

- SUBJECT:** Adjusting award limits for breach of contracts by state agencies
- COMMITTEE:** Judiciary and Civil Jurisprudence — committee substitute recommended
- VOTE:** 8 ayes — Leach, Farrar, Julie Johnson, Krause, Meyer, Neave, Smith, White  
0 nays  
1 absent — Y. Davis
- WITNESSES:** For — Corbin Van Arsdale, Associated General Contractors-Texas Building Branch; (*Registered, but did not testify:* Karen Rove, Associated General Contractors-Texas Highway Heavy; Jennifer Fagan, Texas Construction Association; Tara Snowden, Zachry Corporation)  
  
Against — (*Registered, but did not testify:* Jamaal Smith, City of Houston Mayor's Office)
- BACKGROUND:** Civil Practice and Remedies Code sec. 114.004 limits the total amount of money awarded in an adjudication brought against a state agency for breach of an express provision of a contract to:
- 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 if the contract expressly provides for that compensation;
  - the amount owed for written change orders;
  - reasonable and necessary attorney's fees based on an hourly rate that are equitable and just if the contract expressly provides that recovery of attorney's fees is available to all parties to the contract; and
  - interest at a rate specified by the contract or by statute.

It has been suggested that there are inconsistencies in 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.

**DIGEST:** CSHB 1185 would remove certain limitations on the total money that could be awarded in an adjudication brought against a state agency for breach of an express provision of certain contracts.

The bill would remove the requirement that a contract had to expressly provide for compensation for the increased cost to perform work as a direct result of owner-caused delays or acceleration in order for the balance due and owed by the state under the contract, including the compensation amount, to be granted as an award in an adjudication under the bill.

The bill also would remove the requirement that a contract had to expressly provide for the recovery of attorney's fees in order for the fees to be included in an award amount. Instead, money awarded in an adjudication would be limited to reasonable and necessary attorney's fees that were equitable and just.

The bill would take effect September 1, 2019, and would apply only to a claim arising under a contract executed on or after that date.

**NOTES:** According to the Legislative Budget Board, the fiscal implications to the state cannot be determined due to the increase in adjudication awards and attorney's fees paid to litigants in cases involving state agencies being unknown.