

SUBJECT: Sovereign immunity under the Uniform Declaratory Judgments Act

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 11 ayes — Jackson, Lewis, Bohac, Castro, S. Davis, Hartnett, Madden, Raymond, Scott, Thompson, Woolley

0 nays

WITNESSES: For — (*Registered, but did not testify*: Darrin Hall, City of Houston - Mayor Annise Parker)

Against — (*Registered, but did not testify*: Rick Levy, Texas AFL-CIO; Ted Melina Raab, Texas American Federation of Teachers; Derrick Osobase, Texas State Employees Union)

On — Sean Jordan, Office of the Attorney General of Texas

BACKGROUND: A declaratory judgment establishes the rights of parties without providing for or ordering enforcement. It may be used, for example, for a court determination of which statute prevails when two statutes conflict. In Texas, declaratory judgments are governed by the Uniform Declaratory Judgments Act (UDJA). The UDJA allows a court to award costs and reasonable and necessary attorney's fees.

The Supreme Court of Texas has held that sovereign immunity is waived under the UDJA. Sovereign immunity is a government's immunity from being sued in its own courts without its consent. The Supreme Court also has indicated that the UDJA requires governmental entities to be joined in suits to construe statutes.

DIGEST: HB 2294 would add a provision to the Uniform Declaratory Judgments Act (UDJA) stating that the UDJA did not waive sovereign immunity.

The bill would take effect on September 1, 2011.

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**SUPPORTERS
SAY:**

HB 2294 would ensure that the state of Texas was not responsible for defending suits seeking an interpretation of a state statute and would not be responsible for paying attorney's fees in those cases. Suits seeking an interpretation of a statute are common, and the state often has no interest in the outcome. Requiring the state to defend these cases and to pay attorney's fees is an unnecessary drain on state resources.

HB 2294 also would allow the state to obtain interlocutory appeals in certain instances based on sovereign immunity. An interlocutory appeal provides for immediate review of a trial court's order before a final judgment, thus preserving state resources by providing for appellate review without going through a full trial.

The bill would not affect the availability of *ultra vires* suits, which are suits against a state official rather than the state itself.

Governmental immunity, which applies to local government entities such as cities and counties, would not be affected by this bill and would continue to be waived under the UDJA.

**OPPONENTS
SAY:**

HB 2294, by declaring that sovereign immunity was not waived under the UDJA, would make it more difficult for plaintiffs with worthy claims involving the unlawful exercise of authority by state officials to find attorneys to take their cases. The UDJA provides for attorney's fees, which generally are not available for *ultra vires* suits against state officials unless the suit is based on another statute that provides for them. Attorney's fees also provide an incentive for parties to settle a lawsuit. If sovereign immunity were restored, suits against the state under the UDJA no longer would be possible. As a result, this bill could affect not only suits interpreting statutes but also suits where important constitutional rights had been violated.

**OTHER
OPPONENTS
SAY:**

The bill should be amended to clarify that local governments would not have immunity under the UDJA. It is possible that "sovereign immunity" could be broadly interpreted to include local governmental immunity.