
38 he or she lacks authorization to so act. Damages recoverable under

1 this section include, but are not limited to, damages for the market
2 value of the property removed or injured, and for injury to the land,
3 including the costs of restoration. In addition, the person is liable
4 for reimbursing the injured party for the party's reasonable costs,
5 including but not limited to investigative costs and reasonable
6 attorneys' fees and other litigation-related costs.

7 (2) This section does not apply in any case where liability for
8 damages is provided under RCW 64.12.030, 79.01.756, 79.01.760, ((or))
9 79.40.070, or where there is immunity from liability under section 1 of
10 this act.

11 NEW SECTION. **Sec. 3.** If any provision of this act or its
12 application to any person or circumstance is held invalid, the
13 remainder of the act or the application of the provision to other
14 persons or circumstances is not affected.

Passed the Senate April 20, 1999.

Passed the House April 14, 1999.

Approved by the Governor May 10, 1999.

Filed in Office of Secretary of State May 10, 1999.