

Liability limit for doctors employed by certain governmental hospitals and other revisions to local governmental authority

HB 3485 by Coleman (West)

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DIGEST: HB 3485 would have allowed direct employment of physicians by the Dallas County Hospital District and certain rural hospitals operated by a governmental entity. The bill would have established requirements to enable physicians employed by a hospital to retain their independent medical judgment in providing care to patients. The bill would have established that a physician employed by a governmental hospital could be held civilly liable for up to \$250,000 for each single occurrence of bodily injury or death in a health care liability claim. A governmental hospital would have been required to maintain this amount of professional liability insurance or a self-insurance plan covering each employed physician.

Public improvement districts. HB 3485 also would have allowed public improvement district assessments to finance more types of projects and would have revised the boundaries within which a municipality or county could have established a public improvement district. The bill would have revised the financing methods available for improvement projects and the process by which a public improvement district could annex or exclude land from a district.

County assistance districts. The bill would have allowed the appointment of a governing body for a county assistance district and establishment of more than one district in a county. HB 3485 also would have revised the taxing authority of county assistance districts, including revising the maximum amount of tax that could be imposed by a district and allowing districts to apply different rates to different areas to pay for improvements or services that benefitted those areas primarily.

Medical examiners. HB 3485 would have revised requirements for county medical examiners' offices, including staffing structure, certification for examiners, and the circumstances under which a medical examiner was required to perform an inquest. The authority of medical examiners would have been revised, including allowing them to limit or prohibit the harvesting of donated tissue or organs if they determined it would interfere with an investigation and to perform an autopsy without notice to a deceased person's next of kin. The bill would have revised the circumstances under which an autopsy was performed and redefined an autopsy to allow procedures to determine the manner of death, obtain evidence, or identify the deceased. Counties could have created funds to pay for disposing of bodies of deceased paupers.

County procedures. The threshold over which certain county expenditures or contract awards would have to be made using competitive bidding procedures would have been raised from \$25,000 to \$50,000. Other provisions would have revised processes related to grand jury proceedings, intergovernmental risk management pools, county employee payroll deductions, payment of jurors for jury service, electronic transmission of documents such as warrants and arrest notices, and the sale or licensure of a software application or system developed by the county.

GOVERNOR'S
REASON FOR
VETO:

“As the husband of a former nurse at a rural hospital, the son-in-law of a rural county physician, and a native of a rural county, I understand the needs of rural hospitals and their patients. I support rural hospitals’ intention of attracting more doctors, and would have been glad to sign a bill allowing them to do so by directly hiring physicians.

“However, an amendment added to House Bill No. 3485 late in the session would undermine some of the gains in medical liability reform that have come from caps on physicians’ liability. These reforms were passed in 2003 and approved in a constitutional amendment election. The objectionable provision would increase the liability cap for doctors employed directly by hospital districts, as compared to the bill without the amendment. With respect to doctors employed by hospital districts, this amendment creates uncertainty as to the applicability of the liability cap available in a single action when multiple doctors or multiple claims are involved.

“The bill’s provision regarding physician liability was neither debated nor discussed, but rather amended onto this bill late in the session. It risks unraveling the progress we made in curtailing excessive liability and ensuring that patients who need physicians will be able to find them. The 2003 medical liability reform has led to thousands of new doctors coming to Texas. The changes proposed by House Bill No. 3485 threaten the progress that reform has made.”

RESPONSE:

Rep. Garnet Coleman, the bill’s author, said: “It is disappointing that Governor Perry vetoed this important piece of legislation. With the addition of the amendment allowing certain rural public hospitals to employ physicians, this bill would have ensured access to physician coverage across rural Texas. Rural public hospitals in Texas find it more and more difficult to attract physicians to their communities and retain them. Many physicians entering practice today prefer an employee relationship, rather than having the responsibility and burden of setting up and managing a small business. HB 3485 gave rural public hospitals and physicians who want to practice in rural Texas flexibility. Having the option to employ physicians would have helped rural hospitals improve and preserve access to physicians. Without physicians, these hospitals will not continue to exist.

