

SUBJECT: Immunity for entities contracting with metropolitan transit authorities

COMMITTEE: Transportation — committee substitute recommended

VOTE: 6 ayes — Krusee, Callegari, Casteel, Deshotel, Flores, Hamric
0 nays
3 absent — Phillips, Hill, West

WITNESSES: For — Arthur L. Walker, TML Risk Pool
Against — None

BACKGROUND: Certain provisions of the Transportation Code allow regional and metropolitan rapid transit authorities to enter into contracts with other entities. Sec. 451.055 states that an authority may contract with any person. Sec. 451.057 states that an authority may acquire rolling stock or other property under a contract or trust agreement, including a conditional sales contract, lease, or equipment trust certificate. Sec. 451.060 states that an authority may establish an agreement with any other public or private utility, communication system, common carrier, or transportation system for the joint use of property or for the establishment of through routes, joint fares, or transfers of passengers.

Sec. 451.069 states that Secs. 451.055, 451.057, and 451.060 do not create or confer governmental immunity on any entity other than an authority.

DIGEST: CSHB 3465 would repeal Transportation Code, sec. 451.069.

The bill would take effect September 1, 2005.

SUPPORTERS SAY: CSHB 3465 would align conflicting provisions in Transportation Code, chs. 451 and 452. The Dallas and Fort Worth transit authorities are organized under Transportation Code, ch. 452, which relates to regional transportation authorities. That chapter does not forbid the extension of governmental immunity for a private entity that is performing a government function for a transit authority. Ch. 451, which applies to

metropolitan transit authorities and under which the Austin, San Antonio, Corpus Christi, and Houston transit authorities are organized, however, specifically does not extend governmental immunity to a private entity performing a government function for a transit authority. There is no reason for this inconsistency in treatment under the law of similar authorities.

OPPONENTS
SAY:

When a public transit authority performs services, it does so to serve the public. When a private entity contracts with a transit authority to perform functions of the authority, however, the private entity does so in order to make a profit. The reasons that the government should be immune from civil suits do not apply to private entities performing government functions for profit. Such private entities should be responsible for any damages they cause in relation to performing the government function because the private entity is making a profit by its performance.

OTHER
OPPONENTS
SAY:

The transit system of El Paso is organized under ch. 453, Municipal Transit Systems. Sec. 453.109(b) states that ch. 453 does not create or confer governmental immunity on any entity other than an authority. In order to make the Transportation Code as it relates to transit authorities truly consistent, sec. 453.109(b) also should be repealed.

NOTES:

The bill as introduced would not have repealed sec. 451.069. Instead, it would have amended sec. 451.056 to state that a private operator that contracted with an authority to perform a function of the authority was liable for damages arising in connection with that performance only to the extent that the authority would have been liable if the authority had been performing the function.

The companion bill, SB 728 by Barrientos, passed the Senate by 29-0 on April 29 and was reported favorably, without amendment, by the House Transportation Committee on May 5.