

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 6, 2024

1:19 p.m.

MEMBERS PRESENT

Representative Sarah Vance, Chair
Representative Jamie Allard, Vice Chair
Representative Ben Carpenter
Representative Craig Johnson
Representative Jesse Sumner
Representative Andrew Gray
Representative Cliff Groh

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CONFIRMATION HEARING(S)

Alaska state commission for human rights

William Craig - Sitka

- CONFIRMATION(S) ADVANCED

HOUSE BILL NO. 227

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

- HEARD & HELD

HOUSE BILL NO. 338

"An Act relating to physician liability for gender transition procedures performed on minors; and providing for an effective date."

- BILL HEARING CANCELED

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
01/25/24	(H)	Moved HB 227 Out of Committee
01/25/24	(H)	MINUTE(ENE)
01/26/24	(H)	ENE RPT 4DP 3AM
01/26/24	(H)	DP: BAKER, MCKAY, WRIGHT, RAUSCHER
01/26/24	(H)	AM: SCHRAGE, ARMSTRONG, PRAX
03/06/24	(H)	JUD AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

WILLIAM CRAIG, Appointee
 Alaska State Commission for Human Rights
 Sitka, Alaska

POSITION STATEMENT: Testified as appointee to the Alaska State Commission for Human Rights.

REPRESENTATIVE GEORGE RAUSCHER
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Presented HB 227, as the prime sponsor.

RYAN MCKEE, Staff
 Representative George Rauscher
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Presented the sectional analysis for HB 227, on behalf of Representative Rauscher, prime sponsor.

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

POSITION STATEMENT: Gave invited testimony during the hearing on HB 227.

ANDY LEMAN, General Counsel
 Alaska Power Association
 Anchorage, Alaska

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

HEATHER O'CLARAY, Statewide Right-of-Way Chief
Department of Transportation & Public Facilities
Juneau, Alaska

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

ALLISON RADFORD, Attorney
Legislative Legal Services
Legislative Affairs Agency
Juneau, Alaska

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

ACTION NARRATIVE

[1:19:47 PM](#)

CHAIR VANCE called the House Judiciary Standing Committee meeting to order at 1:19 p.m. Representatives Sumner, Groh, and Vance were present at the call to order. Representatives Carpenter, C. Johnson, Gray, and Allard arrived as the meeting was in progress.

CONFIRMATION HEARING(S): Alaska State Commission for Human Rights

[1:20:30 PM](#)

CHAIR VANCE announced that the first order of business would be a confirmation hearing for the Alaska State Commission for Human Rights.

[1:20:56 PM](#)

WILLIAM CRAIG, Appointee, Alaska State Commission for Human Rights (ASCHR), informed the committee that he had served on ASCHR for five years and chaired one year. In addition, he served the blind and deaf community for the past three years advocating for legislative reform at state and federal levels.

[1:22:09 PM](#)

CHAIR VANCE asked Mr. Craig to speak to his passions.

MR. CRAIG said as a legally blind person himself, he is passionate about issues in the blind and deaf community. He

noted that his wife is also deaf. He said he would like to see reform of educational standards for blind children in Alaska.

[1:23:55 PM](#)

REPRESENTATIVE CARPENTER asked whether the committee had been provided with Mr. Craig's resume.

CHAIR VANCE explained that Mr. Craig did not upload his resume because he was facing connectivity issues.

MR. CRAIG said he had an older resume from his initial ASCHR application that should be in the state's computer systems.

[1:26:11 PM](#)

CHAIR VANCE opened public testimony on Mr. Craig's appointment. After ascertaining that no one wished to testify, she closed public testimony.

[1:26:48 PM](#)

CHAIR VANCE moved to advance the confirmations of William Craig, appointee to the Alaska State Commission for Human Rights, to the joint session of the House and Senate for consideration. There being no objection, the confirmations were advanced. She reminded members that signing the reports regarding appointment to boards and commissions in no way reflects individual members' approval or disapproval of the appointees, and that the nominations are merely forwarded to the full legislature for confirmation or rejection.

[1:27:13 PM](#)

The committee took an at-ease from 1:27 p.m. to 1:31 p.m.

HB 227-ELECTRIC UTILITY LIABILITY

[1:31:06 PM](#)

CHAIR VANCE announced that the final 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."

[1:31:25 PM](#)

REPRESENTATIVE GEORGE RAUSCHER, Alaska State Legislature, prime sponsor, presented HB 227. He shared the sponsor statement [included in the committee packet], which read as follows [original punctuation provided]:

House Bill 227 protects Alaska's electric utilities and their ratepayers from paying for damage caused by vegetation that falls from outside an electric utility's legal right-of-way and contacts a utility's electric facilities.

