

## **BILL ANALYSIS**

C.S.S.B. 1651  
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Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Chapter 104 (State Liability for Conduct of Public Servants), Civil Practice and Remedies Code, defines the scope and applicability of state indemnification for those state actors who are sued and found liable for conduct in the course and scope of their activity on behalf of the state. In a cause of action for negligence or deprivation of civil rights—the most common scenarios—indemnification is only provided if the attorney general determined that it is in the best interest of the state {Section 104.002 (State Liability; Conduct Covered), Civil Practice and Remedies Code}. Indemnification by the state is generally capped at \$100,000 for a single person or \$300,000 for a single occurrence with multiple defendants {Section 104.003(a) (relating to the maximum for state liability for indemnification), Civil Practice and Remedies Code}.

Currently, the coverage of Chapter 104 is limited to current and former employees and members of the governing board of each "state agency, institution or department" {Section 104.001 (State Liability; Persons Covered), Civil Practice and Remedies Code}, and a handful of other fairly specific roles on behalf of the state. Appointees to various boards and task forces in the judicial branch are not specifically identified and should be entitled to the same peace of mind that state indemnification affords to those acting in similar capacities on the state's behalf in the executive branch.

This legislation affects the following boards: the Texas Judicial Council, the Judicial Committee on Information Technology, the Court Reporter Certification Board, the Guardianship Certification Board, the Process Server Review Board, and, created by court order, the Task Force to Ensure Judicial Readiness in Times of Emergency, the Permanent Judicial Commission for Children Youth and Families, and the Access to Justice Commission and Foundation.

As proposed, C.S.S.B. 1651 amends Section 104.011 (State Liability; Persons Covered), Civil Practice and Remedies Code, to require the state, in a cause of action based on certain conduct to indemnify certain persons, without regard to whether the persons performed their services for compensation, for actual damages, court costs, and attorneys fees adjudged against the person who was acting in an official capacity as an appointee when the act or omission on which the damages are based occurred. The bill also amends Section 74.141 (Defense of Judges), Government Code, to require the attorney general to defend certain current or former appointees of the supreme court in certain suits or actions.

The Committee Substitute SB 1651 does two things. (1) It adds judges to the indemnification statute, along with judicial branch appointees, and (2) it corrects a prior drafting error: The filed version amended another statute that currently requires OAG to represent judges, by adding in judicial branch appointees. This was not necessary, as the indemnification law (Chapter 104 Civil Practice and Remedies Code), which is amended in Section 1 of the substitute, elsewhere requires that OAG represent anyone who is covered by indemnification.

### **RULEMAKING AUTHORITY**

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

### **ANALYSIS**

SECTION 1. Amends Section 104.001, Civil Practice and Remedies Code, as follows:

Sec. 104.001. STATE LIABILITY; PERSONS COVERED. Requires the state, in a cause of action based on conduct described in Section 104.002 (State Liability; Conduct Covered) to indemnify certain persons, without regard to whether the persons performed their services for compensation, for actual damages, court costs, and attorneys fees adjudged against, a current or former appointee of the supreme court to a judicial board, commission, or task force who was acting in an official capacity as an appointee when the act or omission on which the damages are based occurred. Makes non-substantive changes.

SECTION 2. Amends Section 74.141, Government Code, as follows:

Sec. 74.141. DEFENSE OF JUDGES. Requires the attorney general to defend a state district judge, a presiding judge of an administrative region, an active, retired, or former judge assigned under this chapter, or a current or former appointee of the supreme court to a judicial board, commission, or task force in any action or suit in any court in which the judge or appointee is a defendant because of his office as judge or service on the board, commission, or task force if the judge or appointee requests the attorney general's assistance in the defense of the suit.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: upon passage with two-thirds vote or September 1, 2009.

**EFFECTIVE DATE**

Upon passage with two-thirds vote or September 1, 2009.

**COMPARISON OF ORIGINAL TO SUBSTITUTE**

SB 1651	CSSB 1651
SECTION 1. Amends Section 104.001, Civil Practice and Remedies Code to include supreme court appointees, current and former, to the list of persons covered by this code.	SECTION 1. Amends Section 104.001, Civil Practice and Remedies Code to include judicial agency personnel, current and former, to the list of persons covered by this code. Also adds judges; active, retired or former; to the list of persons covered. (Essentially combines SECTIONS 1 & 2 of the original.)
SECTION 2. Amends Section 74.141, Government Code to include judicial agency personnel, current and former, to the list of persons covered by this code.	SECTION 2. Same as SECTION 3 of original.
SECTION 3. . Makes application of this Act prospective.	SECTION 3. Same as SECTION 4 of original.
SECTION 4. Effective date provision	