

HOUSE BILL ANALYSIS

HB 1783

Title: An act relating to reimbursement of public entities for payments made because of criminal acts of officers, employees, or contractors.

Brief Description: Providing for reimbursement of public entities for payments made because of criminal acts of officers, employees, or contractors.

Sponsors: Representatives Cox, Carrell, Gombosky and Kastama.

Brief Summary of Bill

- Allows government reimbursement from the pension of a public employee or a contractor whose criminal act results in government liability.
- Applies to public employees who become members of a public retirement system after the effective date of the act.

HOUSE COMMITTEE ON JUDICIARY

Staff: Bill Perry (786-7123).

Background:

The state has generally waived sovereign immunity for itself and for all levels of government in the state. That is, generally, the state has allowed government to be sued in the same way that private entities may be sued for tortious conduct. This means, again generally, that government may be liable for damages caused by its negligent, reckless, or intentional acts or omissions.

In the discussion below, elected officials, employees, and volunteers will be referred to collectively as employees,– and descriptions of statutes regarding state employees may be taken generally to cover also local government employees to whom similar statutes apply.

A person injured by the action or inaction of government may sue to recover damages. The suit may be filed against both the government itself and the individual employee who was responsible for the action or inaction. A government employee who is named in such a lawsuit may be eligible for legal defense at government expense and, if found liable, eligible for government payment of any judgment.

A state employee named in a suit may, but need not, request that the attorney general defend him or her against the suit. The employee is entitled to attorney general representation if he or she was performing, or in good faith purporting to perform, official duties.— If the attorney general finds that the employee was acting within the scope of employment, or in good faith thought he or she was so acting, then the employee will be represented. If the attorney general has agreed to represent the employee, and if the court subsequently finds that the employee was acting within the scope of his or her duties, then the state will pay any damage award entered against the employee.

A state employee who has not been represented by the attorney general and who has been found liable for damages is responsible for paying those damages.

When a judgment has been entered against a person, various procedures control the enforcement of that judgment. Statutes provide various methods that a judgment creditor may use to collect money from a judgment debtor. Statutes also specifically restrict some of these collection methods with respect to some kinds of property of the judgment debtor. Pensions, in particular, are generally protected. One of the statutes controlling enforcement of judgments declares that it is the policy of the state to ensure the well-being of its citizens by protecting retirement income.— This statute protects pensions, annuities, retirement or disability allowances, and death benefits from execution, attachment, garnishment, or seizure by or under any legal process whatever.— In addition, statutes covering some of the state’s employee retirement systems contain individual prohibitions against use of these enforcement measures on pensions. Exceptions to these prohibitions are made for collection of child support obligations.

Summary of Bill:

If the criminal act of a public employee, or of a person who has contracted with the government, leads to government liability for damages, the pension of that employee or contractor may be used to reimburse the government. This provision applies to all state and local governments.

Whenever the criminal conduct of an employee or contractor results in government making a payment under a judgment or settlement, the attorney general is directed to notify the state auditor. The auditor is to determine if a significant portion— of the payment is attributable to the criminal conduct. If the auditor so finds, the attorney general or an attorney hired by the auditor, may sue the employee or contractor for reimbursement. The auditor is to hire an attorney to bring the suit unless the attorney general has concluded that he or she is barred from bringing the action. The court may order reimbursement out of the employee’s or contractor’s pension. Such an order is not to conflict with a spouse’s community property interests.

An additional ground is created for the attorney general to agree to represent a state employee who is being sued for tortious conduct. Even if the attorney general believes there is reasonable doubt whether the acts or omissions of the state employee were performed in good faith and within the scope of duties, the attorney general may nonetheless agree to represent the employee if it would be in the best interest of the state.

The enforcement of judgment law and various pension plan laws are amended. Enforcement of judgment procedures such as execution, attachment, and garnishment may be used on pensions in suits brought against public employees or contractors under this act. These provisions apply to public employees who become a member of a retirement system after the effective date of the act.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Office of Program Research