If HB 227 becomes law, electric utilities would not be liable for damage caused by vegetation outside their easements contacting electric facilities. For vegetation inside an easement, electric utilities could still face liability under existing negligence standards. In cases where the location of vegetation or the cause of the damage is disputed, a court would have to determine whether the protection provided by this bill applies.

This bill does not prevent electric utilities from being sued. It provides a court with clear direction on when liability does and does not apply in a situation where vegetation contacts powerlines or other electric infrastructure. HB 227 accomplishes this by:

□ making clear in statute that electric utilities may not be held liable for costs, property damage, death, or personal injury resulting from contact between vegetation and the utility's facilities if the vegetation is located or originated outside the boundaries of the utility's real property, lease, permit, easement, or right-of-way.

□ HB 227 also makes clear that a utility is not liable for cutting, girdling, or otherwise injuring or removing vegetation if part of the trunk of the vegetation is inside the boundaries of the utility's real property, lease, permit, easement, or right-of-way.

Importantly, the bill does not preclude civil liability if the utility itself causes vegetation to contact the utilities' facilities.

Alaska's electric utilities diligently maintain their rights-of-way to prevent damage to powerlines and other infrastructure. Those electric utilities should not be held liable for damage caused by vegetation outside of their legal control.

By passing HB 227, the Legislature will help protect Alaska utilities and their ratepayers from potential increases in rates due to a situation that is outside the control of an electric utility.

[1:34:58 PM](#)

RYAN MCKEE, Staff, Representative George Rauscher, Alaska State Legislature, on behalf of Representative Rauscher, prime sponsor of HB 227, presented sectional analysis [included in the committee packet], which read as follows [original punctuation provided]:

Section 1: Amends AS 09.65 by adding a new section. Ensures a utility offering services to the public may not be held liable for property damage, death, or personal injury if vegetation outside the utility's right-of-way falls onto a utility's facilities unless the utility caused the vegetation to fall. It also allows a utility to remove vegetation if the trunk straddles the right of way.

Section 2: Amends the uncodified law of the State of Alaska. This section outlines that the act will apply to civil lawsuits against electric utilities filed on or after the effective date.

[1:36:19 PM](#)

REPRESENTATIVE ALLARD asked, "How far are we looking at vegetation from being away from anything that the utilities [are] required to clear?"

REPRESENTATIVE RAUSCHER said there are several different widths on both sides of the utility line.

[1:37:16 PM](#)

REPRESENTATIVE ALLARD surmised that it would depend on where the utility structures are located. She referenced the [2023 Hawaii

wildfires] in Maui, which, she said, were started by a utility line collapse. She asked whether the utility company would be protected in a similar scenario or whether the individuals who lost their homes would be made whole.

REPRESENTATIVE RAUSCHER remarked, "I don't know all the facts on Hawaii." He shared his understanding that if a utility line in the right of way did indeed start the fire, there would be a liability to the utility company. He noted that the bill would not absolve utilities from all liability. The provision would ensure that utilities are accountable for their own actions and encourages them to take necessary precautions for events like Hawaii.

[1:39:33 PM](#)

KERIANN BAKER, Chief Strategy Officer, Homer Electric Association (HEA), gave invited testimony during the hearing on HB 227. She stated that the bill is narrowly tailored to codify what's understood to be existing law related to property, property damage, and negligence. She provided anecdotal examples involving HEA, noting that most of the rights-of-way are 10 feet on each side. She clarified that the bill would protect utilities, like HEA, from being held liable if a person's unmaintained property damaged HEA's lines. She added that HEA is careful about entering private property to clear its lines. If a hazard tree is found to be endangering the utility's line, it is taken down but not removed to avoid passing additional costs onto members. She shared statistics on outages and said the goal is to provide reliable service in a responsible manner. She explained that if HEA were negligent in maintaining its property and caused damages, the company would be liable. She stated that the bill would provide a very narrowly codified exemption for private property that causes damage to a utility.

[1:44:32 PM](#)

REPRESENTATIVE SUMNER asked whether a tree rooted entirely on private property could be taken down.

REPRESENTATIVE RAUSCHER deferred to Ms. Baker.

[1:45:46 PM](#)

MS. BAKER explained that if a tree were on private property outside of the right of way, HEA would talk to the property

owner. She discussed the hazard tree program that allows citizens to report dangerous trees to be inspected and removed if given the permission to do so.

[1:47:01 PM](#)

REPRESENTATIVE SUMNER said by his reading of the bill, the utility company could cut down any part of the trunk that is in the easement.

CHAIR VANCE highlighted page 1, line 11 of the bill, indicating that there would be an exemption for [cutting down] a limb if the trunk originated outside of the boundaries.

REPRESENTATIVE SUMNER directed attention to subsection (b) on page 1, lines 13-14, which outlines a separate exemption.

[1:48:19 PM](#)

REPRESENTATIVE GRAY asked how many times Alaska utility companies had been held liable for vegetation on private property that fell or blew into the utilities. He sought to quantify the size of the problem in Alaska.

