

# SENATE BILL REPORT

## SHB 2941

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As of February 23, 1998

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

**Brief History:**

**Committee Activity:** Energy & Utilities: 2/24/98.

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### SENATE COMMITTEE ON ENERGY & UTILITIES

**Staff:** Andrea McNamara (786-7483)

**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 seeking statutory or common law remedies, or both. Statutory remedies include compensatory damages and may include punitive (treble) damages under certain circumstances.

Treble damages are only available when the trespass is "willful." Current law identifies three mitigating circumstances when treble damages are not available: (1) when the trespass was "casual or involuntary;" (2) when it was based on a mistaken belief of ownership of the land; or (3) when the tree or timber is removed from open woodlands in order to repair any public highway or bridge on adjoining land. Under these circumstances, the remedy for the timber trespass is for single, compensatory damages. Courts have measured such damages in various ways depending on the type of vegetation affected, including stumpage value, production value, lost profits, and restoration/replacement value.

In August 1997, the Washington Supreme Court affirmed a decision by the Court of Appeals holding that, in addition to treble damages, common law damages for emotional distress may also be awarded for intentional interference with property interests such as trees and vegetation. *Birchler v. Castello Land Co., Inc.*, 133 Wn.2d 106 (1997).

**Summary of Bill:** The Legislature makes a number of findings and declarations, including: utilities have a dual interest in protecting their facilities and preserving service continuity and reliability; removal of vegetation from adjacent properties is often done to maintain service and protect the public; utilities should not be liable for treble and emotional distress damages when they remove vegetation to protect their facilities; and utilities should be immune from liability for removing vegetation that has encroached upon or damaged utility facilities.

An additional mitigating circumstance is created where a trespasser would be exempt from treble damages: when one removes trees or timber from another's property to repair or

maintain a utility facility. In such cases, only single compensatory economic damages are available.

Compensatory economic damages are defined as restoration and replacement value, stumpage value, production value, or lost profit of residential, recreational, or commercial trees.

When damage is caused to natural vegetation, compensatory economic damages are limited to stumpage value only. Natural vegetation is defined as any tree indigenous to the area that grew naturally and was not planted for aesthetic or commercial purposes.

Immunity is granted to utilities for cutting or removing trees, timber, or shrubs under two circumstances: (1) When the vegetation damages or threaten imminent damage to a utility facility and the utility makes a reasonable effort as soon as practicable to notify the property owner or resident and secure agreement regarding the disposal of the vegetation that has been cut by the utility; and (2) when the vegetation encroaches on utility facilities and 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 definition of utility facility is added. It includes equipment, property, easements, and routes used, operated, owned or 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.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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