

BILL ANALYSIS

S.B. 561
By: Carona
Insurance
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Current law requires a political subdivision to be subrogated to its employees' right of recovery for personal injuries caused by a third party. However, the decision in *Texas Association of School Boards v. Ward* maintains that a political subdivision is prohibited from being reimbursed until an injured employee is made whole from injuries. As a result, political subdivisions are not being fully compensated for funds that were used to pay for an employee's medical costs incurred due to a third party's negligence.

S.B. 561 entitles a political subdivision to the lesser of one-third of the injured employee's recovery or the total cost of benefits paid by the political subdivision, with an exception, and provides that the political subdivision is required to pay to the injured employee's attorney an amount not greater than one-third of the political subdivision's recovery when the political subdivision is not represented by its own attorney

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

S.B. 561 relates to the subrogation interests of certain political subdivisions or insurance carriers providing reinsurance for subdivisions.

SECTION 1. Amends Section 172.015, Local Government Code, as follows:

Sec. 172.015. New Heading: SUBROGATION; ADEQUATE RECOVERY. (a) Defines "covered individual" which means a person who is covered by the pool. The term includes an official, an employee, a retiree, and an employee of an affiliated service contractor and their dependents.

(b) Provides that the payor of employee benefits, whether a political subdivision, group of political subdivisions, pool, or carrier providing reinsurance to one of those entities, is subrogated to a covered individual's, rather than the employees', right of recovery for personal injuries caused by the tortious actions of a third party.

(c) States that a payor of employee benefits whose interest is not actively represented by an attorney in a third-party action shall pay to an attorney representing the covered individual a fee in an amount determined under an agreement between the attorney and the payor of employee benefit. States that the court shall award to the attorney a reasonable fee for recovery of the interest of the payor payable from the recovery of the payor, not in excess of one-third of the payor's recovery, except as provided by Subsection (i), in the absence of an agreement.

(d) Entitles the payor to a certain pro rata recovery if the injured covered individual is unable to realize a complete and adequate recovery for injuries sustained as a result of the actionable fault of a third party. Provides that a common law that requires that an injured party be made whole before a subrogee makes a recovery does not apply to the recovery of the payor under this section.

(e) Provides that the payor's pro rata share under Subsection (d) is equal to the lesser of one-third of the covered individual's total recovery, or the total cost of employee benefits paid by the payor as a result of the tortious conduct of the third party, unless otherwise agreed by a covered individual and the payor and subject to Subsection (f).

(f) Authorizes a covered individual to bring an action for declaratory judgment to establish that the amount of the pro rata recovery which the payor is entitled is an amount that is less than the pro rata share described by Subsection (e). Requires the covered individual to prove by a preponderance of the evidence that the amount of the covered individual's total recovery is less than 50 percent of the value of the covered person's underlying claim for damages to prevail in an action brought under this section.

(g) States that the court shall establish the payor's pro rata recovery under Subsection (f) in an amount that is not less than 15 percent of and not more than one-third of the covered individual's total recovery, except as otherwise provided by this section. Requires the court to establish the payor's pro rata recovery in an amount that is less than 15 percent of and equal to or greater than five percent of the covered individual's total recovery if a covered individual shows by clear and convincing evidence that the pro rata share otherwise described by this subsection would result in manifest injustice.

(h) Prohibits the court from awarding costs or attorney's fees to any party in an action brought under Subsection (f), notwithstanding Chapter 37 (Declaratory Judgments), Civil Practice and Remedies Code, or any other law.

(i) Prohibits a payor to be assessed any attorney's fees under any theory or rule of law, including the common fund doctrine, out of the recovery which the payor is entitled under Subsection (e) or (f), notwithstanding Subsection (c).

SECTION 2. Section 172.015, Local Government Code, as amended by this Act, applies only to a cause of action that accrues on or after the effective date of this Act. An action that accrued before the effective date of this Act is governed by the law applicable to the action immediately before the effective date of this Act, and that law is continued in effect for that purpose.

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

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.