

BILL ANALYSIS

C.S.H.B. 1473
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Urban Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Many employment benefits for fire fighters and police officers employed by political subdivisions of the State are prescribed by statute. For example, Section 141.032, Local Government Code, requires municipalities with more than 10,000 population 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. Prior case law describes the ability of fire fighters and police to sue to enforce their right to such statutory benefits as "well settled." for example *Lee v. Downey*, 842 S.W.2d 646 (Tex. 1992). However, in recent years, local governments have asserted that they are immune from suit against employee claims that include a claim for statutorily required monetary benefits.

Although these local governmental entities are governed by State statutes and/or charter provisions providing that they may "sue and be sued" or "plead and be impleaded," the Texas Supreme Court recently held in *Tooke v. City of Mexia*, 197 S. W. 3d. 325 (Texas. 2006) that "sue and be sued" and similar statutory language, standing alone, does not constitute a waiver of immunity from suit. In 2005, the Legislature amended Chapter 271, Local Government Code, by adding Subchapter I to clearly waive the immunity to suit of local governments in certain types of contract claims. Although statutory employment benefits have historically been treated as contract claims, municipalities continue to contend that State statutes, and their own ordinances, requiring pay and other monetary benefits for their employees may not be enforced because of immunity from suit.

The purpose of the proposed complete committee substitute for House Bill No. 1473 is to make clear that sovereign or governmental immunity does not bar suit by fire fighters and/or police officers to recover pay and benefits required by certain statutes, charter provisions and ordinances. At the same time, the committee substitute does not expand the liability of local governments in such suits beyond the total amount of money necessary to make the affected individual whole, plus interest allowed by law.

RULEMAKING AUTHORITY

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

SECTION-BY-SECTION ANALYSIS

SECTION 1 amends Chapter 180, Local Government Code, by adding Section 180.006.

Subsection (a) limits application of the section to identified chapters of the Local Government Code, municipal ordinances enacted pursuant to those chapters, and municipal charter provisions conferring civil service benefits.

Subsection (b) authorizes fire fighters and police officers affected by such provisions to sue for monetary benefits, including back pay, provided by those provisions.

Subsection (c) waives sovereign and governmental immunity against claims for benefits under those provisions without otherwise expanding the remedies available for such claims.

Subsection (d) clarifies:

(1) that the new section should not be construed as conferring immunity on local governments where it does not already exist;

(2) that the section's purpose is to waive immunity without waiving other defenses the local government may have; and

(3) that the section does not modify agreements made under authority of Chapters 142, 143, or 174, Local Government Code.

Subsection (e) requires exhaustion of administrative remedies available under the statutes or contracts made under the statutes prior to filing suit.

Subsection (f) provides for judicial review of such final administrative decisions.

Subsection (g) prohibits application of the section to claims based on referendum elections conducted prior to January 1, 1980.

SECTION 2 amends Chapter 174, Local Government Code, by adding Section 174.008 to clarify that sovereign or governmental immunity does not bar suits to enforce rights created by Chapter 174 or contracts entered into under authority of Chapter 174.

SECTION 3 applies the newly-created statutes to claims initially asserted on or after the effective date of the Act.

SECTION 4 establishes the effective date of the Act.

EFFECTIVE DATE

Immediate if passed by vote of two-thirds in each house; otherwise September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The committee substitute for House Bill No. 1473 refines the scope of the original bill.

SECTION 1 of the substitute replaces, in its entirety, Section 180.006, Local Government Code, as originally drafted. The newly-created Section 180.006, Local Government Code:

(a) limits application of Section 180.006 to fire fighters and police officers;

(b) grants fire fighters and police officers authority to sue for monetary benefits, including back pay, under the provisions of the committee substitute;

(c) limits the waiver of immunity to claims for monetary benefits, including back pay, and not extending to claims involving negligence, intentional tort, or a contract not related to such monetary benefits;

(d-1) provides that this section is not intended to imply that immunity from suit exists under the prior laws or other portions of the local government code;

(d-2) provides that, with the exception of immunity, this section is not intended to waive any affirmative defense or other limitation on damages, attorney's fees, or costs otherwise available to a party;

(d-3) provides this section does not modify so-called meet and confer or collective bargaining agreements;

- (e) requires exhaustion of administrative remedies provided by the statute or agreement being enforced;
- (f) defines the scope of judicial review of such administrative decisions; and
- (g) provides that a claim based on a referendum election held prior to January 1, 1980, or an ordinance enacted pursuant to such referendum, is not affected by this section.

SECTION 2 of the substitute creates a new Section 174.008, Local Government Code, to ensure that immunity does not bar judicial enforcement of rights conferred by the Fire and Police Employee Relations Act and collective bargaining agreements negotiated thereunder.