

Date of Hearing: April 21, 2021

ASSEMBLY COMMITTEE ON UTILITIES AND ENERGY

Chris Holden, Chair

AB 448 (Mayes) – As Amended March 25, 2021

SUBJECT: Fire safety: electrical transmission or distribution lines: clearances

SUMMARY: Permits a landowner (electric utility) of a transmission or distribution line (lines) to enter any property without the permission of the property landowner to fell, cut, or trim trees to prevent contact with those lines. Specifically, **this bill:**

- 1) Permits an electric utility to enter any property to perform vegetation management if;
 - a. The utility provides notice and an opportunity to be heard to the landowner;
 - b. The property is in a high fire threat district (HFTD) or state responsibility area (SRA); and
 - c. The utility uses tools and methods developed or approved by a certified arborist to identify a hazardous tree.
- 2) The utility must, at a minimum, follow current laws and orders of the CPUC specifying minimum clearances but the utility has full discretion to go beyond those specified minimum clearances to achieve safety.
- 3) Clarifies that any wood or timber of value remains the property of the landowner, unless the removal is timely requested of the utility from that landowner, which shall be done at no cost to the landowner.
- 4) Attempts to restate current law that the utility is liable for collateral property damage caused by negligence in felling, cutting, or trimming trees or vegetation in accordance with this measure but not trespass.

EXISTING LAW:

- 1) Permits electric utilities with transmission or distribution lines, in an HFTD or the SRA, to traverse land as necessary, regardless of landownership or express permission from the landowner, after providing notice, to prune trees to maintain clearances and to remove any hazardous, dead, rotten, diseased, or structurally defective live trees. (Public Resources Code § 4295.5)
- 2) Requires, except as specified, any utility that owns lines in the SRA to maintain around and adjacent to any pole or tower that supports a switch, fuse, transformer, lightning arrester, line junction, or dead end or corner pole, a firebreak that consists of a clearing of not less than ten feet in each direction from the outer circumference of such pole or tower. (Public Resources Code § 4292)

- 3) Requires utilities with lines in the SRA to maintain clearances in all directions between all vegetation and all conductors of varying voltages as specified. (Public Resources Code § 4293)
- 4) Requires dead trees, old decedent or rotten trees, trees weakened by decay or disease, and trees or portions thereof that are leaning toward a line that may contact the line from the side or may fall on the line to be felled, cut, or trimmed to remove the hazard by the utility. (Public Resources Code § 4293)
- 5) Holds any entity liable for trespassing and three times the damages for removal of a hazard tree where it does not have legal authority to do so, whether on public or private property. (Civil Code § 3346)
- 6) Allows a utility to disconnect service to customers and landowners who obstruct access to overhead lines in SRAs or HFTDs when there is a breach of minimum vegetation clearances, or when a dead, rotten, diseased, leaning, or overhanging tree poses an imminent or immediate risk for falling onto a line. (Electric Tariff Rule 11)
- 7) Requires the removal of any trees when a utility has actual knowledge, that dead, rotten or diseased trees or dead, rotten or diseased portions of otherwise healthy trees overhang or lean toward and may fall into a span of lines. (CPUC General Order 95, Rule 35)
- 8) Exempts utilities from the requirement to remove hazardous trees where the utility has made a “good faith” effort to obtain permission to trim or remove vegetation from a landowner but permission was refused or unobtainable. (CPUC General Order 95, Rule 35, Exception 2)

FISCAL EFFECT: This bill is keyed fiscal and will be referred to the Appropriations Committee for its review of the fiscal effect of this bill.

