

- SUBJECT:** Increasing filing fees and judges' salaries in statutory county courts
- COMMITTEE:** Judicial Affairs — committee substitute recommended
- VOTE:** 8 ayes — Thompson, Hartnett, Capelo, Deshotel, Garcia, Hinojosa, Solis, Uresti
- 0 nays
- 1 present, not voting — Talton
- WITNESSES:** For — Jim Hogan, Texas Association of County Court-at-Law Judges; Judge Mark Owens; *Registered but did not testify:* Randy Sims, County Judges and Commissioners Association and Brazos County; Jim Allison, County Judges and Commissioners Association; Judge Thomas H. Bacus; Jeane Brunson, Texas County and District Clerks Association; Judge Martin Chiuminatto; Judge David Hodges; Lynn Nabers, Alliance for Judicial Funding; Judge Penny Roberts; *On committee substitute:* Mike Ramsey, Texas Trial Lawyers Association
- Against — None
- BACKGROUND:** Under Government Code, sec. 25.0005, statutory county court judges must be paid annual salaries that are at least equal to \$1,000 less than the salaries received by the county's district judges on August 31, 1999. Judges who engage in private law practice and those in whose courts additional fees and costs are not collected are excluded from this provision. The commissioners court sets the salaries of those judges. A county does not have to meet these salary requirements for a particular court if, by September 1 of the year in which a county court begins collecting filing fees used for court costs, the county increases the salary of these judges by at least \$28,000 above the salary to which the judge was entitled on May 1 of that year.
- In addition to other fees, Government Code, sec. 51.702 allows a county to require its statutory county court clerks to collect a \$40 filing fee on civil cases to help pay judiciary costs. These fees are sent to the comptroller, who deposits the money in the judicial fund and credits a county \$40 for each fee

the county sends.

Clerks in counties with a constitutional court judge who is entitled to an annual salary supplement must charge a \$40 filing fee in civil cases and send the fees to the comptroller to deposit in the judicial fund. County judges are entitled to \$10,000 salary supplements if at least 40 percent of the functions they perform are judicial functions.

Under Government Code, sec. 25.0015, the state annually must compensate each county that collects the \$40 filing fee, an amount equal to \$35,000 for each statutory county court judge in the county who does not engage in the private practice of law and who presides over a court that meets certain jurisdictional requirements. Of the \$35,000 paid a county, \$30,000 must come from the judicial fund and \$5,000 from general revenue.

DIGEST:

CSHB 2300 would delete the salary payment exclusion for statutory county court judges who engage in the private practice of law or judges in whose courts additional fees and costs are not collected. It also would delete the provision that the commissioners court sets the salaries for these types of judges.

The bill would require that statutory county court judges be paid at least \$1,000 less than the salaries received by the county's district judges at any time, rather than on August 31, 1999. For this provision not to apply, the county would have to increase the salary of each of its statutory county court judges by \$40,000 (rather than \$28,000, as under current law) more than the salary to which the judge was entitled on May 1 of the year the county began collecting filing fees and costs.

For each statutory county court judge in a county that did not collect additional fees and costs, the state would have to compensate the county an amount that was \$52,000 less (instead of \$35,000 less) than the state salary for a district judge under the general appropriations act. The bill would delete the provision specifying from what funds the compensation would have to come. The amount the comptroller would credit each county for each fee deposited in the judicial fund would increase from \$40 to \$50.

CSHB 2300 would raise to \$55 the filing fee for civil cases collected for judiciary support by statutory county court clerks and constitutional county court clerks with judges entitled to an annual supplement for performing judicial functions. Of the \$55 fee, the clerk would have to send the comptroller \$50 at least once a month. The bill also would delete the provisions pertaining to a county's option to collect the filing fees, thus making the filing fees collected to pay judiciary costs mandatory for all statutory county courts.

The bill would prohibit any statutory county court judge from engaging in the private practice of law. The bill would delete all provisions that prohibit constitutional county court judges from engaging in the private practice of law. It also would delete the provision that at least 40 percent of the functions a constitutional county judge performs be judicial functions for the judge to be entitled to a supplemental annual salary.

CSHB 2300 would take effect only if HB 1884 by Thompson, which would increase the filing fees for district courts, is enacted by the 77th Legislature and becomes law. The effective date for the increase in filing fees under CSHB 2300 would be September 1, 2001. The effective date for the provisions regarding a judge's salary, the state contribution, and the judicial functions of a judge would take effect October 1, 2001.

