

# Waiving sovereign immunity to authorize MBP Corp. to sue the Galveston Wharves

SCR 59 by Jackson (Taylor)

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**DIGEST:** SCR 59 would have waived the sovereign immunity of the Board of Trustees of the Galveston Wharves to allow MBP Corp. to sue Galveston Wharves over terms of a lease and development agreement concerning the Galveston Cruise Ship Terminal.

## GOVERNOR'S REASON FOR VETO:

“Senate Concurrent Resolution No. 59 would grant MBP Corp. permission to sue the Board of Trustees of the Galveston Wharves, a Galveston city utility, for breach of a lease and for invading its leasehold. In dispute is whether the lease permits the board to construct an air-conditioned walkway on the roof of Galveston’s Mallory Building to allow cruise ship passengers access to ships.

“Senate Concurrent Resolution No. 59 would have been acceptable if it had been limited to this provision and had capped damages for which Galveston taxpayers could ultimately have been held responsible.

“The permission to sue granted by Senate Concurrent Resolution No. 59, however, is not limited to the dispute regarding the rooftop of the Mallory Building, and authorizes future suits on any property involved in the lease. Moreover, the resolution contains no cap on the damages for which the taxpayers could be ultimately held responsible under the litigation.

“A lawsuit on this matter is currently pending in the 14th Court of Appeals of Texas. The court’s decision on the sovereign immunity issue could eliminate the need for this resolution. If the court rules against it, MBP Corp. could return to the Legislature for a resolution that limited the permission to sue to the matter at issue in the resolution and set a reasonable cap on the damages sought.

“I will only support waivers of sovereign immunity that are specific as to the cause of action for which a governmental entity may be subject to suit, and that set a reasonable cap on damages.”

**RESPONSE:** **Sen. Mike Jackson**, the author of SCR 59, had no comment on the veto.

**Rep. Larry Taylor**, the House sponsor, said: “Governor Perry listed three main reasons for vetoing SCR 59 as passed: 1) the resolution was not limited to the specific suit at hand, and authorized future suits, 2) the resolution did not contain a cap on the damages for which taxpayers could be responsible, and 3) a pending court decision on the sovereign immunity issue could eliminate the need for this resolution.

“In response, legislative intent was discussed and established on the House floor between Rep. Taylor and Rep. Lewis and recorded in the House Journal to reflect the resolution’s scope, specifically not to include future disputes. Moreover, the floor discussion recognized that both parties had confirmed such limitation, expressed by issuance of letters distributed to members of the House Committee on Judiciary and Civil Jurisprudence. These documents were provided to the governor’s staff as well.

“No cap was included in the resolution because the damages are entirely dependent on the Galveston Wharves’ actions. MBP sued the Wharves only after the Wharves came onto MBP’s leasehold and took MBP’s property (the Mallory Building rooftop). After the rooftop suit was dismissed based on the Wharves’ sovereign immunity claim, the Wharves notified MBP that the Wharves was unilaterally reducing the amount of property it leased to MBP. No suit has been filed on that claim, but there is little doubt that the Wharves would again claim it is immune from such suit. If the Wharves were to retract its threat to take back property covered by the lease then no suit (and no damages) would be sought for this claim. The damages are dependent on the Wharves’ actions and are limited to the damages recoverable under applicable Texas law.

“Most importantly, counsel for the Port admitted before the Senate Jurisprudence Committee that the Port has the right to sue Mr. Mitchell, yet that same right is not afforded in return without legislative permission. In fact, during recent arguments on appeal before the 14th Court of Appeals, counsel for the Port rebuked the Mitchell representation for not having sought or obtained passage of a legislative resolution waiving sovereign immunity. Therefore, passage of a resolution was sought for purposes of the court moving forward with related proceedings. And the pending appeal does not eliminate the need for this resolution. The appeal only involves the Wharves’ action in taking the Mallory Building rooftop, not the Wharves’ threat to reduce the amount of property under the lease.

“Due to the veto of SCR 59, developers are less likely to consider entering into an agreement with the Wharves to improve local properties and invest millions of dollars for the betterment of the community as a whole. So long as developers are denied access to the courts to protect their rights under a lease, local improvements will come to a halt and interested parties will look to the governor’s veto as precedent that no civil remedy is available when their respective rights have been violated.”