

ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE

March 9, 2020

3:30 p.m.

MEMBERS PRESENT

Senator John Coghill, Vice Chair
Senator Click Bishop
Senator Cathy Giessel
Senator Joshua Revak
Senator Scott Kawasaki
Senator Jesse Kiehl

MEMBERS ABSENT

Senator Peter Micciche, Chair

COMMITTEE CALENDAR

SENATE BILL NO. 193

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

- HEARD & HELD

SENATE BILL NO. 189

"An Act relating to the fish and game fund; establishing the sport fishing enhancement surcharge; relating to the repeal of the sport fishing facility surcharge; providing for an effective date by amending the effective date of sec. 21, ch. 18, SLA 2016; and providing for an effective date."

- BILL HEARING CANCELED

PREVIOUS COMMITTEE ACTION

BILL: SB 193

SHORT TITLE: ELECTRIC UTILITY LIABILITY

SPONSOR(S): SENATOR(S) COGHILL

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| 02/14/20 | (S) | READ THE FIRST TIME - REFERRALS |
| 02/14/20 | (S) | RES |

WITNESS REGISTER

CHRISTIAN ENGLISH, Intern
Senator John Coghill
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided an overview of SB 193.

RYNNIEVA MOSS, Staff
Senator John Coghill
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided a sectional analysis and answered questions regarding SB 193.

TRAVIS MILLION, Chief Executive Officer
Copper Valley Electric Association
Glennallen, Alaska

POSITION STATEMENT: Testified in support of SB 193.

MICHAEL ROVITO, Deputy Director
Alaska Power Association
Palmer, Alaska

POSITION STATEMENT: Testified in support of SB 193.

JOHN LEMAN, General Counsel
Alaska Power Association
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 193.

ACTION NARRATIVE

3:30:30 PM

VICE-CHAIR JOHN COGHILL called the Senate Resources Standing Committee meeting to order at 3:30 p.m. Present at the call to order were Senators Kiehl, Bishop, Revak, Giessel, and Vice-Chair Coghill. Senator Kawasaki arrived shortly thereafter.

SB 193-ELECTRIC UTILITY LIABILITY

3:31:17 PM

VICE-CHAIR COGHILL announced that the only order of business would be SENATE BILL NO. 193, "An Act relating to liability of

an electric utility for contact between vegetation and the utility's facilities; and relating to vegetation management plans."

He noted that he is the sponsor of Senate Bill 193 (SB 193).

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CHRISTIAN ENGLISH, Intern, Senator John Coghill, Alaska State Legislature, Juneau, Alaska, read the following sponsor statement for SB 193:

This Senate Bill further defines the responsibility of a utility providing electrical service to the public, and the damages in which they can be held liable for.

Senate Bill 193 makes clear in statute that a utility offering electrical service to the public may not be held liable for property damage, death, or personal injury resulting from contact between vegetation and the utility's facilities, unless the vegetation is located entirely within the boundaries of the utility's right-of-way or if the utility fails to have a written vegetation management plan or fails to comply with that plan.

To specify, an electric utility is not to be held liable for damages that come about as a result of natural events moving vegetation into a facility's right-of-way. Nor is a utility to be held liable for damages caused by an unaffiliated person or party recklessly endangering a facility by causing vegetation to fall into its right-of-way.

SB 193 protects responsible electric utilities from being held liable for the cost of damages caused by vegetation that they either cannot control or are not permitted to maintain, consequently this also protects Alaska electric customers from having to bear the brunt of those costs through their rates in a state where electric utility service costs are already so high.

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SENATOR KAWASAKI joined the committee meeting.

VICE-CHAIR COGHILL asked for a sectional analysis on SB 193.

[3:34:50 PM](#)

RYNNIEVA MOSS, Staff, Senator John Coghill, Alaska State Legislature, Juneau, Alaska, noted that the language in Alaska Statute (AS) 09.65.085 regarding electrical utility liability in SB 193 is language passed in a 1997 tort reform bill sponsored by Representative Porter. The reform bill came about when the courts were looking at utilities as providing a product instead of a service. The reform bill released electrical utilities from strict liability where providing a product meant utilities were at fault no matter what. The strict liability language in the reform bill protected utilities as providers of a service rather than a product.

