

- SUBJECT:** Immunity from liability for flood warnings by governmental bodies
- COMMITTEE:** Civil Practices — committee substitute recommended
- VOTE:** 8 ayes — Bosse, Janek, Alvarado, Dutton, Goodman, Hope, Nixon, Smithee
1 nay — Zbranek
- WITNESSES:** For — Ed Shaefer, Lower Colorado River Authority; Daryl Lee Spiewak, Brazos River Authority; Bill West, Guadalupe Blanco River Authority
Against — Mike Ramsey, Texas Trial Lawyers Association
- DIGEST:** CSHB 2445 would eliminate any liability by a governmental body for property damage, bodily injury, or death resulting from failure to warn of flood events or conditions or for any inaccuracies in warnings issued about flood events or conditions.
- CSHB 2445 would not create any liability nor waive sovereign immunity. It would override any liability that normally might apply under the Texas Tort Claims Act (Civil Practice and Remedies Code, chapter 101).
- Governmental bodies covered under the bill would include any executive branch agency, board, commission, council, or department and any political subdivision of the state.
- The bill would include a findings and purpose section stating that it is in the public interest to encourage governmental bodies to warn the public of flood conditions, but that such warnings are being discouraged by the possibility of litigation. According to the bill, this legislation is intended to encourage governmental entities to warn of flood events or conditions by confirming that they are not liable for damages arising from the dissemination of warnings or from the failure to do so.
- CSHB 2445 would take effect September 1, 1999.

SUPPORTERS
SAY:

River authorities and others who monitor and warn of possible flood conditions currently can be held liable for failing to disseminate information or for disseminating inaccurate information. This possible liability makes it very difficult for these governmental bodies to disseminate any information directly to the public. Instead, they often simply inform other local officials, who then take the risk of liability when they inform the public. This approach means that it can take longer for the public to be informed about potentially dangerous flood conditions. Eliminating governmental bodies' liability for dissemination of information would make them feel more confident that they would not be sued for disseminating information that might not be completely accurate but was the best information they had at the time.

Governmental bodies also would be excused from any liability for failure to warn because they did not receive information about a possibly hazardous condition in time due to mechanical or other failures. Often, flood gauges are not as reliable as they could be, and river authorities do not employ weather forecasters, relying instead on the National Weather Service for such information.

The exception for deliberate, wilful, or malicious injury was removed from the original bill because those acts would be covered under criminal law.

OPPONENTS
SAY:

It is essential that governmental bodies feel compelled to disseminate important information about possible flood events or conditions, but it is not necessary to excuse those officials from liability for failing to provide such warnings or for including inaccurate information in those warnings. Precisely because of the potential for damage and injury through failing to warn of flood conditions or through providing inaccurate information, these governmental bodies should be held liable for such actions.

The Texas Tort Claims Act, which covers the same governmental bodies that this legislation would cover, provides more than adequate limits on liability for these situations. Under that law, liability is strictly limited for property damages or personal injury and death claims.

NOTES:

The original bill would have allowed a governmental entity to be held liable for deliberate, wilful, or malicious injury to a person or property.

HB 2445
House Research Organization
page 3

The committee substitute failed to receive an affirmative vote in the House Civil Practices Committee when first considered on April 7 by three ayes, one nay, and five present, not voting.