

**ALASKA STATE LEGISLATURE  
HOUSE SPECIAL COMMITTEE ON ENERGY**

January 25, 2024

10:15 a.m.

**MEMBERS PRESENT**

Representative George Rauscher, Chair  
Representative Tom McKay  
Representative Thomas Baker  
Representative Stanley Wright  
Representative Mike Prax  
Representative Calvin Schrage  
Representative Jennie Armstrong

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 227

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

- MOVED HB 227 OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: HB 227

SHORT TITLE: ELECTRIC UTILITY LIABILITY

SPONSOR(S): REPRESENTATIVE(S) RAUSCHER

01/16/24	(H)	PREFILE RELEASED 1/8/24
01/16/24	(H)	READ THE FIRST TIME - REFERRALS
01/16/24	(H)	ENE, JUD
01/23/24	(H)	ENE AT 10:15 AM BARNES 124
01/23/24	(H)	Heard & Held
01/23/24	(H)	MINUTE (ENE)
01/25/24	(H)	ENE AT 10:15 AM BARNES 124

**WITNESS REGISTER**

JASON CUSTER, Vice President  
Regulatory and Government Affairs  
Alaska Power and Telephone Company  
Juneau, Alaska

**POSITION STATEMENT:** Testified in support of HB 227.

CHRISTIAN RATAJ, Senior Regional Vice President  
National Association of Mutual Insurance Companies  
Fort Collins, Colorado

**POSITION STATEMENT:** Testified in opposition to HB 227.

KERIANN BAKER, Chief Strategy Officer  
Homer Electric Association  
Homer, Alaska

**POSITION STATEMENT:** Testified in support of HB 227.

ANDY LEMAN, Counsel  
Alaska Power Association  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions during the hearing on HB 227.

#### **ACTION NARRATIVE**

[10:15:28 AM](#)

**CHAIR RAUSCHER** called the House Special Committee on Energy meeting to order at 10:15 a.m. Representatives McKay, Baker, Prax, Schrage, Armstrong and Rauscher were present at the call to order. Representative Wright arrived as the meeting was in progress.

#### **HB 227-ELECTRIC UTILITY LIABILITY**

[10:17:17 AM](#)

CHAIR RAUSCHER announced that the only order of business would be HOUSE BILL NO. 227, "An Act relating to liability of an electric utility for contact between vegetation and the utility's facilities."

[10:18:05 AM](#)

CHAIR RAUSCHER opened public testimony on HB 227.

[10:18:33 AM](#)

JASON CUSTER, Vice President, Regulatory and Government Affairs, testified in support of HB 227. He said that HB 227 helps to ensure that electric utilities are not held liable for damage caused by vegetation located outside the legal right-of-way and

therefore outside a utility company's legal control. Alaska Power and Telephone dutifully maintains its right-of-way and keeps it free of vegetation. He stated that it is unreasonable to expect utility companies to be responsible for vegetation outside the right-of-way because it could significantly increase the cost to rate payers. He mentioned that the Tongass National Forest has specific rules regarding tree cutting. He said that Native corporations and Tribal entities have concerns about having trees cut down. The public would likely object to the appearance of extended clearcuts. Burying power lines is a possibility; however, it is expensive and would increase rates. In the event of a fire, the Alaska Power and Telephone Company would face challenges with disaster recovery, and if there were also liability charges on top of restoring power, the company would likely go bankrupt, there would be delays to disaster recovery, and rates would further increase.

[10:21:35 AM](#)

CHRISTIAN RATAJ, Senior Regional Vice President, National Association of Mutual Insurance Companies, testified in opposition to HB 227. He referred to written testimony [included in the committee packet] and offered to answer questions posed during the previous bill hearing. He stated that HB 227 does not have provisions about risk mitigation, prevention, or vegetation reduction and management standards. Most state legislatures are focusing on wildfire prevention. He said that HB 227 would grant broad unqualified legal liability immunity for electric utilities in certain situations. Absolute civil liability immunity grants a free pass. He noted that businesses and individuals are more responsible when they have exposure.

[10:26:24 AM](#)

REPRESENTATIVE SCHRAGE asked why vegetation outside of the right-of-way would be a problem.

