SUBJECT: Sovereign immunity for junior college districts

COMMITTEE: Civil Practices — favorable, without amendment

VOTE: 6 ayes — Bosse, Janek, Hope, Nixon, Smithee, Zbranek

0 nays

3 absent — Alvarado, Dutton, Goodman

SENATE VOTE: On final passage, Local and Uncontested Calendar, May 6 — 30-0

WITNESSES: No public hearing

BACKGROUND: The doctrine of sovereign immunity protects the state from the kinds of lawsuits that routinely are brought against private citizens and businesses. It is based on an ancient common-law rule that courts may not hear claims against the sovereign without the sovereign's consent. Texas' sovereign immunity protects the state in two ways. Before the state may be sued, it must consent to be sued. Then, if a plaintiff is granted permission to sue the state and wins a judgment, the state is immune from liability and the plaintiff may not recover a judgment unless the state agree to pay that judgment.

The San Antonio Court of Appeals, in *Alamo Community College District v. Obayashi Construction*, 980 S.W.2d 745 (1998), held that junior college districts were treated under sovereign immunity law as independent school districts, meaning that they could sue and be sued without first getting permission from the state.

DIGEST: SB 975 would authorize the board of trustees of a junior college district to sue in the name of the district. The board also would be immune from suit and could be sued only in the same manner as a general academic teaching institution or the governing board of such an institution. To bring suit against a junior college district, a plaintiff would have to ask the Legislature's permission, unless otherwise specified by law. SB 975 would not affect the inclusion of junior college districts under the Texas Tort Claims Act (Civil Practice and Remedies Code, chapter 101).

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house.

SUPPORTERS SAY:

SB 975 would correct the problem caused by the *Obayashi* decision in 1998. Under that decision, junior college districts, which previously had been treated like other units of state government under the doctrine of sovereign immunity, now are treated like school districts, which can be sued without receiving permission from the state. Junior college districts thus are subject to being sued without any of the traditional limitations of sovereign immunity.

Sovereign immunity is an essential component of a governmental body's protection from suit. Without such protections, junior college districts never would be able to budget or plan because of the risk of unrestricted suits. Regardless of the benefits, however, similar institutions should be treated similarly under law. In order to treat junior college districts like their closest counterparts, the general academic institutions, these districts need to have the same sovereign immunity as those institutions.

The bill would not limit the ability of those who contract with these districts, as it simply would return the law to what it was before the *Obayashi* case.

OPPONENTS SAY:

SB 975 would go too far in addressing the sovereign immunity of junior college districts by providing that the board would be "immune from suit." That statement is not necessary to ensure that districts are treated like general academic districts.

The *Obayashi* case is based on clear statement of statute, under which junior college districts are governed by the laws that govern the establishment, management, and control of independent school districts, Education Code, sec. 130.084. If the only reason to treat junior college districts differently for purposes of sovereign immunity is that they have always been treated that way, perhaps that should be changed.

NOTES:

SB 629 by Cain, also placed on the House General State Calendar for May 21, would establish an alternative dispute resolution process for resolving contract claims against units of state government, including junior college districts.