

- SUBJECT:** Reducing and reapportioning distribution of family protection fee
- COMMITTEE:** Juvenile Justice and Family Issues — favorable, without amendment
- VOTE:** 5 ayes — Dutton, Bolton, Farrar, Gonzalez Toureilles, Hernandez
0 nays
4 absent — Eiland, Farias, Strama, Vaught
- WITNESSES:** For —Cathy Sisk, Harris County and Harris County Attorney’s Office
(*Registered, but not testifying:* Jennifer Shelley Rodriguez, County and District Clerks Association of Texas)

Against — None
- BACKGROUND:** In 2005, the 79th Legislature enacted SB 6 by Nelson, which revised the state’s child and adult protective services systems. Among its provisions, the bill amended Government Code, sec. 51.961(a) to require a county commissioners court to collect from petitioners for divorce a family protection fee of \$30 or less, rather than the previous maximum of \$15. While the county clerk formerly was required to pay the entire fee to the credit of the family protection account in the county treasury, SB 6 also amended secs. 51.961(d) and (g) to require the clerk to pay one-half of the fee to the county’s family protection account and the other half to the comptroller for deposit in the child abuse and neglect prevention trust fund account.
- In December 2005, Atty. Gen. Greg Abbott issued Opinion no. GA-0387, which deemed the disposition of one-half of the fee to the comptroller under 51.961(g) unconstitutional. According to the attorney general, a court fee must be allocated expressly to court-related services to avoid being an unreasonable interference with the right of access to the court in violation of the Texas Constitution’s open courts provision (Art. 1, sec. 13). Because the comptroller’s portion of the fee can be used for non-court-related services, such as Department of Family Protective Services prevention programs and administrative costs, the attorney general determined that the comptroller’s allocation imposed an unconstitutional burden on a litigant’s right of access to the courts.

On February 12, 2007, the 53rd District Court of Travis County issued a declaratory judgment, *Harris County, Charles Bacarisse, Harris County District Clerk v. Carole Keeton Strayhorn, Comptroller*, (D-1-GN-06-000-725), which held unconstitutional the payment of half the family protection fee to the comptroller.

DIGEST:

HB 764 would amend Government Code, secs. 51.961(a) and (d) to require a county commissioners court to adopt a family protection fee of \$15 or less, rather than the current \$30 or less, and to require the county clerk to pay the entire portion of the fee collected to the credit of the county's family protection account.

The bill also would repeal sec. 51.961(g), which requires the diversion of one-half of the fee to the comptroller for deposit to the credit of the child abuse and neglect prevention trust fund account.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

**SUPPORTERS
SAY:**

HB 764 would remove an unconstitutional provision in Texas law. By repealing Government Code, sec. 51.961(g), the bill would address constitutional objections raised by an attorney general's opinion and a recent district court ruling. HB 764 essentially would restore the family protection fee law to its constitutionally sound condition before the enactment of SB 6 in 2005.

The bill still would allow counties to collect a family protection fee of \$15 or less to fund a broad range of services, including court-related services, to families that have experienced, or are at risk for experiencing, family violence or child abuse. This is the same amount permitted before the enactment of SB 6.

**OPPONENTS
SAY:**

There is no need to lower the maximum amount of the fee from \$30 to \$15. By repealing sec. 51.961(g), which sends half the county fee to the state, HB 764 would ensure that the family protection fee law passed constitutional muster. Counties should have discretion to collect up to a \$30 fee to support and expand worthwhile initiatives to serve children and families in need or at risk.

NOTES:

A related bill, SB 957 by West, which would repeal Government Code, sec. 51.961(g), but would not reduce the maximum the family protection fee that counties could collect, has been referred to the Senate Jurisprudence Committee.