

BILL ANALYSIS

Senate Research Center

S.B. 1015
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Jurisprudence
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Many employment benefits for employees of political subdivisions of the state are prescribed by statute. For example, Section 141.032, Local Government Code, requires municipalities with a population of more than 10,000 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. In recent years, there has been litigation over whether local governments are immune from suit when they fail to pay such statutorily required benefits. There are many local entities that are governed by state statutes providing that they may "sue and be sued." Nonetheless, in response to claims that they failed to pay benefits required by the statute or ordinance, local governmental entities have been pleading immunity from suit, claiming that the "sue and be sued" provisions applicable to them does not constitute a clear, unequivocal waiver of immunity required by such cases as *Wichita Falls State Hospital v. Taylor*, 106 S.W. 3d 692 (Tex. 2003). The Texas Supreme Court has been slow to resolve the issue of whether language such as "sue and be sued" constitutes the needed waiver of immunity from suit. In 2005, the legislature amended Chapter 271, Local Government Code, by adding Subchapter I to clearly waive the immunity of local governments to suit on certain types of contract claims, but municipalities are contending that state statutes and their own ordinances requiring benefits for their employees may not be enforced because of immunity from suit.

As proposed, S.B. 1015 authorizes a suit against a local government that does not pay employee benefits that are required to be paid out by law.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Chapter 271, Local Government Code, to read as follows:

CHAPTER 271. PURCHASING, CONTRACTING, AND RELATED AUTHORITY OF MUNICIPALITIES, COUNTIES, AND CERTAIN OTHER LOCAL GOVERNMENTS

SECTION 2. Amends the heading to Subchapter I, Chapter 271, Local Government Code, to read as follows:

SUBCHAPTER I. ADJUDICATION OF CONTRACT OR EMPLOYMENT-RELATED CLAIMS AGAINST LOCAL GOVERNMENTAL ENTITIES

SECTION 3. Amends Section 271.152, Local Government code, as follows:

Sec. 271.152. WAIVER OF IMMUNITY TO SUIT FOR CERTAIN CLAIMS. Provides that a local governmental entity that is authorized by statute or the constitution to enter into a contract subject to this subchapter, or that is governed by a state statute or local ordinance affecting the employment rights of a local governmental entity's employees, waives sovereign immunity to suit for the purpose of adjudicating a claim for breach of the contract or a violation of statute or ordinance, subject to the terms and conditions of this subchapter.

SECTION 4. Amends Section 271.153, Local government Code, by adding Subsection (c), as follows:

(c) Provides that the total amount of money awarded in an adjudication brought against a local governmental entity for violation of a statute or ordinance affecting the employment rights of a local governmental entity's employees is limited to the amount necessary to make the affected individual whole for any violation of rights found to have occurred, and interest as allowed by law.

SECTION 5. Amends Section 271.155, Local Government Code, as follows:

Sec. 271.155. NO WAIVER OF OTHER DEFENSES. Provides that this subchapter does not waive a defense or a limitation on damages available to a person, rather than party to a contract, other than a bar against suit based on sovereign immunity.

SECTION 6. Amends Section 271.159, Local Government Code, as follows:

Sec. 271.159. NO RECOVERY OF ATTORNEY'S FEES. (a) Creates this subsection from existing text. Specifies that the claim under this subchapter includes a claim under a contract subject to this subchapter.

(b) Requires that attorney's fees incurred by a local governmental entity or any other party in the adjudication of a claim under a statute or ordinance affecting the employment rights of a local governmental entity's employees to not be awarded to any party in the adjudication unless authorized by a statute outside this subchapter.

SECTION 7. Provides changes in law made by this Act to Subchapter I, Chapter 271, Local Government Code, apply to any action alleging a violation of Title 5, Local Government Code, or another state statute or a local ordinance affecting employment that has not been finally adjudicated on the effective date of this Act.

SECTION 8. Effective date: upon passage or September 1, 2007.