

SUBJECT: Waiving the sovereign immunity of municipalities against certain claims

COMMITTEE: Urban Affairs — committee substitute recommended

VOTE: 5 ayes — Bailey, Murphy, Menendez, Latham, Mallory Caraway

0 nays

2 absent — Cohen, Martinez Fischer

WITNESSES: (*On original version:*)

For — Craig Deats, Texas State Association of Fire Fighters; Rick Mumey, Houston Professional Fire Fighters Association; (*Registered, but did not testify:* Mark Clark, Houston Police Officers Union; David Crow, Arlington Professional Fire Fighters; Tom Gaylor, Texas Municipal Police Association; Mike Higgins, Texas State Association of Fire Fighters; Dennis Speight, Texas Watch; Johnny Villarreal, Houston Fire Fighters Local 341; Charley Wilkinson, Combined Law Enforcement Association of Texas)

Against — Holly Claghorn, Texas Association of School Boards; Robert E. Johnson, Jr., City of Houston; Gerald Pruitt, City of Fort Worth; David Reagan, Texas Municipal League Intergovernmental Risk Pool; (*Registered, but did not testify:* T.J. Patterson Jr., City of Fort Worth; Susan Rocha, City of Round Rock)

On — Tim Higley, City of Houston

(*On committee substitute:*)

For — Mike Higgins, Texas State Association of Fire Fighters; Robert E. Johnson, Jr., City of Houston

BACKGROUND: The doctrine of sovereign immunity precludes a party from asserting an otherwise meritorious cause of action against a government entity unless the government consents. The Texas Supreme Court has recently heard a number of cases, including *Bell v. City of Grand Prairie*, 160 S.W.3d 691, (Tex. App.-Dallas 2005, no pet.), regarding an employee's ability to bring suit against a local government entity to recover back pay and other benefits conferred by contract.

Local Government Code chs. 141, 142, and 143 regulate municipal police officers and fire fighters. Ch. 141, subch. B establishes longevity pay and other standards for compensating firefighters and police officers in municipalities with populations greater than 10,000. Chs. 142 and 143 define, authorize, and regulate municipal meet-and-confer and civil service agreements.

DIGEST:

CSHB 1473 would add Local Government Code, sec. 180.006 to allow firefighters and police officers in certain municipalities to sue a public employer to recover monetary benefits or damages and back pay owed to the employee as part of such agreements or as a result of certain grievance processes. The bill would apply to firefighters and police if:

- the employee was covered under Local Government Code, ch. 141, 142, or 143 or a municipal ordinance enacted with authority granted in these chapters; or
- the employee worked for a municipality with chartered civil service provisions apart from those set forth in ch. 143.

Liability would not be extended to claims unrelated to a contract for monetary benefits. The bill would allow limitations and caps to be placed on findings for employees. Before filing suit, employees would have to exhaust the administrative grievance and appeal procedures established by the municipal agreement that was the basis for the claim. Employees dissatisfied with the outcome of such a procedure would be entitled to judicial review by filing suit in district court.

The bill would apply only to a claim initially made on or after its effective date. The bill would not apply to ordinances or resolutions that resulted from a referendum election held before January 1, 1980.

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, 2007.

**SUPPORTERS
SAY:**

CSHB 1473 would empower Texas firefighters and police officers to defend their rights to back pay and benefits by filing suit against their employing municipality. Statutory provisions in the Local Government Code providing that municipalities may “sue and be sued” have ambiguous applicability to specific suits filed against local governments. Courts have been slow to resolve whether such language constitutes a

waiver of immunity from suit. The Texas Supreme Court recently has delivered a number of opinions suggesting that governmental bodies are immune from suits for back pay. For example, in the 2005 case *Bell v. City of Grand Prairie*, the court determined that city firefighters were not eligible to file suit for back pay and other benefits. The court ruled that such claims, unless expressly waived by the Legislature in clear and unambiguous language, are barred by cities' immunity from suit.

