

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 1015

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Jurisprudence

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Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Many employment benefits for employees of political subdivisions of the state are prescribed by statute. For example, Section 141.032, Local Government Code, requires municipalities with a population of more than 10,000 to provide longevity pay for each member of a fire or police department of \$4.00 per month for each year of service to the municipality, up to 25 years.

Some local ordinances also require certain employment benefits. In recent years, there has been litigation over whether local governments are immune from suit when they fail to pay such statutorily required benefits. There are many local entities that are governed by state statutes providing that they may "sue and be sued." Nonetheless, in response to claims that they failed to pay benefits required by the statute or ordinance, local governmental entities have been pleading immunity from suit, claiming that the "sue and be sued" provisions applicable to them does not constitute a clear, unequivocal waiver of immunity required by such cases as *Wichita Falls State Hospital v. Taylor*, 106 S.W. 3d 692 (Tex. 2003). The Texas Supreme Court has been slow to resolve the issue of whether language such as "sue and be sued" constitutes the needed waiver of immunity from suit. In 2005, the legislature amended Chapter 271, Local Government Code, by adding Subchapter I to clearly waive the immunity of local governments to suit on certain types of contract claims, but municipalities are contending that state statutes and their own ordinances requiring benefits for their employees may not be enforced because of immunity from suit.

C.S.S.B. 1015 authorizes a suit against a local government that does not pay employee benefits that are required to be paid out by law.

### **RULEMAKING AUTHORITY**

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

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 180, Local Government Code, by adding Section 180.007, as follows:

Sec. 180.007. Sovereign or Governmental Immunity Waived. (a) Authorizes a current or former fire fighter or police officer who is or was employed by a municipality with a population of 1.9 million or more and who is or was covered by Chapters 141 (Compensation and Expenses of Municipal Officers and Employees), 142 (Assistance, Benefits, and Working Conditions of Municipal Officers and Employees), 143 (Municipal Civil Services for Firefighters and Police Officers), 175 (Right of Certain Municipal and County Employees to Purchase Continued Health Coverage at Retirement), or 180 (Miscellaneous Provisions Affecting Officers and Employees of Municipalities, Counties, and Certain Other Local Governments), Local Government Code, or a municipal ordinance passed pursuant to a provision contained in Chapters 142 or 143, Local Government Code; and who alleges denial of monetary benefits associated with the recovery of backpay authorized under one or more of those provisions, or a monetary civil penalty under Chapter 143.134(h) (requiring the department of head, after a decision is made by certain persons, to implement the relief granted to the fire fighter not later than a certain time period), to sue the employing political subdivision for those monetary benefits.

(b) Provides that sovereign and governmental immunity from suit and liability is waived only to the extent of liability for the monetary benefits described in Subsection (a) of this section and in no other circumstances, including without limitation, claims involving negligence, intentional tort or contract unless otherwise provided for by statute.

(c) Provides that nothing in this section constitutes a grant of immunity to suit to a local governmental entity.

(d) Provides that this section does not waive a defense or a limitation on damages, attorney fees, or costs available to either party to a suit under this chapter or any other chapter set out herein, or available pursuant to other statute, nor modify an agreement entered pursuant to Chapter 142, 143, or 174 (Fire and Police Employee Relations), Local Government Code.

(e) Requires an employee alleging denial of monetary benefit(s) associated with the recovery of backpay under one or more of the provisions set out in Subsection (a) or any applicable agreement, prior to filing suit, to initiate action under any applicable grievance or appeal procedures created by the provision or any applicable agreement. Provides that exhaustion of any applicable grievance or appeal procedures created by the provision or any applicable agreement is a statutory prerequisite to filing a suit. Authorizes a party dissatisfied with the final grievance or appeal decision to obtain judicial review of the decision by filing suit in district court not later than the time period allowed by any applicable provision. Requires judicial review of the grievance or appeal decision to be under the substantial evidence rule, unless a differed standard of review is provided in the provision creating the grievance or appeal provision.

SECTION 2. Provides that Section 180.007, Local Government Code, as added by this Act, applies to any action alleging a violation of Subchapter G (Provisions Applicable to Municipality with Population of 1.5 Million or More and Certain Other Municipalities), Chapter 143, Local Government Code, Section 142.0017 (Hours of Labor and Vacation of Members of Fire and Police Departments in Municipality with Population of More than 1.5 Million), Local Government Code, or a municipal ordinance passed pursuant to a provision contained in Chapter 143, Subchapter G, Local Government Code, that has not been finally adjudicated on the effective date of this Act.

SECTION 3. EFFECTIVE DATE. Effective date: upon passage or September 1, 2007.