

BILL ANALYSIS

C.S.H.B. 487
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

State law provides immunity from civil liability for a person responding to a disaster at the request of an authorized representative of a local, state, or federal agency, except in a case of reckless conduct or intentional, wilful, or wanton misconduct. A recent court case has been interpreted to affirm that immunity, but there is concern that despite such protections, local officials resist accepting volunteer services while responding to hazardous or dangerous situations because of a fear of being exposed to liability suits based on a volunteer's actions. C.S.H.B. 487 seeks to address those concerns by clarifying existing law with regard to a local official's authority to request or accept assistance in a hazardous or dangerous situation and with regard to a person's immunity from liability in providing such assistance.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 487 amends the Local Government Code to authorize the governing body of a municipality, the chief of a municipality's fire department, an emergency management director or coordinator designated for a municipality, a county commissioners court, a county judge, a county fire marshal, an incorporated volunteer fire department under contract with a county, a volunteer fire department described by statutory provisions relating to the contractual provision of fire-fighting equipment by a commissioners court, as applicable, or an emergency management director or coordinator designated for a county to request or accept any care, assistance, or advice with respect to the management of an incident that is a man-made or natural disaster, including the loan or operation of construction equipment or other heavy equipment by the owner or operator of the equipment, as applicable, or the donation of resources to the extent the official or entity believes necessary to address a man-made or natural disaster.

C.S.H.B. 487 grants an individual, association, corporation, or other private legal entity that provides such care, assistance, or advice to a municipality or county immunity from civil liability as provided by Civil Practice and Remedies Code provisions granting a person immunity from liability for an act or omission that occurs in providing certain disaster assistance at the request of a local, state, or federal agency.

C.S.H.B. 487 specifies that its provisions do not authorize the acceptance of care, assistance, or advice in violation of any other law or contractual agreement that prohibits the acceptance of that care, assistance, or advice, but are intended only to clarify existing law.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 487 may differ from the original in nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantive differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 79.003, Civil Practice and Remedies Code, is amended by adding Subsection (c) to read as follows:

(c) This section applies to an owner or licensed operator of construction equipment or other heavy equipment who provides voluntary assistance to:

(1) a municipality in the manner described by Section 342.006, Local Government Code; or

(2) a county in the manner described by Section 352.024, Local Government Code.

SECTION 2. Subchapter A, Chapter 342, Local Government Code, is amended by adding Section 342.006 to read as follows:

Sec. 342.006. ASSISTANCE BY VOLUNTEER IN HAZARDOUS OR DANGEROUS SITUATION.

The governing body of a municipality, the chief of the fire department, or an emergency management director or coordinator designated for the municipality under Section 418.1015, Government Code, may request or accept any voluntary assistance, including the loan or operation of construction equipment or other heavy equipment by the owner or licensed operator of the equipment, as applicable, to the extent the governing body, chief, or emergency management director or coordinator believes necessary to address a hazardous or dangerous situation.

SECTION 3. Subchapter B, Chapter 352, Local Government Code, is amended by adding Section 352.024 to read as follows:

Sec. 352.024. ASSISTANCE BY VOLUNTEER IN HAZARDOUS OR DANGEROUS SITUATION.

The commissioners court of a county, the county fire marshal, an incorporated volunteer fire department under contract

HOUSE COMMITTEE SUBSTITUTE

No equivalent provision.

SECTION 1. Chapter 370, Local Government Code, is amended by adding Section 370.006 to read as follows:

Sec. 370.006. ASSISTANCE IN MAN-MADE OR NATURAL DISASTER.

(a) The governing body of a municipality, the chief of the fire department, or an emergency management director or coordinator designated for the municipality under Section 418.1015, Government Code, may request or accept any care, assistance, or advice described by Section 79.003(a), Civil Practice and Remedies Code, including the loan or operation of construction equipment or other heavy equipment by the owner or operator of the equipment, as applicable, or the donation of resources to the extent the governing body, chief, or emergency management director or coordinator believes necessary to address a man-made or natural disaster.

(b) The commissioners court of a county, the county judge, the county fire marshal, an incorporated volunteer fire department

with a county under Section 352.001, or an emergency management director or coordinator designated for the county under Section 418.1015, Government Code, may request or accept any voluntary assistance, including the loan or operation of construction equipment or other heavy equipment by the owner or licensed operator of the equipment, as applicable, to the extent the commissioners court, county fire marshal, incorporated volunteer fire department, or emergency management director or coordinator believes necessary to address a hazardous or dangerous situation.

No equivalent provision.

No equivalent provision.

SECTION 4. Section 79.003(c), Civil Practice and Remedies Code, and Sections 342.006 and 352.024, Local Government Code, as added by this Act, are intended only to clarify existing law with respect to:
(1) the power of certain local officials to request or accept certain voluntary assistance in certain situations; and
(2) the applicability of Section 79.003, Civil Practice and Remedies Code, to certain persons providing certain voluntary assistance in certain situations.

SECTION 5. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate

under contract with a county under Section 352.001, a volunteer fire department described by Section 352.005, as applicable, or an emergency management director or coordinator designated for the county under Section 418.1015, Government Code, may request or accept any care, assistance, or advice described by Section 79.003(a), Civil Practice and Remedies Code, including the loan or operation of construction equipment or other heavy equipment by the owner or operator of the equipment, as applicable, or the donation of resources to the extent the commissioners court, county judge, county fire marshal, volunteer fire department, or emergency management director or coordinator believes necessary to address a man-made or natural disaster.

(c) A person as defined by Section 79.001, Civil Practice and Remedies Code, who provides care, assistance, or advice to a municipality or county in the manner described by this section is immune from civil liability as provided by Section 79.003, Civil Practice and Remedies Code.

(d) Subsection (a) or (b) does not authorize the acceptance of care, assistance, or advice in violation of any other law or contractual agreement that prohibits the acceptance of that care, assistance, or advice.

SECTION 2. Section 370.006, Local Government Code, as added by this Act, is intended only to clarify existing law with respect to:

- (1) the power of certain local officials to request or accept certain assistance in certain situations; and
- (2) the applicability of Section 79.003, Civil Practice and Remedies Code, to certain persons providing certain assistance in certain situations.

SECTION 3. Same as introduced version.

effect, this Act takes effect September 1,
2013.