

**SUBJECT:** Allowing recovery of attorney's fees in certain breach of contract claims

**COMMITTEE:** Judiciary and Civil Jurisprudence — favorable, without amendment

**VOTE:** 8 ayes — Smithee, Farrar, Gutierrez, Laubenberg, Murr, Neave, Rinaldi, Schofield

0 nays

1 absent — Hernandez

**WITNESSES:** For — Corbin Van Arsdale, AGC-Texas Building Branch; (*Registered, but did not testify*: Peyton McKnight, American Council of Engineering Companies of Texas; Jon Fisher, Associated Builders and Contractors of Texas; Tom Kader, AGC-Texas Building Branch; Michael White, Texas Construction Association; David Lancaster, Texas Society of Architects; Perry Fowler, Texas Water Infrastructure Network; Jack Baxley, TEXO, the Construction Association; Ed Mazanec)

Against — None

**BACKGROUND:** Government Code, ch. 2260 applies to the resolution of certain contract claims against the state for less than \$250,000. Sec. 2260.003(c)(4) prohibits an award of attorney's fees in these cases.

Civil Practice and Remedies Code, ch. 114 applies to claims in an amount of \$250,000 or more against the state for breach of a written contract for engineering, architectural, or construction services or for related materials. Sec. 114.004 allows for the awarding of reasonable and necessary attorney's fees in these cases.

Local Government Code, sec. 271.153 allows for the recovery of attorney's fees in a breach of contract suit against a local government entity.

Some have expressed concerns about the disparity in the awarding of

attorney's fees in certain claims against the state for breach of a written contract, especially those involving engineering, architectural, or construction services.

**DIGEST:** HB 2121 would allow damages to include attorney's fees in claims against the state for breach of a written contract for engineering, architectural, or construction services or for related materials in which the amount in controversy was less than \$250,000, excluding penalties, costs, expenses, prejudgment interest, and attorney's fees.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017, and would apply only to actions filed on or after that date.

**NOTES:** A companion bill, SB 1950 by Hughes, was referred to the Senate Committee on State Affairs on March 27.