

BILL ANALYSIS

C.S.S.B. 27
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Concerns have been raised that Texans, especially small business owners, who face regulatory actions and administrative proceedings brought by a state agency may not be sufficiently protected from potentially unjustified actions taken by regulators because current law relating to frivolous claims by the state is limited to civil suits. C.S.S.B. 27 seeks to redress the imbalance of power and resources between private citizens and the state by providing for the recovery of attorney's fees and costs in administrative proceedings and judicial review of such proceedings if the state's regulatory action is determined to be frivolous but caps recovery of fees in these contexts and in civil suits in which state claims are found to be frivolous at \$1 million.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.S.B. 27 amends the Civil Practice and Remedies Code to cap at \$1 million the total amount of fees, expenses, and reasonable attorney's fees that a party is entitled to recover in a civil suit brought by or against a state agency in which the agency asserts a cause of action against the party, either originally or as a counterclaim or cross claim, if the court finds that the action is frivolous and the action is dismissed or judgment is awarded to the party. The bill removes a suit in which the court finds that the action is unreasonable or without foundation from among those to which that entitlement to recovery of fees, expenses, or attorney's fees applies.

C.S.S.B. 27 authorizes the court reviewing a decision in a contested case under the Administrative Procedure Act to award a person, in addition to all other costs allowed by law or rule, an amount not to exceed \$1 million for reasonable attorney's fees and costs incurred in defending against a frivolous regulatory action during the contested case and judicial review of that case if the person prevails on review and there is a final determination that the regulatory action is frivolous.

C.S.S.B. 27 amends the Government Code to authorize the administrative law judge in a contested case to award a person, in addition to all other costs allowed by law or rule, an amount not to exceed \$1 million for reasonable attorney's fees and costs incurred in defending against a frivolous regulatory action during the case if there is no judicial review of the decision in the case, the person prevails in the case, and there is a final determination that the regulatory action is frivolous. The bill prohibits a state agency from vacating or modifying an order of an

administrative law judge that awards attorney's fees and costs under these provisions.

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 27 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

The substitute does not include provisions authorizing a court or administrative law judge, as applicable, to consider certain specified factors in determining whether a claim or regulatory action is frivolous.