

SUBJECT: Liability for use of private property without owner's consent

COMMITTEE: Land and Resource Management — favorable, without amendment

VOTE: 7 ayes — Saunders, Mowery, Combs, Hamric, Howard, Krusee, B. Turner
0 nays
2 absent — Alexander, Hilderbran

WITNESSES: For — Bill Powers, Texas Farm Bureau
Against — None

DIGEST: HJR 14 would amend the Texas Constitution, Article 1, sec. 17, to provide that a person using private property without the consent of the owner would be liable to the owner for damages resulting from the violation. The Legislature, by general law, could specify or regulate the damages.

The amendment also would specify that a private property owner would not be liable for damages to a person who used the owner's private property without the owner's consent.

HJR 14 would be submitted to the voters at an election on November 7, 1995. The ballot proposal would read: "The constitutional amendment requiring consent for use of and compensation for damages to private property and releasing property owners from liability to persons using property without consent."

SUPPORTERS SAY: HJR 14 would eliminate, once and for all, the tort for damages to injured trespassers. The amendment would state very explicitly that if a person used private property without the owner's consent and hurt themselves in the process, they could not turn around and sue the property owner for damages.

There is confusion about the law in this area, as normally a property owner has no liability if an undiscovered trespasser is injured on private property. However, the owner has a duty of care if the trespasser is discovered, is a child or the owner knows that a number of people normally trespass.

A notorious case demonstrates why HJR 14 would provide a necessary protection. A child stole a Jet Ski and drowned while using it without the knowledge or consent of the owner. The child's parents immediately sued the owner for failing to lock up the Jet Ski. The death of a child is always a tragedy, but in this case, the owner of the vehicle was clearly not at fault in the child's death.

HJR 14 would protect private property owners from a variety of situations. For example, if a burglar broke a leg while robbing a house, a trespasser fell into a hole on private land or a hunter shot his buddy while trespassing on private property, none of the injured persons could turn around and sue the property owner for damages.

The bill would also provide that a person who used someone's private property without their consent would be liable to the property owner for any damages that resulted from that violation. If, for example, a person enters a farmer's land and takes a tractor for a joyride, damaging crops and fences, the farmer should be able to recover damages. Or if a person enters private property and chops a tree down, that person should be liable for the damages caused.

**OPPONENTS
SAY:**

This constitutional amendment is unnecessary. Damages to private property can already be recovered under various laws.

Landowners are in a better position than anyone else to know what the dangers on their land might be. Landowners should not be able to ignore dangerous conditions on the land, especially if it is likely that people, including children, are likely to trespass.

Since "person" is not defined in the bill, the bill could be read broadly to refer to state agencies as well as private persons. Certain enforcement abilities of state agencies and other units of local government could be impaired by HJR 14. Sometimes, state and local officials need to enter private land to inspect sites or address pressing health and safety hazards that could affect the public. Under HJR 14, government employees could be held liable for damages resulting from their entry on the property, even if they are exempted from liability in another statute.

This could make enforcement actions more difficult and subject agencies to possible lawsuits for compensation, for actions in which the state or local

government was required to take over someone's property because it contained a safety or environmental hazard.

The Texas Natural Resource Conservation Commission may soon be ordered by a federal judge to regulate pumping from the Edwards Aquifer. Many landowners in the aquifer region think limiting their pumping would constitute a "taking" of their private property rights and could sue the agency for damages. The Legislature could find itself in the awkward position of specifying damages against a state agency.

OTHER
OPPONENTS
SAY:

The resolution needs to be clarified to specify "real property," if the intent is to apply only to those who trespass on another's land. The legislation also should specify that a "person" could not be interpreted to mean a state agency or other unit of state or local government.

NOTES:

A related bill, SB 14 by Bivins et al. would create a cause of action for property owners if a governmental action devalued their real property more than 25 percent, but would allow compensation only if waiver of sovereign immunity were granted by legislative resolution. SB 14 passed the Senate by 26-5 on April 12 and was substituted and reported favorably by the House Committee on Land and Resource Management on April 11.

HB 957 by B. Turner, which would create a cause of action under which property owners could sue a governmental entity for a reduction in property value if they could prove that the governmental action was adopted for the express purpose of reducing the value of their property, was reported favorably from the House Land and Resource Management Committee on April 18.