



CITY OF HOUSTON

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April 5, 2021

The Honorable Jeff Leach
House Committee on Judiciary and Civil Jurisprudence
P.O. Box 2910
Austin, Texas 78768

Dear Chairman Leach and Members of the Committee:

On behalf of the City of Houston (City), I write in opposition to House Bill 3150 and ask that this written testimony be included in the formal legislative record for House Bill 3150 (H.B. 3150). The City and I thank the Committee and Chairman for the opportunity to comment regarding this proposed legislation.

My name is Lisa A. Ketai. I am a Senior Assistant City Attorney for the City of Houston and have held this position for a total of almost six years. I also have over 25 years of civil litigation experience. I testify with the City's full authority to speak on its behalf as part of my assigned duties and responsibilities.

The City of Houston opposes H.B. 3150 for the following reasons:

I. H.B. 3150 IS OVERBROAD AND WOULD ALLOW GOVERNMENTAL ENTITIES TO BE LIABLE FOR ATTORNEY'S FEES PURSUANT TO CHAPTER 38 OF THE TEXAS CIVIL PRACTICES AND REMEDIES CODE

H.B. 3150 seeks to overhaul Chapter 38.001 and 38.002 of the Texas Civil Practice and Remedies Code ("Code") to allow a Court, in its discretion, to award reasonable and necessary attorney's fees to "a prevailing party" without

a distinction or limitation of whom will pay the fees. Currently, Chapter 38 does not authorize an award of attorney fees against other types of defendants who do not fall under the statute's express language. For, example, a claimant cannot recover attorney's fees from a governmental entity.¹ Section 38.001 of the Code allows a "person" to recover attorney fees *only* from an "individual" or "corporation".

There have been many attempts to revise the language of Section 38.001 over the years since its predecessor statute, TEX.REV.CIV.STAT.ANN. ART. 2226 (Vernon Supp.1985) (repealed 1986), which provided that any person, corporation, partnership or other legal entity having a valid claim against a person or corporation for services rendered...if represented by an attorney may recover...reasonable amount of attorney fees, was repealed. After the legislature repealed Article 2226 it codified the attorney fee statute in Section 38.001 and changed the wording used to specify the classifications of those entitled to recover attorney's fees as well as those against whom attorney's fees can be recovered. As written, H.B. 3150 would erode the drafters' intent of unambiguously and explicitly limiting the breadth of the statute. Further, as written, H.B. 3150 would allow attorney's fees to be indiscriminately assessed against the City without concern of the financial burden it would place on the City's constituents and taxpayers.

H.B. 3150 also substantially modifies Section 38.002 of the Code. Section 38.001 tells us who can receive and who can pay attorney's fees, section 38.002 sets out procedures to recover these fees. As written, HB 3150 would remove these procedures and only require that the "prevailing party" have a lawyer. The Bill goes so far as to say, *The prevailing party is not required to bring a claim in the action to recover attorney's fees under this chapter.* This change has the potential to conflict with many statues that limit recovery of attorney's fees only if certain conditions precedents are met.

II. THE BILL POSES A POTENTIAL CONFLICT WITH CHAPTER 271 OF THE LOCAL GOVERNMENT CODE

Indeed, claimants are, at times, entitled to reasonable attorney's fees against governmental entities for some claims once immunity has been waived

¹ *Base-Seal, Inc. v Jefferson Cnty*, 901 S.W.2nd 783,787 (Tex. App. -- Beaumont 1995, writ denied)

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such as claims in breach of contract pursuant to Section 271.153 of the Local Government Code. Pursuant to this section, the total amount of money awarded ...is limited to the, balance of the contract due and owed by the governmental entity..., and, (3) reasonable and necessary attorney's fees that are equitable and just. However, the award of attorney's fees is reached only if immunity for the contract is waived and the terms of the contract meet the elements of a, *governmental contract*. For example, a government contract must be "a *written contract* stating the essential terms of the agreement for providing goods or services to the local governmental entity that is properly executed on behalf of the local governmental entity using essential terms of the agreement which include the time of performance, the price to be paid . . . [and] the service to be rendered.

If H.B. 3150 is read in its broadest sense it could possibly weaken if not gut Chapter 271 by allowing the City to be subject to attorney's fees if the claim is for any breach of contract *written or oral*, which the City would oppose.

For these reasons, the City of Houston respectfully opposes H.B. 3150.

Sincerely yours,

/s/Lisa A. Ketai

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