

## **BILL ANALYSIS**

C.S.H.B. 2551  
By: Smithee  
Insurance  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Section 172.015, Local Government Code provides as follows:

"The payor of employee benefits, whether a political subdivision, group of political subdivisions, pool, or carrier providing reinsurance to one of those entities, shall be subrogated to the employees' right of recovery for personal injuries caused by the tortious conduct of a third party."

The provision was placed in the statute in 1989 with the idea that a pool would have a preferential right of subrogation. That means, by way of example, that if the political subdivision risk pool paid out \$5000 to health care providers on behalf of a city employee who was injured by the negligence of a third party, the risk pool would "step into the shoes" of the injured city employee to recover the first \$5000 paid by the negligent third party.

Unfortunately, the case of Texas Association of School Boards, Inc. v. Ward (TASB v. Ward), 18 S.W.3d 256 (Tex. App. Waco- 2000) holds that while a pool of political subdivisions does have a right of subrogation against third parties, it also holds the pool may not be reimbursed until the claimant is made whole for his injuries. In other words, until the injured city employee (claimant) is made whole (recovers money damages for all its injuries), the risk pool cannot recover any of the \$5000 that it paid on behalf of the claimant for claimant's medical costs.

The purpose of HB 2551 is to expressly overrule the holding in TASB v. Ward and to restore the risk pool's preferential right of subrogation with the result that the risk pool or other political subdivision under Chapter 172, Local Government Code, will recover the first dollars recovered from a third party in a negligence action.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

SECTION 1. Amends Section 172.015, Local Government Code, by adding a new subsection (b). Provides that a payor of employee benefits whose interest is not actively represented by an attorney in a third-party action must pay a fee to an attorney representing the claimant employee in an amount determined under an agreement entered into between the attorney and the payor of employee benefits. If there is no agreement, the court shall award the attorney a reasonable fee for recovery of interest of the payor of employee benefits, not to exceed one-third of the payor's recovery, and a proportionate share of the expenses. This is payable out of the recovery of the payor of employee benefits. Provides that if the injured employee is not able to realize a complete an adequate recovery for injuries sustained as a result of the actionable fault of a third party, the payor of employee benefits is entitled to a pro rata recovery consistent with the recovery obtained by the injured employee

SECTION 2. Provides that the change in law applies only to a cause of action that accrues on or after the effective date of the Act.

SECTION 3. Effective date: September 1, 2005.

## **EFFECTIVE DATE**

September 1, 2005

## **COMPARISON OF ORIGINAL TO SUBSTITUTE**

The substitute changes the payment language in Section 1 of the original. The substitute adds the heading "Adequate Recovery" to Section 172.015 of the Government Code. The substitute specifies that the legislation applies to a payor of employee benefits whose interest is not actively represented by an attorney in a third-party action. The substitute changes the payment provisions contained in section 1 of the original and adds a provision describing the procedure for a situation in which an injured employee is not able to realize a complete and adequate recovery.