

SUBJECT: Attorney's fees in cases involving public entities

COMMITTEE: Civil Practices — favorable, without amendment

VOTE: 5 ayes — T. Hunter, Hilbert, Culberson, Hartnett, Moffat

1 nay — Zbranek

3 absent — Alvarado, Sadler, Tillery

SENATE VOTE: On final passage, May 12 — voice vote

WITNESSES: No public hearing

BACKGROUND: A declaratory judgment action allows a court to decide a particular issue even though a particular case or controversy may not exist. Such declaratory judgment actions are often used as preemptive measures by governmental units to insure the constitutionality of an action before it is undertaken.

The Uniform Declaratory Judgment Act, incorporated into Civil Practices and Remedies Code Chapter 37, permits a governmental unit to recover reasonable attorney's fees if the court decides such fees are warranted under equity and justice.

DIGEST: SB 1581 would expressly allow a court to award attorney's fees in a case where a governmental unit is a party, but the court would be required to consider the financial impact of the award on the party against which the fees may be assessed.

A party would not be permitted to receive attorney's fees from the state in declaratory judgment actions that:

- involve the constitutionality of a statute or other rule in which the attorney general is entitled to be heard or
- involve a case in which the attorney general intervenes for the purpose of defending the constitutionality of a statute or other rule.

The bill would take immediate effect if approved by two-thirds of the membership of each house.

**SUPPORTERS  
SAY:**

SB 1581 is necessary to protect the state from paying attorney fees when the attorney general is simply defending the constitutionality of a particular statute or other rule. When attorney's fees are awarded against the state, it is a cost to the taxpayers. The taxpayer is already paying for the attorney general to defend constitutional actions through general appropriations to support the attorney general's office. Without this bill the taxpayers could continue to subsidize the attorney's costs of private parties.

Although courts generally consider the financial condition of parties in awarding attorney's fees, this bill would assure that a court consider the financial impact of awarding attorney's fees in a case involving a governmental unit.

**OPPONENTS  
SAY:**

This bill would substantially reduce the ability of a person to bring a declaratory judgment action against a governmental unit because attorney's fees would not be awarded. Without such an award, many people would not be able to afford to bring such actions.