

BILL ANALYSIS

Senate Research Center
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S.B. 1738
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under state law, county auditors are tasked with ensuring strict financial compliance. The primary tool for enforcement is the prohibition against payment of a claim that the auditor has determined was not incurred in compliance with constitutional or statutory law. This role places the auditor at greater legal risk for internal suit.

The duties of the office also put the county auditor at risk from an internal suit over issues involving interpretation of state law. Sometimes, the conflict is between two other officials, but if the conflict has a financial implication, such as budget or salary, the auditor can be sued for the position he or she takes on the financial aspect. The county auditor is not always provided with legal counsel to present the auditor's position to the commissioners court.

S.B. 1738 will ensure greater collaboration locally and allow county auditors to access legal representation for issues arising in the performance of official duties.

As proposed, S.B. 1738 amends current law relating to the legal defense and indemnification of county officials and employees.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 157.901, Local Government Code, by adding Subsection (d), to authorize the attorney general, at the request of a county official or employee, to represent the official or employee in an action arising from the performance of public duty or the refusal to take a formal action that the official or employee considers to be contrary to law.

SECTION 2. Amends Subchapter Z, Chapter 157, Local Government Code, by adding Section 157.9011, as follows:

Sec. 157.9011. REPRESENTATION IN MANDAMUS ACTION. (a) Entitles a county official 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) Provides that a county official is not required to accept the legal counsel provided in this section.

SECTION 3. Amends Section 157.9015(a), Local Government Code, to provide that it is not a conflict of interest for a district or county attorney under Section 157.901 (Legal Defense of Employees) 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. Amends Subchapter Z, Chapter 157, Local Government Code, by adding Section 157.9016, as follows:

Sec. 157.9016. RECOVERY OF LEGAL FEES. (a) Entitles a county or district attorney who is not fully funded to provide representation under Section 157.901(a) (relating to entitling county employees or officials to be represented by the district attorney of the district in which the county is located, the county attorney, or both under certain conditions) to reasonable legal fees paid from the general fund or a legal expenses fund of the county.

(b) Entitles the attorney general 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) Authorizes legal fees paid under this section from the county's general fund to 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. Amends Section 157.903, Local Government Code, as follows:

Sec. 157.903. AUTHORITY TO INDEMNIFY ELECTED AND APPOINTED COUNTY OFFICERS. Authorizes the commissioners court of a county by order to provide for the indemnification of an elected or appointed county officer against personal liability for the loss of county funds, 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. Makes a nonsubstantive change.

SECTION 6. Makes application of 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, prospective.

SECTION 7. Effective date: September 1, 2013.