Testimony

House Tourism and Recreational Development Committee Hearing on House Bill 544

March 18, 2013
Harrisburg, Pennsylvania

Offered by
John J. Bell, Governmental Affairs Counsel
PENNSYLVANIA FARM BUREAU

Pennsylvania Farm Bureau
510 S. 31st Street • P.O. Box 8736 • Camp Hill, PA 17001-8736 • (717) 761-2740

Good morning, Mr. Chairman and members of the Committee. I am John Bell, and I currently serve as Governmental Affairs Counsel for Pennsylvania Farm Bureau. On behalf of Farm Bureau and the nearly 55,400 farm and rural families who are members of our organization, I want to thank you for the opportunity offer remarks today regarding the statutory changes to the Recreational Use of Land and Water Act proposed in House Bill 544.

Protection of private landowners, particularly those landowners who voluntarily avail their lands for public use, remains a priority among members of our organization. Many of our members want to provide the public the opportunity to experience the same peace and enjoyment of nature and its bounty on their farms and lands as they do. But they are also very aware of the legal, financial and personal risks that they could encounter when they do allow others on their property.

Many laws, such as statutory provisions of the Crimes Code governing protection of property, do give effective protection to farmers and landowners against others who intentionally attempt to take advantage of landowners' generosity and commit unlawful conduct on private property.

Other laws, like common law principles surrounding landowner liability, are not nearly as certain in outcome, and raise considerable doubt and apprehension among farmers and landowners who extend the invitation to use and enjoy their property beyond their immediate relatives.

The Recreational Use of Land and Water Act, as it has become commonly known, has made considerable inroad in providing in statute to landowners the level of legal protection that reduces landowners' level of apprehension and makes them more willing to open their lands to others. The Act's original enactment in 1966 and amendments to the Act subsequently enacted, as well proposals for additional amendments such as the ones discussed today, are policy matters that the Commonwealth and its General Assembly must continue to consider and evaluate.

In 2008, and again last May, Farm Bureau offered testimony in support of legislation very similar to the proposed legislation in House Bill 544 being considered by the Committee today. The Committee's April 2008 hearing was roughly one year after the General Assembly unanimously decided to enact legislative amendments to the Recreational Use of Land and Water Act in response to a court decision that held a farmer and his wife civilly liable for injuries incurred to another off-premises by a stray bullet fired from a hunter whom the landowner allowed to hunt.

Many of our members and other landowners who became aware of this case were outraged. They were under the impression that the Act already protected landowners from liability for injuries caused by hunters allowed to hunt on landowners' property. When word of this case broke publicly, landowners massively threatened to permanently close future access of others to hunting on their property.

The General Assembly unanimously responded to affirm through statutory amendment to the RULWA policy in the Commonwealth that landowners who do open their lands to public hunting will be legally protected from civil liability and that civil law will not impose on landowners the burden of being guarantors for hunters' conduct on the landowner's property.

Few would argue that the enactment of Act 11 of 2007 seriously deviated from the expectations for protection of liability that many landowners allowing others to hunt on their lands had prior to that case, or that Act 11 was an unreasonable policy for the legislature to establish in law. When the General Assembly weighed the importance of facilitating and promoting opportunities to provide public access to private lands for hunting against relative risks of injury that may result, the General Assembly made a policy decision to protect landowners allowing the public hunting access from civil liability, notwithstanding the foreseeable possibility that persons injured from hunting activity on landowners' property may not be receive adequate financial recovery from their injuries.

House Bill 544 proposes to make several statutory changes that we believe are consistent with decisions made by courts in interpreting the Recreational Use of Land and Water Act and the extent and limitation of protections intended to be provided to landowners. Our courts have recognized, for example, that snowmobiling and motorbike riding fall

within the scope of the Act's definition of "recreational purposes" for which the protections from liability may apply.

Several other changes proposed in House Bill 544 may be viewed by some as expanding the scope of landowner protection to include several "improvements to land", as well as land in its natural state. But the "improvements" for the bill proposes to extend protection from liability are, in large part, accessories that facilitate the recreational purposes for which access to land is sought by the public. The bill's attempt to include "boating access and launch ramps," "fishing piers" and "public access and parking areas" within the scope of "land" for which the protection from liability may apply is, in our view, a reasonable extension of the Act's overall policy objectives to encourage landowners to allow others to use their lands for recreational purposes. While boat launches and parking areas are not recreational activities themselves, many see these facilities as necessary or important accessory components of persons' ability to meaningfully engage in these activities.

I would note that the bill's proposed inclusion of these items in the definition of "land" does not mean absolutely that the landowner is absolved of liability for any injury occurring on these improvements, because of the exceptions to liability protection that the Act provides. But it would raise the level of protection from liability to landowners for injuries sustained from use of these improvements above the level of ordinary negligence.

One of the areas that House Bill 544 attempts to statutorily clarify is the Act's intended scope of "malicious or willful" conduct for which a landowner would not protected under the Recreational Use of Land and Water Act. Section 6 of the Act denies the Act's protection from liability in situations where there is "willful or malicious failure [by the landowner] to guard or warn against a dangerous condition, use, structure or activity." At a minimum, "willful" or "malicious" conduct should reasonably suggest extreme indifference or neglect by landowner in correcting conditions that will likely cause serious injury to others exposed to the condition. However, some cases have concluded that the "willful" or "malicious" failure exception may apply in less than extreme situations, where the landowner had reason to know of a condition on the premises that may cause injury and that the landowner failed to correct.

House Bill 544 would more clearly state the more extreme degree of conduct that the landowner must exude in order to be denied protection under the Act. To be the type of "willful" or "malicious" conduct for which the Act's protection from liability would not apply, the bill would require that the landowner intentionally intended to cause harm or showed utter indifference or conscious disregard for the safety of others through his or her failure to warn or guard against the injury causing condition.

House Bill 544 would make one substantive change to the Recreational Use of Land and Water Act that our organization would find to be particularly positive. Where a lawsuit has been brought against a

landowner and the landowner has successfully asserted the Act's protection from liability in defense of the lawsuit, House Bill 544 would require that the landowner be awarded attorney fees and legal costs that the landowner incurred in his or her defense. Even under RULWA' legal protection from liability, landowners who are sued must still hire and bear the economic costs of hiring legal personnel when asserting and ultimately prevailing on the Act's protection from liability.

We understand the General Assembly's general reluctance to establish an absolute award of attorney fees in statue. But we also feel that establishment of a statutory award in this Act is not an unreasonable stretch of the policy already established in the Act that landowners should be encouraged without consequence to open their private lands for public recreational use. And establishment of award of attorney fees in the Act will encourage injured plaintiffs and their attorneys to more carefully evaluate the degree to which the Act's bar from recovery of damages applies to their case.

In sum, Farm Bureau supports the legislative amendments to the Recreational Use of Land and Water Act contained in House Bill 544, and would urge this Committee to take action to favorably report the bill.

Thank you again for the opportunity today to share with you our views. I will try to answer any questions you may have.