

By: Laubenberg

H.B. No. 859

A BILL TO BE ENTITLED

AN ACT

relating to liability for property damage arising in connection with the use of certain easements; providing a waiver of sovereign immunity.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 4, Civil Practice and Remedies Code, is amended by adding Chapter 100A to read as follows:

CHAPTER 100A. PROPERTY DAMAGE ARISING OUT OF USE OF CERTAIN EASEMENTS

Sec. 100A.001. EASEMENT USED FOR PUBLIC PURPOSE. (a) For purposes of this section, an easement is used for a public purpose if it is used for a purpose for which the easement holder has the authority to condemn an easement, regardless of whether the easement holder acquired the easement by condemnation.

(b) A governmental unit, as defined by Section 101.001, that holds an easement on private property, or a private entity that holds an easement on private property that is used by the easement holder for a public purpose, is liable to the property owner for any damage to the owner's property outside the area covered by the easement that arises out of the easement holder's use of the easement or ingress or egress on the property to access the easement, regardless of whether the easement holder commits a negligent or intentional act.

(c) This section does not affect any liability of an

1 easement holder for damage to property within the area covered by
2 the easement.

3 SECTION 2. Section 101.021, Civil Practice and Remedies
4 Code, is amended to read as follows:

5 Sec. 101.021. GOVERNMENTAL LIABILITY. A governmental unit
6 in the state is liable for:

7 (1) property damage, personal injury, and death
8 proximately caused by the wrongful act or omission or the
9 negligence of an employee acting within the employee's ~~[his]~~ scope
10 of employment if:

11 (A) the property damage, personal injury, or
12 death arises from the operation or use of a motor-driven vehicle or
13 motor-driven equipment; and

14 (B) the employee would be personally liable to
15 the claimant according to Texas law; ~~[and]~~

16 (2) personal injury and death so caused by a condition
17 or use of tangible personal or real property if the governmental
18 unit would, were it a private person, be liable to the claimant
19 according to Texas law; and

20 (3) as provided by Chapter 100A, property damage
21 arising out of the governmental unit's use of or access to an
22 easement.

23 SECTION 3. The change in law made by this Act applies only
24 to a cause of action that accrues on or after the effective date of
25 this Act. A cause of action that accrues before the effective date
26 of this Act is governed by the law in effect immediately before that
27 date, and that law is continued in effect for that purpose.

1 SECTION 4. This Act takes effect immediately if it receives
2 a vote of two-thirds of all the members elected to each house, as
3 provided by Section 39, Article III, Texas Constitution. If this
4 Act does not receive the vote necessary for immediate effect, this
5 Act takes effect September 1, 2009.