

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 11, 2024

1:49 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

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. 238

"An Act relating to criminal mischief in the third degree; and providing for an effective date."

- MOVED CSHB 238 (JUD) 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
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
 03/06/24 (H) Heard & Held
 03/06/24 (H) MINUTE (JUD)
 03/08/24 (H) JUD AT 1:00 PM GRUENBERG 120
 03/08/24 (H) Heard & Held
 03/08/24 (H) MINUTE (JUD)
 03/11/24 (H) JUD AT 1:00 PM GRUENBERG 120

BILL: HB 238

SHORT TITLE: CRIMINAL MISCHIEF 3RD DEGREE
 SPONSOR(S): REPRESENTATIVE(S) JOSEPHSON

01/16/24 (H) PREFILE RELEASED 1/8/24
 01/16/24 (H) READ THE FIRST TIME - REFERRALS
 01/16/24 (H) JUD
 02/26/24 (H) JUD AT 1:30 PM GRUENBERG 120
 02/26/24 (H) Heard & Held
 02/26/24 (H) MINUTE (JUD)
 03/01/24 (H) JUD WAIVED PUBLIC HEARING NOTICE, RULE
 23
 03/01/24 (H) JUD AT 1:30 PM GRUENBERG 120
 03/01/24 (H) Heard & Held
 03/01/24 (H) MINUTE (JUD)
 03/11/24 (H) JUD AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

BOB BALLINGER, Staff
 Representative Sarah Vance
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Explained Amendment 1 to HB 227, on behalf of Representative Vance; explained Amendment 1 to HB 238, on behalf of Representative Vance.

REPRESENTATIVE GEORGE RAUSCHER
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 227, as the prime sponsor.

KERI-ANN BAKER, Chief Strategy Officer
 Homer Electric Association

Kenai, Alaska

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

IAN WALSH, Attorney
Legislative Legal Services
Legislative Affairs Agency
Juneau, Alaska

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

ALEX SCHROEDER, Staff
Representative Andy Josephson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Offered final comment on HB 238, on behalf of Representative Josephson, prime sponsor.

ACTION NARRATIVE

[1:49:29 PM](#)

CHAIR VANCE called the House Judiciary Standing Committee meeting to order at 1:49 p.m. Representatives Carpenter, C. Johnson, Sumner, Gray, Groh, and Vance were present at the call to order. Representative Allard arrived as the meeting was in progress.

HB 227-ELECTRIC UTILITY LIABILITY

[1:50:17 PM](#)

CHAIR VANCE announced that the first 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."

[1:50:50 PM](#)

REPRESENTATIVE CARPENTER moved to adopt Amendment 1 to HB 227, labeled 33-LS0969\B.3, A. Radford, 3/8/24, which read:

Page 1, line 2, following "**facilities**":

Insert "**; relating to a vegetation management plan for an electric utility; and providing for an effective date**"

Page 1, line 12, following "right-of-way":

Insert "and the utility was in compliance with a vegetation management plan under AS 42.05.141(g)"

Page 2, following line 6:

Insert a new bill section to read:

"* Sec. 2. AS 42.05.141 is amended by adding a new subsection to read:

(g) The commission shall adopt regulations

(1) requiring an electric utility to establish a procedure in writing by which the utility will manage vegetation to protect the reliability and safety of the utility's facilities; and

(2) establishing standards for vegetation management plans required under (1) of this subsection; the standards must incorporate industry standards and provide for regional, topographic, and community differences in the state."

Renumber the following bill section accordingly.

Page 2, line 9:

Delete "This Act"

Insert "AS 09.65.086, added by sec. 1 of this Act,"

Page 2, line 10, following "of":

Insert "sec. 1 of"

Page 2, following line 10:

Insert new bill sections to read:

"* Sec. 4. The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION: REGULATIONS. The Regulatory Commission of Alaska may adopt regulations necessary to implement the changes made by this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date of the law implemented by the regulation.

*** Sec. 5.** Section 4 of this Act takes effect immediately under AS 01.10.070(c).

*** Sec. 6.** Section 1 of this Act takes effect July 1, 2025."

REPRESENTATIVE SUMNER objected.

