

**TESTIMONY**

**ON HOUSE BILL 544**

**BEFORE THE  
HOUSE TOURISM AND RECREATIONAL  
DEVELOPMENT COMMITTEE**

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THANK YOU CHAIRMAN STERN, CHAIRMAN KIRKLAND, MEMBERS AND STAFF OF THE HOUSE TOURISM AND RECREATIONAL DEVELOPMENT COMMITTEE.

MY NAME IS FRED BROWN. I AM HERE TODAY ON BEHALF OF THE PENNSYLVANIA OFF-HIGHWAY VEHICLE ASSOCIATION AND THE OWNERS OF THE MORE THAN 250,000 PENNSYLVANIA REGISTERED ALL-TERRAIN VEHICLES AND DIRT BIKES TO ASK AND URGE THE COMMITTEE'S FAVORABLE CONSIDERATION AND AFFIRMATIVE VOTE FOR HOUSE BILL 544. IN ADDITION TO THOSE ORGANIZATIONS REPRESENTED HERE, THE LEGISLATION IS SUPPORTED BY A NUMBER OF ALLIED GROUPS.

(A LIST IS ATTACHED FOR YOUR INFORMATION).

HOUSE BILL 544 PROPOSES REVISIONS TO PENNSYLVANIA'S RECREATIONAL USE OF LAND AND WATER ACT PASSED BY THE PENNSYLVANIA GENERAL ASSEMBLY IN 1966, BY RE-AFFIRMING THE ORIGINAL LEGISLATIVE INTENT AND EXPRESSED WORDING OF THE ACT.

OHV RECREATION IS PART OF MIX THAT MAKES UP TOURISM AND RECREATION INDUSTRY IN PENNSYLVANIA. BEST ESTIMATES SHOW THAT THE SPORT ADDS NEARLY \$2 BILLION TO THE STATE'S ECONOMY. OHV RECREATION IS AN UNDERUTILIZED TOOL FOR ECONOMIC DEVELOPMENT AND JOB CREATION. THE ACT THAT HB 544 IS AMENDING IS A SIGNIFICANT BARRIER TO CAPITALIZING ON ECONOMIC AND JOB CREATING POTENTIAL THE SPORT OFFERS. LANDOWNERS HAVE A GREAT DISINCENTIVE – THE THREAT OF SUIT — DISCOURAGING THEM FROM OFFERING PRIVATE LANDS FOR RECREATION PURPOSES. CONSEQUENTLY, WHEN PRIVATE LANDS ARE UNAVAILABLE; DEVELOPMENT OF INNOVATIVE GROWTH MODELS IS CHOKED.

THE PURPOSE OF ACT 586 OF 1966 IS "...TO ENCOURAGE OWNERS OF LAND TO MAKE LAND AND WATER AREAS AVAILABLE TO THE PUBLIC FOR RECREATIONAL PURPOSES BY LIMITING THEIR LIABILITY TOWARDS PERSONS ENTERING THEREON FOR SUCH PURPOSES." EXCEPT WHERE THE OWNER CHARGES PEOPLE WHO USE THE LAND FOR SUCH USE, OR WHERE THE OWNER IS GUILTY OF A WILLFUL OR MALICIOUS FAILURE TO GUARD OR WARN AGAINST A DANGEROUS CONDITION, USE, STRUCTURE OR ACTIVITY, "AN OWNER OF LAND OWES NO DUTY OF CARE TO KEEP THE PREMISES TO PERSONS ENTERING FOR SUCH PURPOSES." THE PRACTICAL EFFECT OF RULWA IS TO PROVIDE LANDOWNERS WITH AN "IMMUNITY" TO LAWSUITS FOR DAMAGES FOR INJURIES CAUSED BY MERE NEGLIGENCE OR CARELESSNESS WHILE PRESERVING THE RIGHT OF INJURED PARTIES TO SUE THE LANDOWNER IF THE LANDOWNER ACTED DELIBERATELY OR MALICIOUSLY REGARDING A DANGEROUS CONDITION OF WHICH THEY WERE AWARE OR SHOULD HAVE BEEN AWARE.

NOTHING CONTAINED IN HB 544 CHANGES THAT. LET ME REPEAT, THERE IS NOTHING IN THIS BILL THAT PROHIBITS INJURED PARTIES FROM FILING AN ACTION AGAINST A LANDOWNER.

CONCERNS OF LIABILITY AND THE COSTS ASSOCIATED WITH THE DEFENSE OF LITIGATION HAVE CAUSED, AND CONTINUE TO CAUSE, LANDOWNERS TO BE RELUCTANT TO OPEN THEIR LAND.

