

1-1 By: Hughes S.B. No. 27
 1-2 (In the Senate - Filed March 7, 2019; March 7, 2019, read
 1-3 first time and referred to Committee on State Affairs;
 1-4 March 27, 2019, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 9, Nays 0; March 27, 2019,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 27 By: Hughes

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to recovery of damages, attorney's fees, and costs related
 1-22 to frivolous claims and regulatory actions by state agencies.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. The heading to Chapter 105, Civil Practice and
 1-25 Remedies Code, is amended to read as follows:

1-26 CHAPTER 105. FRIVOLOUS CLAIM OR REGULATORY ACTION BY STATE AGENCY

1-27 SECTION 2. Section 105.002, Civil Practice and Remedies
 1-28 Code, is amended to read as follows:

1-29 Sec. 105.002. RECOVERY OF FEES, EXPENSES, AND ATTORNEY'S
 1-30 FEES FOR FRIVOLOUS CLAIM. A party to a civil suit in a court of this
 1-31 state brought by or against a state agency in which the agency
 1-32 asserts a cause of action against the party, either originally or as
 1-33 a counterclaim or cross claim, is entitled to recover, in addition
 1-34 to all other costs allowed by law or rule, a total amount not to
 1-35 exceed \$1 million for fees, expenses, and reasonable attorney's
 1-36 fees incurred by the party in defending the agency's action if:

1-37 (1) the court finds that the action is frivolous [~~7~~
 1-38 ~~unreasonable, or without foundation~~]; and

1-39 (2) the action is dismissed or judgment is awarded to
 1-40 the party.

1-41 SECTION 3. Section 105.003(a), Civil Practice and Remedies
 1-42 Code, is amended to read as follows:

1-43 (a) To recover under Section 105.002 [~~this chapter~~], the
 1-44 party must file a written motion alleging that the agency's claim is
 1-45 frivolous [~~, unreasonable, or without foundation~~]. The motion may
 1-46 be filed at any time after the filing of the pleadings in which the
 1-47 agency's cause of action is alleged.

1-48 SECTION 4. Chapter 105, Civil Practice and Remedies Code,
 1-49 is amended by adding Section 105.005 to read as follows:

1-50 Sec. 105.005. RECOVERY OF ATTORNEY'S FEES AND COSTS IN
 1-51 FRIVOLOUS REGULATORY ACTION. The court reviewing a decision in a
 1-52 contested case under Chapter 2001, Government Code, may award a
 1-53 person, in addition to all other costs allowed by law or rule, an
 1-54 amount not to exceed \$1 million for reasonable attorney's fees and
 1-55 costs incurred in defending against a frivolous regulatory action
 1-56 during the contested case and judicial review of the decision in the
 1-57 contested case if:

1-58 (1) the person prevails on review; and

1-59 (2) there is a final determination that the regulatory
 1-60 action is frivolous.

2-1 SECTION 5. Section 2001.058, Government Code, is amended by
2-2 adding Subsection (e-1) to read as follows:

2-3 (e-1) Notwithstanding Subsection (e), a state agency may
2-4 not vacate or modify an order of an administrative law judge that
2-5 awards attorney's fees and costs under Section 2001.903.

2-6 SECTION 6. Subchapter Z, Chapter 2001, Government Code, is
2-7 amended by adding Section 2001.903 to read as follows:

2-8 Sec. 2001.903. RECOVERY OF ATTORNEY'S FEES AND COSTS IN
2-9 CONTESTED CASES INVOLVING FRIVOLOUS REGULATORY ACTION. The
2-10 administrative law judge in a contested case may award a person, in
2-11 addition to all other costs allowed by law or rule, an amount not to
2-12 exceed \$1 million for reasonable attorney's fees and costs incurred
2-13 in defending against a frivolous regulatory action during the case
2-14 if there is no judicial review of the decision in the case and:

- 2-15 (1) the person prevails in the case; and
- 2-16 (2) there is a final determination that the regulatory
2-17 action is frivolous.

2-18 SECTION 7. The change in law made by this Act applies only
2-19 to a claim filed or regulatory action taken on or after the
2-20 effective date of this Act. A claim filed or regulatory action
2-21 taken before the effective date of this Act is governed by the law
2-22 applicable to the claim or regulatory action immediately before the
2-23 effective date of this Act, and that law is continued in effect for
2-24 that purpose.

2-25 SECTION 8. This Act takes effect September 1, 2019.

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