

**SUBJECT:** Right to sue for A&M bonfire and A&M Prairie View van crash accidents

**COMMITTEE:** Civil Practices — committee substitute recommended

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

**WITNESSES:** None

**BACKGROUND:** Under the doctrine of sovereign immunity, no one can sue the state, nor can the state be liable for damages without the Legislature’s permission. A state university is considered the state for the purposes of this immunity. The Texas Tort Claims Act (Civil Practice and Remedies Code, ch. 101) waives the state’s immunity from suit and damages for operation of motor vehicles and for conditions or uses of tangible personal or real property, but caps damages at \$500,000 per occurrence.

**DIGEST:** CSHJR 22 would propose amending the Texas Constitution to allow people who have claims for bodily injury or death arising from either the November 1999 Texas A&M University bonfire tragedy or the February 2000 Prairie View A&M University van crash tragedy to sue the state or a state agency for those injuries. The proposed amendment would waive the state’s immunity from suit and from damages up to \$250,000 for each person who sustained bodily injury or death from these incidents. A person suing under this waiver of immunity would have until November 6, 2002, to file a lawsuit. This section of the Constitution would expire December 31, 2003.

The proposal would be presented to Texas voters at an election on November 6, 2001. The ballot proposal would read: “The constitutional amendment to abolish and waive sovereign immunity to suit and to liability for bodily injury or death sustained in the Texas A&M Bonfire Tragedy and the Prairie View A&M Van Crash Tragedy.”

**SUPPORTERS SAY:** The tragedies addressed by CSHJR 22 harmed scores of people. The current damage cap of \$500,000 per occurrence does not allow full compensation for the victims of those incidents. CSHJR 22 would do the just and fair thing

for the victims and their families by removing the cap on the damages for which the state could be liable for these incidents.

It is not entirely clear whether the bonfire tragedy would fall within the waiver of immunity under the Tort Claims Act. CSHJR 22 would ensure that those injured in that incident and the families of those who died could seek compensation for their losses.

OPPONENTS  
SAY:

CSHJR 22 would impose retroactive liability on the universities in question. A constitutional amendment is being proposed because enacting a statute to this effect would violate the Constitution's prohibition against retroactive and *ex post facto* laws (Art. 1, sec. 16). As a retroactive imposition of liability, CSHJR 22 would set an unfortunate precedent. Every time a high-profile tragedy involved a state agency, plaintiffs' lawyers would come to the Legislature seeking a special exception in the Constitution for their clients.

Also, the limited waiver of the cap on damages would be unfair by treating victims of some incidents differently from the victims of others. It is wrong to lift the damage caps for some and not others when all people who have been injured by the negligence of the state or its agents are equally deserving of compensation.

These caps exist to protect taxpayers from either frivolous or excessive lawsuits. Although these suits probably are not frivolous, lifting the state's immunity could expose the universities in question, and the taxpayers who finance those universities, to very large potential liability.

Though the intent of the proposed amendment may be simply to remove the cap on damages for a single occurrence under the Tort Claims Act, it actually would take these suits out of the Tort Claims Act altogether and effect a general waiver of the state's sovereign immunity. This waiver would include all possible causes of action and all types of damages, including punitive damages. Another effect would be to remove the protections from suits in their personal capacity that state employees receive under the Tort Claims Act.

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NOTES: HJR 22 as filed would have proposed abolishing the general rule of sovereign immunity. The committee substitute added provisions to remove the per-occurrence damage cap for the Prairie View A&M van crash.