

**SUBJECT:** Excusing lawmakers from compelled testimony during legislative sessions

**COMMITTEE:** Civil Practices — committee substitute recommended

**VOTE:** 8 ayes — B. Cook, Strama, P. King, Martinez Fischer, Miller, Raymond, Talton, Woolley

0 nays

1 absent — Madden

**WITNESSES:** None

**BACKGROUND:** Civil Practices and Remedies Code, sec. 30.003 provides for a legislative continuance that allows lawyer-legislators to delay proceedings while the Legislature is in session if the lawmaker represents one of the parties.

**DIGEST:** HB 965 would amend the Civil Practices and Remedies Code by adding sec. 30.0035 to require courts to excuse a legislator from being compelled to testify as a witness or give a deposition, if the legislator filed a request in court. On receipt of the request, the court would have to grant the request for delay until a time and place agreed to by the legislator or until a date at least five days after the legislative session ended.

The immunity from testifying or giving deposition would apply only to civil cases, including probate or condemnation proceedings, and to any matter ancillary to a civil case in which testimony or a deposition could be taken. The immunity would not apply to a contested case or other proceeding before a state agency. It also would not apply in criminal cases or lawsuits in which the legislator was a party.

The bill would take effect September 1, 2007.

**SUPPORTERS SAY:** Legislators face significant difficulty in responding to subpoenas or deposition requests while in session in Austin. For example, one legislator was called last session to travel far from Austin to provide testimony in a case involving a relative's business. Compelling a legislator to testify or

give a deposition can present significant hardship in attending to legislative business, and relocating a deposition can prove difficult.

The primary duties of a legislator require the member to be in Austin for legislative business at least during the weekdays. Litigants who require the testimony or deposition of a legislator should recognize the inconvenience and difficulty of taking lawmakers away from their primary responsibilities and should wait until the session has ended to obtain the information. Also, litigants should not be able to abuse the judicial process by calling a legislator away from voting on bills and performing legislative duties as a way to affect political outcomes.

The bill would be fair for both the plaintiffs and defendants because the immunity would apply to both. Also, because the bill would not apply to criminal cases, it would not cause unreasonable delay nor deny a required expedient trial. It also would not apply to contested cases or other proceedings before a state agency, nor to cases in which a legislator was an actual party to the suit. At most, any delay would be until five days after the 140-day regular session, and most civil proceedings in which a legislator is not a party should be able to schedule around that delay.

**OPPONENTS  
SAY:**

Legislative immunity from civil subpoena would expand the special privileges of legislators too far. Since the Legislature, due to complaints about abuse of legislative continuances, required disclosure of all continuances and information about the suits involved in 2003, 32 lawyer-legislators have filed 431 continuances, often causing significant delay in legal proceedings. Adding legislative immunity from testimony or depositions only would compound that delay and disruption of the legal process.

The increased number of special sessions in recent years could lead to further delays for litigants who require the testimony or deposition of a legislator. Legislators already have many privileges and protections and should not be able to shirk the duties of ordinary citizens. Others in crucial professions who cannot afford to take time away from their jobs do not receive special immunity from testifying. These issues should be considered on a case-by-case basis weighing the inconvenience to legislators of having to testify during a session versus the burden on the parties from any delay.

Other measures short of complete immunity could solve any problem with requiring legislators to testify during sessions and would be less disruptive to the civil trial schedule. For example, depositions from legislators could be required to be conducted in Austin while the Legislature was in session.

NOTES:

The committee substitute added the provision that the legislative immunity from civil subpoena was not applicable in contested cases or other proceedings before state agencies.

A related bill, HB 2012 by Rose, which would abolish statutory legislative continuances, was heard by the State Affairs Committee on March 12 and left pending. The Senate companion to HB 2012, SB 1290 by Patrick, was heard and left pending by the Senate Jurisprudence Committee on April 4.