
SUBSTITUTE HOUSE BILL 2941

State of Washington

55th Legislature

1998 Regular Session

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

Read first time 02/05/98. Referred to Committee on .

1 AN ACT Relating to limiting the liability of utilities for efforts
2 undertaken to protect their facilities from adjacent vegetation;
3 amending RCW 64.12.040; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** (1) The legislature finds:

6 (a) Utilities that provide service for the public necessity and
7 convenience, particularly electric, water, and sewer utilities,
8 maintain facilities in rights of way and where easements, both acquired
9 and implied, exist;

10 (b) Vegetation growth on state lands and private properties
11 adjacent to utility facilities can cause damage to utility facilities
12 and pose public safety concerns where such vegetation grows or falls
13 into these facilities;

14 (c) When vegetation from adjacent land or property causes damage to
15 utility facilities, utility service to customers might be disrupted,
16 collateral damage might occur to other properties, and the general
17 public might be placed in imminent danger;

1 (d) In *Sherrell v. Selfors*, 73 Wn. App. 596 (1994), the court
2 delineated appropriate and specific damages to be awarded for damages
3 to different forms of trees, timber, and shrubs; and

4 (e) In *Birchler v. Castello Land Co.*, 81 Wn. App. 603 (1996), the
5 court awarded damages for emotional distress for a violation of RCW
6 64.12.030, the timber trespass statute.

7 (2) The legislature declares:

8 (a) Utilities have a dual interest in protecting their facilities
9 from potential damages caused by vegetation on adjacent lands or
10 properties and preserving service continuity and reliability for the
11 customer;

12 (b) The cutting or removal of trees, timber, and shrubs by a
13 utility from adjacent lands or properties is often done to protect the
14 utility's facilities, to maintain service continuity and reliability,
15 and to protect the general public, not for commercial or profit-
16 motivated purposes;

17 (c) Utilities should not be liable for treble damages and special
18 damages for emotional distress when the utility removes or cuts
19 vegetation in order to protect their facilities and maintain service
20 reliability;

21 (d) Utilities should be immune from liability for cutting or
22 removing from adjacent lands or properties vegetation that has
23 encroached upon or damaged utility facilities; and

24 (e) Allowable damages as set forth in *Sherrell v. Selfors* should be
25 codified.

26 **Sec. 2.** RCW 64.12.040 and Code 1881 s 603 are each amended to read
27 as follows:

28 (1) If upon trial of such action it shall appear that the trespass
29 was casual or involuntary, or that the defendant had probable cause to
30 believe that the land on which such trespass was committed was his or
31 her own, or that of the person in whose service or by whose direction
32 the act was done, or that such tree or timber was taken from uninclosed
33 woodlands, for the purpose of repairing or maintaining any public
34 highway, utility facility, or bridge upon the land or adjoining it,
35 judgment shall only be given for single compensatory economic damages.

36 (2) A utility is immune from any liability under RCW 64.12.030 and
37 this section when it:

1 (a) Cuts or removes any trees, timber, or shrubs that have damaged
2 or pose an imminent threat to damage utility facilities and the utility
3 makes a reasonable effort as soon as practicable to notify and secure
4 agreement from an adjacent land or property owner of record, or the
5 resident of the property, with respect to the disposal of any trees,
6 timber, or shrubs that have been cut or removed by the utility; or

7 (b) Cuts or removes any trees, timber, or shrubs that have
8 encroached upon utility facilities after making a reasonable effort to
9 notify and secure agreement from an adjacent land or property owner of
10 record, or the resident of the property, with respect to the removal
11 and disposal of any trees, timber, or shrubs located on land or
12 property adjacent to utility facilities.

13 (3) For the purposes of this section:

14 (a)(i) "Compensatory economic damages" means restoration and
15 replacement value, stumpage value, production value, or lost profit, as
16 appropriate and applicable to residential and recreational property,
17 commercial timber, commercial productive fruit trees, or Christmas
18 trees intended to be sold at market unless the damage is caused to
19 natural vegetation.

20 (ii) Compensatory economic damages allowable for natural vegetation
21 loss are stumpage value only;

22 (b) "Natural vegetation" means a tree indigenous to the area in
23 which it has grown and is of such age and condition that it can be
24 reasonably determined to have grown naturally in its present location
25 and it was not planted for the purposes of residential aesthetics, or
26 commercial, production, or retail sale; and

27 (c) "Utility facility" means lines, conduits, ducts, poles, wires,
28 pipes, conductors, cables, cross-arms, receivers, transmitters,
29 transformers, instruments, machines, appliances, instrumentalities, and
30 all devices, real estate, easements, apparatus, property, and routes
31 used, operated, owned, or controlled by an electric, water, or sewer
32 utility, natural gas, or telecommunications company, for the purposes
33 of manufacturing, transmitting, distributing, selling, or furnishing
34 electricity, water, sewer, natural gas, or telecommunications services.

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