

SUBJECT: Limiting state and county liability for injuries in recreational facilities

COMMITTEE: Civil Practices — committee substitute recommended

VOTE: 5 ayes — Gattis, Capelo, Hartnett, King, Rose
1 nay — Y. Davis
3 absent — Nixon, Krusee, Woolley

WITNESSES: For — Carole Lenz, for Harris County Commissioner Steve Radack; George A. Nachtigall, Harris County
Against — None

BACKGROUND: In 1999, the 76th Legislature amended Civil Practice and Remedies Code, sec. 75.002 to give municipalities liability protection for injuries occurring during recreational activities inside a municipal facility, except in cases of gross negligence or acts conducted in bad faith or with malicious intent. Covered recreational activities include hockey and inline hockey, skating and inline skating, rollerskating, skateboarding, and rollerblading.

DIGEST: CSHB 3248 would apply limited liability to the state and counties regarding damages arising directly from recreational activities. The bill would amend the definition of recreation to include activities that take place “in or on an indoor or outdoor facility” owned, operated, or maintained by the state or a county or municipality. It would amend the notice that a facility must post on or near the facility to reflect the inclusion of the state and counties in this limited liability.

The bill would take effect September 1, 2003, and would apply only to a cause of action that accrued on or after that date.

SUPPORTERS SAY: CSHB 3248 would make it economically feasible for the state and counties to open facilities where children and adults can skate and play hockey safely. Because people can injure themselves in these activities, the owners of such facilities can face suits for damages.

In Midland in October 1998, two fifth-grade boys were killed when they were skating on a street at night and hit by a car. In response to this accident, the Legislature immunized municipalities from injuries occurring in recreational facilities, thereby allowing municipalities to open skate rinks where children could skate safely. Midland opened its rink last month.

Although the Texas Tort Claims Act may offer some protection, it would not prevent the state or counties from being held liable for damages on facilities they owned, operated, or maintained. They need the protection in CSHB 3248 to ensure that they can provide safe recreational facilities. Liability limitations would not discourage counties and the state from keeping their facilities safe, because they would act in the best interest of their citizens.

Where recreational facilities are not available, many people skate on the streets, creating a risk of being hit by a car or of hurting themselves by falling on surfaces that are not designed for the sport. This bill would make it more feasible for counties and the state to build facilities specifically designed for recreational use.

The bill also would help to protect private property. Skaters often skate on private property and can damage it.

**OPPONENTS
SAY:**

Extending immunity for damages could make government entities less diligent in maintaining existing facilities. Liability keeps a facility owner or operator focused on its responsibility to ensure public safety. Rather than hide behind limited liability, the state and counties should invest the necessary resources to keep recreational facilities safe.

CSHB 3248 is unnecessary. The Texas Tort Claims Act already provides limited liability for counties and the state.

NOTES:

The committee substitute would specify that limited liability would apply to activities in or on an indoor or outdoor facility and that the required warning be placed on or near the “facility,” rather than “building.”

HB 3248
House Research Organization
page 3

The companion bill, SB 1205 by Lindsay, was considered in a public hearing by the Senate State Affairs Committee on May 8.