

SUBJECT: Statutory prerequisites to a waiver of sovereign immunity

COMMITTEE: Civil Practices — favorable, without amendment

VOTE: 5 ayes — Nixon, Rose, King, Madden, Talton
0 nays
4 absent — Martinez Fischer, Raymond, Strama, Woolley

WITNESSES: For — Bruce Powers, Harris County
Against — None

BACKGROUND: Unless the Legislature waives the government’s right of sovereign immunity, a government entity may not be sued. Government Code, sec. 311.034 states that unless a statute clearly and unambiguously waives sovereign immunity, the statute may not be construed to waive immunity.

DIGEST: HB 2988 would amend sec. 311.034 to add that if a statute authorized a waiver of immunity against a government entity but required that certain prerequisites be met before a suit could be brought, those statutory prerequisites would have to be met for a court to have jurisdiction over the case.

The bill would take effect September 1, 2005.

SUPPORTERS SAY: HB 2988 would make it clear that the decision to waive sovereign immunity rests with the Legislature and that a court does not have jurisdiction over a case if a plaintiff has not met the statutory prerequisites for a waiver. It is important that the Legislature alone be able to exercise the authority to allow a government entity to be sued because the Legislature is responsible for fiscal matters of the state. Lawsuits against the government have the potential to cost the government significant amounts of money.

Some courts, however, have infringed on the power of the Legislature to waive sovereign immunity by refusing to dismiss a case in which a

plaintiff had not met the statutory prerequisites to bring suit against a government entity. Some courts have put cases on hold until the plaintiff complies with the prerequisites rather than dismissing the cases. In so doing, courts are encroaching into the powers of the Legislature.

The bill would affirm that a court would be required, due to lack of jurisdiction, to dismiss any case for which the plaintiff had not met statutory requirements. If a judge refused to issue such a dismissal, the government entity would be authorized to appeal immediately this jurisdictional issue rather than waiting until the trial had been completed. This would save government entities a significant amount of money in these cases as they would be spared from having to pay litigation expenses through the end of trial.

The bill would not affect anyone's substantive rights, but simply would clarify the procedure required to sue a government entity.

OPPONENTS
SAY:

No apparent opposition.