THE AMENDMENTS DETAILED IN HB 544 ARE INTENDED TO RE-AFFIRM THE ORIGINAL INTENT OF THE ACT AND TO FURTHER ENCOURAGE LANDOWNERS TO MAKE AND KEEP LAND OPEN AND AVAILABLE FOR RECREATIONAL USE.

HB 544 DOES THE FOLLOWING:

THE DEFINITION OF "LAND" IS CLARIFIED BY ADDING ADDITIONAL IMPROVEMENTS TO IT BRIDGES, BOAT DOCKS, RAMPS, FISHING PIERS AND PAVED AND UNPAVED TRAILS. THE DEFINITION WOULD ALSO APPLY TO SUCH AREAS AND PHYSICAL OBJECTS WHETHER THEY ARE IN AN UNIMPROVED CONDITION OR A CONDITION BY MANMADE EFFORT, WHETHER THEY ARE LARGE OR SMALL IN SIZE AND WHETHER THEY ARE LOCATED IN A RURAL OR AN URBAN AREA. AGAIN, RE-AFFIRMING THE ORIGINAL INTENT OF THE ACT.

"RECREATIONAL PURPOSE" IS EXPANDED TO INCLUDE ANY ACTIVITY FOR EXERCISE, SPORT, EDUCATION, RECREATION, RELAXATION OR PLEASURE, WITH SNOWMOBILING AND ATV AND MOTORCYCLE RIDING SPECIFICALLY INCLUDED.

THE DEFINITION OF "CHARGE," AS DEFINED MEANS AN ADMISSION FEE TO USE LAND, IS AMENDED TO SPECIFICALLY EXCLUDE ANY IN-KIND CONTRIBUTIONS OR DE MINIMIS CONTRIBUTIONS.

A DEFINITION OF "RECREATIONAL USER" IS ADDED AND MEANS ANY PERSON WHO ENTERS OR USES LAND FOR A RECREATIONAL PURPOSE.

A DEFINITION FOR THE TERM "WILLFUL OR MALICIOUS" AS USED IN THE ACT IS ADDED AND REFERS TO AN "ACTUAL OR DELIBERATE INTENTION BY THE LANDOWNER TO CAUSE HARM OR, IF UNINTENTIONAL SHOWS, AN UTTER INDIFFERENCE OR CONSCIOUS DISREGARD TO THE SAFETY OF OTHERS."

FINALLY, THE BILL ADDS A SECTION REQUIRING COURTS TO AWARD ATTORNEY FEES AND LEGAL COSTS TO THE LANDOWNER, LESSEE, MANAGER, EASEMENT HOLDER OR OCCUPANT FOUND NOT TO BE LIABLE FOR AN INJURY.

LAST SESSION THE OPPONENTS OF THIS LEGISLATION OFFERED SEVERAL INACCURATE AND ERRANTLY CREATIVE ARGUMENTS AGAINST THIS BILL. THEREFORE IT IS IMPORTANT TO ILLUSTRATE WHAT THE BILL DOES NOT DO.

THE OPPONENTS ASSERT THAT, THE “WHEREVER LOCATED” LANGUAGE ON PAGE 2 LINE 1 WOULD EXONERATE LANDOWNERS FROM LIABILITY WHERE “PERMITTED FIREWORKS”, FOR EXAMPLE, FALL UPON SOMEONE ELSE’S PROPERTY MANY MILES AWAY. I WOULD ARGUE THAT THE DEFINITION OF “WILLFUL OR MALICIOUS” WOULD ADDRESS THOSE SITUATIONS. THE DEFINITION READS **“WILLFUL OR MALICIOUS MEANS, IN REFERENCE TO AN OWNER OF REAL PROPERTY, AN ACTUAL OR DELIBERATE INTENTION BY THE OWNER TO CAUSE HARM OR WHICH, IF NOT INTENTIONAL, SHOWS AN UTTER INDIFFERENCE TO OR CONSCIOUS DISREGARD FOR THE SAFETY OF OTHERS.”** THE PHRASE “WILLFUL AND MALICIOUS HAS BEEN THE STANDARD SINCE THE PASSAGE OF THE ACT IN 1966.

THE OPPONENTS ASSERT THAT THE AMENDMENTS WILL ALSO INCREASE LITIGATION BECAUSE THEY ALLOW CONTRIBUTIONS, WHICH ARE “IN KIND”, OR “DE MINIMUS.” WHAT THAT MEANS, OF COURSE, WOULD HAVE TO BE LITIGATED. **IN-KIND IS DEFINED AS CONSISTING OF SOMETHING SUCH (AS GOODS OR COMMODITIES SOMETHING OTHER THAN MONEY) DE MINIMUS HAS BEEN LITIGATED IN BIXLER V STATE ETHICS COMMISSION 847 A.2<sup>ND</sup> 785, THE COURT RULED THAT \$561.77 IS DE MINIMUS. OPPOSITION ON THIS POINT IS HOLLOW.**