MS. MOSS detailed that section 1 of the bill adds a new paragraph (2) to AS 09.65.085(a). It provides that if damage starts entirely within the right-of-way then the utility would be responsible. However, should a neighboring property drop a tree, for instance, on a line and start a fire, that would be the responsibility of the property owner who owned the tree that fell into the right-of-way.

She said section 1 also includes caveats to [AS 09.65.085(a)(2)] in subparagraphs (A) and (B) that hold the utility responsible if it does not write a vegetation management plan or comply to the plan.

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VICE-CHAIR COGHILL asked about section 2 in the bill.

MS. MOSS explained that section 2 adds "written vegetation management plan or policy" [in new subsection (c) to AS 09.65.085].

VICE-CHAIR COGHILL added that the written vegetation plan is a requirement.

MS. MOSS answered yes.

VICE-CHAIR COGHILL noted that the requirement for a written plan, that matches this liability, has not been in statute until now.

MS. MOSS pointed out that the bill still has language from the 1997 reform bill that a utility is not precluded from liability for civil damages that are the result of intentional, reckless, or negligent acts or omissions, [AS 09.65.085(b)].

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VICE-CHAIR COGHILL opened public testimony.

He said the utilities probably will want to speak to SB 193. He explained that based on the recent fires in California, the legislation addresses both utility and individual responsibility. In Alaska, trees are big enough to occasionally fall across a right-of-way into powerlines. The bill addresses responsibility questions based on a vegetation management plan and landowners who have trees along right-of-ways.

SENATOR KIEHL asked what needs to be in a vegetation management plan.

MS. MOSS replied each utility has a vegetation management plan. In Fairbanks, Golden Valley Electric Association (GVEA) has a monthly clearing schedule in its management plan for property owner areas and powerline rights-of-way.

She noted that GVEA removed cottonwood trees on her property that could have fallen on powerlines. Property owners that do not allow utilities to remove trees that are in danger of falling into a right-of-way is an issue. Utilities have no right to cut down a tree that is not in their right-of-way.

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TRAVIS MILLION, Chief Executive Officer, Copper Valley Electric Association, Glennallen, Alaska, testified in support of SB 193. He noted that the right-of-way management plan that Copper Valley Electric Association (CVEA) has specifically calls out time frames to maintain its rights-of-way.

He detailed that CVEA separates its management plan for transmission lines into northern and southern districts. Valdez, located in the southern district, gets more rain and requires right-of-way maintenance every 5 to 7 years, whereas the northern district requires right-of-way maintenance every 7 to 10 years. Distribution lines right-of-way maintenance is based on growth patterns and rotates from 5 to 10 years.

SENATOR BISHOP asked what CVEA's clearing limits are.

MR. MILLION answered that clearing limits are based on whether the lines are distribution or transmission but about 95 percent of CVEA's distribution lines have a 30-foot right-of-way which means 15 feet from the pole on either side. Transmission lines

have a 100-foot right-of-way, so 50 feet from the center line outwards on either side.

VICE-CHAIR COGHILL offered his understanding that any tree that is over 60 feet could be an issue if it is on the edge of the right-of-way.

MR. MILLION answered correct.

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VICE-CHAIR COGHILL noted that having trees over 60-feet tall near the right-of-way is not uncommon.

He asked Mr. Million to provide his testimony specifically on SB 193.

MR. MILLION detailed that CVEA is an electrically isolated electric cooperative serving 3,800 members in Interior Alaska. CVEA, which is headquartered in Glennallen, serves a large service area that encompasses Valdez to the south, 160 miles north of Valdez, and 100 miles east and west of Valdez.

He said SB 193 will clarify in statute that holding an electric utility liable for property damage, death, or personal injury resulting from the contact of vegetation outside of a utility's right-of-way and utility infrastructure may not occur. The legislation protects ratepayers which in most cases in Alaska are the member-owners of the electric cooperative or citizens of the municipality.

MR. MILLION noted that even prior to the news of the California wildfires, CVEA has been very aggressive over the last five years to reestablish and maintain the utility's rights-of-way. Not only is it CVEA's responsibility as the stewards of the utility rights-of-way, it is also the right thing to do.

He said maintaining rights-of-way in Alaska can be very difficult work. In places like Southeast and even in Valdez, the trees and vegetation grow back quickly. CVEA's vegetation management plan describes the clearing width of rights-of-way for both distribution and transmission assets. The methods used to clear rights-of-way include both hand clearing and the use of mechanical equipment such as Fecon mowers and vertical clearing machines. CVEA also reviews the rotation and frequency for clearing feeder lines in any given year. CVEA maintains a 100-foot-wide clearing for its 106-mile-long transmission line from Glennallen to Valdez that runs through some of the most rugged

terrain in Alaska. CVEA reestablished nearly the entire length of the line since 2016.

