



CITY OF HOUSTON

John Whitmire

Mayor

P.O. Box 1562
Houston, Texas 77251-1562

Telephone – Dial 311
www.houstontx.gov

April 7, 2025

The Honorable Jeff Leach
Chair, House Committee on Judiciary & Civil Jurisprudence
P.O. Box 2910
Austin, TX 78768

Re: HB 3647

Dear Chairman Leach and Members of the Committee,

On behalf of the City of Houston, I write in opposition to House Bill 3647 and ask that this written testimony be included in the formal legislative record. We thank the Committee and the Chairman for the opportunity to comment regarding this proposed legislation.

HB 3647 appears to be a radical solution in search of a problem. *Ultra vires* claims are rare and appeals involving such claims are rarer still. There is no indication from the bill's authors, nor any evidence from the courts, that the right to interlocutory appeal is being abused.

I am a senior attorney for the City of Houston in the Office of the City Attorney, General Litigation Section. Our office defends only a few of such *ultra vires* civil lawsuits each year. Such litigation usually concerns allegations that government officials have acted improperly in the use of public funds. Pleas to the jurisdiction are an important tool for government entities—such as the City of Houston—to separate legitimate taxpayer disputes from meritless nuisance suits. Because both government immunity and *ultra vires* are subjects with which most district court judges have little familiarity, it is not uncommon for trial courts to simply deny pleas to the jurisdiction, relying upon the appellate courts to clean up errors when they happen. While this may not be an efficient way of resolving such disputes, it is also not a circumstance of the government entities' making.

Nevertheless, HB 3647 represents an extreme departure from the present system governing interlocutory appeals and appears specifically designed to attract and encourage *ultra vires* litigation against all levels of government—including the State of Texas itself, county governments, cities, state universities, government hospitals, hospital districts, water authorities, and public school districts. This arbitrary and unnecessary change will not strengthen the ability of citizens to pursue genuine claims against government entities. They can do that now. Instead, it will force government entities to waste ever-more thinly stretched resources on litigating purported *ultra vires* claims all the way to expensive trials, designed for media attention to a particular issue, before government entities can even attempt to correct wrongly-decided jurisdictional matters by appeal. The bill will also make such trials

more risky and frequent because of the bill's mandatory, if unfairly one-sided, fee award. This is neither an effective nor an efficient solution, even if there were a real problem to solve here.

Currently, under Section 51.014(a) of the Texas Civil Practices & Remedies Code, both government entities and citizen plaintiffs may seek an interlocutory appeal following the grant or denial of a plea to the jurisdiction (or similar motion premised upon jurisdiction). *See* Tex. Civ. Prac. & Rem. Code § 51.014(a)(8).

HB 3647, however, would create a carve-out from Section § 51.014(a) that would deny all government entities the ability to appeal from “an order granting or denying a plea to the jurisdiction ... with respect to: (1) a mandamus action; or (2) a claim alleging performance of an *ultra vires* act.” Part Two means that any lawsuit involving allegations of *ultra vires* acts that survives a plea to the jurisdiction must proceed to trial without any intervention from the appellate courts. This would create a significant new burden for all government entities.

HB 3647 also addresses mandamus claims brought against governments. Mandamus—referenced in Part One—is not an appeal, but a separate form of appellate relief based upon the trial court's alleged abuse of discretion, either in refusing to rule on an issue or abusing its discretion about the law in reaching a decision. *See Pope v. Ferguson*, 445 S.W.2d 950, 953–54 (Tex. 1969) (orig. proceeding). Under the current statutory arrangement, interlocutory appeals and mandamus have nothing to do with each other. Within the context of HB 3647 however, Part One's mandamus reference appears to be an attempt to remove that avenue of relief as an alternative in the absence of an interlocutory appeal. Depriving governments of any legal recourse to frivolous claims and poor trial court decisions, however, is as unwise as it is wasteful of their scarce resources.

The second part of HB 3647 is an amendment to Section 51.015 (concerning the “Costs of Appeal”), *requiring* the court of appeals to award appellate attorneys' fees to plaintiffs who obtain an affirmance on appeals concerning alleged *ultra vires* acts. Removing the court of appeals' discretion in whether to award attorneys' fees does not appear to support any governmental purpose in this context.

Both Parts One and Two of HB 3647 are directly focused on limiting the ability of state and local governments to protect themselves from protracted *ultra vires* litigation, since neither provision would have any negative impact on plaintiffs. The first provision would have no impact on plaintiffs, since any order *granting* a plea to the jurisdiction would represent a final appealable order, without any need for an interlocutory appeal. Likewise, the second provision neither requires nor provides for an award of attorneys' fees from unsuccessful plaintiffs. Only the government would ever be required to pay attorneys' fees. This would only encourage suits against government entities.

HB 3647 is thus a radical and wholly-unnecessary step away from the existing, well-considered statutory system that keeps both plaintiffs and government defendants on equal footing and does not provide unfair advantage or financial incentives to one over the other. Worse, both provisions appear aimed at promoting *ultra vires* lawsuits against all levels of government, at their expense, in a manner that is contrary to the intent behind both sovereign and governmental immunity—that government should focus its limited resources on serving its citizens, rather than defending lawsuits. On behalf of the City of Houston, I ask that HB 3647 not be approved or enacted.

Hon. Jeff Leach

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Sincerely,

/s/ Donald B. Hightower

Donald B. Hightower

City of Houston - Legal Department