[1:49:02 PM](#)

ANDY LEMAN, General Counsel, Alaska Power Association (APA), said he was familiar with at least two lawsuits brought against Alaska utilities.

REPRESENTATIVE GRAY asked how many states had implanted this policy.

MR. LEMAN shared his belief that no other state had passed a bill like HB 227. He noted Alaska's uniquely challenging service conditions due to the vast and sparsely populated service areas. Additionally unique is the fact that almost all the state's electric utilities are community owned. He said the bill would be an opportunity for Alaska to be a leader.

REPRESENTATIVE GRAY referenced a previous version of the legislation, House Bill 29, and asked how feasible it would be to reduce risk by moving all underground power lines.

MR. LEMAN explained that constructing underground lines is dramatically more expensive than overhead lines. He said it would not be a practical solution in rural areas.

[1:52:16 PM](#)

REPRESENTATIVE GRAY asked whether immunity could be provided to utilities for trespassing near the right of way to cut down vegetation.

MR. LEMAN said that would be problematic, as utilities already face challenges when they have the legal right to operate within their easements.

CHAIR VANCE questioned the cost of liabilities and settlements and whether those costs are transferred to rate payers.

MS. BAKER said outages are a reliability issue and stressed that utilities want the power to remain on. She shared a personal anecdote in which a tree was accidentally taken down on private property. She opined that the property owner should be maintaining the property to prevent the cost of inspections and removals from being passed on to members.

[1:57:38 PM](#)

REPRESENTATIVE GROH questioned the legality of a utility line breaking and contacting vegetation outside the right of way, which causes a fire.

REPRESENTATIVE RAUSCHER deferred the question.

MR. LEMAN said the intent of the bill is to protect the utility that's maintaining its right of way from vegetation outside the right of way, as opposed to protecting from something going wrong with the utility system.

CHAIR VANCE asked Ms. O'Claray to respond to Representative Groh's question.

[2:01:00 PM](#)

HEATHER O'CLARAY, Statewide Right-of-Way Chief, Department of Transportation & Public Facilities (DOT&PF), directed the question to Legislative Legal Services.

[2:01:31 PM](#)

REPRESENTATIVE RAUSCHER directed attention to subsection (c) on page 2 of the bill, which clarifies that civil liability would

not be precluded if a utility causes vegetation to contact the utility's facilities.

REPRESENTATIVE GROH asked whether it would make sense to include provisions providing for a vegetation management plan or an auditor survey of vegetation to be conducted by the utility in question.

REPRESENTATIVE RAUSCHER opined that prescribing a specific plan for all utility companies would be unfathomable.

MS. BAKER assured the committee that HEA has a vegetation management plan that is not random. She cautioned against making a utility the party that monitors private property, as property owners are responsible for maintenance. She reiterated that the high cost of such a proposal would be passed on to rate payers and suggested that if the committee were to go down that road, funds should be allocated to allow that job to be done.

[2:07:46 PM](#)

REPRESENTATIVE CARPENTER pointed out that the bill is written in the negative, making it difficult to understand. He asked whether the property owner is currently liable for damages caused by hazard trees that exist outside the right of way that may come into contact with utility lines or equipment.

[2:09:20 PM](#)

The committee took a brief at-ease.

[2:10:39 PM](#)

REPRESENTATIVE RAUSCHER clarified that the bill speaks to what goes on inside the right of way and does not address the liability of homeowners, state property, or federal property outside the right of way.

REPRESENTATIVE CARPENTER said he would like to hear from Legislative Legal Services.

[2:12:26 PM](#)

REPRESENTATIVE ALLARD expressed concern about subsection (b) on page 1, line 13 of the bill. In addition, she opined that an audit would be fiscally unreasonable and an intrusion on Alaskans' privacy.

REPRESENTATIVE RAUSCHER shared his understanding that the trunk's location is what matters, not the branches.

REPRESENTATIVE ALLARD said she was more concerned about the roots, as she had seen roots destroy entire foundations and homes.

REPRESENTATIVE RAUSCHER said, "I think if we have to dig the ground up to find out who actually owns this tree or not, it's kind of defeating the purpose."

REPRESENTATIVE CARPENTER perceived the statute to be erring on the side of the property owner. He said property rights would be given "the first call" on a tree encroaching the right of way.

REPRESENTATIVE CARPENTER asked whether property owners have legal liability for damages caused by trees existing outside the right of way that may come into contact with utility lines.

[2:18:26 PM](#)

ALLISON RADFORD, Attorney, Legislative Legal Services, Legislative Affairs Agency (LAA), offered to follow up with the requested information.

