

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 2039
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State Affairs
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Committee Report (Substituted)

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Most legislation creating or authorizing the creation of various local governmental entities contains language that authorizes the entity to "sue and be sued." Until recently, well-established case law followed the plain meaning of such language and interpreted those provisions to constitute a statutory waiver of immunity from suit in cases arising from breach of contract.

Several recent Texas courts of appeals decisions have ignored prior Texas case law and have disregarded the plain meaning of statutes by holding that they do not constitute a statutory waiver of immunity from suit in cases arising from breach of contract.

Currently, at least 12 cases involving the issue of the statutory waiver of immunity from suit arising from the "sue and be sued" or similar language are pending before the Texas Supreme Court. Several cases have been pending since 2003.

C.S.H.B. 2039 clarifies and re-expresses the legislature's intent that all local governmental entities that are given the statutory authority to enter into contracts shall not be immune from suits arising from those contracts, subject to the limitations set forth in C.S.H.B. 2039.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 271, Local Government Code, by adding Subchapter I, as follows:

SUBCHAPTER I. ADJUDICATION OF CLAIMS ARISING UNDER WRITTEN CONTRACTS WITH LOCAL GOVERNMENTAL ENTITIES

Sec. 271.151. DEFINITIONS. Defines "adjudication," "contract subject to this subchapter," and "local governmental entity."

Sec. 271.152. WAIVER OF IMMUNITY TO SUIT FOR CERTAIN CLAIMS. Provides that a local governmental entity that is authorized by statute or the constitution to enter into a contract and that enters into a contract subject to this subchapter waives sovereign immunity to suit for the purpose of adjudicating a claim for breach of an express or implied provision of the contract, subject to the terms and conditions of this subchapter.

Sec. 271.153. LIMITATIONS ON ADJUDICATION AWARDS. Sets forth limitations for the total amount of money awarded in an adjudication brought against a local governmental entity for breach of an express or implied provision of a contract subject to this subchapter. Prohibits damages awarded in an adjudication brought against a local governmental entity arising under a contract subject to this subchapter from including certain damages.

Sec. 271.154. CONTRACTUAL ADJUDICATION PROCEDURES ENFORCEABLE. Provides that adjudication procedures, including requirements for serving notices or

engaging in alternative dispute resolution proceedings before bringing a suit or an arbitration proceeding, that are stated in the contract subject to this subchapter or that are established by the local governmental entity and expressly incorporated into the contract are enforceable except to the extent those procedures conflict with the terms of this subchapter.

Sec. 271.155. NO WAIVER OF OTHER DEFENSES. Provides that this subchapter does not waive a defense or a limitation on damages available to a party to a contract, other than a bar against suit based on sovereign immunity.

Sec. 271.156. NO WAIVER OF IMMUNITY TO SUIT IN FEDERAL COURT. Provides that this subchapter does not waive sovereign immunity to suit in federal court.

Sec. 271.157. NO WAIVER OF IMMUNITY TO SUIT FOR TORT LIABILITY. Provides that this subchapter does not waive sovereign immunity to a claim arising from a cause of action for negligence.

Sec. 271.158. NO GRANT OF IMMUNITY TO SUIT. Provides that nothing in this subchapter shall constitute a grant of immunity to suit to a local governmental entity.

Sec. 271.159. NO RECOVERY OF ATTORNEY'S FEES. Prohibits attorney's fees incurred by a local governmental entity or any other party in the adjudication of a claim by or against a local governmental entity from being awarded to any party in the adjudication unless the local governmental entity has entered into a written agreement that expressly authorizes the prevailing party in the adjudication to recover its reasonable and necessary attorney's fees.

SECTION 2. (a) Makes application of Subchapter I, Chapter 271, Local Government Code, as added by this Act, prospective.

(b) Provides that nothing in this Act is intended to create, rescind, expand, or limit any waiver of sovereign immunity to suit applicable to a contract executed before September 1, 2005.

SECTION 3. Effective date: September 1, 2005.