“The governor alleges that an amendment was added in the final days of session that was neither debated nor discussed. However, prior to concurring with all of the Senate amendments, I had multiple conversations with the governor’s office, one of them with Sen. Ken Armbrister, the governor’s legislative director, as well as another member of the governor’s staff.

To be clear — I told the governor’s staff that the amendment in question could be removed if it created any sort of problem or if it jeopardized the passage of this

important legislation. Sen. Armbrister assured me that the governor was fine with the amendment and therefore fine with the overall bill.

“Tort reform groups were also contacted concerning the amendment the governor refers to in his veto statement. These groups indicated that they were neutral on the bill. Their neutrality was probably due to the fact that HB 3485 in no way undermines tort reform efforts. Instead, the bill would have furthered those efforts by helping attract more doctors to underserved rural areas and keeping their liability insurance costs down.

“The most recent tort reform efforts undertaken in 2003 limited non-economic damages against physicians, including pain and suffering, to \$250,000. However, economic damages such as medical bills and past or future lost wages were not capped. In addition, the current Texas Tort Claims Act limits damages for public and government hospitals to \$100,000 for each person or \$300,000 for each single occurrence causing bodily injury or death. HB 3485 would have limited the liability of physicians who are employed by public hospitals in counties with less than 50,000 people to an absolute maximum of \$250,000, including economic and non-economic damages. Doctors would have further been enticed to practice in these underserved rural areas because the employer hospital would have been responsible for maintaining liability insurance of the employee doctor.

“The worst part is, the only losers with this veto are the people of the state of Texas and the various counties, with no gain or loss to the tort reform movement. In addition to helping rural doctors and hospitals HB 3485 would have saved taxpayer dollars in many other ways by ensuring that county governments have the ability to operate in a more independent and financially efficient manner.

“Additional provisions in HB 3485:

- allow warrants to be transmitted by secure fax or secure electronic mail, which will reduce paperwork and administrative time;
- allow electronic payment methods for jurors, which will speed payment and reduce staff time and paperwork in cutting checks;
- permit the cremation of an unidentified pauper’s remains, which is an unfortunate but real need in some of the border counties;
- permit the use of video teleconferencing system for grand jury proceedings, which can reduce travel time for expert witnesses and law enforcement officers, resulting in a savings for the county; and

- update the statute on automatic payroll deductions to permit a county-maintained automated payroll system to be used to process payroll deductions, resulting in reduced administrative costs.”

Sen. Royce West, the Senate sponsor, said: “House Bill 3485, as finally passed, was 99 pages long. The bill updated a wide variety of statutory provisions related to the administration of county government. It was also amended in the Senate to change the means of notifying a property owner of a violation of city or county ordinance, to modernize the law pertaining to public improvement districts and county medical examiners, and to provide for the direct employment of physicians by certain hospital districts. The vote was 27-4 in the Senate, and the House agreed with Senate amendments by a vote of 142-2-1. It is the latter provision, regarding the employment of doctors by certain hospital districts, to which the governor apparently objected.

“The veto is curious in this respect. Currently, a doctor practicing independently of a city or county-owned hospital district who is found to be negligent is subject to \$250,000 in non-economic damages, and an unlimited amount of economic damages. Also, under current law, the liability of a doctor employed by a city or county-owned facility is capped at \$100,000 for non-economic damages and economic damages. As passed, the bill would have made any doctor hired by a hospital district in a county of less than 50,000 in population subject to a cap of \$250,000 in non-economic damages and a cap of \$250,000 in economic damages. Changes made by the bill would have applied prospectively, so doctors currently employed by city or county-owned hospital districts would retain the benefit of the \$100,000 caps. So, the bottom line is as follows. Had this bill not been vetoed, if a hospital district in a county of less than 50,000 which does not currently directly employ physicians, chose to do so, the caps on liability for those doctors would have been \$250,000, instead of \$100,000. But, their liability for economic damages would have also been capped at \$250,000, rather than the unlimited liability for such damages faced by a physician not employed by a political subdivision of the state. Proponents of the ‘rural hospital district’ amendment showed evidence from insurers that this would actually lower premiums for medical malpractice insurance.

“In our system of checks and balances it is of course the governor’s right to exercise the veto, but in this particular instance the bill’s sponsor feels that his concern was unwarranted.”

NOTES:

HB 3485 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.