

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

April 20, 2009

TO: Honorable Todd Hunter, Chair, House Committee on Judiciary & Civil Jurisprudence

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB933 by Dutton (Relating to liability of a governmental unit for personal injury and death caused by the governmental unit's negligence.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB933, As Introduced: a negative impact of (\$2,724,069) through the biennium ending August 31, 2011.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2010	(\$1,431,393)
2011	(\$1,292,676)
2012	(\$3,065,354)
2013	(\$2,889,579)
2014	(\$2,970,152)

All Funds, Five-Year Impact:

Fiscal Year	Probable (Cost) from <i>General Revenue Fund</i> 1	Probable (Cost) from <i>State Highway Fund</i> 6	Change in Number of State Employees from FY 2009
2010	(\$1,431,393)	(\$275,272)	21.0
2011	(\$1,292,676)	(\$526,933)	24.0
2012	(\$3,065,354)	(\$503,322)	47.0
2013	(\$2,889,579)	(\$503,322)	47.0
2014	(\$2,970,152)	(\$599,922)	49.0

Fiscal Analysis

The bill would amend the Civil Practice and Remedies Code to expand the legal conditions under which the state may be held liable for personal injury and wrongful death actions by allowing suits against the state for negligence without tangible object limitations.

If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

Methodology

The estimated fiscal impact shown above is for the Office of the Attorney General (OAG).

The bill would impact these four legal divisions within the OAG:

- Tort Litigation Division: Expanding the current statutory waiver of sovereign immunity would result in almost every case filed against a state entity to be litigated or settled.
- Transportation Division: Allowing allegations of negligence would cause fact issues to always be present, which would expand governmental liability and virtually abolish summary judgments.
- Law Enforcement Defense Division: Exposing the Texas Department of Criminal Justice (TDCJ) to tort actions that would waive its sovereign immunity in substantially more lawsuits than what the division currently handles for TDCJ.
- General Litigation Division: Opening the state up to negligence and intentional tort claims, including negligent supervision and intentional infliction of emotional distress. This would likely lead to an increased number of such claims that the division would actually have to litigate rather than resolve.

It is assumed that the provisions of this bill would also increase claims and litigation of other state agencies; however, these statewide costs cannot be determined since they would be dependent on the number and outcomes of the claims against the State. One example comes from The University of Texas System Administration, which reported that 5% of the current 200+ annual reported claims result in litigation. It is estimated that liability through negligence would increase the number of lawsuits and damage claims, which would result in an annual cost increase to General Revenue Fund 1 of \$2,500,000 for the UT System.

Technology

The technology impact to the OAG would be \$47,928 for FY 2010; \$7,311 for FY 2011; \$50,275 for FY 2012; \$0 for FY 2013; and \$5,596 for FY 2014 for standard capital equipment.

Local Government Impact

The bill would allow a governmental unit to be liable for personal injury and death caused by the negligence of the governmental unit.

According to the Texas Association of Counties (TAC), and the Texas Municipal League, implementing the provisions of the bill could have a tremendous fiscal impact on counties and cities by expanding the Texas Tort Claims Act's waiver of immunity.

TAC also stated that currently, governmental units are subject to suit and liability for only two categories of claims: 1) those arising from negligence in the operation of motor vehicles or motor-driven equipment; and 2) those arising from a condition or use of tangible property.

TAC also believes fiscal impact will be substantial arising from two areas: 1) greater liability exposure; and 2) increased cost of defense. Not only would all governmental entities be liable under the law in more situations, and therefore pay more money in judgments, the increase in the number of cognizable claims means the number of suits being filed would be multiplied by some factor, as would the cost of defense. The cost of defending a suit ranges from an estimated \$25,000 to \$50,000. The potential liability for counties of \$100,000 per person and \$300,000 per occurrence could result in a severe fiscal impact. If counties average only one additional claim every other year, the statewide cost of defending a suit could reach \$6,350,000 (254 x \$50,000 x 0.5) annually. The potential liability could reach \$38,410,000 (254 x \$300,000 x 0.5) per year.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 347 Public Finance Authority, 477 Commission on State Emergency Communications, 529 Health and Human Services Commission, 582 Commission on Environmental Quality, 696 Department of Criminal Justice, 710 Texas A&M University System Administrative and General Offices, 720

The University of Texas System Administration, 802 Parks and Wildlife Department

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