

# FINAL BILL REPORT

## SSB 5154

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Synopsis as Enacted

**Brief Description:** Limiting the liability of electric utilities.

**Sponsors:** Senate Committee on Judiciary (originally sponsored by Senators Hargrove, McCaslin, Goings and Heavey).

**Senate Committee on Judiciary**

**House Committee on Judiciary**

**Background:** Currently, property owners may bring an action seeking damages when an electric utility worker trespasses on their land and injures or removes trees, timber or shrubs. Triple damages may be awarded if the trespass is willful.— There are three mitigating circumstances when triple damages are not available: (1) when the trespass was casual or involuntary;— (2) when the trespass was based upon a mistaken belief of ownership of the land; or (3) when the vegetation is removed from open woodlands in order to repair any public highway or bridge on adjoining land. Under those three circumstances, the remedy for the trespass is single or compensatory damages. Damages are measured in various ways depending upon the type of vegetation affected, including stumpage value, production value, lost profits, and restoration/replacement value.

Electric utilities are also liable for damages for emotional distress for intentional interference with property interests, such as trees and other vegetation. *Birchler v. Castello Land Co., Inc.*, 133 Wn.2d 106 (1997).

Electric utilities are concerned about increasing liability when their workers go onto private land to remove or trim vegetation that poses an imminent hazard or potential threat to disrupt electrical service to the public.

**Summary:** Electric utilities are granted immunity from liability for damages, including damages for emotional distress, when their workers cut or remove vegetation that has come in contact with or damaged electric facilities or that poses an imminent hazard or potential threat to damage their facilities.

An imminent hazard occurs when there is a threat to the public health or safety. A potential threat occurs when the vegetation can be reasonably expected to damage electric facilities. Certified arborists or qualified foresters determine whether the vegetation is an imminent hazard or potential threat.

In case of an imminent hazard, the utility must make a reasonable effort to notify and obtain agreement from the property owner or the resident of the property before cutting or trimming vegetation. Notice may be provided by posting a flyer on the property.

Where there is a potential threat, the utility must notify the property owner and, if there is no response within two weeks, the utility may obtain agreement for cutting or trimming the vegetation from the resident of the property. The notice must contain a statement on the need for the work, a good faith estimate of the time frame for the work, and how to contact the utility.

A technical correction is made that merges a separate short subsection into another sentence.

**Votes on Final Passage:**

Senate	42	4	
House	94	1	(House amended)
Senate	41	1	(Senate concurred)

**Effective:** July 25, 1999