[1:51:14 PM](#)

BOB BALLINGER, Staff, Representative Sarah Vance, Alaska State Legislature, on behalf of Representative Vance, explained Amendment 1. He stated that to be eligible for the immunity provided under HB 227, the amendment would require regulated utilities to establish a vegetation management plan. In addition, the commission shall adopt regulations requiring electric utilities to establish said vegetation management plan.

[1:55:12 PM](#)

REPRESENTATIVE SUMNER expressed concern that Amendment 1 would expand the liability for utilities because there would be no acknowledgment of compliance once the vegetation management plan is implemented.

MR. BALLINGER indicated that an established vegetation management plan would allow utilities to file a motion to dismiss if a lawsuit were filed.

REPRESENTATIVE SUMNER questioned the bill sponsor's position on Amendment 1.

[1:58:11 PM](#)

REPRESENTATIVE GEORGE RAUSCHER, Alaska State Legislature, prime sponsor of HB 227, requested a moment to properly vet the proposed amendment.

[1:58:54 PM](#)

The committee took an at-ease from 1:58 p.m. to 2:00 p.m.

[2:00:17 PM](#)

REPRESENTATIVE RAUSCHER deferred to the Regulatory Commission of Alaska (RCA) for comment on Amendment 1.

[2:00:47 PM](#)

REPRESENTATIVE GRAY shared his understanding that a previous version of the bill included a vegetation management plan, but utilities found it to be too onerous.

[2:01:30 PM](#)

KERI-ANN BAKER, Chief Strategy Officer, Homer Electric Association (HEA), stated that preparing, implementing, and overseeing a vegetation plan is not too onerous for a utility. She suggested inviting someone from the RCA to speak to their responsibilities and work level, and the impact that Amendment 1 might have. She opined that regulatory oversight of the vegetation management plan would be onerous, not the plan itself.

REPRESENTATIVE GRAY shared his understanding that Utah is the only other state to implement similar legislation with the inclusion of a vegetation management plan.

[2:04:00 PM](#)

REPRESENTATIVE CARPENTER asked, from a legal perspective, whether the utility would have to be in compliance with the vegetation management plan if it covered a large area of land. He moved to table Amendment 1. There being no objection, it was so ordered.

[2:06:18 PM](#)

REPRESENTATIVE GROH said he would not be offering Amendment 2 at this time.

[2:06:27 PM](#)

REPRESENTATIVE GRAY moved to adopt Amendment 3 to HB 227, labeled 33-LS0969\B.2, A. Radford, 3/8/24, which read:

Page 1, line 11, following "originated":
Insert "entirely"

Page 1, line 14:
Delete "of the trunk"

REPRESENTATIVE SUMNER objected.

[2:06:32 PM](#)

REPRESENTATIVE GRAY explained that Amendment 3 would make it so the liability shield only applies when all parts of the vegetation in question are outside the utility's right of way. In addition, by removing the words "of the trunk," it would allow utilities to cut or remove vegetation within its right of

way as long as any part of that vegetation is within the right of way.

[2:07:43 PM](#)

REPRESENTATIVE SUMNER removed his objection.

REPRESENTATIVE CARPENTER objected. He asked whether Ms. Baker had reviewed the proposed amendment and the effect that it would have on the legislation.

MS. BAKER explained that HEA already takes everything that encroaches on its right of way. She shared her belief that Amendment 3 may be interpreted differently than intended.

[2:09:27 PM](#)

REPRESENTATIVE GRAY shared his understanding that HEA is already following the directive of Amendment 3.

REPRESENTATIVE ALLARD said she liked the proposed amendment and reasoned that there would be no harm in putting it in statute if the utilities are already doing it. She questioned the bill sponsor's position on Amendment 3.

REPRESENTATIVE RAUSCHER opined that Amendment 3 is unnecessary and confusing. Further, he conveyed that the Alaska Power Association (APA) shares that opinion.

[2:10:42 PM](#)

REPRESENTATIVE SUMNER said he would be supportive of the proposed amendment because to his reading, it would allow a utility to take down a tree that is in its right of way and not be held liable for trees entirely outside the right of way.

[2:11:39 PM](#)

REPRESENTATIVE C. JOHNSON sought to confirm that if any part of a tree extends into the right of way, the utility can cut down the whole tree. He asked whether that would effectually give utilities an extra 10 feet of right of way.

