

## **BILL ANALYSIS**

Senate Research Center  
80R592 KCR-D

S.B. 561  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Current law requires a political subdivision to be subrogated to their 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.

As proposed, 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, 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**

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

### **SECTION BY SECTION ANALYSIS**

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

Sec. 172.015. New Heading: SUBROGATION; ADEQUATE RECOVERY. (a) Defines "covered individual."

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

(d) Entitles the payor of employee benefits 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 of employee benefits 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 of employee benefits.

(f) Prohibits a payor of employee benefits 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) notwithstanding Subsection (c).

SECTION 2. Makes application of this Act prospective.

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