[10:27:20 AM](#)

MR. RATAJ responded that generally if a utility does not have control over a hazard, then it would not be held responsible. If the utility was aware of a hazard outside of the easement, for example a tree that is precariously leaning prior to a storm, and if the homeowner is not notified, under HB 227 the utility would not be liable.

[10:29:24 AM](#)

REPRESENTATIVE PRAX asked about liability insurance for homeowners.

CHAIR RAUSCHER asked if Representative Prax sought to expand the right-of-way.

REPRESENTATIVE PRAX noted that as a property owner it is his responsibility to know the risks of trees on his property regarding their proximity to powerlines.

[10:31:16 AM](#)

KERIANN BAKER, Chief Strategy Officer, Homer Electric Association, an electric utility that maintains 1,500 miles of above-ground lines, discussed the robust vegetation management plan which involves touching every portion of the line every seven years. The right-of-way includes 10 feet on either side of the lines, and she expressed her concern that trees beyond the right-of-way are growing much higher and could blow into the line. She maintained that HB 227 does not provide blanket immunity to utilities. She described the hazard tree mitigation program, wherein a property owner can call the utility and grant permission for the utility to remove a hazardous tree. She stated that it is the responsibility of the private landowner to maintain problematic vegetation. She further expressed her support for HB 227.

[10:35:12 AM](#)

REPRESENTATIVE PRAX asked if utilities could put a notice in the billing statement that explains if tall trees grow just outside of the right-of-way, the landowner is liable should they fall within the right-of-way and cause damage or fire.

[10:36:06 AM](#)

MS. BAKER responded about annual notices and offered to provide the committee with a copy. She referred to the Homer Electric Association's webpage about hazard trees and clearing information. Homer Electric Association also advertises on the radio encouraging property owners to call if they have hazard trees. She stated that the utilities are under no obligation to police private property.

[10:37:08 AM](#)

REPRESENTATIVE PRAX asked whether customers complain when branches are removed that are hanging into the right-of-way.

MS. BAKER responded that tree cutting is unpopular and that the utility works with vendors for vegetation management and encourages vendors to buck firewood and clean up the site in a timely manner.

[10:38:17 AM](#)

CHAIR RAUSCHER, after ascertaining that no one else wished to testify, closed public testimony on HB 227.

[10:38:33 AM](#)

REPRESENTATIVE SCHRAGE asked whether someone from Legislative Legal Services was available to provide clarity about conflicting statements between testifiers.

[10:40:04 AM](#)

REPRESENTATIVE PRAX moved to adopt Amendment 1 to HB 227, labeled 33-LS0969\B.1, A. Radford, 1/24/24, which read as follows:

Page 2, lines 2 - 3:

Delete all material and insert:

"(c) This section does not preclude civil liability for property damage, death, or personal injury resulting from contact between vegetation and the utility's facilities if

(1) the vegetation was located entirely within the boundaries of the utility's real property, lease, permit, easement, or right-of-way and the utility did not have, or failed to comply with, a vegetation management plan; or

(2) the vegetation was located outside the boundaries of the utility's real property, lease, permit, easement, or right-of-way and the utility caused the vegetation to

(A) enter the boundaries of the utility's real property, lease, permit, easement, or right-of-way; and

(B) contact the utility's facilities."

Page 2, line 4, following "section,":

Insert "(1)"

Page 2, line 6, following "utility":

Insert ";

(2) "vegetation management plan" means a document that establishes a procedure by which a utility will manage vegetation to protect the reliability and safety of the utility's electric facilities"

[10:40:12 AM](#)

REPRESENTATIVE SCHRAGE objected for the purpose of discussion.

[10:40:21 AM](#)

REPRESENTATIVE PRAX said that HB 227 as it is currently drafted grants liability protection for utilities without defining what is negligible. He opined that utilities are not negligent because the rights-of-way are too narrow. He sought to fix the underlying problem and suggested that the House Judiciary Standing Committee take a closer look at the bill.

[10:41:18 AM](#)

REPRESENTATIVE RAUSCHER noted that larger rights-of-way on smaller lots could potentially be problematic for property owners.

[10:42:14 AM](#)

REPRESENTATIVE SCHRAGE asked for a description of Amendment 1.

[10:42:34 AM](#)

The committee took an at-ease from 10:42 a.m. to 10:44 a.m.