CSHB 1473 would resolve serious inconsistencies in state law, which guarantees certain negotiated benefits to peace officers and yet provides no means for enforcing the terms of the contracts it permits. The bill would apply to local firefighters and police officers in municipalities with populations greater than 10,000 as well as larger municipalities that have adopted civil service or meet-and-confer agreements. Employees that participated in civil service agreements or were subject to benefits guaranteed by state law would gain the right to sue municipalities to honor the terms of resulting employment contracts. Authorizing these employees to file suit against public employers to recover contractually obligated pay and other benefits would at once allow aggrieved employees to collect due pay and compel municipalities to broker only contracts that could be honored. Local governments would receive a strong incentive to avoid court proceedings and the possibility of further expenses associated with upheld claims by reaching a fair settlement in advance.

CSHB 1473 would offer a well-crafted balance between upholding contractual obligations to peace officers and protecting municipalities and taxpayers from excessive and widespread claims. The bill would be restricted in scope generally to firefighters and police officers in towns large enough to have full time fire and police services. CSHB 1473 would codify the enforceability of meet and confer and civil service agreements in clear, unambiguous language as suggested in the *Bell v. City of Grand Prairie* decision. The bill would exempt suits associated with a costly referendum agreement adopted in Dallas in 1978. Claims and damages would be expressly limited to employment contracts or statutes, and municipalities would retain immunity from other claims involving damages that could be excessively costly for taxpayers.

The 79th Legislature in 2005 enacted laws waiving sovereign immunity for local governments against suits resulting from local contracts. CSHB 1473 would be an appropriate and limited extension of legislative waivers of immunity granted in previous sessions.

OPPONENTS
SAY:

Sovereign immunity provides important protections for governing bodies and the taxpayers they represent. Minor adjustments in sovereign immunity protections can have significant public fiscal consequences. Excessive and abundant suits against a governmental entity can impair the body's ability to function and carry out its obligations to provide services to citizens. Any legislation that would entail an erosion of a public entity's sovereign immunity should be authorized only if absolutely necessary. Current law does not prohibit a municipality from accepting a lawsuit if the entity judges the suit to be appropriate. This discretion is important for public employers that face abundant and excessive litigation.

CSHB 1473 would have a broad range of application to municipalities in Texas. Municipalities often have internal procedures for determining pay and benefits and have internal processes to deal with employee grievances concerning wages and back pay. Peace officers in many municipalities are represented by unions that work on their behalf to collect due benefits. Since many covered employees already have procedures to address grievances, it is not clear that peace officer personnel need the extra protection afforded by the ability to sue a local government. If grievance processes do not sufficiently provide for the delivery of benefits, they should be changed locally or through statutory amendments. Contractual employment terms may be subject to differing interpretations, and this is best settled locally with the municipality that agreed to the contract, instead of in a court room.

CSHB 1473 could result in a multitude of additional cases opened against local governments. The bill would provide no strong disincentive to discourage aggrieved employees from filing suits to maximize any restitution received. Disputes regarding public employee contracts should, to the extent practicable, be addressed locally by departments, unions, and municipalities. Even small modifications to sovereign immunity can have a significant fiscal and administrative impact on local governmental entities. The bill would require small, resource-poor communities to cover additional costs incurred for the delivery of benefits and expenses associated with litigation and could impede their ability to recruit additional peace officers. The bill would enable peace officer personnel to file suit and collect for benefits designated in state statutes and yet would not provide any compensatory funding to offset the fiscal implications of these suits.

NOTES:

The bill as introduced would have permitted employees to sue an employing political subdivision for back pay and other relief necessary to enforce their rights conferred by the relevant statutes. The committee substitute would place restrictions on the applicability of the sovereign immunity waiver to local employees, allow caps and other limitations on damages awarded, and exclude rights or claims related to a referendum election held before January 1, 1980, or filed before the effective date of the bill.

The companion bill, SB 1014 by Whitmire, is pending in the Senate Jurisprudence Committee.