

## **Alaska Electric Utility Liability Bill (House Bill 29)**

*"An Act relating to liability of an electric utility for contact between vegetation and the utility's facilities; and relating to vegetation management plans."*

### **General Information**

#### **Overview – what the bill does:**

This legislation helps ensure that electric utilities are protected from lawsuits over wildfires they cannot reasonably control. It also defines liability for utilities that adopt vegetation management plans and follow those plans. Utilities that approve and follow a plan will only be liable for damages if they do not adhere to their plans.

The risk of wildfire liability is increasing: more vegetation growth from climate change, longer growing seasons, higher concentrations of CO<sub>2</sub> in the air, and invasive insects (such as spruce bark beetles). These factors increase the likelihood of wildfires and the liability risk to electric utilities. This bill is intended to rectify this situation.

#### **Why this legislation is needed:**

Legal liability for wildfires caused by vegetation contacting electric lines poses a serious threat to Alaska's electric utilities and their ratepayers. Without the reforms in this bill, Alaska ratepayers could face higher utility costs from litigation related to damage caused by vegetation outside a utility's control.

Vegetation wildfire liability risk arises from two primary causes: (1) wildfires caused by vegetation outside a utility easement; and (2) wildfires caused by vegetation growing within the easement. The current statutory and legal regime creates a Catch-22 situation, whereby the electric utilities can be held liable for wildfires caused by vegetation outside utility easements but could also face liability for removing vegetation outside their easements. Similarly, even utilities that have vegetation management plans for their easements and follow those plans can still be held liable for wildfires.

Electric utilities are prohibited from entering adjacent property without the consent of the property owner but can be subjected to costly litigation if that vegetation causes a wildfire. Even for vegetation located within a utility easement, it is impractical to require electric utilities to eliminate all wildfire hazards. Moreover, wildfire hazards can exist even if the electric utility is following a properly designed vegetation management plan.

It is unreasonable for Alaska electric utilities to have to defend against lawsuits for wildfires caused by vegetation from outside their easements and rights of way. Utilities are at the mercy of landowners if utilities want to trim or remove such trees or vegetation. In those cases, electric utilities would be liable for trespass and treble damages if they altered vegetation without a landowner's permission.

In Alaska, we are beginning to see litigation over vegetation contacting electric lines. In 2015, a spruce tree located beyond the boundary of the utility easement fell and struck an

electric cooperative's distribution line, resulting in a wildfire. Property owners damaged by the fire filed a lawsuit claiming the electric cooperative was responsible for the fire. The result was that the electric utility was required to engage in the costly defense of a lawsuit for failing to remove a tree that was on land it could not legally access. The case eventually settled.

Without the reforms in this legislation, electric utilities would be required to look at other options that are prohibitively expensive to consumers or would result in undue damage to the environment and wildlife. Burying electric lines is extremely costly. Alternatively, acquiring easements wide enough to eliminate the possibility of vegetation ever contacting electric lines presents other issues. Such easements would be much wider and would result in significant costs as well as impacts on the environment, wildlife and the property rights of landowners.

**What the bill does not do:**

Liability is not eliminated from utilities – they will still be liable if they are found to have failed to follow their own vegetation management plans. This bill simply better defines when damages are applicable and sets up a clear expectation that utilities will develop and follow vegetation management plans or face liability.

**After the legislation is approved:**

Utilities would not be liable for a fire caused by a tree outside its easement contacting electric facilities. For vegetation inside an easement, a utility would only be liable for a wildfire if the utility did not adhere to its vegetation management plan.

**Frequently Asked Questions:**

***What should I do if I am concerned about a tree contacting a powerline?***

If you see vegetation that appears to be hazardous and may contact electrical equipment, notify your local electric utility as soon as possible so it can assess the situation. Most electric utilities have danger tree programs where customers can report safety issues and utilities can address them. A danger tree is a structurally unsound tree, located on or off the right-of-way, that could come into contact with power lines, equipment or facilities by growing, falling or swaying into energized lines.

***Does this bill give immunity for electric utilities?***

This bill does not give immunity to electric utilities. Instead, it sets up clear rules ahead of time for liability. All of us in business understand the need to know the rules of the game. Instead of a jury deciding those rules after the fact, we are letting each local community utility establish them on the front end knowing that they will be held to these standards. Alaska's utilities are almost all owned by citizens through customer-owned cooperatives or through their municipality. The risk of angry customers and the costs of replacing electric facilities gives utilities strong incentives to manage vegetation carefully.

***Does this legislation shift responsibility from electric utilities to customers?***

Electric utilities are responsible for following their vegetation management plans that include procedures by which they manage vegetation to protect the reliability and safety of their electric facilities. Customers should maintain their own property and promptly notify the electric utility of any vegetation they believe has the potential to come in contact with electrical facilities. Customers are responsible for keeping easements clear of personal vehicles, personal equipment and animals. They are requested to provide safe access to the easement and to keep children stay away from clearing activity for their safety and that of the crews.

***Who pays to repair property if the utility is not liable for damages when a tree hits a power line and causes a fire?***

It is important to remember that a utility can still be liable for damage when a tree hits a powerline and causes a fire. Protection is only available for utilities when the tree is (1) on utility property and the utility followed its vegetation management plan, or (2) outside the utility's property and the utility did not cause the tree to contact the line. Property owners are generally responsible for repairing damage to their property and to the property of others if they or their property are the cause of that damage. In some circumstances, owners of property with hazardous trees may be held liable for damages caused to others by their allowing that risk to continue. Property owners are already responsible for protecting themselves from all kinds of risks, including not just fires but earthquakes, flooding, theft, etc. Most property owners carry insurance to protect against these kinds of risks.