

By: Duncan

S.B. No. 1207

Substitute the following for S.B. No. 1207:

By: Woolley

C.S.S.B. No. 1207

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to state liability for costs and attorney's fees in  
3 certain actions seeking declaratory judgment.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 37.009, Civil Practice and Remedies  
6 Code, is amended to read as follows:

7 Sec. 37.009. COSTS. (a) Except as provided by Subsection  
8 (b), in [In] any proceeding under this chapter, the court may award  
9 costs and reasonable and necessary attorney's fees as are equitable  
10 and just.

11 (b) The court may not award costs and attorney's fees  
12 against the state, a state agency, or a state official in an action  
13 under this chapter if:

14 (1) the action seeks a declaratory judgment regarding  
15 construction of a statute under which an agency exercises powers or  
16 duties; and

17 (2) the party seeking relief is participating in a  
18 proceeding before the agency pursuant to Chapter 2001, Government  
19 Code, or another statute, or participated in a proceeding that  
20 resulted in a final order, rule, or other decision by the agency,  
21 and the proceeding involves or involved the construction of a  
22 statute on which a declaration is being sought.

23 (c) Subsection (b) does not limit the authority of a court  
24 to award attorney's fees under Chapter 105 or 106 or any other

1 statute that expressly authorizes the award of attorney's fees  
2 against the state, a state agency, or a state official.

3 SECTION 2. This Act takes effect September 1, 2003, and  
4 applies only to an action filed on or after the effective date of  
5 this Act. An action filed before the effective date of this Act is  
6 governed by the law in effect immediately before the effective date  
7 of this Act, and that law is continued in effect for that purpose.