REPRESENTATIVE RAUSCHER shared his understanding that if the majority of a tree is outside the right of way, the utility would have to be on private property to cut it down. For that

reason, he believed that Amendment 3 was confusing and not good for the bill.

REPRESENTATIVE ALLARD asked Representative C. Johnson to elaborate on his prior question.

REPRESENTATIVE C. JOHNSON expressed concern about private property rights and allowing a utility to cut down an entire tree that may partially extend into a right of way.

[2:14:43 PM](#)

The committee took an at-ease from 2:14 p.m. to 2:18 p.m.

[2:18:32 PM](#)

REPRESENTATIVE SUMNER sought to verify that if any part of the tree is inside the right of way, the utility could take the entire tree. In addition, he asked whether that would be considered a taking.

IAN WALSH, Attorney, Legislative Legal Services, Legislative Affairs Agency (LAA), said that is a possible interpretation of Amendment 3 and offered to follow up on the requested information.

REPRESENTATIVE SUMNER moved to table Amendment 3. There being no objection, it was so ordered.

[2:20:46 PM](#)

REPRESENTATIVE SUMNER asked Legislative Legal Services to give an opinion on what would constitute a taking in regard to HB 227.

MR. WALSH stated that as drafted, if a tree straddles the boundary, it would be treated as if it were owned by both sides. He added that he would need to follow up with governing case law or statutes to confirm.

REPRESENTATIVE SUMNER asked Mr. Walsh to analyze the legality of a tree that is entirely rooted on a neighboring property and leans into the utility's easement.

[2:23:00 PM](#)

REPRESENTATIVE GRAY said by deleting "of the trunk," his intention was to give utility's immunity from liability for killing a tree by protecting the right of way. He asked how to properly word the language in Amendment 3.

MR. WALSH said he would be happy to draft an amendment that captures that intent.

CHAIR VANCE announced that HB 227 would be held over.

[2:25:17 PM](#)

The committee took an at-ease from 2:25 p.m. to 2:27 p.m.

HB 238-CRIMINAL MISCHIEF 3RD DEGREE

[2:27:57 PM](#)

CHAIR VANCE announced that the final order of business would be HOUSE BILL NO. 238, "An Act relating to criminal mischief in the third degree; and providing for an effective date."

CHAIR VANCE opened public testimony on HB 238. After ascertaining that no one wished to testify, she closed public testimony.

[2:28:44 PM](#)

REPRESENTATIVE CARPENTER moved to adopt Amendment 1 to HB 238, labeled 33-LS1101\A.4, C. Radford, 3/9/24, which read:

Page 2, lines 6 - 7:

Delete "a building, structure, or personal property used for worship or any other religious purpose"

Insert "(i) real property that has a place of religious education or worship located on it and is owned, leased, or used by a religious organization or used for any religious purpose; or

(ii) tangible personal property used by a religious organization or used for any religious purpose"

Page 2, line 14:

Delete "institution"

Insert "organization"

Page 2, lines 15 - 16:

Delete "a building, structure, or personal property used for worship or any other religious purpose"

Insert "real property or tangible personal property under (a)(3)(C) of this section"

Page 2, line 17:

Delete "institution"

Insert "organization"

Page 2, line 18:

Delete "building, structure, or personal property"

Insert "real property or tangible personal property"

REPRESENTATIVE GRAY objected for the purpose of discussion.

[2:29:21 PM](#)

MR. BALLINGER read the new language in Amendment 1.

REPRESENTATIVE GRAY removed his objection. There being no further objection, Amendment 1 was adopted.

CHAIR VANCE invited the bill sponsor to provide closing comments on the bill, as amended.

[2:31:40 PM](#)

ALEX SCHROEDER, Staff, Representative Andy Josephson, Alaska State Legislature, on behalf of Representative Josephson, prime sponsor of HB 238, characterized Amendment 1 as a "friendly" amendment.

[2:32:28 PM](#)

REPRESENTATIVE CARPENTER moved to report HB 238, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 238(JUD) was reported from the House Judiciary Standing Committee.

[2:33:37 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:33 p.m.