

BILL ANALYSIS

Senate Research Center

S.B. 539
By: Carona
Business & Commerce
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law states that a judge "may award costs and reasonable attorney's fees as are equitable and just" to a party who has successfully foreclosed on a mechanic's or materialman's lien or a claim against a construction-related bond. Some recent court cases have held that a mechanic's or materialman's lien holder who forecloses on a lien or bond is not entitled to court costs or reasonable attorney's fees.

This bill amends Texas law to require, rather than allow, judges to award costs and reasonable attorney's fees to a party who has successfully foreclosed on a mechanic's or materialman's lien or a claim against a construction-related bond, ensuring that a successful party recover reasonable funds after having to go through the lien filing and foreclosure process.

S.B. 539 amends current law relating to the award of costs and attorney's fees in certain proceedings concerning mechanic's, contractor's, or materialman's liens.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 53.156, Property Code, as follows:

Sec. 53.156. COSTS AND ATTORNEY'S FEES. Requires, rather than authorizes, the court, in any proceeding to foreclose a lien or to enforce a claim against a bond issued under Subchapter H (Bond to Indemnify Against Lien), I (Bond to Pay Liens or Claims), or J (Lien on Money due Public Works Contractor) or in any proceeding to declare that any lien or claim is invalid or unenforceable in whole or in part, to award costs and reasonable attorney's fees as are equitable and just. Provides that with respect to a lien or claim arising out of a residential construction contract, the court is not required to order the property owner to pay costs and attorney's fees under this section.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2011.