

SUBJECT: Limiting personal liability of public servants for property damage

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Hunter, Hughes, Alonzo, Leibowitz, Lewis, Madden, Martinez, Woolley

0 nays

1 present not voting — Hartnett

2 absent — Branch, Jackson

WITNESSES: For — None

Against — None

On — (*Registered, but did not testify*: Laura Messina, Office of the Attorney General)

BACKGROUND: Civil Practice and Remedies Code, ch. 104 obligates the state to indemnify public servants and employees for personal injuries and property damages caused by certain acts performed within the scope of a public servant's or employee's official duties. Sec. 104.003 limits the state's liability for indemnification to \$100,000 for each indemnified person for personal injury or death and \$10,000 for each occurrence of property damage.

The provisions under Civil Practice and Remedies Code, sec. 108.002 regarding property damages that exceed \$10,000 vary from the provisions that govern personal liability for personal injuries. Currently, the law exempts a public servant from personal liability for damages related to personal injuries that exceed the state's indemnification obligation of \$100,000. By contrast, sec. 108.002 limits a public servant's personal liability for property damages to \$100,000, meaning that a public servant can be held personally responsible for up to \$90,000 in property damages above the state's \$10,000 indemnification amount.

Sec. 108.001 defines “public servant” to mean an elected or appointed public official who serves a governmental unit and was acting in that capacity when the act or omission that caused the damages occurred.

DIGEST: HB 2149 would reduce a public servant’s personal liability for property damages to \$10,000, rather than \$100,000 under current law. The bill would apply to public servants that are indemnified by the state or a local governmental entity or covered by insurance for the amount not greater than \$10,000.

The bill would not apply to actions or lawsuits filed under the U.S. Constitution or federal law.

HB 2149 would apply only to an action filed on or after the bill’s September 1, 2009, effective date.

SUPPORTERS SAY: HB 2149 would make the provisions in the Civil Practice and Remedies Code pertaining to public servants’ personal liability for personal injuries and property damages consistent with one another. Unlike a public servant who causes a personal injury, a public servant who causes property damage in the scope of the public servant’s official capacities can be held personally liable for up to \$90,000, a discrepancy for which no compelling reason exists. The bill would eliminate this discrepancy and set a consistent personal liability cap for public servants.

OPPONENTS SAY: HB 2149 would generally undermine the widely-held principle that people are responsible for their own actions, and those actions should have consequences. By limiting the personal liability of a public servant who caused property damage, this bill would effectively grant a special privilege to government workers over private citizens by providing the former stronger legal protections than the latter.

NOTES: The companion bill, SB 1041 by Patrick, has been referred to the Senate State Affairs Committee.