

SUBJECT: Immunity from liability for dry fire hydrants.

COMMITTEE: Civil Practices — favorable, without amendment

VOTE: 7 ayes — Gray, Hilbert, Bosse, Goodman, Nixon, Roman, Zbranek
0 nays
2 absent — Alvarado, Dutton

WITNESSES: For — Luther Moseley, Rusk County Rural Fire Prevention District No. 1
Against — Hartley Hampton, Texas Trial Lawyers Association

DIGEST: HB 1602 would immunize landowners who allow fire-fighting agencies to connect dry fire hydrants on their land from any liability related to the hydrant. A dry fire hydrant would be defined as any hydrant connected to a stock tank, pond or similar water source used to fight fires.

Landowners who permitted dry fire hydrants on their land would not be liable for injury to persons or damage to property arising from the installation, maintenance or use of the hydrant; for any fire that the hydrant was used to fight; or if the hydrant ran dry while fighting a fire. The immunity from liability would not apply if the landowner acted, or failed to act, with intentional negligence or with reckless disregard for the safety of others.

HB 1602 would establish that any agreement allowing for the installation of a dry fire hydrant would not be binding on subsequent landowners.

This bill would take effect September 1, 1997, and apply only to a cause of action accruing on or after the effective date.

SUPPORTERS SAY: Dry fire hydrants are an essential component of fire prevention in rural areas of Texas. HB 1602 would encourage more landowners to install dry fire hydrants by removing the threat of civil liability that they carry.

Currently landowners who allow dry fire hydrants to be installed on their property can be held responsible for damages stemming from the installation, operation or failure of the hydrant. Because of the threat of liability, many landowners have refused to have hydrants installed, hampering rural firefighting capabilities. HB 1602 would remove the unwarranted threat of liability from landowners and thereby improve conditions for fighting fires in rural Texas.

Under HB 1602, landowners would still be liable if damage resulted from any action they intentionally took or if they failed to take action or acted with conscious indifference or reckless disregard for the safety of others. They should not, however, be held liable for a hydrant that fails to operate or runs out of water while the fire is still raging, the most common problems with dry fire hydrants.

It is unreasonable to make these landowners responsible for negligent harm related to these dry fire hydrants. First, many landowners do not have the resources to check these hydrants, and often the fire-fighting agency retains control over care and maintenance. Second, many conditions that are beyond the landowner's control can affect the operation of these hydrants. It would be unreasonable to tell landowners that they could not use a water source on their property in drought conditions unless they replaced the water so that it was available to fight fires. However, without this bill, landowners can be held liable for using their own water source for their own needs if the remaining water is insufficient to fight a fire.

HB 1602 also would clarify that agreements to install dry fire hydrants are made between the current landowner and the fire-fighting agency and would not bind future landowners. This clarification is necessary so that an installed hydrant would not diminish the value of the property or require the future owner to keep or maintain the hydrant.

OPPONENTS
SAY:

HB 1602 would open the door to wholesale immunity from liability for anything but intentional or reckless acts. Retaining liability for negligence would simply force landowners to use reasonable care in ensuring these hydrants were in working order and capable of fulfilling their intended purpose of fighting fires.