MR. MILLION stated that if a tree from outside the right-of-way were to come in contact with a CVEA line and cause a fire, it does not seem right for the utility that has an established plan and is doing its due diligence to maintain its rights-of-way to be held liable for property damage caused by that tree, even if the utility does not have the legal right to remove it.

He said unlike many utilities in the Lower 48, remotely isolated utilities run the risk of having to shut down their power system if a lawsuit were to bankrupt the utility. In most cases, there is not another option to receive electrical services. Essentially, a utility liability lawsuit would ultimately hurt the member-owners, not the shareholders like a for-profit electrical utility. Without the changes to Alaska statute that SB 193 introduces, there are very few cost-effective options for the utilities to mitigate their liability risks. Again, CVEA must pass any cost burden on to its member-owners.

MR. MILLION said increasingly warm summers in the Interior brings drier conditions, increased numbers of Spruce beetle killed trees, and higher risk of wildfires. Passing SB 193 will protect the Alaska electric utilities and their member-owners.

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SENATOR KAWASAKI asked how a utility works with a property owner who has a large tree at the edge of the right-of-way.

MR. MILLION answered that CVEA handles right-of-way issues with trees on a case-by-case basis. CVEA first identifies who the property owner is and then discusses whether they would be willing to allow CVEA to remove the tree. In most cases, CVEA member-owners are willing to allow clearing. However, there are a few people who really enjoy their trees and do not want the trees cut down for any reason.

VICE-CHAIR COGHILL noted that he topped a tree near his home to avoid interfering with a powerline right-of-way.

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MICHAEL ROVITO, Deputy Director, Alaska Power Association, Palmer, Alaska, testified in support of SB 193. He noted that the Alaska Power Association (APA) is a statewide trade association representing the electric utilities in Alaska.

He said SB 193 will clarify in statute that holding an electric utility liable for property damage, death, or personal injury resulting from the contact of vegetation outside of a utility's right-of-way and utility infrastructure may not occur. SB 193 will protect Alaska's electric ratepayers from shouldering costs related to damage caused by vegetation outside of a utility's control. SB 193 also requires utilities to create and follow written vegetation management plans for the easements and rights-of-way that they do control.

MR. ROVITO explained that Alaska is largely a public-power state meaning there are no outside investors to absorb the cost of lawsuits filed against the utility. It is the ratepayers who bear the cost. SB 193 will protect ratepayers from rate increases brought on by costly litigation related to damage caused by vegetation a utility cannot control.

He reiterated that electric utilities do not have legal access to vegetation located on land located outside of the utility's right-of-way. Not having access creates a situation where trees or other vegetation outside the right-of-way, but large enough to fall inside the right-of-way and contact powerlines or other utility infrastructure, pose an uncontrollable risk. Electric utilities should not bear the burden of defending against lawsuits over wildfires or other damage caused by vegetation beyond those utilities' easements and rights-of-way. Electric utilities should have protection when they develop and carry out vegetation management plans within their easements and rights-of-way.

He said the reforms in SB 193 will protect Alaska consumers from ultimately having to pay the costs through electric rates in cases where fires begin on property not under a utility's control. Electric utilities outside of Alaska have run into serious financial difficulties in such instances, and Alaska is starting to see some litigation.

He stated that without the immediate changes made through SB 193, the only alternatives for utilities is to consider the costly options of either burying electric lines or acquiring easements to eliminate the possibility that vegetation from outside of the right-of-way ever contacts powerlines. The easement acquisition option is also environmentally and logistically unfeasible in most areas.

He concluded that as the cause of wildfires increases due to hotter and drier summers, invasive insects, and longer growing

seasons, it is imperative that SB 193 pass to protect Alaska's electric utilities and their ratepayers.

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SENATOR KIEHL noted the use of the word "entirely" in the bill regarding the base of a tree being entirely outside of the right-of-way. He asked what occurs if a tree grows and leans above the right-of-way.

