

SUBJECT: Providing immunity from damage claims during disaster response

COMMITTEE: Civil Practices — favorable, without amendment

VOTE: 6 ayes — Bosse, Janek, Clark, Hope, Martinez Fischer, Nixon
1 nay — Dutton
2 absent — Smithee, Zbranek

WITNESSES: For — James P. Jungman, Live Oak County Emergency Management Agency; Samuel L. Neal Jr., City of Corpus Christi
Against — None
On — Tom Millwee, Texas Department of Public Safety

DIGEST: HB 235 would amend Government Code, ch. 418 to provide immunity for a person or governmental unit from liability for damages arising from use of the person's or governmental unit's property during disaster response or recovery. Immunity would apply regardless of whether the property were offered to or commandeered by the state or a political subdivision. The Texas Tort Act would not apply to a claim for damages.

The bill would not apply to a damage claim against a person, other than a governmental unit, if the person were wilfully negligent in offering the property or if it were offered with conscious indifference or reckless disregard for the safety of others.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2001, and only would apply to a cause of action that occurred on or after that date.

SUPPORTERS SAY: HB 235 is needed to grant immunity to governmental entities for the use of their property during disaster response or recovery. School districts, municipalities, counties, and other political subdivisions often are asked to

provide transportation or shelter during a disaster. Some governmental entities have been reluctant to provide facilities — such as public buildings to house displaced residents or school buses to transport victims — for fear of exposing themselves to liability. This situation burdens local emergency response organizations and particularly endangers residents living in substandard housing. The bill would remedy the situation by ensuring governmental entities that they would not be held liable for damage claims arising from use of their property during a disaster.

The bill would not infringe on a citizen's right to file suit for damages due to negligence or other obvious public safety hazards. The bill specifically states that a person's negligent acts in the offering of property or indifference or disregard for public safety would not warrant immunity from liability.

**OPPONENTS
SAY:**

HB 235 would infringe on a citizen's right to file suit. The public should be able to seek compensation for damages due to the acts of others regardless of whether they occurred during a disaster or not. Governmental entities should not be given a free ticket to endanger the public safety, even under emergency circumstances.