

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION

May 26, 2003

TO: Honorable David Dewhurst, Lieutenant Governor, Senate

FROM: John Keel, Director, Legislative Budget Board

IN RE: SB1017 by Wentworth (Relating to the ability of a county to sue and be sued.), **As Passed 2nd House**

No fiscal implication to the State is anticipated.

The bill would prohibit a person from filing a suit against a county or an elected or appointed county official acting in their capacity as an elected or appointed county official unless the person first presents a claim to the commissioners court and the commissioners neglect or refuse to act on the claim before the sixtieth day after the date the claim is presented.

Further, the bill would authorize a county that is a party to a written contract for engineering, architecture, construction services, or related goods to sue or be sued, plead or be impleaded, or defend or be defended on a claim arising under the contract. The bill would place a limit on the total amount of money that could be recovered from a county when a lawsuit for breach of contract has been filed. A suit filed must be filed in a state court in the affected county. Sovereign immunity to suit in federal court would not be waived as a result of the provisions of the bill.

The bill would take effect September 1, 2003 and would apply only to a claim arising under a contract executed on or after that date.

Under current statute, a person with a claim against a county must present that claim to the commissioners court and the claim must be neglected or refused before the person is allowed to sue the county, but no time frame is identified. The proposed revised statute would set a specific time frame in which the county commissioners court must respond to a claim and would also add that a person could bring a claim, and if applicable later file suit, against an elected or appointed county official.

Under current statute, counties are immune from liability for contract suits. The proposed addition to statute would remove that immunity at the state level with relationship to contracts for engineering, architecture, construction services, or related goods.

According to the Office of Court Administration, implementation of the bill would not result in a fiscal impact on the state, nor on the local court systems, but removing a county's immunity from liability for contract suits presents the potential for counties to incur costs in legal expenses and in any judgments a county may lose, within the limits set by the provisions of the bill.

Local Government Impact

Costs to a county would depend on whether or not there are lawsuits filed against the county, how many suits are filed, and the outcome of each trial.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council

LBB Staff: JK, DLBa, GO