

BILL ANALYSIS

C.S.H.C.R. 161
By: Burnam
Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Benbrook Water Authority (BWA) – a municipal governmental entity – built a 1.5 million gallon water storage tank in 2002 which, according to the Texas Commission on Environmental Quality, cannot be put into service due to defects in its construction.

BWA has spent approximately \$1,000,000.00 since that time to repair the tank's defects and must spend another \$500,000.00 before the tank can be placed into service.

BWA has sued the project manager engineer – Carter & Burgess, Inc. – to pay for its damages and attorneys' fees. The case is set for trial on June 29, 2009. One of BWA's chief witnesses, John Cook, has been threatened with suit by Carter & Burgess, Inc. if he testifies that BWA's damages were caused by Carter & Burgess's improper project management oversight. BWA, through a written agreement with Cook, has agreed to indemnify and hold harmless John Cook if Carter & Burgess sues him for his testimony in its lawsuit against Carter & Burgess.

As a state governmental entity, BWA enjoys sovereign immunity from suit. Therefore, Cook is properly concerned that the written indemnity agreement – which BWA has voluntarily and willingly committed to – may not be legally enforceable unless the Legislature waives BWA's sovereign immunity for this particular situation.

CSHCR 161 makes the written indemnity agreement between John Cook and the BWA enforceable, in the event he is sued by Carter & Burgess for testifying on BWA's behalf in the upcoming trial, by granting John Cook permission to sue the BWA. Without CSHCR 161, BWA is at risk of losing its trial because Cook is not willing to provide truthful testimony in the trial because of the risk to him of significant financial loss.

RULEMAKING AUTHORITY

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

ANALYSIS

CSHCR 161 grants John Cook, his heirs, and representatives, permission to sue the Benbrook Water Authority should a legal dispute arise with Benbrook Water Authority over the terms of the Hold Harmless and Indemnity Agreement.

CSHCR 161 waives any immunity from suit that might shield the Benbrook Water Authority.

CSHCR 161 grants John Cook permission to sue the Benbrook Water Authority subject to Chapter 107 of the Civil Practice and Remedies Code.

CSHCR 161 requires that the board of directors of the Benbrook Water Authority be served process as provided by Section 107.002(a)(3) of the Civil Practice and Remedies Code.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The committee substitute deletes the state of Texas from the list of those whom John Cook is granted permission to sue under the resolution and removes the Attorney General from the list of those who must be served process as provided by Section 107.002(a)(3) of the Civil Practice and Remedies Code.

All else in the committee substitute is identical.