

SUBJECT: Providing indemnity for prison chaplains and spiritual advisors

COMMITTEE: Civil Practices — favorable, without amendment

VOTE: 7 ayes — Bosse, Clark, Dutton, Hope, Martinez Fischer, Nixon, Smithee
0 nays
2 absent — Janek, Zbranek

WITNESSES: For — None
Against — None
On — Carl Reynolds, Texas Department of Criminal Justice

BACKGROUND: Civil Practices and Remedies Code, sec. 104.001 determines when the state is responsible for paying damages awarded against persons sued for actions they took in their capacity as a state employee or representative and for paying for their legal defense.

DIGEST: HB 2179 would add prison chaplains or spiritual advisors to the list of people whom the state could indemnify, provided that the person was performing services under contract with the Texas Department of Criminal Justice (TDCJ), the Texas Youth Commission, or the Texas Juvenile Probation Commission at the time of the act or omission on which the suit was based.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2001.

SUPPORTERS SAY: HB 2179 would ensure that ministers, rabbis, and other spiritual advisors employed on a contract basis to serve in the state's correctional facilities would continue to do so. Many spiritual advisors are contractors, not employees, serving on an as-needed basis because members of their faith are only a small portion of the correctional facility population. These advisors earn only a few thousand dollars a year. If an inmate sues an advisor — for instance, for refusing to certify that the inmate is of a faith that has special

dietary restrictions — defending such a suit could cost more than the advisor's annual earnings from the correctional facility. One rabbi has been sued twice in the past several years. Even one suit could deter spiritual advisors from serving in correctional facilities.

On the other hand, the suits are not so frequent that the state would incur great additional expense by defending and indemnifying these advisors. In fact, the spiritual advisor rarely would be the only defendant, and since the attorney general typically would be defending other state employees and TDCJ itself, defending the spiritual advisor as well would cause little additional cost. As for damages, the state would be liable only if the court found that the spiritual advisor acted improperly and violated an inmate's rights, which would be much less likely for this category of defendants.

Other professionals who contract to provide services at Texas' correctional facilities, such as physicians and psychiatrists, already are entitled to be defended and indemnified by the state. Treating spiritual advisors differently is not justifiable and could be harmful for inmates who were denied their services as a result.

**OPPONENTS
SAY:**

The indemnity and defense rights that HB 2179 would provide could create significant new potential liabilities for the state.

NOTES:

The bill's fiscal note indicates that it would have no significant fiscal implication for the state.