

## **BILL ANALYSIS**

Senate Research Center  
85R11175 YDB-D

S.B. 949  
By: Kolkhorst  
State Affairs  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Currently, the Uniform Declaratory Judgments Act (UDJA) permits a court to award a party “reasonable and necessary attorney’s fees as are equitable and just” (Texas Civil Practice & Remedies Code § 37.009). A party does not have to prevail to be entitled to fees and could even lose, but still recover fees. Fees are typically determined by the trial court. The UDJA is meant “to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations.”

Many divisions within the Office of the Attorney General regularly defend state agencies from UDJA claims brought against them. At any given time, the State of Texas will have 100 or more UDJA cases pending against state agencies. The agencies often prevail in these cases, but a court may still order the agency to pay attorney’s fees to the losing plaintiff.

Depending on the magnitude of the litigation, a fee award in a UDJA action may range from the low thousands to potentially millions of dollars in some very limited circumstances. In most suits against the state, any attorney’s fee award would be well below \$50,000.

In 2015, S.B. 455 was passed by the legislature, creating a special three-judge district court for redistricting and school finance cases only.

S.B. 949 would create a \$250,000 attorney’s fee cap on claims brought before the special three-judge court. S.B. 949 would, therefore, only limit recovery of fees in these narrow circumstances. A \$250,000 cap would limit a trial court’s discretion to award fees, but still leave the court a considerable amount of leeway to grant fees that are reasonable and necessary.

Such a cap would be a reasonable limit on the state’s waiver of sovereign immunity. This limited waiver would be consistent with the \$250,000 judgment cap in the General Appropriations Act (GAA) 2014-2-015, Article IX, § 16.02(b)(3), and GAA 2016-2017, Article IX, § 16.04(b)(3).

As proposed, S.B. 949 amends current law relating to a limitation on the amount of attorney’s fees awarded in a case assigned to a special three-judge district court.

### **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 Chapter 22A, Government Code, by adding Section 22A.0055, as follows:

Sec. 22A.0055. ATTORNEY'S FEES. Prohibits a special three-judge district court, in a case assigned to the court and in any related case consolidated with the case before the court, from awarding attorney's fees in an amount that exceeds \$250,000.

SECTION 2. Makes application of Section 22A.0055, Government Code, as added by this Act, prospective.

SECTION 3. Effective date: upon passage or September 1, 2017.