MS. BAKER explained that if a tree trunk was located outside the right of way, but the limbs were encroaching on the right of way, HEA would remove all limbs passing the plane of the easement. She reiterated that the utility company does not perform vegetation management on private property because all costs would be passed on to members.

REPRESENTATIVE CARPENTER asked whether a property owner is currently liable for a tree on his/her property that falls into utility lines and starts a fire.

MS. RADFORD offered to follow up with the requested information.

REPRESENTATIVE CARPENTER asked whether the bill would provide a pathway for a property owner to be held liable for damages caused by hazard trees.

[2:22:29 PM](#)

REPRESENTATIVE SUMNER asserted that the bill would clarify that utilities are not liable for trees outside the right of way. He added that existing liability conditions for trees inside the right of way or property owners of trees outside the right of way would not change.

REPRESENTATIVE GROH agreed with Representative Sumner.

[2:24:09 PM](#)

REPRESENTATIVE C. JOHNSON pointed out that "right of way" and "easement" were being used interchangeably. He asked for the legal definition of both terms.

MS. O'CLARAY deferred to Legislative Legal Services.

MS. RADFORD said the bill is silent on that.

MR. LEMAN stated that the terms are used interchangeably. He claimed that "right of way" is associated with the right to cross a piece of property, while "easement" is the right to do something on another's piece of property other than cross it. He explained that both terms allow utilities to maintain lines on property that they do not own title to.

REPRESENTATIVE RAUSCHER agreed that "right of way" and "easement" are used interchangeably.

REPRESENTATIVE C. JOHNSON said he was still unclear on the delineation.

[2:31:51 PM](#)

REPRESENTATIVE GRAY posed a hypothetical scenario and said he wanted to make homeowners aware that that they would be held liable "if a whole city burns down."

REPRESENTATIVE RAUSCHER reiterated that the bill would not impose liability onto anyone. Instead, it would make clear that utilities could not be held responsible for something that originated outside the right of way.

REPRESENTATIVE GRAY shared his belief that utility companies are more of an expert on hazardous vegetation.

REPRESENTATIVE RAUSCHER agreed, adding that utilities already [share their expertise] with property owners.

[2:36:01 PM](#)

REPRESENTATIVE CARPENTER asked whether subsection (b) suggests that utilities are prevented from removing a tree that is partially in the right of way.

MS. BAKER said if a tree is straddling the line, HEA will usually clear it. She shared an example, reiterating that utilities need permission to clear anything outside the right of way.

[2:39:32 PM](#)

REPRESENTATIVE C. JOHNSON shared his belief that this stemmed from a California ruling that held a utility company responsible for starting a fire due to fallen lines, which resulted in the utility filing for bankruptcy. He perceived the bill as an attempt to indemnify utilities in Alaska against catastrophic events or malfeasance. He said he was not prepared to let anyone off the hook.

MR. MCKEE answered no, this did not stem from that event. He clarified that the legislation would ensure that utilities are not held liable for damages caused by something outside their property.

[2:43:23 PM](#)

REPRESENTATIVE ALLARD asked whether the purpose of the bill is to prevent lawsuits in the future and "put it back on the homeowners."

REPRESENTATIVE RAUSCHER cited beetle-kill trees as one of the main reasons for the bill. He reiterated that property owners would still have the same liabilities whether or not the bill were to pass. If anything, the bill would give power companies the right to cut down trees with branches hanging in the way of a power line. As long as utilities are keeping their equipment up to date and their rights of way clear, he said the bill would say "they did their job."

REPRESENTATIVE ALLARD said she read the bill differently than the bill sponsor and expressed concern for the homeowners.

[2:49:04 PM](#)

REPRESENTATIVE CARPENTER said his understanding of the word "liable" had shifted after reading the language. He stated that the bill would clarify that utilities cannot be sued for damages caused by trees outside the right of way or removing a tree that is partially or completely inside the right of way.

MS. RADFORD confirmed that Representative Carpenter's understanding is correct.

CHAIR VANCE asked whether the bill would remove any criminal liability from the utility.

MS. RADFORD said the bill does not address that question.

[2:50:34 PM](#)

REPRESENTATIVE suggested there should be an "act of god clause" to cover certain incidents, such as those caused by high wind.

CHAIR VANCE asked who owns the utility companies in Alaska.

MR. LEMAN said most Alaskans receive electric utility service through member-owned cooperatives; other electric utilities are municipally owned. He noted that there are a handful of investor-owned utilities as well.

CHAIR VANCE reminded the committee that if member-owned utilities tried to shirk their duties, the cost would fall on rate payers. She said legally, there is a different landscape to consider.

[2:54:23 PM](#)

REPRESENTATIVE C. JOHNSON requested that someone from the Division of Insurance come before the committee to address the bill's impact on homeowners' insurance.

[2:55:10 PM](#)

CHAIR VANCE announced that HB 227 would be held over.

[2:55:48 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:55 p.m.