**SUPPORTERS
SAY:**

CSHB 2300 would bring statutory county court-at-law judges' salaries into line with those of state district court judges. With many statutory courts of law and district courts having concurrent jurisdiction over civil cases, and with some sharing jurisdiction over lower-degree felonies, the judges of statutory county courts at law should be paid nearly the same as district judges. The salary increase also would help recruit and retain the best judges by providing competitive salaries.

The bill would provide counties with funding to pay these increased salaries by raising the statutory county court filing fee.

In conjunction with HB 1884, which would increase the filing fees for district courts, CSHB 2300 would provide uniformity between the filing fees charged in each type of court. This would result in less public confusion and less distortion in caseloads.

Filing fee schedules for statutory county courts usually differ from the district courts' filing fee schedules even though both courts are located in the same county. People tend to file their cases in the court with the cheaper fees, skewing the caseloads between the district courts and statutory county courts. The different filing fee schedules also can confuse the public because, for the most part, the work is about the same.

CSHB 2300 would strengthen the constitutionality of the filing fees. In Opinion JC-0196 (March 2000), the attorney general expressed concern with the constitutionality of Government Code, sec. 51.702(b), since counties are allowed to decide whether or not to charge criminal defendants additional court costs to help fund judiciary costs. According to the attorney general, because not all counties have chosen to charge additional fees, this has resulted in a variation in court costs that may violate a person's rights under the due process and equal rights provision. CSHB 2300 would require all counties to charge the additional fees, leading to more uniformity among the different counties' statutory county court filing fees.

CSHB 2300 would preempt a court having to determine the constitutionality of the section by making it mandatory for counties to charge the additional fees. In a suit filed individually and on behalf of a certified class, Marcie Caldwell sought to enjoin the collection and disbursement of fees collected under sec. 51.702(b), asked the court to declare that this section violates the Texas Constitution, and sought reimbursement of attorney's fees. The comptroller challenged the trial court's authority to hear the case. Last year, the Third Court of Appeals in Austin decided against the comptroller, holding that the trial court had authority to hear the case, but did not address the question of the section's constitutionality.

**OPPONENTS
SAY:**

CSHB 2300 would increase the burden on those filing lawsuits by raising fees. Higher fees could make it more difficult for low-income people to gain access to the courts, because they might not be able to afford these increased costs. A person who could not afford the higher fees but who did not qualify for a pauper's affidavit could be prevented from filing a suit or action. If higher fees forced more people to file pauper's affidavits, these costs would be transferred to local taxpayers.

OTHER
OPPONENTS
SAY:

The Legislature has not yet approved the proposed salary increase for district court judges, but CSHB 2300 would mandate a complementary salary increase for certain statutory county judges anyway. It would be premature to approve this bill before the general appropriations bill is enacted.

NOTES:

The committee substitute changed the proposed increase in filing fees for a suit to \$55 from \$40 in the bill as filed. The substitute reinstated and modified the provision that a county would not have to meet the salary requirement for a particular court if the county increased the salary of each statutory county court judge in the county.

The substitute would require the state contribution to be \$52,000 less, rather than \$1,000 less, than the salary provided by the state for a district judge under the general appropriations act without regard to specified jurisdiction or exceptions. It would require the county clerk to send \$50 of each fee collected to the comptroller monthly. Also, the substitute would specify that it would take effect only if HB 1884 became law.

According to the bill's fiscal note, it would result in a net gain of \$948,750 in general revenue-related funds in fiscal 2002-03. The bill would cost the judicial fund about \$10.7 million for salary increases during the biennium, partly offset by the collection of \$3.9 million in additional filing fees.

According to the fiscal note, the state now reimburses the judges' salaries for the 64 counties that have statutory county courts and also collect the required fees and court costs, paying \$35,000 annually for a salary supplement for 138 judges, with \$5,000 coming from general revenue. Under CSHB 2300, state salary reimbursement for all 192 statutory county judges would increase to \$49,700 annually, and all 74 counties that have statutory county courts would have to collect the fees and court costs. Also, the state currently pays the \$10,000 annual salary supplement (\$5,000 from general revenue) to 215 of the 254 constitutional county judges whose duties are at least 40 percent judicial. CSHB 2300 would pay the supplement for all 254 county judges.

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HB 1884 by Thompson, on which CSHB 2300 would be contingent, passed the House by a nonrecord vote on April 10 and has been referred to the Senate Jurisprudence Committee.