

SUBJECT: Exempting attorneys employed by state government from paying bar dues

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Jackson, Lewis, Bohac, Hartnett, Madden, Scott, Thompson, Woolley

2 nays — S. Davis, Raymond

1 absent — Castro

WITNESSES: For — None

Against — None

On — Michelle Hunter, Terry Tottenham, State Bar of Texas; James Person, Office of the Attorney General

BACKGROUND: Government Code, sec. 81.054 directs the Texas Supreme Court to set membership fees for attorneys who are members of the State Bar of Texas. Currently the bar dues increase the longer an attorney has been licensed.

- attorneys licensed fewer than three years owe \$68;
- attorneys licensed three to five years owe \$148; and
- attorneys licensed more than five years owe \$235.

DIGEST: HB 1072 would exempt from paying State Bar membership fees attorneys in good standing who were employed as full-time attorneys by a board, commission, department, agency, office, or other entity of Texas state government. The State Bar would adopt rules for the proration of membership fees for attorneys who were not employed by state government for an entire year.

This bill would take effect on January 1, 2012, and would apply to a membership fee or renewal in the State Bar of Texas that became due on or after that date.

**SUPPORTERS
SAY:**

HB 1072 would help state agencies reduce costs. According to the State Bar, 12 state agencies and six appellate courts pay the bar membership dues of their staff attorneys as an employee benefit. Currently, the Office of the Attorney General pays the bar dues of 719 staff attorneys at a cost of \$168,965 annually, more than any other agency. According to the LBB's fiscal note, HB 1072 would save the state a total of \$357,670 a year.

HB 1072 would allow those state agencies that currently do not pay the bar dues of their staff attorneys to offer the exemption from dues as an employee benefit. It is standard practice for private law firms to pay the bar dues of their attorneys and pass the costs onto their clients as overhead. Attorneys employed by the state cannot pass on the cost of their State Bar dues to their clients. In order to attract and retain qualified attorneys, many state employers feel they should pay bar dues. HB 1072 would allow state employers to offer the benefit without facing extra costs.

The state has exempted other state-employed professionals from their professional organization dues. In 1997, HB 1135 by Kubiak, exempted state-employed certified public accountants from paying dues to the Texas State Board of Public Accounting. This exemption saved state agencies the cost of paying those dues and allowed them to attract better qualified applicants by offering this additional benefit.

HB 1072 is narrowly tailored to minimize any loss of funds the State Bar might incur from the exemption. It would apply only to those employed as staff attorneys. It would not cover state employees who happened to have a law license but were not employed as attorneys. According to the comptroller, 2,778 full-time attorneys are employed by the state, though many work for agencies that do not currently pay their bar dues. If the number of attorneys held steady and all of these attorneys paid the maximum bar dues because they had been licensed for more than five years, the State Bar would lose \$652,830 a year. While this would be a loss, it is only 1.6 percent of the state bar's \$39 million budget. This would be a small reduction in these tough economic times.

**OPPONENTS
SAY:**

Attorneys employed by the state should not be exempted from paying bar dues because the State Bar provides them with the same benefits that it provides to other attorneys. The State Bar regulates attorneys in Texas and by doing so preserves the value of a license to practice law. It investigates complaints against attorneys, monitors attorneys for misleading

advertising, ensures compliance with mandatory continuing education requirements, provides treatment assistance for substance abuse, and other regulatory functions. All attorneys enjoy these professional and personal benefits, and all should pay bar dues to help maintain them as a matter of equity and fairness.

HB 1072 would significantly cut into the State Bar's revenue stream, hindering its regulatory efforts. Like other organizations that regulate licensed professionals, the State Bar receives funding from member dues. The fiscal note significantly underestimates the fiscal impact HB 1072 would have on the State Bar. The fiscal note says the bill would affect 2,778 attorneys who work for the state as attorneys. However, according to state bar records, 6,118 attorneys claimed an exemption as state employees from the state occupations tax. That exemption has no requirement that the attorneys be employed as attorneys. If all 6,118 attorneys claimed an exemption from bar dues, the state bar could lose up to \$1.5 million. Such a loss would force the bar to cut services or curtail its regulatory activities.

Despite the claim that HB 1072 is narrowly tailored to apply only to state attorneys who are employed as attorneys, many more who work for the state could claim the exemption even if they were not technically eligible. The bar would not have ability to fully enforce this exemption, regardless of how narrow a definition the bill provided.