

- SUBJECT:** Increasing caps on tort damages for governmental units
- COMMITTEE:** Civil Practices — committee substitute recommended
- VOTE:** 9 ayes — Bosse, Janek, Clark, Dutton, Hope, Martinez Fischer, Nixon, Smithee, Zbranek  
0 nays
- WITNESSES:** For — Richard Hile, Texas Trial Lawyers Association  
Against — Shellie Crow, Council of School Attorneys; Cathy Douglass, Texas Association of School Boards
- BACKGROUND:** Civil Practice and Remedies Code, sec. 101.023 establishes caps on the tort liability of governmental entities, as follows:
- State agencies:* \$250,000 per person and \$500,000 per occurrence of bodily injury or death; \$100,000 per occurrence of property damage.
- Local government units:* \$100,000 per person and \$300,000 per occurrence of bodily injury or death; \$100,000 per occurrence of property damage.
- Municipalities:* \$250,000 per person and \$500,000 per occurrence of bodily injury or death; \$100,000 per occurrence of property damage.
- Emergency services organizations:* \$100,000 per person and \$300,000 per occurrence of bodily injury or death; \$100,000 per occurrence of property damage.
- In cases with multiple governmental entities as defendants because the entities were working together, some courts have held that a plaintiff can be awarded damages from each of the entities at each entity's capped amount. This practice is called the cumulation of damage caps.
- DIGEST:** CSHB 1119 would increase the damage caps for state government, for local governmental units, and for large municipalities. The state's caps and those

for cities of 100,000 people or more would increase to \$375,000 per person and \$750,000 per occurrence of bodily injury or death and to \$150,000 per occurrence of property damage. The caps for local government units would increase to \$250,000 per person and \$500,000 per occurrence of bodily injury or death and to \$150,000 per occurrence of property damage.

The caps for emergency services organizations and for cities of less than 100,000 population would not change from the current levels.

In addition, CSHB 1119 would end the cumulation of governmental entities' damage caps.

This bill would take effect September 1, 2001, and would apply only to a cause of action that accrued on or after that date.

**SUPPORTERS  
SAY:**

By increasing the liability caps for certain governmental units, CSHB 1119 would help make whole more people who had been harmed by a governmental actor's negligence. The current caps were set in 1983. Using 1983 as the base year, if those amounts had been indexed to the Consumer Price Index to reflect inflation since then, the caps would have increased by 76.91 percent, so that a \$250,000 cap on personal injuries, for instance, would now be set at \$442,275. This bill would increase that cap only to \$375,000. Considering that governmental entities cannot be sued except in certain narrow circumstances, partially restoring the value of the liability caps would be appropriate and would strike a proper balance between the interests of injured parties and governmental entities.

By exempting small cities and emergency services organizations from any increase, CSHB 1119 would avoid imposing costs on entities that were least able to pay for them, either because their tax bases were too small or because their revenues were based on flat fees on phone lines and long-distance service and thus were not within their control.

The bill also would offset some of the cost to government entities of increasing liability caps by ending a claimant's ability to cumulate multiple entities' liability amounts when the entities were working together in the activity that caused the harm.

OPPONENTS  
SAY:

Cities and local government units, which include school districts as well as hundreds of small water, appraisal, utility, and community college districts, cannot afford the increases in liability insurance premiums that CSHB 1119 would cause. The proposed increases in the caps are estimated to raise liability insurance premiums by 25 percent, but these estimates are based on the current level of claims. Increasing the damage caps could encourage more claims, so those estimates may be low.

The Legislative Budget Board estimates that the yearly cost to counties cross the state would be \$6 million to \$7 million, reflecting increased insurance and legal costs and greater numbers of claims.

At a time when these entities are facing 15 to 25 percent increases in the costs of employee health insurance, an average 20 percent increase in workers' compensation insurance premiums, and demands for teacher pay raises and curriculum enrichment, they cannot afford **tort** liability insurance increases too. This is especially true of the approximately 400 school districts that already have their property tax rates set at or within 10 cents of the maximum \$1.50 per \$1,000 assessed value for maintenance and operations taxes. Increasing the liability caps essentially would amount to an unfunded mandate for many of these districts.

NOTES:

The committee substitute removed smaller municipalities from the increased caps and reduced the increases proposed for other entities, compared to HB 1119 as filed. The substitute also added the provision that would prohibit a claimant from cumulating multiple entities' damage caps.