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JOHN LEMAN, General Counsel, Alaska Power Association, Anchorage, Alaska, testified in support of SB 193. He conceded that trees do not generally observe the property lines so there could be a situation where a tree hangs over. He said he does not believe that Alaska law would let a utility cut down a tree that is growing from an adjacent parcel of land. An electrical utility may have the ability to do some trimming to the extent that the tree is growing into the right-of-way. However, "entirely" is in the bill because vegetation that is straddling the right-of-way boundary complicates what a utility must do in the interest of powerline protection.

SENATOR KIEHL noted that one of the things associated with the California fires was powerlines catching fire due to strong winds blowing material into them. He asked if the airborne branch is entirely within the utility right-of-way or is the base of the tree.

MR. LEMAN answered that the way the bill reads is that the airborne branch would be vegetation outside of the right-of-way. He reiterated that there is nothing the utility can do if the branch from a tree that was outside of the right-of-way blows off in a storm.

VICE-CHAIR COGHILL noted that his experience is that electrical utilities will work with homeowners, especially if they know they have a liability.

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MR. LEMAN agreed that a utility has a lot of incentive to try to keep any tree, either inside or outside the right-of-way, from contacting their powerlines. In addition to fire prevention, a utility wants to maintain system integrity, not have angry customers who do not have power, and avoid the cost of repairing powerlines in remote areas. Alaska's electric utilities are very willing to take out a tree that is over the right-of-way line if

the landowner will let them. When they are already in the area clearing the easement or right-of-way, the cost is minimal.

SENATOR KIEHL referred to the provision on page 2, line 6 that does not shield a utility from civil damages that are the result of an intentional, reckless, or negligent act. He said he doesn't believe that applies to this, but he wonders why the legislature would want to provide a shield for even an intentional or negligent act.

MR. LEMAN answered that the purpose of the bill is to preclude someone from saying that a utility was negligent if a tree outside the right-of-way caused a fire. He said he is having trouble imagining saying someone intentionally caused a fire from outside the right-of-way. The intent is to avoid the negligence argument. There have been utilities in the Lower 48 that had juries say a utility was negligent because a tree outside the right-of-way fell on the powerline. He said this is designed to protect against that.

He added that, regarding vegetation within the right-of-way itself, the question is going to be whether the utility had a written vegetation management plan and whether they substantially complied with it. That is what is going to determine liability for vegetation inside the right-of-way, he said.

He summarized that the section in the bill sets the rules of liability in a clearer way than just a common law negligence standard.

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MS. MOSS said she believes Senator Kiehl is correct; the bill is written incorrectly. As written, precluding liability applies to paragraph (A)(1) and it should preclude liability for both paragraph (A) and paragraph (B).

VICE-CHAIR COGHILL said his office will have to ask the drafter for assistance.

SENATOR BISHOP commented that the intent is to protect ratepayers from not paying for something that they are not responsible for.

VICE-CHAIR COGHILL said the intent is to draw a clean line between when the utility is responsible and liable and when the property owner is responsible and liable.

MS. MOSS suggested that homeowners make sure they understand what their liability is under their homeowner's insurance policy. She noted that most utilities carry up to \$2 million in liability insurance for right-of-way damages.

SENATOR BISHOP remarked that GVEA in Fairbanks would rather send a bucket truck and two guys to take down a tree than to send two line-trucks in the dead of winter to put in a new pole and new service.

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SENATOR GIESSEL agreed and noted that Chugach Electric Association in Anchorage would also be happy to help remove a tree.

VICE-CHAIR COGHILL remarked that the utilities have worked on vegetation management, but liability becomes a key question due to the fires in California.

MR. LEMAN offered his understanding that most homeowner insurance would cover damage to homes and businesses from wildfire.

He maintained that line 6 on page 2 is written correctly. He said he would be concerned about rewriting subsection (b) and reimposing a negligence standard for trees outside the right-of-way when the bill is trying to say there is not going to be liability in that circumstance. He added that liability for vegetation within the right-of-way is going to be determined by the vegetation management plan.

VICE-CHAIR COGHILL said the committee will look at subsection (b) again to make sure the liability ladder of responsibility is properly in context. He suggested that the legal drafter may provide an explanation.

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VICE-CHAIR COGHILL announced that public testimony will remain open for SB 193.

He commented that transmission issues in Alaska and the Lower 48 are getting tougher.

[4:01:19 PM](#)

VICE-CHAIR COGHILL held SB 193 in committee.

4:01:48 PM

There being no further business to come before the committee, Vice-Chair Coghill adjourned the Senate Resources Standing Committee meeting at 4:01 p.m.