[10:44:22 AM](#)

REPRESENTATIVE SCHRAGE stated he has concerns about the impact of HB 227 and while he understands that the House Judiciary Standing Committee may be better suited to interpret the bill, he hesitates regarding moving HB 227 out of committee due to unanswered legal questions about liability.

REPRESENTATIVE RAUSCHER sought the expertise of Andy Leman.

[10:45:55 AM](#)

ANDY LEMAN, Counsel, Alaska Power Association, commented on Amendment 1 and said he had concerns with adding language regarding a vegetation management plan. He claimed he was unaware of fires in Alaska that were caused in recent years by vegetation beside a right-of-way. Utilities are already keenly aware of the need to manage vegetation in the right-of-way.

[10:47:57 AM](#)

CHAIR RAUSCHER offered Mr. Lemman the opportunity to comment on liability.

MR. LEMAN said that HB 227 would provide a clear rule that the utility is protected in the event of a fire caused by vegetation outside of the right-of-way. There is still negligence liability for utilities if the vegetation management plan is not upheld, or if poles and other equipment are neglected and cause a fire or other damage. Utilities have lots of incentives and potential legal liability to encourage the maintenance of their system and continued right-of-way management.

REPRESENTATIVE MCKAY offered his thoughts regarding the significant number of miles of rights-of-way adjacent to government land. He noted the challenges of the utility companies to force governments to maintain their vegetation adjacent to rights-of-way. He offered his support for the legislation moving to the House Judiciary Standing Committee.

[10:51:57 AM](#)

REPRESENTATIVE SCHRAGE pointed out that major fires cause losses for everyone. He suggested that a prudent, low-cost measure could be to notify homeowners of maintenance recommendations for vegetation adjacent to rights-of-way. He expressed his concerns with utility negligence.

[10:53:54 AM](#)

REPRESENTATIVE BAKER disagreed with Representative Schrage and noted that property owners may opt not to cut down their trees. He stated his support for HB 227 as it is currently written.

REPRESENTATIVE SCHRAGE agreed that the choice to remove a tree is the responsibility and legal liability of the homeowner. He clarified that if utilities are not liable per statute,

utilities may choose not to send out notifications to homeowners that would have prevented potential damage from vegetation outside the rights-of-way. He noted the cost to the state and addressed solutions to prevent wildfires. He reemphasized his concerns with HB 227.

CHAIR RAUSCHER defended HB 227 and emphasized the thousands of miles of lines that would need to be monitored by utilities. He noted that utility companies work hard to monitor and inform the public about potential hazards around powerlines.

REPRESENTATIVE SCHRAGE sought additional clarity from Legislative Legal Services. He agreed about the impracticality and expense of maintaining so many miles of power lines. He speculated that there may be legal precedent for a framework of what is reasonable for the size and maintenance of rights-of-way.

[11:00:16 AM](#)

REPRESENTATIVE ARMSTRONG said that Representative Prax' points bring up the opportunity for a more robust conversation about changing weather patterns including extreme weather events like wildfires, heavy snow, and droughts. As weather events change, she suggested collaboration among stakeholders to prevent problems like wildfires.

[11:01:26 AM](#)

REPRESENTATIVE PRAX stated that there is likely a legal foundation that could be used to determine parameters of negligence through collaboration with utilities, insurance companies, and legislators. He gave a hypothetical mathematical option for improving the size of rights-of-way.

CHAIR RAUSCHER asked whether the issues could be worked out before moving the bill to the House Judiciary Standing Committee.

REPRESENTATIVE PRAX said because of time constraints, the bill should be moved out of committee with or without Amendment 1.

[11:05:56 AM](#)

The committee took an at-ease from 11:05 a.m. to 11:06 a.m.

[11:06:28 AM](#)

CHAIR RAUSCHER asked if the objection to Amendment 1 was maintained.

REPRESENTATIVE SCHRAGE removed his objection to Amendment 1.

REPRESENTATIVE PRAX [moved to] withdraw Amendment 1. [There being no objection, Amendment 1 was withdrawn.]

REPRESENTATIVE MCKAY moved to report HB 227 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 227 was reported out of the House Special Committee on Energy.

[11:07:54 AM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Special Committee on Energy meeting was adjourned at [11:08] a.m.