

Alaska State Legislature
House Committee on Energy

January 25, 2024

Submitted electronically to: House.Energy@akleg.gov

RE: HB 227, Electric Utility Liability - NAMIC's Written Testimony in Opposition

Dear Representative Rauscher, Chair; and honorable committee members:

Thank you for affording the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to the House Committee on Energy for the public hearing on HB 227.

NAMIC is the largest property/casualty insurance trade association in the country, with more than 1,400 member companies representing 40 percent of the total market. NAMIC supports regional and local mutual insurance companies on main streets across America and many of the country's largest national insurers. NAMIC member companies serve more than 170 million policyholders and write nearly \$225 billion in annual premiums.

NAMIC and its members share the bill sponsor's and the electric utilities companies' concerns about the financial challenges and implications of wildfires to citizens and businesses in the State of Alaska. We live in an unprecedented era where major wildfires take innocent lives and burn homes. These epic wildfires can destroy entire communities as we have witnessed in recent years in Paradise, California and Maui, Hawaii. Fire experts agree that wildfire prevention, risk mitigation, and fuel source reduction should be the primary focus of policymakers. Collaboration with electric utilities is essential because of the wildfire risk their operation and maintenance can have for society. Consequently, NAMIC is opposed to HB 227, because it does not accomplish any of these important public policy objectives and, arguably, adds to the problem.

Specifically, NAMIC is concerned with the proposed legislation for the following reasons:

1) HB 227 is not a consumer safety, risk mitigation and prevention bill – it is a liability immunity and business cost-savings bill for the benefit of a single business industry (electrical utilities)

Although NAMIC appreciates the legitimate financial concerns of the electrical utilities, especially the rural and cooperative electrical utilities, we are opposed to granting broad liability immunity during a time when heightened legal responsibility needs to be undertaken by all to deal with this serious threat to life and property. Electrical utilities by their very nature and operation must be a proactive partner in the effort to prevent wildfires and promote the general welfare and safety of citizens of this state. Providing them with a broad liability immunity does not promote risk mitigation vigilance. It is an inescapable reality of life and human nature, that people and businesses are most engaged in preventing a risk from happening when they

have “skin in the game” and legal liability exposure is a motivating force that needs to remain for the benefit of the general welfare. Granting electrical utilities a broad immunity for vegetation overgrowth and risk hazards that are not within their easement may seem like a good thing to do for THEM, but is it not good for SOCIETY.

Location of the vegetation (whether it is located within or outside of the utilities’ easement) should not be the gravamen of the legal liability issue – *negligent risk mitigation and prevention* by the electrical utility and the parties to the legal action should be the gravamen of the legal liability issue. Location of the vegetation hazard is merely a single factual variable to be evaluated by the trier of fact.

For example, electrical utility “x” fails to properly maintain their utility pole in an area leaving it precariously standing, a tree from outside the electrical utility’s easement gets weighted down with snow and falls. The falling tree comes into contact with the utility pole causing it to fall and start a fire. If the utility pole wouldn’t have fallen had it been properly maintained by the utility company, why should the electrical utility receive liability immunity just because the vegetation that started the event was outside the electrical utility’s easement?

2) HB 227 is unnecessary in light of current state law and is likely to create new legal ambiguity and litigation

Alaska’s Legislature and judicial system have a long history of working with the current comparative negligence law, that basically says – if you failed to act as a reasonably prudent party under the circumstances, you have comparative liability for the reasonably foreseeable damages that are the direct and proximate cause of your negligence.

This law is clear in its pronouncement and there is a wealth of case law on point. Now, fact patterns are always changing (whoever thought of beetle-kill forests 20 years ago?) but applying the facts of the specific case to the law is exactly what the judicial system is setup to do and has expertise in handling. There is no evidence that the courts and trier of fact are incapable of applying the negligence law to new and different fact patterns.

The proponents of the bill believe that the broad immunity language will help clarify when they are not liable. This contention is yet to be proven because a court could rule that application of the immunity in a particular case is void as against public policy, or that the electrical utility acted in a way where they are legally estopped from asserting the defense of immunity, or that the utility caused the vegetation to come in contact with the utilities equipment thereby causing the fire. Whether this proposed immunity will in fact add clarity to the law is unclear, but what is clear is that the proposed immunity will add a new complex issue for legal challenge and for the courts to have to rule upon. This could result in greater costs and delays for litigants and injured parties.

