HB 3557 by Paddie: Too Broad, Too Expansive A Definition and Damages Too Punitive

HB 3557 expands the definition of “critical infrastructure” to include a “facility that is being constructed and all of the equipment and appurtenances used during that construction” (Sec. 424.001). While the intent of the bill appears to be to make trespassing in areas with “critical infrastructure” -- pipelines, power plants, refineries and other lands defined in Chapter 30 of the Penal Code -- liable for any damage that occurs, the impact of the bill could be to chill any demonstrations or protests that have no intention of damaging property. The new definition broadens the reach of the bill beyond protests and demonstrations at existing pipelines and other infrastructure, which is broadly defined, and includes locations where infrastructure is under construction.

The bill defines “damage to critical infrastructure” as either intentionally or knowingly damaging, destroying, vandalizing, defacing or tampering with critical infrastructure. This is significant in the context of pipeline protests, many of which have aimed to peacefully hinder access to pipelines or pipeline construction projects for a limited period. Incredibly the bill says a person can be found liable even if they are not actually convicted under the Penal Code.

The bill creates new civil and vicarious liability for individuals and organizations related to the offenses, as well. A defendant who engages in damage of critical infrastructure is civilly liable to the property owner under Section 424.002. An organization “that compensates a person for engaging in” damage or intent to damage critical infrastructure is likewise civilly liable to the property owner under Section 424.003. Notably, there is no knowledge element—i.e., it does not say “that knowingly compensates a person”; as such, an organization that has compensated (in any way) a person who then goes and breaks the law could be held vicariously liable under this provision. For both individuals and organizations, the property owner may sue for and claim actual damages, court costs, reasonable attorney’s fees, and potentially exemplary damages (Sec. 424.006). This could amount to an extraordinary sum and is likely to further inhibit individuals’ and organizations’ willingness to engage in First Amendment activity around infrastructure sites.

The Sierra Club believes that this broad bill is much too broad and is aimed not completely at protecting critical infrastructure but at preventing protests and demonstrations such as that engaged by many native persons and nearby property rights holders over pipelines in recent years. This is the USA and we should not be passing laws that are aimed at chilling protests or demonstrations.

Interestingly, the bill is so broad someone protesting a development on their own land -- as through an eminent domain process, could be found liable and pay extensive damages for tampering with a future site.

Cyrus Reed, Interim Director
Lone Star Chapter, Sierra Club
Cyrus.reed@sierraclub.org
512-740-4086