

SUBJECT: Allowing monetary recovery for frivolous state regulatory actions

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Smithee, Gutierrez, Hernandez, Murr, Neave, Rinaldi, Schofield
0 nays
2 present not voting — Farrar, Laubenberg

SENATE VOTE: On final passage, April 12 — 28-3 (Garcia, Rodríguez, Schwertner)

WITNESSES: No public hearing

BACKGROUND: Civil Practice and Remedies Code, sec. 105.002 allows a party to a civil suit brought by or against a state agency in which the agency asserts a cause of action against the party the ability to recover fees, expenses, and reasonable attorney's fees if the court finds that the action is frivolous, unreasonable, or without foundation and the action is dismissed or judgment is awarded to the party.

DIGEST: SB 813 would authorize a claimant to bring an action against a state agency if the state agency took a regulatory action against the claimant that was frivolous, unreasonable, or without foundation. In bringing such an action, a claimant could recover, in addition to all other costs allowed by law or rule, damages caused by the state agency's frivolous regulatory action, reasonable attorney's fees, and court costs.

A person could recover reasonable attorney's fees and costs incurred in defending against a frivolous regulatory action during an administrative proceeding and judicial review of that proceeding if:

- the person prevailed in the judicial review of an administrative proceeding; and
- the state agency was unable to demonstrate that it had good cause

for the regulatory action.

The bill would take effect September 1, 2017, and would apply to a regulatory action taken on or after that date.

**SUPPORTERS
SAY:**

SB 813 would provide individuals and businesses with a legal remedy when state government agencies misuse their power in pursuing frivolous regulatory actions by allowing them to recover damages and attorney's fees. Some businesses have incurred tens of thousands of dollars in legal fees, lost revenue, and other costs in responding to regulatory actions that were later found to be unjustified. Small businesses especially are at a disadvantage in regulatory actions and administrative proceedings when compared to the vast resources of the state. The threat of having to pay legal fees for an action that could not be substantially justified in court would be an incentive for agencies to consider whether a contemplated regulatory action was reasonable.

The bill would be an extension of a 1985 law that allows a party in a lawsuit against the state to recover expenses and reasonable attorney's fees if a judge finds the state's claim was frivolous, unreasonable, or without foundation. SB 813 would allow a person to bring a similar claim for fees and costs spent to defend against a regulatory action only if the person won a judicial review of the administrative proceeding and if the state agency failed to demonstrate good cause for the regulatory action.

Concerns that the bill could have a chilling effect on reasonable regulatory actions are unfounded because state agencies would be allowed to present evidence that they acted with good cause. The bill simply would act as a check to ensure state agencies were acting within the reasonable bounds of their authority and were properly supervising their employees.

**OPPONENTS
SAY:**

SB 813 would waive part of the sovereign immunity that allows the state to carry out its functions without being subjected to litigation. It could cost the state treasury money if claimants prevailed in obtaining attorney's fees, damages, and other costs. The bill also could have a chilling effect on state agencies worried about being sued for doing their job of enforcing

regulations.

NOTES: A companion bill, HB 2516 by Meyer, was referred to the House Judiciary and Civil Jurisprudence Committee on March 23.