

## **BILL ANALYSIS**

C.S.H.B. 3762  
By: Coleman  
County Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Current law tasks county auditors with ensuring strict compliance with financial laws. Interested parties note that a county auditor's primary enforcement tool is the ability to prohibit payment of a claim that is not legally compliant, an action that necessarily involves the interpretation of state law and could place the auditor at greater risk for internal suit. Current law also permits county officers and employees to be represented by the county or district attorney in a third party legal action. In counties without an elected attorney, the commissioners court may contract for legal counsel. However, interested parties assert that this practice potentially leaves county officials, including a county auditor, without a resource for legal consultation when the need for clarification arises.

Interested parties further assert that in certain cases where representation is lacking, it is increasingly common for a lawsuit to name a county officer or employee in both an official and individual capacity and for the issue to be referred to the Texas attorney general. The parties contend that efforts should be made to ensure greater local collaboration in these matters and to reduce the number of legal requests submitted to the attorney general. Interested parties note that it is necessary to clarify in relevant statutes that a county official, including a county auditor, is authorized to request assistance from the district or county attorney in interpreting statute. C.S.H.B. 3762 seeks to address these issues relating to the entitlement of county officials to legal 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. 3762 amends the Government Code to clarify that a precinct or county official, including a county auditor, is authorized to request in writing from the district or county attorney a written opinion or written advice relating to the official duties of that official, including the interpretation of a statute relating to those official duties. The bill requires the district or county attorney, not later than the 30th day after the date such a written request is submitted, to either grant the request and provide the written opinion or written advice, or to deny the request in writing. The bill entitles a county or precinct official to representation as prescribed by Local Government Code provisions relating to legal defense of county employees if the county or precinct official is sued for an action arising from the performance of a public duty as a result of following that opinion or advice.

### **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. 3762 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

### INTRODUCED

SECTION 1. Section 157.901, Local Government Code, is amended by adding Subsection (d) to read as follows:

(d) At the request of a county official or employee, the attorney general may represent the official or employee in an action arising from:

(1) the performance of a public duty; or  
(2) the refusal to take a formal action that the official or employee considers to be contrary to law.

SECTION 2. Subchapter Z, Chapter 157, Local Government Code, is amended by adding Section 157.9011 to read as follows:

Sec. 157.9011. REPRESENTATION IN MANDAMUS ACTION. (a) A county official is entitled to be represented in a mandamus action by the district attorney of the district in which the county is located, the county attorney, or both.

(b) A county official is not required to accept the legal counsel provided in this section.

SECTION 3. Section 157.9015(a), Local Government Code, is amended to read as follows:

(a) It is not a conflict of interest for a district or county attorney under Section 157.901 to defend a county or a county official or employee sued by the county or another county official or employee and also to advise or represent the opposing party on a separate matter arising from the performance of a public duty, regardless of whether the attorney gives the advice or representation to the opposing party before the suit began or while the suit is pending.

SECTION 4. Subchapter Z, Chapter 157, Local Government Code, is amended by adding Section 157.9016 to read as follows:

Sec. 157.9016. RECOVERY OF LEGAL FEES. (a) A county or district attorney who is

### HOUSE COMMITTEE SUBSTITUTE

No equivalent provision, but see SECTION 1 below.

No equivalent provision.

No equivalent provision.

No equivalent provision.

not fully funded to provide representation under Section 157.901(a) is entitled to reasonable legal fees paid from the general fund or a legal expenses fund of the county.

(b) The attorney general is entitled to reasonable legal fees for providing representation under Section 157.901(d) to be paid from the general fund or a legal expenses fund of the county in which the county official or employee requesting the representation serves or is employed.

(c) Legal fees paid under this section from the county's general fund may be recovered by court order from a person, other than the county, a county official, or a county employee, initiating a legal action.

SECTION 5. Section 157.903, Local Government Code, is amended to read as follows:

Sec. 157.903. AUTHORITY TO INDEMNIFY ELECTED AND APPOINTED COUNTY OFFICERS. The commissioners court of a county by order may provide for the indemnification of an elected or appointed county officer against personal liability for the loss of county funds, [ø] loss of or damage to personal property, or other losses incurred by the officer in the performance of official duties if the loss was not the result of the officer's negligence or criminal action.

SECTION 6. The changes in law made by Sections 157.901 and 157.9015(a), Local Government Code, as amended by this Act, and Section 157.9011, Local Government Code, as added by this Act, apply only to an action filed on or after the effective date of this Act. An action filed before the effective date of this Act is governed by the law in effect when the action was filed, and the former law is continued in effect for that purpose.

No equivalent provision, but see SECTION 1 above.

No equivalent provision.

No equivalent provision.

SECTION 1. Section 41.007, Government Code, is amended to read as follows:

Sec. 41.007. OPINIONS TO COUNTY AND PRECINCT OFFICIALS. (a) A [~~district or county attorney, on request, shall give to a~~] county or precinct official may request in writing [~~of his district or county~~] a written opinion or written

advice relating to the official duties of that official, including the interpretation of a statute relating to the official duties of the official, from the district or county attorney.

(b) Not later than the 30th day after the date a written request is submitted under Subsection (a), the district or county attorney shall:

(1) grant the request and provide the written opinion or written advice; or

(2) deny the request in writing.

(c) If a county or precinct official is sued for an action arising from the performance of a public duty as a result of following an opinion or the advice provided under Subsection (a), the county or precinct official is entitled to representation as provided by Section 157.901, Local Government Code.

(d) In this section, "county official" includes a county auditor.

No equivalent provision.

SECTION 2. The changes in law made by Section 41.007, Government Code, as amended by this Act, apply only to a request submitted for a written opinion or written advice on or after the effective date of this Act. A request submitted before the effective date of this Act is governed by the law in effect when the request was submitted, and the former law is continued in effect for that purpose.

SECTION 7. This Act takes effect September 1, 2013.

SECTION 3. 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 effect, this Act takes effect September 1, 2013.