

SUBJECT: Liability for law enforcement agencies aiding other governments

COMMITTEE: Civil Practices — committee substitute recommended

VOTE: 5 ayes — Bosse, Clark, Martinez Fischer, Smithee, Zbranek
0 nays
4 absent — Janek, Dutton, Hope, Nixon

WITNESSES: For — Anita Burgess, City of Lubbock
Against — None

BACKGROUND: In 1991, the 72nd Legislature added Government Code §791.006, which holds that if a governmental unit contracts with another governmental unit's fire department for fire protection services, the contracting government is responsible for any civil liability arising from those services.

Under Civil Practice and Remedies Code sec. 101.23, the liability for state government is limited to a maximum of \$250,000 for each person and \$500,000 for each single occurrence of bodily injury or death. The limits for local governments, except municipalities, is \$100,000 per person and \$300,000 per occurrence for bodily injury or death, and the limits for municipalities is \$250,000 per person and \$500,000 per occurrence for bodily injury or death. The limit on property damage for all jurisdictions is \$100,000.

DIGEST: CSHB 785 would amend Government Code sec. 791.006 to provide that a governmental unit without a prior agreement about law enforcement assistance would be responsible for any civil liability against another entity's law enforcement agency operating within the jurisdiction requesting the service.

CSHB 785 specifically would not change the liability limits for governmental units set by Civil Practice and Remedies Code Chapter 101.

CSHB 785 would be effective on Sept. 1, 2001.

SUPPORTERS
SAY:

CSHB 785 would promote a “good neighbor” policy where larger jurisdictions could assist smaller cities and other governmental entities with law enforcement services. Larger city police departments have divisions such as bomb squads, hazardous materials units, or SWAT teams that smaller cities cannot afford. Clarifying the legal liability question would make larger cities more willing to respond to requests for law enforcement assistance.

CSHB 785 would provide incentives for governmental entities to enter formal agreements on mutual assistance. The bill would not preclude a municipality, especially in a highly urbanized area, from deciding to accept civil responsibility for its officers responding to calls from other jurisdictions. The proposed change would put local governments on notice that they would be liable for problems arising from a response from other law enforcement agencies if there is no contract. The governing body would be more likely to negotiate interlocal agreements, secure adequate insurance, and develop policies for assisting or requesting assistance from neighboring jurisdictions. Jurisdictions also would be encouraged to plan ahead to reduce situations that could lead to future liability.

CSHB 785 would not eliminate current standards of liability for governmental actions, but just assign the responsibility to the appropriate jurisdiction. Current law on bringing lawsuits and the limits of liability for governmental units would remain unchanged by CSHB 785. The bill would not change the immunities granted under state law to school districts.

CSHB 785 would extend the same protections already provided to fire departments responding to assistance calls from other jurisdictions. The current law has been in place for almost a decade with no problems. Jurisdictions have been negotiating interlocal agreements to provide fire service, and CSHB 785 would grant local governments the same flexibility to negotiate similar agreements to provide law enforcement assistance.

OPPONENTS
SAY:

Smaller jurisdictions would not be financially able to provide the necessary insurance coverage to indemnify themselves against a liability claim arising from actions of another law enforcement agency. Most of these situations

would involve emergencies and other hazardous situations. Innocent parties who would be injured would be unable to recover for their injuries, or the taxpayers in the responding jurisdictions would have to assume that responsibility.

OTHER
OPPONENTS
SAY:

C SHB 785 would not address an existing gray area of the law regarding the liability of the governmental unit or the law enforcement officer when the officer responds to an emergency situation in another jurisdiction without being called. Law enforcement officers typically request permission to respond outside their jurisdiction. However, law enforcement officers responded to situations such as shootings of Department of Public Safety troopers in Central Texas or hurricanes in Galveston without express permission of their superiors or from the jurisdictions where the emergency occurred.

Law enforcement agencies themselves also have not requested permission or sought to coordinate with other law enforcement agencies handling emergency situations. One example of an agency acting at its own discretion was when the Tarrant County Sheriff's Department responded to a disturbance at Six Flags over Texas without consulting the Arlington Police Department, which had not requested the assistance.

NOTES:

The companion bill, SB 202 by Duncan, was left pending on January 23 in the Senate Intergovernmental Affairs Committee.

The committee substitute added the provisions that the requesting governmental unit would be civil liable in the absence of a contract and that the bill would not change existing liability limits.