

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

April 4, 2017

TO: Honorable Dennis Bonnen, Chair, House Committee on Ways & Means

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB2669 by Shine (Relating to remedies in certain taxpayer suits against the state.), As
Introduced

The bill may reduce an indeterminate amount of state obligations to pay attorney's fees in tax litigation.

The bill would amend Chapter 112 of the Tax Code, regarding taxpayers' suits.

The bill would add new Section 112.003, regarding attorney's fees, to prohibit a court from awarding attorney's fees in a suit against the state, a state agency, or a state officer or employee that seeks legal or equitable relief relating to the applicability, assessment, collection, constitutionality, or amount of a tax or fee imposed under Title 2 of this code (state taxation) or collected by the Comptroller under any law, including a local tax collected by the Comptroller.

The bill would repeal Section 112.108, regarding other actions prohibited, which has been declared unconstitutional as it violates the open courts guarantee of the state constitution through the combined effect of the requirement of prepayment of the taxes, the ban on declaratory judgments, and the inadequacy of the remedy of awaiting the filing of a collection suit by the Comptroller.

The bill would have no revenue implications. However, the bill would remove the existing prohibition on attorney's fees in Section 112.108 of the Tax Code, as the courts have declared this section to be unconstitutional, and would add new Section 112.003 which places the prohibition on attorney's fees in its own stand-alone provision that should survive constitutional challenge. The new stand-alone provision in Section 112.003 may reduce state obligations to pay attorney's fees in tax litigation but the fiscal impact cannot be determined.

The bill would take effect September 1, 2017.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: UP, KK, SD