If the electrical utilities really want clarity as to their legal liability exposure, adoption of a vegetation mitigation and management plan would be far more valuable as a public policy tool and would provide the utilities, citizens, and the judicial system with greater clarity as to what an electrical utility must do vegetation risk management-wise to be in compliance with their legal duty of care.

It is interesting to note that this bill fails to clarify *what legal duty of care the electrical utility has* regarding vegetation reduction and risk mitigation, and only focuses upon *what legal immunity the electrical utility would get*. How does this bill meaningfully add clarity to the legal analysis of wildfire liability? How does this bill help educate and protect citizens of the state?

3) The proposed legislation is really nothing more than a “cost-shifting” of liability from electrical utilities to homeowner, citizens, and other businesses in the state.

The electrical utilities testified at the “invitation only” hearing on the bill that HB 227 will help them, and their cooperative customers, save money on legal liability exposure and defense costs. This may or may not be true. Even if it is an established point, what about the cost-shifting burden implications of passing on this liability exposure and the related legal costs to homeowners, businesses, property and casualty insurers, local communities, and the state and federal government?

Why is it a better public policy to shift this cost onto others in society, who will also have to pass on the legal liability and defense costs onto their policyholders, business customers, and tax-paying constituents? And what about innocent homeowners and cabin owners who may not have any property insurance coverage, how does this bill benefit and protect them from the economic harm of having their home destroyed and a legally at-fault electrical utility asserting the HB 227 liability immunity defense?

4) HB 227 is inconsistent with the public policy national trend of requiring greater responsibility for wildfire risk mitigation and prevention, and in enumerating clear guidelines for vegetation management.

There are bills pending around the nation seeking to clearly set-forth vegetation risk mitigation and management requirements for electrical utilities. NAMIC not aware of any pending legislation that would just grant an electrical utility a broad liability immunity without proof that the public utility is fully in compliance with a comprehensive, fire-science-based set of vegetation mitigation and management standards. The 2021 bill that was offered by the electrical utilities, at least, imposed a vegetation risk mitigation and management requirement on the electrical utilities.

HB 227 is a serious step backward public policy-wise from the 2021 bill and is inconsistent with the public policy perspective across the nation *that more ... not less* should be done to address wildfire risk prevention and mitigation. NAMIC believes that risk mitigation and prevention, not liability immunization should be the focus of policymakers.

For the aforementioned reasons, NAMIC respectfully requests that the members of the House Committee on Energy **VOTE NO on HB 227** and offers its time and resources to assist in further discussion of this project.

Thank you for your time and consideration. Please feel free to contact me at 303.907.0587 or at crataj@namic.org, if you would like to discuss NAMIC’s written testimony.

Respectfully,



Christian John Rataj, Esq.
NAMIC Senior Regional Vice President
State Government Affairs, Western Region

*Section 1. AS 09.65 is amended by adding a new section to read:

Sec. 09.65.086. Civil liability of electric utility for fires from contact between vegetation and utility facilities.

(a) A utility offering electrical service to the public for compensation under a certificate of public convenience and necessity issued by the former Alaska Public Utilities Commission or the Regulatory Commission of Alaska under AS 42.05.221 may not be held liable for property damage, death, or personal injury resulting from fires caused by contact between vegetation and the utility's facilities if

(1) the vegetation was located entirely outside the boundaries of the utility's real property, lease, permit, easement, or right-of-way and the utility did not cause caused the vegetation to enter the boundaries of the utility's real property, lease, permit, easement, or right-of-way, or come into contact with any portion of the utility's facilities, and

(2) at the time of the fire, the electric utility was in compliance with a wildland protection plan filed with and approved by the Regulatory Commission of Alaska pursuant to AS 42.05.XXX.

(b) If an electric utility identifies vegetation along but outside of its real property, lease, permit, easement, or right-of-way that poses a particular hazard as defined in the electric utility's filed and approved wildland protection plan, it may enter onto the property and perform vegetation management pursuant to the wildland protection plan. The electric utility may not be held liable for trespass as long as its actions are limited to those necessary to comply with the wildland protection plan.

(c) Nothing in this section shall shield a utility from liability for property damage, death, or personal injury caused by a utility's negligence in maintaining the utility's real property, lease, permit, easement, or right of way and the utility's facilities thereon.