THE OPPONENTS ASSERT THAT THE DEFINITION OF STRUCTURES IS “ENHANCED TO INCLUDE THE CONSTRUCTION OF DEFECTIVE BRIDGES AND THE LIKE.” **ACTUALLY, THE DEFINITION OF LAND ALREADY**

**INCLUDES STRUCTURES. A STRUCTURE IS DEFINED AS SOMETHING THAT IS CONSTRUCTED, THAT WOULD INCLUDE THOSE STRUCTURES BEING ADDED TO THE DEFINITION OF LAND. DEFECTIVE STRUCTURES ARE EXPRESSLY SUBJECT OF SUIT UNDER HB 544 NOT EXCLUDED. FURTHERMORE, ANY NOTION THAT THIS BILL ENCOURAGES PEOPLE TO BUILD DEFECTIVE BRIDGES IS JUST SILLY. NO RATIONAL PERSON WOULD DO THIS.**

THE OPPONENTS ASSERT THAT THE LAW WOULD ALSO PROVIDE "EFFECTIVE IMMUNITY TO CONDITIONS THAT ARE IMPROVED BY MAN-MADE EFFORT. WHY SHOULD THE IMMUNITY BE GIVEN TO SOMEONE WHO CREATES A STRUCTURE OR OTHER OBJECT WHICH CAUSES HARM?" THEY FURTHER OPINE THAT THIS SECTION WOULD EFFECTIVELY DESTROY ANY INCENTIVE TO CREATE A SAFE ENVIRONMENT FOR RECREATIONAL ACTIVITY. IT WILL SERVE AS A TRAP TO THE UNWARY. THE CURRENT DEFINITION OF LAND READS ...LAND, ROADS, WATER, WATERCOURSES, PRIVATE WAYS AND BUILDINGS, AND MACHINERY OR EQUIPMENT WHEN ATTACHED TO THE REALTY. ARE ALL MAN MADE IMPROVEMENTS AND HAVE EXISTED SINCE 1966. WE FIND THIS POINT OF OPPOSITION DISTURBING. IT ASSUMES THAT LANDOWNERS FIND GLEE IN HARMING INNOCENT PEOPLE. THEY'RE ARGUMENT SPEAKS TO THE DARKEST SIDE OF HUMANITY AND ASKS YOU TO LEGISLATE WITH THE ASSUMPTION THAT ALL LANDOWNERS ARE SOCIOPATHS.

THE OPPONENTS ASSERT THAT THE DEFINITION OF RECREATIONAL PURPOSE SHOULD NOT BE EXPANDED TO INCLUDE MOTORIZED VEHICLES SUCH AS SNOWMOBILES, ALL-TERRAIN VEHICLES AND MOTORCYCLES. THESE ACTIVITIES DO OCCUR AND HAVE BEEN THE SUBJECT OF LITIGATION.

THE OPPONENTS ASSERT THAT THE LANGUAGE PROVIDING FOR THE

REIMBURSEMENT OF ATTORNEY FEES IS"...NOT CONSTITUTIONAL BECAUSE IT INFRINGES UPON THE PENNSYLVANIA SUPREME COURT'S RULE-MAKING BY AWARDING ATTORNEY'S FEES AND COSTS..." AND THAT "THE LEGISLATION MAKES AWARDS OF THESE FEES AND COSTS WITHOUT PROVIDING THE SAME CORRESPONDING AWARD TO THOSE WHO ARE SUCCESSFUL IN OVERCOMING THE STRICT IMMUNITY." **A WORD SEARCH REVIEW OF THE LDP SYSTEM REVEALS THAT THERE ARE SCORES OF REFERENCES RELATED TO "ATTORNEY FEES", IN PENNSYLVANIA STATUTES, THE MOST NOTABLY EXAMPLE WAS THE PASSAGE AND ENACTMENT OF HOUSE BILL 40 OR ACT 10 OF THE 2011-2012 SESSION KNOWN AS THE CASTLE DOCTRINE.**

HB 544 REAFFIRMS AND REINFORCES THE IMMUNITY PROMISED WHEN RULWA WAS ADOPTED IN 1966. HB 544 POSES NO BARRIERS IN BRINGING LEGITIMATE CLAIMS ON BEHALF OF INNOCENT AND INJURED PEOPLE. WE BELIEVE BRINGING BASELESS LITIGATION AGAINST LANDOWNERS SOLELY BECAUSE THEY ARE CONVENIENT TARGETS IS AN OUTRAGEOUS VIOLATION OF LANDOWNER'S FUNDAMENTAL RIGHTS.

THANK YOU AGAIN FOR THE OPPORTUNITY TO EXPRESS OUR VIEWS IN SUPPORT OF HB 544.

