

HOUSE BILL REPORT

SHB 2941

As Amended by the Senate

Title: An act relating to limiting the liability of utilities for efforts undertaken to protect their facilities from adjacent vegetation.

Brief Description: Limiting liability for utilities in protecting their facilities.

Sponsors: By House Committee on Law & Justice (H) (originally sponsored by Representatives Sheahan, Kessler, Crouse, Lantz and Bush).

Brief History:

Committee Activity:

Law & Justice: 2/5/98 [DPS].

Floor Activity:

Passed House: 2/13/98, 97-1.
Senate Amended.

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Sheahan, Chairman; McDonald, Vice Chairman; Sterk, Vice Chairman; Costa, Ranking Minority Member; Carrell; Cody; Kenney; Lambert; Lantz; Mulliken; Robertson and Sherstad.

Minority Report: Do not pass. Signed by 1 member: Representative Constantine, Assistant Ranking Minority Member.

Staff: Elizabeth Chambers (786-7291); Trudes Hutcheson (786-7384).

Background: When a person trespasses on another's land and injures or removes trees, timber, or shrubs, the owner of the land may bring an action for treble damages. In August 1997, the Washington Supreme Court found that, in addition to treble damages, emotional distress may also be awarded for an intentional interference with property interests such as trees and vegetation. Birchler v. Castello Land Co., Inc.

This treble damage remedy is only available when the trespass is "willful," not "casual or involuntary," or based on a mistaken belief of ownership of the land. In addition, when the tree or timber is removed from open woodlands in order to repair any public

highway or bridge on adjoining land, the remedy for the timber trespass is for single damages, and is thus exempted from treble damages.

Summary of Bill: The Legislature finds that utilities provide an important public service, and when utilities remove vegetation from adjacent properties to maintain service and protect the public, utilities should not be liable for treble and emotional distress damages. In addition, utilities should be immune from liability for removing vegetation from adjacent lands that encroach upon or damage utility facilities.

The exemption from treble damages when one removes trees or timber from another's property to repair a highway or bridge is extended to utility facilities, and only single compensatory economic damages are available. Maintenance as well as repairs fall under this exemption. Compensatory economic damages means restoration and replacement value, stumpage value, production value, or lost profit of residential, recreational, or commercial trees. However, if the damage is caused to natural vegetation, the compensatory economic damages are limited to stumpage value only. Natural vegetation is any tree indigenous to the area that grew naturally and was not planted for aesthetic or commercial purposes.

When trees, timber, or shrubs damage or threaten imminent damage to the utility facility, a utility is immune from liability for cutting or removing them if the utility soon thereafter makes a reasonable effort to notify the property owner or resident and secure agreement regarding the disposal of the cut trees, timber, or shrubs. When trees, timber, or shrubs encroach on utility facilities, the utility is immune from liability for cutting or removing them if the utility first makes a reasonable effort to notify and secure agreement from the property owner or resident regarding the removal and disposal of the trees, timber, or shrubs.

A utility facility includes any property or easement controlled by an electric, water, or sewer utility, natural gas, or telecommunications company, for the purposes of manufacturing, transmitting, distributing, selling or furnishing electricity, water, sewer, natural gas, or telecommunications services.

EFFECT OF SENATE AMENDMENT(S): The Senate amendment removes House language that would have exempted a utility from treble damages, and would have instead awarded single compensatory damages, when the utility takes trees or timber from another's property to repair or maintain utility property. When damages are awarded for natural vegetation they are limited to stumpage value only, and in no event are utilities liable for emotional distress damages.

However, the Senate amendment keeps provisions that immunize a utility from liability for cutting or removing vegetation when the utility provides notice and/or secures agreement from the property owner or resident in certain circumstances. When a utility cuts or removes vegetation that *damages* utility facilities, it must make a reasonable

effort as soon as practical to notify and secure agreement regarding the disposal of the vegetation. When a utility cuts or removes vegetation that poses an *imminent threat to damage* facilities, it must make a reasonable effort to notify and secure agreement regarding the cutting or removing and disposal of the vegetation. When vegetation *encroaches* on utility facilities, the utility must secure an agreement regarding the cutting or removing and disposal of the vegetation.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: This bill resolves the confusion about the appropriate amount of damages that should be awarded for vegetation removed by utilities. The bill will give utilities a leg up by removing or reducing liability when utilities must cut or remove neighboring vegetation in order to maintain or repair utility lands and easements.

Testimony Against: None.

Testified: Collins Sprague, Washington Water Power (pro); Aaron Jones, Washington Rural Electric Co-op Association (pro); and Tim Boyd, Washington Forest Protection Association (pro).