

## **BILL ANALYSIS**

C.S.S.B. 495  
By: Senator Williams  
Business & Industry  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The Office of the Attorney General is required by law to review and approve (1) all bonds and similar obligations ("public securities") issued by governmental entities and certain non-profit corporations created to act on behalf of governmental entities; and (2) certain credit agreements and contracts related to public securities. The purpose of this review is to make a legal determination as to whether the securities and credit agreements have been properly authorized to be issued in conformity with law. This opinion issued is extremely valuable to the issuers of public debt because it makes the securities and agreements valid, enforceable and incontestable in court for any reason, except for a constitutional defect. The attorney general reviews the record of proceedings for approximately 1,400 different public securities and credit agreements per year. (A "record of proceedings" refers to the legal documents related to the issuance of a public security or credit agreement.)

As part of the Attorney General's review process, issuers of public securities are required by Section 1202.004, Tex. Govt. Code to pay a non-refundable fee to the Attorney General for completion of this review. Chapter 1371, Tex. Govt. Code and certain other statutes require Attorney General approval of credit agreements and the Attorney General collects a fee in accordance with Section 1202.004 for those reviews.

The amounts of the fees charged for these reviews are based on a fee schedule that has remained unchanged for over 13-1/2 years.

This bill would generally increase the fees charged by the Office of the Attorney General for its legal review of public securities and credit agreements by changing the method by which these fees are calculated. Fees would be based on 1/10th of 1% of the principal amount, with a minimum fee of no less than \$750 and maximum fee of no more than \$9,500.

### **RULEMAKING AUTHORITY**

It is the opinion of the Committee on Business and Industry that this bill would delegate rulemaking authority to the Office of the Attorney General in order to establish such rules as may be necessary to administer the proper calculation and collection of the fees authorized by the bill.

### **SECTION-BY-SECTION ANALYSIS**

SECTION 1. This section amends Section 1202.001, Government Code, definitions to clarify that "record of proceedings" includes the record or proceedings related to a credit agreement; and to incorporate a definition of credit agreement as that term is defined in other statutes.

SECTION 2. This section amends the current fee structure of Government Code Section 1202.002 by deleting the current fee schedule and replacing it with an examination fee of 1/10th of 1 percent of the principal amount of the security. A fee is charged for each series of public security, or in the case of a credit agreement submitted separately from a public security, the principal amount of the public security to which the credit agreement relates, with a maximum fee of \$9,500 and a minimum fee of \$750.

SECTION 3. This section provides that the fees imposed by this Act apply only to the record of proceedings submitted to the Attorney General for review after the effective date of the Act.

SECTION 4. Provides that the act takes effect September 1, 2005.

C.S.S.B. 495 79(R)

### **EFFECTIVE DATE**

This Act takes effect September 1, 2005.

### **COMPARISON OF SUBSTITUTE WITH SENATE ENGROSSED VERSION**

The committee substitute for Senate Bill No. 495 differs from the Senate engrossed version by changing the following language from the engrossed version:

Under SECTION 2 of the bill, on Line 23, “1/20th of one percent” is changed to “1/10th of 1 percent”.

Also under SECTION 2 of the bill, on Line 25, “\$10,000” is changed to “\$9,500”.

And likewise under SECTION 2 of the bill, on Line 27, “\$500” is changed to “\$750”.