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HOUSE BILL 2163

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State of Washington

61st Legislature

2009 Regular Session

By Representative Van De Wege

Read first time 02/11/09. Referred to Committee on Judiciary.

1 AN ACT Relating to the liability of an electric utility; and  
2 amending RCW 64.12.035.

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

4 **Sec. 1.** RCW 64.12.035 and 1999 c 248 s 1 are each amended to read  
5 as follows:

6 (1) An electric utility is immune from liability under RCW  
7 64.12.030, 64.12.040, and 4.24.630 and any claims for general or  
8 special damages, including claims of emotional distress, for cutting or  
9 removing vegetation located on or originating from land or property  
10 adjacent to electric facilities that:

11 (a) Has come in contact with or caused damage to electric  
12 facilities;

13 (b) ~~((Poses an imminent hazard to the general public health,~~  
14 ~~safety, or welfare and the electric utility provides notice and makes~~  
15 ~~a reasonable effort to obtain an agreement from the resident or~~  
16 ~~property owner present on the property to trim or remove such hazard.~~  
17 ~~For purposes of this subsection (1)(b), notice may be provided by~~  
18 ~~posting a notice or flier in a conspicuous location on the affected~~  
19 ~~property that gives a good faith estimate of the time frame in which~~

1 the electric utility's trimming or removal work must occur, specifies  
2 how the electric utility may be contacted, and explains the  
3 responsibility of the resident or property owner to respond pursuant to  
4 the requirements of the notice. An electric utility may act without  
5 agreement if the resident or property owner fails to respond pursuant  
6 to the requirements of the notice. No notice or agreement is necessary  
7 if the electric utility's action is necessary to protect life,  
8 property, or restore electric service; or

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

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

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

32 (ii) Vegetation is visibly diseased, dead, or dying and has been  
33 determined by a qualified forester or certified arborist employed or  
34 retained by, or on behalf of, an electric utility to be of such  
35 proximity to electric facilities that trimming or removal of the  
36 vegetation is necessary to avoid contact between the vegetation and  
37 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.)) Has encroached upon electric facilities by overhanging or~~  
13 ~~growing in such close proximity to overhead electric facilities that it~~  
14 ~~constitutes an electrical hazard under applicable electrical~~  
15 ~~construction codes or state and federal health and safety regulations~~  
16 ~~governing persons who are employed or retained by, or on behalf of, an~~  
17 ~~electric utility to construct, maintain, inspect, and repair electric~~  
18 ~~facilities or to cut or remove vegetation; or~~

19       (c) Is visibly diseased, dead, or dying or has been determined by  
20 a qualified forester or certified arborist employed or retained by, or  
21 on behalf of, an electric utility to be of such proximity to electric  
22 facilities that cutting or removal of the vegetation is necessary to  
23 avoid contact between the vegetation and electric facilities.

24       (2) The factors to be considered in determining the extent of  
25 cutting or removal required may include, but are not limited to: Line  
26 voltage class, species growth rates and failure characteristics,  
27 location of the vegetation in relation to the conductors, the potential  
28 combined movement of vegetation and conductors during routine winds,  
29 and sagging of conductors due to elevated temperatures or icing, and as  
30 experience of the electric utility has shown to be necessary for  
31 conditions in any given area.

32       (3) An electric utility shall make a reasonable attempt to provide  
33 notice to property owners for conditions described in subsection (1)(b)  
34 and (c) of this section.

35       (a) Except as provided under (b) of this subsection, in urban  
36 growth areas notice may be provided by mailing or by leaving notice  
37 with the resident or property owner.

1 (b) For vacant properties, and for properties not in urban growth  
2 areas, notice may be provided by mailing or by posting a notice or  
3 flier on the affected property.

4 (c) All notices must provide a good faith estimate of the time  
5 frame in which the electric utility's cutting or removal work will  
6 occur, including a brief statement of the need for and nature of the  
7 work, and specifying how the electric utility may be contacted.

8 (d) An electric utility may act without agreement if the resident  
9 or property owner fails to respond pursuant to the requirements of the  
10 notice.

11 (e) No notice is necessary for conditions described in subsection  
12 (1)(a) of this section or if in the sole discretion of the electric  
13 utility, the electric utility's action is necessary to protect life,  
14 property, to maintain essential electric services in urban areas, or to  
15 restore electric service to any location.

16 (4)(a) Vegetation management practices consistent with a habitat  
17 conservation plan approved prior to March 25, 1996, by the secretary of  
18 the interior or commerce under 16 U.S.C. Sec. 1531 et seq., the  
19 endangered species act of 1973 as amended, or to maintain riparian  
20 ecosystems on forest lands under RCW 76.09.330 are exempt from rules  
21 and policies under this chapter.

22 (b) However, an electric utility may not be held liable for any  
23 injury or damages resulting from vegetation being left for the  
24 purposes listed in (a) of this subsection, including but not limited to  
25 injury or damages resulting from wildfire, erosion, flooding, personal  
26 injury, property damage, damage to public improvements, and other  
27 injury or damages of any kind or character.

28 (5) For the purposes of this section:

29 (a) "Cutting or removal" means pruning vegetation or complete  
30 removal of vegetation.

31 (b) "Electric facilities" means lines, conduits, ducts, poles,  
32 wires, pipes, conductors, cables, cross-arms, receivers, transmitters,  
33 transformers, instruments, machines, appliances, instrumentalities, and  
34 all devices and apparatus used, operated, owned, or controlled by an  
35 electric utility, for the purposes of manufacturing, transforming,  
36 transmitting, distributing, selling, or furnishing electricity.

37 ((+b)) (c) "Electric utility" means an electrical company, as  
38 defined under RCW 80.04.010, a municipal electric utility formed under

1 Title 35 RCW, a public utility district formed under Title 54 RCW, an  
2 irrigation district formed under chapter 87.03 RCW, a cooperative  
3 formed under chapter 23.86 RCW, and a mutual corporation or association  
4 formed under chapter 24.06 RCW, that is engaged in the business of  
5 distributing electricity in the state.

6 ~~((e))~~ (d) "Urban growth area" means those areas designated by a  
7 county under RCW 36.70A.110.

8 (e) "Vegetation" means trees, timber, vines, or shrubs.

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