

- SUBJECT:** Creating criminal, civil penalties for damage to critical infrastructure
- COMMITTEE:** Judiciary and Civil Jurisprudence — committee substitute recommended
- VOTE:** 6 ayes — Leach, Krause, Meyer, Neave, Smith, White
3 nays — Farrar, Y. Davis, Julie Johnson
- WITNESSES:** For — James Mann, Texas Pipeline Association; Al Philippus, Valero; (*Registered, but did not testify:* Lindsey Miller, Anadarko Petroleum; Julia Rathgeber, Association of Electric Companies of Texas; Dennis Kearns, BNSF Railway; June Deadrick, CenterPoint Energy; Matt Barr, Cheniere Energy; Steve Perry, Chevron USA; Jay Brown, Concho Resources; Shayne Woodard, Enbridge; Samantha Omey, ExxonMobil; Mark Vane, Husch Blackwell Strategies; Lee Loftis, Independent Insurance Agents of Texas; Martha Doss, Latinos for Trump; Tom Oney, Lower Colorado River Authority; James Mathis, Occidental Petroleum; Neftali Partida, Phillips 66; Terry Harper, Republican Party of Texas SD21; Kinnan Golemon, Shell Oil Company; Caleb Troxclair, SM Energy; Lee Parsley, Texans for Lawsuit Reform; Michael Garcia, Texas Association of Manufacturers; Austin McCarty, Texas Chemical Council; Carol Sims, Texas Civil Justice League; Shanna Igo, Texas Municipal League; Cory Pomeroy, Texas Oil and Gas Association; Thure Cannon, Texas Pipeline Association; Charlotte Owen; Denise Seibert; Jacqueline Stringer)
- Against — Robin Schneider, Texas Campaign for the Environment; Marisa Perales; Alyssa Tharp; (*Registered, but did not testify:* Alex Norton, Extinction Rebellion; Kelley Shannon, Freedom of Information Foundation of Texas; Cyrus Reed, Lone Star Chapter Sierra Club; Michael Coleman, Public Citizen; Karen Hadden, SEED Coalition; and nine individuals)
- On — (*Registered, but did not testify:* Robert Kepple, Texas District and County Attorneys Association)
- BACKGROUND:** Government Code sec. 423.0045 defines "critical infrastructure facility"

by listing specific types of facilities that are completely enclosed by a fence or other barrier designed to exclude intruders or clearly marked with a posted sign indicating that entry is forbidden, including certain refining, electrical, chemical, water, natural resources, telecommunications, processing, feeding, and infrastructure facilities.

The definition also includes portions of aboveground pipelines, oil or gas drilling sites, wellheads and other oil and gas related facilities if enclosed by a fence or other physical barrier obviously designed to exclude intruders.

DIGEST:

CSHB 3557 would create the Critical Infrastructure Protection Act and establish the felony offenses of damage to critical infrastructure facility and intent to damage critical infrastructure facility and would provide civil penalties related to the offenses.

In addition to the definition of "critical infrastructure facility" under Government Code sec. 423.0045, the bill would include a critical infrastructure facility that was under construction and all equipment and appurtenances used during construction.

Offenses. The bill would make it a crime for a person to, without the effective consent of the owner, intentionally or knowingly damage, destroy, vandalize, deface, or tamper with a critical infrastructure facility or impede, inhibit, or otherwise interfere with its operation.

This offense would be a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000).

It would be a crime to, without the effective consent of the owner, enter or remain on or in a critical infrastructure facility with the intent to damage, destroy, vandalize, deface, or tamper with the facility or impede, inhibit, or otherwise interfere with its operation.

This offense would be a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000).

If an offense under the bill also constituted an offense under other law, a person could be prosecuted for either or both offenses.

Punishment for corporations, associations. A court would be required to sentence a corporation or association found guilty of an offense under the bill to pay a fine of \$1 million.

Restitution. If an offense resulted in damage to or destruction of property, a court could order an offender to make restitution to the owner in an amount equal to the value of the property on the date of the offense.

Civil liability. A defendant who engaged in conduct that constituted an offense under the bill would be liable to the property owner for damages arising from that conduct.

It would not be a defense to liability that the defendant had been acquitted or had not been prosecuted or convicted under the bill, or had been convicted of a different offense or of a different type or class of offense, for the conduct.

