

SUBJECT: Municipal workers' compensation liability at entertainment events

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 8 ayes — Giddings, Elkins, Kolkhorst, Bohac, Martinez Fischer, Oliveira, Solomons, Zedler

0 nays

1 absent — J. Moreno

SENATE VOTE: On final passage, May 15 — 31-0

WITNESSES: For — Tony Koriath, Texas Municipal League Intergovernmental Risk Pool

Against — None

BACKGROUND: Labor Code, ch. 504 requires a county, municipality, special district, school district, junior college district, housing authority, community center for mental health and mental retardation services, or any other legally constituted political subdivision of the state to provide workers' compensation benefits to its employees. A person is not an employee entitled to workers' compensation under the statute if the person works in the service of a political subdivision but is not paid by the hour, day, week, month, or year. Nor is a person entitled to workers' compensation if the person is a patient or client of a political subdivision involved in vocational training or a prisoner incarcerated by a political subdivision.

DIGEST: SB 478 would stipulate that a person was not an employee or entitled to compensation under Labor Code, ch. 504 if the person performed certain services that could benefit a political subdivision, or was employed by or under contract with a performer providing those services, but did not receive payment from the political subdivision. The services would include those in connection with the production of a stock show, rodeo, carnival, circus, musical performance, vocal performance, theatrical performance, professional baseball league or game, professional hockey league or game, wrestling event, vehicle or motorcycle event, or other entertainment event.

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, 2003.

**SUPPORTERS
SAY:**

SB 478 would help shield municipalities from litigation expenses and possible payments caused by workers' compensation claims that could result from certain activities of nonmunicipal employees working in municipal facilities. Existing statutes already protect cities from workers' compensation claims by nonemployees. This bill simply would help strengthen existing law. It would not affect any benefit of an employee of a political subdivision.

Several municipalities own arenas or other facilities where private leagues and businesses lease space to host for-profit entertainment events, including rodeos, team athletic contests, and musical performances. City employees sometimes perform certain duties — such as preparing ice for a hockey game or operating lighting and sound systems — while working in the vicinity of laborers and others employed or contracted by the private entertainment concerns. Because nonmunicipal workers could attempt to characterize themselves as “borrowed servants” of a municipality in these situations, a city may incur unnecessary litigation expenses in defending against injury claims. SB 478 explicitly would protect cities from these claims.

The bill would conform with existing workers' compensation law by helping ensure that municipalities were held liable only in cases when an actual city employee was injured while working under municipal control or in the course and scope of municipal business. Private employees or contractors who become injured on city property where city employees also are working are not conducting municipal business under municipal control. As a result, the city has little authority to ensure safe delegation of their duties and safe conduct. Also, the city typically benefits only incidentally from the activities of the private workers and their employers.

Like other employers, cities suffer the high cost of defending litigation and providing medical treatment. SB 478 would diminish the incentive to sue municipalities in certain cases and would ensure that cities' responsibility for medical treatment did not extend to other private employees or contractors who prepared city facilities for entertainment events.

**OPPONENTS
SAY:**

SB 478 wrongly would prevent some workers from receiving municipal workers' compensation benefits they might deserve. If a municipality directs the activities and controls the work details of nonmunicipal employees while helping to operate an entertainment event, cities should be held liable for workers' compensation benefits under the borrowed-servant doctrine. Cities often receive a percentage of ticket sales from these events, associating them closely with entertainment businesses and their workers. Accordingly, the borrowed-servant doctrine provides fair treatment to private employers who otherwise might have to pay a compensation benefit, and it helps ensure that workers receive care for their injuries if they work without coverage or if their employer denies their claim benefits. The bill could cause some workers injured while working under the direction of cities at entertainment events to go without medical treatment.