

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1575
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State Affairs
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1575 is designed to make clear that contracts entered into by municipalities with federal and state funds for purposes related to disaster recovery are a governmental function and protected with immunity.

In the aftermath of a disaster, municipalities often are the recipients of federal relief funds (usually grants) to aid in recovery. These funds have in the past originated with the United States Department of Housing and Urban Development through the Community Development and Block Grant program. These programs include direct relief for qualifying homeowners in the form of grants for the repair or reconstruction of their damaged or destroyed homes.

While state and federal governmental entities have immunity from claims relating to the administration of grants, the local governments do not. Texas law is silent on a municipality's immunity for the ministerial, pass-through administration of these grants. As a result, Texas courts have held that municipalities do not maintain immunity when problems arise, contractual or otherwise, between homeowners, contractors, or the federal or state grantors. Experience has shown that the administration of these grants carries with it a substantial financial risk to the municipalities for the administration of these programs, and this bill seeks to curtail that exposure.

There are two ways municipalities are found liable:

1. One is a judicial finding that in the administration of these programs the municipality is performing a proprietary function, rather than a governmental function, and thus sovereign immunity is waived.
2. The second is a judicial finding that, by administering the grants, the municipality has entered into a contract for goods or services under Chapter 271, Local Government Code, and thus sovereign immunity is waived.

Problem with this finding:

Calling a grant administration for disaster relief a contract issued under the Local Government Code is unfair to local municipalities because they are simply passing along disaster relief funds to citizens. When administering pass-through grants, municipalities do not themselves receive any contractual rights and there is no direct or financial benefit to the municipality. The funds pass from the federal relief agencies to the Texas General Land Office, to the local governments, all of whom are simply conduits of the funds to the local citizens. The municipality provides neither a good nor service to the homeowner, and the Local Government Code does not apply. (Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 1575 amends current law relating to governmental immunity for and adjudication of claims arising from a local governmental entity's disaster recovery contract.

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 Title 5, Civil Practice and Remedies Code, by adding Chapter 115, as follows:

CHAPTER 115. MUNICIPAL LIABILITY

Sec. 115.0001. DISASTER RECOVERY AS GOVERNMENTAL FUNCTION. (a) Provides that a municipality performs a governmental function if, after a declaration of a disaster under Section 418.014 (Declaration of State of Disaster), Government Code, the municipality enters into a contract for a purpose related to disaster recovery or takes an action under that contract.

(b) Provides that a municipality has governmental immunity to suit and from liability for a cause of action arising from a governmental function described by this section.

SECTION 2. Amends Subchapter I, Chapter 271, Local Government Code, by adding Section 271.1515, as follows:

Sec. 271.1515. APPLICABILITY OF SUBCHAPTER. Provides that this subchapter (Adjudication of Claims Arising Under Written Contracts With Local Government Entities) does not apply to a contract with a local governmental entity that:

(1) arises from a declaration of a disaster under Section 418.014, Government Code; and

(2) primarily spends state or federal funds on goods and services that benefit private citizens or private property located in the entity in recovering from the disaster and that do not benefit the entity.

SECTION 3. Makes application of Section 115.0001, Civil Practice and Remedies Code, as added by this Act, and Section 271.1515, Local Government Code, as added by this Act, prospective.

SECTION 4. Effective date: upon passage or September 1, 2019.