

BILL ANALYSIS

C.S.S.B. 1207
By: Duncan
Civil Practices
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current Texas law authorizes an action to be brought to have a court declare the rights and duties or status of the parties to a dispute.

CSSB 1207 provides that costs and attorney's fees are not recoverable against the state or a state agency in a declaratory judgment action brought for the purposes of construing a state agency's powers or duties.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

CSSB 1207 amends Section 37.009, Civil Practice and Remedies Code, as follows:

- (a) Makes a conforming change.
- (b) Prohibits the court from awarding costs and attorney's fees against the state, a state agency, or a state official in an action under this chapter if certain conditions are met.
- (c) Provides that Subsection (b) does not limit the authority of a court to award attorney's fees under Chapter 105 or 106 or any other statute that expressly authorizes the award of attorney's fees against the state, a state agency, or a state official.

EFFECTIVE DATE

September 1, 2003

COMPARISON OF ORIGINAL TO SUBSTITUTE

Committee Substitute clarifies that the prohibition against awarding costs and attorney's fees in the bill does not depend on whether an agency might conduct some proceeding in the future, but instead applies to situations where the agency is conducting or did conduct a proceeding involving construction of the statute on which a declaration is being sought. Like the engrossed bill, the Committee Substitute would preclude the award of costs and attorney's fees in cases like *Texas Municipal Power Agency v. Public Utility Commission*, 100 S.W.3d 510 (Tex. App.—Austin 2003) and *City of Waco v. Texas Natural Resource Conservation Commission*, 83 S.W.3d 169 (Tex. App.—Austin 2002).