SUBJECT: Limiting liability of off-campus facilities used for school activities

COMMITTEE: Civil Practices — favorable, with amendment

VOTE: 7 ayes — Bosse, Alvarado, Dutton, Hope, Nixon, Smithee, Zbranek

0 nays

2 absent — Janek, Goodman

WITNESSES: For — Lester Houston

Against — Hartley Hampton, Texas Trial Lawyers Association

DIGEST: HB 2579, as amended, would allow the board of trustees of a school district to use a facility or other property that is not owned by the district for parking, recreational activities, and tutoring. A property owner or lessor who allowed the use of such a facility or other property would be immune from liability for property damages, personal injury, or death arising from the use of the facility or property for a school activity.

The immunity from liability would apply only to people who did not receive compensation from the district other than reimbursement for actual expenses in providing the facility or property. The immunity also would not apply to acts or omissions done intentionally, with wilful or wanton negligence, or with reckless disregard.

HB 2579 would take effect September 1, 1999.

SUPPORTERS SAY: Numerous opportunities exist for schools to use off-campus facilities for recreational activities and tutoring services, but many people who would be willing to donate their property for such uses do not do so because of the liability risk. Immunizing these people from liability would expand opportunities available to districts to use such facilities or properties for after-school and before-school activities. HB 2579 would apply only to facilities and property that did not make a profit from providing the services to the district.

Children engaged in activities either at community-based or school-based facilities are much less likely to be involved in gang activities or other criminal misconduct. While it would be preferable that every school could provide such services on campus, too many campuses do not have the facilities or personnel to conduct such programs. Current grant programs for after-school programs included in the House and Senate versions of HB 1, the general appropriations bill for fiscal 2000-01, could help but would not be enough for all districts to serve all the students who could benefit.

HB 2579 would not expose children to unreasonable risks at off-campus facilities. These facilities still would be held liable for reckless or intentional acts. All activities covered by this bill would have to be conducted under the authority of the school district, and the district could be held liable in certain circumstances. Therefore, the district would take all reasonable efforts to ensure the safety of the off-campus facility or property.

OPPONENTS SAY:

While expanding the opportunities for after-school programs is much needed, the first priority in establishing such programs should be the safety of school children. In order to protect children, the standard of conduct that would trigger liability should be lowered to negligence. Also, any facility or property whose owner was given immunity from liability for negligent acts at least should carry insurance to compensate injured parties. Similar insurance requirements exist under the charitable liability and immunity provisions of the Civil Practice and Remedies Code and should be applied in these circumstances.

NOTES:

The committee amendment remove would restrictions that the facility or property be used only for after-school activities and added parking to the list of acceptable uses.

A related bill, HB 184 by Longoria, would require school districts to keep school buildings and libraries open after hours and on weekends for recreational or tutoring activities. SB 104 by Duncan, which passed the Senate on March 18, would allow districts to keep buildings open for recreational and tutoring purposes after school hours. Both bills are pending in the House Public Education Committee.