***Sec. 2. 42.05.XXX. Wildland fire protection plan for an electric utility.**

(a) The commission shall make rules to implement this section, including:

(1) Rules establishing procedures for the review and approval of a wildland fire protection plan;

(2) Rules establishing the procedures for the review and approval of annual expenditures for the implementation of a wildland fire protection plan; and

(3) Any other rules that the commission determines are necessary to protect the public interest and implement this section.

(b) An electric utility shall prepare a wildland fire protection plan in accordance the requirements of this section. The plan must include:

(1) a description of areas within the service territory of the qualified utility that may be subject to a heightened risk of wildland fire;

(2) a description of the procedures, standards, and time frames that the qualified utility will use to inspect and operate its infrastructure;

(3) a description of the procedures and standards that the qualified utility will use to perform vegetation management. Such procedures and standards must be compliant with the ANSI A300 Integrated Vegetation Management Standard – Part 7, or a similar standard;

(4) a description of proposed modifications or upgrades to facilities and preventative programs that the qualified utility will implement to reduce the risk of its electric facilities initiating a wildland fire;

(5) a description of procedures for de-energizing power lines and disabling reclosers to mitigate potential wildland fires taking into consideration:

(A) the ability of the qualified utility to reasonably access the proposed power line to be de-energized;

(B) the balance of the risk of wildland fire with the need for continued supply of electricity to a community; and

(C) any potential impact to public safety, first responders, and health and communication infrastructure;

(6) a description of the procedures the qualified utility intends to use to restore its electrical system in the event of a wildland fire;

(7) a description of the costs for the implementation of the plan, including system improvements and upgrades;

(8) a description of community outreach and public awareness efforts before and during a wildland fire season; and

(9) a description of potential participation, if applicable, with state or local wildland fire protection plans.

(c) An electric utility shall submit the wildland fire protection plan described in this section to the commission:

(1) on or before October 1, 2021; and

(2) on or before October 1 of every third year after calendar year 2020.

(d) The commission shall:

(1) review the plan submitted pursuant to this section; and

(2) consider input from:

(A) the State Division of Forestry established in in Section 47.17.020

(B) any other appropriate federal, state, or local entity that chooses to provide input; and

(C) other interested persons who choose to provide input.

(e) The commission shall approve a wildland fire protection plan submitted pursuant to this section if the plan:

(1) is reasonable and in the public interest; and

(2) appropriately balances the costs of implementing the plan with the risk of a potential wildland fire.

(f) No later than October 1, 2021, and each year after 2021, a qualified utility shall submit to the commission a report detailing the qualified utility's compliance with the electric utility's wildland fire protection plan.

The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. This Act applies to civil lawsuits against electric utilities filed on or after the effective date of this Act.

HOUSE BILL NO. 227

**IN THE LEGISLATURE OF THE STATE OF ALASKA
THIRTY-THIRD LEGISLATURE - SECOND SESSION**

BY REPRESENTATIVE RAUSCHER

Introduced: 1/16/24

Referred: House Special Committee on Energy, Judiciary

A BILL

FOR AN ACT ENTITLED

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

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 *** Section 1. AS 09.65 is amended by adding a new section to read:**

5 **Sec. 09.65.086. Civil liability of electric utility for contact between**
6 **vegetation and utility facilities.** (a) Except as provided in (c) of this section, a utility
7 offering electrical service to the public for compensation under a certificate of public
8 convenience and necessity issued by the former Alaska Public Utilities Commission or
9 the Regulatory Commission of Alaska under AS 42.05.221 may not be held liable for
10 costs, property damage, death, or personal injury resulting from contact between
11 vegetation and the utility's facilities if the vegetation is located or originated outside
12 the boundaries of the utility's real property, lease, permit, easement, or right-of-way.

13 (b) A utility is not liable for cutting, girdling, or otherwise injuring or
14 removing vegetation if a part of the trunk of the vegetation is inside the boundaries of

1 the utility's real property, lease, permit, easement, or right-of-way.

2 (c) This section does not preclude civil liability if a utility causes vegetation to
3 contact the utility's facilities.

4 (d) In this section, "utility" includes a person cutting, girdling, or otherwise
5 injuring or removing vegetation who is under contract for or acting under the authority
6 of a utility.

7 * Sec. 2. The uncodified law of the State of Alaska is amended by adding a new section to
8 read:

9 **APPLICABILITY.** This Act applies to civil lawsuits against electric utilities filed on
10 or after the effective date of this Act.