

- SUBJECT:** Expanding recovery of attorney's fees for frivolous regulatory actions
- COMMITTEE:** Judiciary and Civil Jurisprudence — committee substitute recommended
- VOTE:** 7 ayes — Leach, Y. Davis, Krause, Meyer, Neave, Smith, White
- 0 nays
- 2 absent — Farrar, Julie Johnson
- SENATE VOTE:** On final passage, April 8, 2019 — 29-1 (Schwertner)
- WITNESSES:** For — Scott Stovall, SDS Petroleum Consultants; (*Registered, but did not testify*: Steven Albright, AGC of Texas-Highway Heavy Branch; Jon Fisher, Associated Builders and Contractors of Texas; Steve Koebele)
- Against — (*Registered, but did not testify*: Vanessa MacDougal; Maria Person; Arthur Simon)
- BACKGROUND:** Civil Practice and Remedies Code sec. 105.002 entitles a party to a civil suit brought by or against a state agency in which the agency asserts a cause of action that is frivolous, unreasonable, or without foundation to recover fees, expenses, and reasonable attorney's fees if the action is dismissed or judgment is awarded to the party.
- DIGEST:** CSSB 27 would expand the types of cases in which a prevailing party could recover reasonable attorney's fees and costs incurred in defending against an action asserted by a state agency that was found to be frivolous. The bill also would set a \$1 million cap on the fees, expenses, and reasonable attorneys' fees that could be awarded in any case involving such actions.
- An administrative law judge would be allowed to award the prevailing party in a contested case for which no judicial review was sought reasonable attorney's fees and costs incurred during the case in defending against a frivolous regulatory action. The state agency involved in the case

could not vacate or modify the administrative law judge's award of attorney's fees and costs.

Upon review of decision in a contested case, a court could award the prevailing party reasonable attorney's fees and costs incurred in defending against such an action during the contested case and judicial review of the decision.

The bill would take effect September 1, 2019, and would apply only to a claim filed or a regulatory action taken on or after that date.

**SUPPORTERS
SAY:**

CSSB 27 would protect Texans from frivolous regulatory actions by expanding the types of cases in which a prevailing party could recover attorney's fees and costs incurred in defending against such action.

Many people lack the means to fight frivolous regulatory actions, leading to unnecessary and unjust settlements. The bill would level the playing field by allowing attorney's fees and costs to be awarded in contested cases involving frivolous regulatory actions and judicial review of such cases. The bill also would limit the state's exposure in these cases by capping at \$1 million the maximum amount of such an award.

**OPPONENTS
SAY:**

CSSB 27 would set a vague standard for determining when attorney's fees and costs could be awarded by relying on a determination of whether a regulatory action was frivolous, rather than describing what constituted a frivolous regulatory action.