COMMENTS:

- 1) *Author’s Statement.* AB 448 recognizes the urgency of California’s current wildfire crisis and would streamline critical safety work around electrical equipment intended to further reduce the risk of future wildfires. AB 448 would ensure that electric energy companies are able to meet their legal and public safety obligations to remove all hazardous vegetation that jeopardizes the safety of neighborhoods where these trees are located without the risk of costly and time-consuming landowner objections and lawsuits. Eliminating delays and litigation associated with the removal of hazard trees saves money by avoiding the need to engage law enforcement and bog down courts in order to complete essential public safety and wildfire mitigation work. Perhaps most importantly, this legislation may save lives by authorizing prompt removal of identified hazard trees, which will reduce the risk of wildfires, as well as the devastating human costs and other damages associated with catastrophic fires.
- 2) *Vegetation Management.* Preventing contact between trees and lines often requires aggressive actions by the utilities beyond the easement boundaries for the lines. The presence of trees far beyond the easements is a growing threat to safety particularly with the added challenges of climate change conditions. For example, an unhealthy 200 foot

tree on private property that is 100 feet from a line can necessitate removal to avoid the tree falling into the lines. However, the efforts of utilities around the state to abate the risk of trees on private property is too often met with resistance, and sometimes litigation, by landowners who refuse access.

The Legislature attempted to address this issue in 2017 authorizing utilities to enter private property, with notice to the landowner, to prune trees to maintain line clearances and to remove any hazardous, dead, rotten, diseased, or structurally defective live trees. Up until that time a utility's only recourse if a landowner prohibited access was to disconnect their power, with notice, per CPUC General Order 11 (which was rarely if ever used). However, a conflicting provision of the 2017 bill could also be interpreted as establishing liability for trespass by the utilities if they enter private property to evaluate, trim, or remove a hazardous tree (see existing law Public Resources Code § 4295.5 (b)).

This bill is intended to provide clear authority for the utilities to traverse private property to abate the hazard of trees, with notice to the landowner, but without permission from the landowner.

- 3) *A Hint of Notice.* This bill requires the utility to give “timely notice” of their intent to enter the property, evaluate the tree, and then possibly fell, trim, or cut the tree. However, there are no parameters or content requirements for the “notice” or “opportunity to heard” for the landowner. This leaves too much gray area for implementation and challenges as to what a proper notice is and isn't, creating confusion between the parties and increased likelihood of litigation. *Consequently, the committee may wish to consider amending the bill to require the CPUC's Wildfire Safety Division to establish a uniform notice to private landowners from the utilities.*
- 4) *Liability – Don't Touch This!* The author reports that he does not intend to affect current law regarding liability for collateral damage or negligence. However, this bill does reference those issues. As delicate as liability is in this state, it is ill- advised to make a statement that is intended to restate current law. Additionally, one of the stated reasons for this bill is that the reference to liability in current law created confusion and a barrier to effective implementation of the statute. *Consequently, the committee may wish to consider striking subdivision (b) at page 3, lines 34 to 38 and on page 4, lines 1-3 and repeal subdivision (b) in current law which created the conflict to begin with.*
- 5) *Right Tree, Right Place.* People love their trees and they do have aesthetic and financial value. It is easy to understand why the utilities encounter resistance from landowners in their attempts to remove them. To provide some compensation for the loss of the tree, should the bill be amended to require the utility to replace a removed tree with appropriate vegetation or another tree if a species is identified as compatible with the area and the lines?
- 6) *Double Referral.* Should this bill be adopted, it will be re-referred to the Assembly Natural Resources Committee for its consideration.

7) *Prior Legislation.*

AB 1516 (Friedman) proposed various changes to improve defensible space requirements, electrical transmission or distribution line vegetation clearance requirements and would have authorized CAL FIRE, CPUC, and landowners of any electrical transmission or distribution line, after providing notice and an opportunity to be heard to the landowners, to access properties in which vegetation has been planted that would grow into conductors for purposes of removing that vegetation at the landowner's expense. Status: Vetoed, 2020

SB 901 (Dodd) established a comprehensive framework to address and prevent catastrophic wildfires including prevention and planning by the state's electric utilities, management of the state's forests, chaparrals, and other lands to prevent and defend against wildfires, and standards to stabilize IOUs in the event of extensive liability resulting from claims under inverse condemnation. Status: Chapter 626, Statutes of 2018

REGISTERED SUPPORT / OPPOSITION:

Support

Coalition of California Utility Employees
Edison International and Affiliates, Including Southern California Edison
Pacific Gas and Electric Company
Sempra Energy Utilities

Opposition

None on file.

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