

- SUBJECT:** Requiring legislative approval of certain claims against the state
- COMMITTEE:** Appropriations — favorable, without amendment
- VOTE:** 18 ayes — Chisum, Allen, Branch, B. Brown, F. Brown, J. Davis, England, Gattis, Harper-Brown, Hopson, Jackson, Kolkhorst, Menendez, Otto, Riddle, Taylor, Van Arsdale, Zerwas
- 5 nays — Darby, Lucio, McClendon, McReynolds, Turner
- 6 absent — Guillen, Chavez, Crownover, Dukes, Isett, Noriega
- SENATE VOTE:** On final passage, May 7 — 28-3 (Ellis, Shapleigh, Watson)
- WITNESSES:** No public hearing
- BACKGROUND:** Civil Practice and Remedies Code, ch. 107 provides the method and effect for resolutions granting permission to sue the state.
- DIGEST:** SB 2031 would add Civil Practice and Remedies Code, ch. 111 to provide a means for the Legislature to determine the extent to which the state waives its sovereign immunity with regard to a settlement of a claim or action against the state that requires an expenditure of state funds. The limitation on settlement of claims or action against the state would apply to any settlement of a claim or action against the state seeking any relief under any theory of recovery, including a mandamus action against a state officer or official, that was brought or could be brought in or before any court, administrative agency, or other tribunal.
- The attorney general or other attorney representing Texas would be prohibited from entering into a settlement or a claim or action against the state without the consent or approval of the Legislature if the settlement:
- required the state to pay total monetary damages in an amount greater than \$5 million; or

- committed the state to a course of action that would entail an expenditure of state funds of greater than \$10 million during the two-year period beginning on the date that the state was to begin the course of action under the settlement.

Such a settlement entered into without the prior consent or approval of the Legislature would be void unless it expressly was conditioned on obtaining subsequent approval by the Legislature.

The Legislature could consent to or approve a settlement only by resolution adopted by both houses. Legislative consent could be expressed in the form of a resolution granting permission to sue the state that limited the relief to which a claimant would be entitled or provided additional conditions on the permission to sue.

An appropriation of state funds to pay or comply with a settlement would not constitute consent to or approval of the settlement. A resolution consenting to or approving a settlement would not and could not require the Legislature to appropriate a particular amount for a particular purpose.

By September 1 of each even-numbered year, the attorney general would be required to send to the lieutenant governor, the speaker of the House, and each member of the Senate Finance Committee and the House Appropriations Committee a report describing each claim or action pending as of September 1 of that year that had been or could be settled in a manner that would require prior consent or subsequent approval by the Legislature.

A reference to the state would include any agency, institution, or other entity of state government. The limitation on settlement would not apply to a refund of a tax, fee, or any related penalty or interest. "Settlement" would include a consent decree, an agreed judgment, or any other settlement or compromise of a claim or action.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

SUPPORTERS
SAY:

SB 2031 would limit the types of settlements that the attorney general or another attorney representing the state could enter without the approval of the Legislature. There is no current means of limiting the extent to which

the state waives its sovereign immunity with regard to a settlement of a claim that requires a significant expenditure of state funds. Requiring the

Legislature to consent would provide checks and balances on the authority of the attorney general to negotiate settlements paid out of state funds.

The bill also would prevent a situation in which the attorney general committed the state to a settlement for which the Legislature was unwilling to appropriate funds. The Legislature is the client in these situations, and as such, the attorney general should consult and negotiate with the Legislature before a large settlement is agreed to on its behalf. The Legislature must pay the bill, so its consent is crucial for the settlement actually being honored by the state. Having the Legislature's agreement before the settlement was finalized would avoid recent appropriations-related problems and make the entire process more efficient.

**OPPONENTS
SAY:**

While instituting checks and balances on the ability to settle large state claims is a worthy endeavor, this bill would tie the hands of the attorney general or other attorney representing the state. SB 2031 essentially would require a plaintiff to try his or her lawsuit in front of the Legislature when it was session. Meanwhile, during the interim, a settlement agreement would incur additional attorney's fees and interest due to the inability to obtain timely legislative consent. A better approach would be to require the Legislative Budget Board and the governor to consent to the attorney general's paying the settlement. This would avoid the complications with the timing of session and the difficulty of essentially trying cases in front of the Legislature.