

SUBJECT: Governmental immunity for the Downtown Midland Management District

COMMITTEE: Urban Affairs — committee substitute recommended

VOTE: 5 ayes — Talton, Wong, Bailey, Blake, Rodriguez

0 nays

2 absent — Menendez, A. Allen

WITNESSES: None

BACKGROUND: The doctrine of sovereign immunity shields the state and government entities from the kinds of lawsuits that routinely are brought against private citizens and businesses. The state may, and has, waived immunity in certain circumstances.

Civil Practices and Remedies Code, ch. 101, commonly known as the Tort Claims Act (TCA), waives governmental immunity from lawsuits in certain circumstances, thereby allowing a government entity to be sued. A government entity may be sued under the TCA if liability has been waived for the particular claim in question. In order for a plaintiff to maintain a lawsuit against a government entity under the TCA, the plaintiff must show that the TCA clearly waives government immunity for that particular claim. TCA also sets liability caps, limiting the amount a governmental entity must pay if it loses a verdict.

Chapter 1160, Acts of the 78th Legislature, Regular Session, 2003, (HB 3592 by West), created the Downtown Midland Management District (DMMD). Except as otherwise noted in the act, Local Government Code, ch. 375, concerning municipal management districts in general, applies to the district. According to Government Code, sec. 375.092, which outlines specific powers of municipal management districts, “a district may sue and be sued in courts of competent jurisdiction.”

DIGEST: CSHB 1587 would stipulate that application of Local Government Code, ch. 375 to the Downtown Midland Management District would not waive the district’s sovereign immunity, except as provided in the Tort Claims Act.

The bill would add an immunity clause to the chapter, stating that neither the district nor its employees would be liable for damages arising out of performance of a governmental function of the district.

The bill also would validate district acts or proceedings taken before the effective date of the bill. This validation clause would not apply to acts or proceedings held invalid by a final judgment if that litigation was filed on or before the effective date of the bill.

The bill would take immediate effect if finally passed by a two-thirds vote of the membership of each house. Otherwise it would take effect September 1, 2005.

**SUPPORTERS
SAY:**

The Texas Supreme Court currently is considering whether language in a government document such as a city's charter or a government entity's enacting legislation that states that a governmental entity "may sue and be sued" is, in effect, a waiver of all governmental immunity. If the Supreme Court rules that the language constitutes a waiver, then the DMMD could lose its governmental immunity.

CSHB 1587 simply would affirm that the DMMD is protected by governmental immunity. Because the bill specifically states that the DMMD is subject to TCA, the bill would not increase the district's liability protection.

The validation clause in the bill is commonly used by the Legislature. Since 1934, the Legislature periodically has enacted legislation retroactively validating certain local governmental actions that may have violated procedural requirements. This validation protects such entities from liability in a situation where the entity made a procedural mistake in one of its actions.

**OPPONENTS
SAY:**

No apparent opposition.

NOTES:

The substitute specified that the TCA would apply to the DMMD, and it removed a section stating that an agreement entered into by the district would not be a joint enterprise for liability purposes.