

BILL ANALYSIS

Senate Research Center
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S.B. 635
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

If political subdivisions enforce ordinances that contravene state law or if they neglect duties prescribed by state law, the residents governed by that locality must pursue judicial recourse in order to rein in the unlawful behavior of the subdivision.

In typical court proceedings, the prevailing parties are compensated for their court costs and attorney fees. This structure is intended to increase access to justice by removing the liabilities of individuals who have the law on their side. However, whenever courts determine that a subdivision acted unlawfully, the individual that brought the suit forward is not compensated for costs associated with the proceedings. Concerned citizens throughout the state have reported that the subdivisions' immunity from the "loser pays" policy makes it costly for aggrieved citizens to seek judicial remedies against their subdivisions, tipping the scales of justice in favor of governmental bodies that have taxpayer-funded attorneys. Furthermore, the same parties posit that this lack of accountability for the subdivisions emboldens them to act unlawfully without fear of reproach.

S.B. 635 requires political subdivisions to compensate the prevailing party in a suit where the subdivision is found to be enforcing an ordinance that is not in accordance with state law.

S.B. 635 requires political subdivisions to compensate the prevailing party in a suit where a political officer of the subdivision is found to be negligent in performing the duties required of them by state law.

As proposed, S.B. 635 amends current law relating to the award of court costs and attorney's fees in certain actions challenging an order, ordinance, or similar measure of a political subdivision or the failure of an officer of a political subdivision to perform certain actions.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle C, Title 2, Civil Practice and Remedies Code, by adding Chapter 38A, as follows:

CHAPTER 38A. AWARD OF COURT COSTS AND ATTORNEY'S FEES IN CERTAIN ACTIONS

Sec. 38A.001. PREEMPTION CHALLENGE AGAINST POLITICAL SUBDIVISION. Requires a court, if the court determines that an order, ordinance, or similar measure of a political subdivision is unenforceable because it is preempted by the state constitution or a state statute, to award the person prevailing in the action challenging the order, ordinance, or measure on that basis court costs and reasonable and necessary attorney's fees to be paid by the political subdivision.

Sec. 38A.002. FAILURE OF OFFICER OF POLITICAL SUBDIVISION TO PERFORM CERTAIN ACTIONS. Requires a court to award the person prevailing in the action challenging the officer for failure to perform an act court costs and reasonable and necessary attorney's fee to be paid by the political subdivision for which the officer served at the time of the failure to perform the act, if a court determines that an officer of a political subdivision has failed to perform an act of the office required by the state constitution or a state statute.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2017.