

SUBJECT: Revising attorney general fees for examining public security proceedings

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 6 ayes — Giddings, Bohac, Martinez, Solomons, Taylor, Vo

0 nays

3 absent — Elkins, Bailey, Zedler

SENATE VOTE: On final passage, April 7 — 31-0, on the Local and Uncontested Calendar

WITNESSES: For — None

Against — None

On — Barry R. McBee, Office of the Attorney General

BACKGROUND: Under Government Code, sec. 1202.003, before the issuance of a public security (bond or other obligation), the issuer must submit the public security and the record of proceedings for its issuance to the attorney general. Under sec. 1202.004, when an issuer submits a public security for examination and approval, the issuer must pay a nonrefundable examination fee to the attorney general, computed according to the principal amount of the public security as follows:

- not more than \$500,000 \$500;
- more than \$500,000 but not more than \$5 million \$750;
- more than \$5 million but not more than \$20 million \$1,000;
- more than \$20 million \$1,250.

If a nonprofit corporation or governmental entity issuing the public security for the benefit of nongovernmental entities submits the public security as required by law, the fee is \$1,250. If the issuer is issuing multiple series of a single public security issue, the issuer shall pay the fees prescribed above, not to exceed \$2,500 for one issue in which all series are issued simultaneously.

Under sec. 1371.057, before an obligation (public security) may be issued

or a credit agreement executed, a record of the proceedings of the issuer authorizing the issuance, execution, and delivery of the obligation, the credit agreement, and any related contract providing revenue or security must be submitted to the attorney general for review.

DIGEST:

CSSB 495 would change the schedule of nonrefundable fees charged by the attorney general for examining and approving the issuance of public securities. The required examination fee would have to be equal to the lesser of one-tenth of one percent of the principal amount of the public security or \$9,500. The minimum examination fee would be \$750. If the issuer issued multiple series of a single public security issue, the issuer would pay the prescribed fees for each series.

The bill would expand the definition of "record of proceedings" to include a public security or a credit agreement relating to a public security. The bill also would include the definition of "credit agreement."

The attorney general could adopt rules necessary to administer the calculation and collection of the examination fees.

The bill would take effect September 1, 2005, and would apply only to a record of proceedings submitted to the Office of the Attorney General (OAG) on or after that date.

**SUPPORTERS
SAY:**

CSSB 495 would increase the fee amounts charged by the OAG to examine and approve issuances of public securities in order to raise salaries of and better retain staff attorneys agencywide and to increase FTEs in the Open Records Division, Cyber Crimes Unit, Post Litigation Division, and Medicaid Fraud Unit. Current law assigns the OAG the duty of reviewing records of proceedings for public securities (bonds) and credit agreements issued by governmental and certain nonprofit entities. The purpose of the reviews is to determine if the bonds have been authorized in conformity with the law. Upon such a determination, the OAG then approves the public securities and/or credit agreements. These reviews protect taxpayers by ensuring that public debt is not issued without proper legal authorization. The OAG reviews an average of about 1,400 bond and credit transactions per year.

Current statute mandates the issuers of public securities to pay a nonrefundable examination fee as part of the OAG's bond review process.

The law requires attorney general approval of credit agreements, and the OAG also collects a fee in accordance with those reviews.

The Legislature first instituted the examination fees on the issuance of public securities in 1985 to be deposited to the credit of the general revenue fund. The fee schedule based on the principal of the bonds has been adjusted only once in 1991, even though the types of transactions that must be reviewed have increased in number and complexity.

The fees associated with the issuance of public securities usually are reimbursed out of the bond issuance, with the final holder of the public security paying the fee. Although the fiscal note refers to local governmental entities' incurring additional costs, the fees generally are rolled into the cost of the financing, much the same way that closing costs on the purchase of a home are included in the final transaction cost. The current fee amounts charged for the OAG's review of public securities and credit agreements are somewhat arbitrary and quite low given the high dollar amount involved in the bond transactions. The proposed fee increase, however, would come out to a very small amount assessed per bond issued.

CSSB 495 would follow the OAG's recommendation to require issuers to pay a nonrefundable fee of one-tenth of one percent of the principal amount of the public security with a minimum fee of \$750 and a maximum fee of \$9,500. The bill would clarify that the definition of "record of proceedings" includes credit agreements, although the OAG currently assesses fees for reviewing such agreements. The legislation would authorize the OAG to implement any necessary rules to administer this provision in order to ensure proper calculation and collection of the fees.

Restructuring the fees and basing them on one-tenth of one percent of the principal amount financed would generate an estimated additional \$11.9 million in general revenue over the next biennium. A contingency rider in the Senate-passed version of SB 1, the general appropriations bill for fiscal 2006-07, would appropriate these funds for salary increases for assistant attorneys general I-V, whose salaries currently are in the lowest quartile of all attorneys in state agencies and who have a 40 percent attrition rate. In addition, the monies generated by the fees would be used to add FTEs to the Open Records Division, the Post Litigation Division, and the newly formed Cyber Crimes Unit, as well as to complete staffing in the Medicaid

Fraud Unit begun after enactment of HB 2292 by Wohlgemuth last session.

OPPONENTS
SAY:

While increasing attorneys' salaries at the OAG might be appropriate in a better economy, the state currently has more pressing needs, such as children's health care and education, that require the state's limited financial resources. In addition, young attorneys are not drawn to positions at the OAG for the salaries but out of a desire to serve the public and obtain a range of experience.

OTHER
OPPONENTS
SAY:

CSSB 495 would set a precedent to use fee increases to raise salaries and the number of FTEs at the OAG. Consideration also should be given to other state employees who are hard to retain and who perform an outstanding job at state agencies that do not have the authority to raise fees.

NOTES:

The House committee substitute differs from the Senate-passed version by changing the proposed fees. Under the committee substitute, the nonrefundable examination fee would be the lesser of one-tenth of one percent, rather than one-twentieth of one percent, of the principal amount of the public securities or \$9,500, rather than \$10,000. The substitute would set the minimum examination fee at \$750, rather than \$500 as in the Senate-passed version.

The fiscal note for CSSB 495 indicates a positive fiscal impact of \$11.9 million. Appropriation of funds to the OAG through a contingency rider in Senate Bill 1, the General Appropriations Act, would provide salary increases for assistant attorneys general I-V and additional FTEs in the Open Records Division, Cyber Crimes Unit, Post Litigation Division, and Medicaid Fraud Unit.