

BILL ANALYSIS

Senate Research Center

H.B. 1185
By: Cyrier (Hughes)
State Affairs
5/16/2019
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

There are inconsistencies regarding a party's ability to recover attorney's fees and damages against a state agency for breach of certain service contracts, depending on the parties involved or terms of the contract. H.B. 1185 seeks to address such inconsistencies relating to adjudication of claims arising from certain written contracts with state agencies.

H.B. 1185 amends current law relating to limitations on adjudication awards arising from certain written contracts with state agencies.

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 114.002, Civil Practice and Remedies Code, as follows:

Sec. 114.002. APPLICABILITY. Provides that this chapter (Adjudication of Claims Arising Under Written Contracts With State Agencies) applies only to a claim for breach of a written contract that is related to real property or improvements to real property and is for engineering, architectural, or construction services or for materials related to engineering, architectural, or construction services, brought by a party to the written contract, in which the amount in controversy is not less than \$250,000, excluding penalties, costs, expenses, prejudgment interest, and attorney's fees.

SECTION 2. Amends Section 114.004, Civil Practice and Remedies Code, as follows:

(a) Provides that the total amount of money awarded in an adjudication brought against a state agency for breach of an express provision of a contract subject to this chapter is limited to the following:

- (1) the balance due and owed by the state agency under the contract as it may have been amended, including any amount owed as compensation for the increased cost to perform the work as a direct result of owner-caused delays or acceleration;
- (2) makes no changes for this subdivision;
- (3) reasonable and necessary attorney's fees that are equitable and just, rather than reasonable and necessary attorney's fees; and
- (4) makes no changes to this subdivision.

Deletes text relating to balance due or owed by the state agency under the contract as it may have been amended compensation owed if the contract expressly provides for that compensation and attorney's fees based on an hourly rate that are equitable and just if the contract expressly provides that recovery of the attorney's fees is available to all parties to the contract.

(b) Creates an exception allowed under Subsection (a)(1) to the prohibition on damages awarded in an adjudication brought against a state agency including consequential danger.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2019.