

Felony Trespass Bill (AB426/SB386) Talking Points

SUMMARY OF THE BILL

The Felony Trespass Bill expands the existing definition of “energy provider property” and therefore creates new instances where a person may be subject to felony prosecution for either (1) intentionally entering energy provider property without both lawful authority and permission from the energy provider; or (2) damaging energy provider property with the intent to interrupt energy provider services. If convicted for either crime, a person may be sentenced to up to six years in prison and a \$10,000 fine, and will lose the right to vote.

Existing law defines “energy provider property” as “property that is part of an electric generation, distribution, or transmission system or part of a natural gas distribution system and that is owned, leased, or operated by an energy provider.” The Felony Trespass Bill would expand this definition to include “property that is part of an electric, oil, petroleum, refined petroleum product, renewable fuel, water, or chemical generation, transmission, or distribution system and that is owned, leased, or operated by an energy provider.”

TALKING POINTS

Property an Energy Provider “Operates” Applies to Expired Leases and Easements

- There are three distinct categories of energy provider property: (1) property an energy provider owns; (2) property an energy provider leases; or (3) property an energy provider operates.
- Whether an energy provider owns property outright or leases property from an owner is clear, but whether an energy provider operates property is not clear.
- As a result, law enforcement officers and prosecutors can easily interpret the category of property an energy provider operates as applying to locations where an energy provider has an expired lease but continues to operate a pipeline anyway, which is the case on the Bad River Reservation in northern Wisconsin.
- That category can also easily be interpreted as applying to easements on both private and public land, meaning:
 - A landowner could be prosecuted for a felony for being on their own land,
 - A member of the general public could be prosecuted for being on public land like a national forest, or
 - A tribal member could be prosecuted for exercising treaty rights both on and off reservation.
 - This is the case because, even though these people might have lawful authority to be on the land, the bill also requires these people to have permission from the energy provider.

The Bill Applies to Energy Providers that Do Not Provide Services Directly to Homes and Businesses

- Existing law limits the definition of energy provider property to electricity and natural gas, which provide necessary services directly to homes and businesses.
 - The interruption of these services can put lives at risk because people will be unable to heat or cool their homes during extremely hot or cold weather.
- The expanded definition of energy provider property includes oil, petroleum, fuel, and chemicals, which do not provide services directly to homes and businesses.
 - Oil pipelines, for example, almost entirely pass through Wisconsin on their way to Canada and other states.

No Intent to Commit a Crime

- To be convicted under the trespassing portion of the bill, a person does not need to have the intent to commit a crime.
- That person only needs to voluntarily enter property they know is owned, leased, or operated by an energy provider and fail to have either lawful authority or permission from the energy provider to be on the property.

Unjust Penalty

- The trespassing portion of the bill imposes the same penalty as the property damage portion of the bill, a Class H felony.
 - A Class H felony is punishable by up to 6 years in prison and \$10,000 fine.
 - A felony conviction also results in the loss of the right to vote.
- To be convicted under the property damage portion of the bill, a person needs to have the intent to interrupt energy provider services and must actually cause property damage.
- To be convicted under the trespassing portion of the bill, a person only needs to have the intent to enter energy provider property.
- Imposing the same penalty to such a disparity in criminal intent is manifestly unjust.

The Law is Enforceable on Reservations

- Local and state law enforcement can enter reservations and enforce this law due to Public Law 280.
- This means that even more Indian lands would be subject to the arbitrary policing of energy corporations and even more Indian lands would be unjustly taken by operation of the law.

Energy Providers Obtain New Property Rights

- Since people are subject to felony prosecution if they don't have permission from an energy provider, including lands those people otherwise have the lawful authority to enter, energy providers obtain new property rights.
 - Under this bill, energy providers obtain the right to exclude people from land the energy provider does not outright own, which was not compensated for when the land was originally "taken" and may subject the State to significant liability.
- When people have permission to enter energy provider property is extremely unclear.

- Energy companies are not required to publish their standards regarding access; furthermore, their standards may be based on arbitrary or unconstitutional categories, including race, gender or nationality.
- Endows energy companies with police powers that may be exercised arbitrarily, which could significantly stifle free expression and freedom of movement enjoyed by American citizens.

The Free Speech Exception is Effectively Meaningless and Does not Counterbalance the Bill's Chilling Effect on Free Speech

- For the Free Speech Exception to apply a person must have committed the underlying crime or there is nothing to except.
 - This means, under the trespassing portion of the bill, a person must have intentionally entered energy provider property without lawful authority and without the permission of the energy provider.
 - Therefore, the exception can only apply when a person is on energy provider property.
 - Energy provider property includes private or public property than an energy provider owns outright, leases, has an easement on, or otherwise operates.
- The First Amendment already protects the right to free speech and assembly on traditional public forums (e.g., streets, parks, and sidewalks) so long as the person complies with applicable time, place, and manner restrictions.
 - Proponents of the bill might argue that without the exception the law would apply to traditional public forums, but the law would almost assuredly be unconstitutional as applied to traditional public forums because it would not be narrowly tailored to serve a significant public interest or leave open ample alternative channels for communication.
 - As such, the exception does not create any more protections for traditional public forums that qualify as energy provider property.
 - The United States Constitution already provides this protection.
- It is already illegal under state law to enter private property without permission from the property owner, and therefore intentionally entering private energy provider property would not be “otherwise lawful.”
- If the Free Speech Exception creates any additional protections at all, those protections only apply to:
 - Public property that qualifies as energy provider property
 - That does not qualify as a traditional public forum, and
 - Where there are no laws prohibiting the general public from either being on that property or exercising their right to free speech on that property.
- The Free Speech Exception is therefore extremely unclear as to when exactly it applies and in any event such application is extremely narrow.
- As such, the exception does not mitigate the chilling effect on free speech.