

SUBJECT: Immunity from liability for boards and counties related to JJAEPs

COMMITTEE: Civil Practices— favorable, without amendment

VOTE: 6 ayes — Gray, Hilbert, Bosse, Goodman, Roman, Zbranek
0 nays
3 absent — Alvarado, Dutton, Nixon

SENATE VOTE: On final passage, March 12 — 31-0

WITNESSES: For — Donald Lee, Conference of Urban Counties; Ann Fickel, Texas Classroom Teachers Association
Against — Chris Elliot, Texas Trial Lawyers Association

BACKGROUND : SB 1 by Ratliff, enacted in 1995, allowed for the creation of juvenile justice alternative education programs (JJAEPs) in the 22 counties with populations over 125,000. The act aimed at eliminating the traditional process of suspending and expelling students, requiring instead that students be “expelled” to an alternative education program operated in conjunction with the juvenile justice system.

Professional employees and volunteers of school districts may not be held personally liable for any act incident to or within the scope of the duties of the employee, except in circumstances in which the employee uses excessive force in disciplining the student, is negligent resulting in bodily harm or injury to the student, or is operating a motor vehicle. School districts are generally immune from liability under the Texas Tort Claims Act, Chapter 101 of the Civil Practices and Remedies Code.

DIGEST: SB 135 would immunize a juvenile board, county commissioners court, and the county from liability regarding the development and operation of a JJAEP to the same extent that school districts are immunized from liability. The employees and volunteers of a juvenile board on county would be immune from liability to the extent that volunteers and employees of school districts are immune.

SB 135 would take immediate effect if finally passed by a two-thirds record vote of the membership of each house and apply to any cause of action that accrued on or after that date.

SUPPORTERS
SAY:

Counties, commissioners' courts and juvenile boards are partners with school districts in creating and operating JJAEPs. Because they are on the same level as school districts and have similar duties and responsibilities, such organizations and their employees and volunteers should be given the same immunity from liability that school districts and their employees and volunteers now have.

Numerous lawsuits have been filed in relation to the creation and operation of JJAEPs. Many of the grounds for such suits are subjects of bills pending in the current legislative session. Because school districts are generally immune from such suits, the suits have been brought against the counties who helped the districts operate the JJAEPs. The counties and juvenile boards should be treated exactly the same as school districts in operating JJAEPs.

This legislation would not take away a right of any student negligently injured in a JJAEP program to sue. What it would do is clarify that all agencies involved in the creation and operation of JJAEPs should be treated the same.

OPPONENTS
SAY:

Many problems exist in the creation and operation of JJAEPs, including due process rights, operational issues, zero tolerance policies, and the quality of education in such programs. At least one case has already been decided in which a court determined that the operation of an alternative education program violated that student's due process rights, *Nevaras v. San Marcos Consolidated Independent School District*. This legislation would limit the rights of students placed in these programs to collect compensation for wrongs done to them.

NOTES:

SB 132, SB 133, SB 136, SB 137, SB 138, SB 139, and SB 140 all by Bivins relating to alternative education programs and JJAEPs, have passed the Senate and have been reported favorably by the House Public Education Committee.

