

HOUSE BILL ANALYSIS

HB 2941

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: Representatives Sheahan, Kessler, Crouse, Lantz and Bush.

HOUSE COMMITTEE ON LAW & JUSTICE

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 trespasses on or damages 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 by 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 a utility cuts or removes any trees, timber, or shrubs that trespass onto or damage utility facilities, that utility is immune from liability.

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

Fiscal Note: Not requested.

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

Office of Program Research