Vicarious liability. Regardless of the relationship between the organization and the person, an organization that compensated a person for engaging in conduct occurring on the premises of a critical infrastructure facility would be vicariously liable to the property owner for damages arising from the conduct if it constituted an offense.

Damages. A claimant who prevailed in a suit under the bill would be awarded actual damages, court costs, and reasonable attorney's fees. In addition, the claimant could recover exemplary damages.

Cause of action cumulative. The cause of action created by the bill would be cumulative of any other remedy provided by common law or statute.

Nonapplicability. Law relating to actions involving the exercise of

certain constitutional rights and provisions limiting the amount of recovery in certain actions would not apply to a cause of action arising under the bill.

Other provisions. To the extent of any conflict, CSHB 3557 would prevail over another bill of the 86th Regular Session.

The bill would take effect September 1, 2019, and provisions relating to a cause of action would apply only to those accrued on or after that date.

SUPPORTERS
SAY:

CSHB 3557 would protect critical infrastructure facilities and private property owners by creating strong criminal penalties and civil liabilities for individuals and organizations to deter activities that damage or intend to damage such facilities.

Critical infrastructure facilities are essential to daily life, and the Legislature should take action to ensure that facilities in Texas are protected against intentional damage. There are well-documented incidents of coordinated criminal activity that were aimed at damaging or destroying critical infrastructure facilities or impeding their operations or construction. Intentional damage can result in costly clean-up operations that are largely paid for by state or local governments or the operator, rather than the person or organization that committed the damage. The bill would provide protections not only against intentional damage but also against construction delays and shutdowns, which are costly to businesses and Texans.

Current law provides only minimal criminal and civil penalties for people trespassing on critical infrastructure facilities with the intent to do damage. These penalties amount to a slap on the wrist, and often related cases are dismissed. It is necessary to increase the consequences to deter those who wish to do harm.

The bill would not restrict or otherwise affect current laws that allow for free speech and the right to protest. The bill would affect only people who

trespass and cause damage. This would not prevent people from protesting so long as nothing was damaged.

The bill would allow a person to be prosecuted under the bill, for an offense under other law if applicable, or for both offenses. This would not require a prosecutor to charge a person for an offense under the bill but would simply provide prosecutors with another tool. They would have the discretion to choose between existing law or the bill and decide the charge based on the seriousness of the offense or if there was well-considered public interest. Under the bill, a protestor placing a sticker on a pipeline or spray painting a facility would most likely still be charged under existing law, so long as no damage was done.

**OPPONENTS
SAY:**

CSHB 3557 is unnecessary because existing law is sufficient to punish the activities that would constitute an offense under the bill. Damaging, destroying, tampering with, or defacing critical infrastructure facilities or entering or remaining on a facility already would be covered under Texas Penal Code criminal mischief and trespassing statutes. By creating felony offenses, the bill would overly criminalize these activities that are already lesser offenses under current law.

The high criminal and civil penalties, breadth of the offenses, and broad definition of critical infrastructure facility to include construction sites would likely have a chilling effect on free speech and assembly rights. For example, individuals, organizations, or landowners wanting to protest construction of a new pipeline could be subject to a felony offense under the bill. While some are willing to risk lesser offenses, most may opt to not exercise their rights for fear of harsh penalties.

Additionally, the bill is too broad and could impose severe penalties for generally benign activities. Vandalizing or defacing a critical infrastructure facility would not inherently cause damage, and the bill could open up the possibility of a person being charged with a second-degree felony for putting a sticker on a pipeline or spray painting a facility.

The vicarious liability for organizations that compensated someone participating in activities that could be an offense under the bill amounts to guilt by association. The bill is too broad, and employers or nonprofits could be liable for damages even if all the organization did was pay for travel to a peaceful protest or just because the charged person was a member of the organization. It is impossible for an organization to control all of its employees or members.

OTHER
OPPONENTS
SAY:

The punishment for corporations and associations found guilty under CSHB 3557 should be amended to provide for more discretion. Instead of requiring a court to sentence a corporation or association to pay a fine of exactly \$1 million, the bill should provide for a range of penalties to give prosecutors, judges, and juries discretion to decide the proper punishment.