

BILL ANALYSIS

Senate Research Center

S.B. 1304
By: Ellis
Jurisprudence
4-8-97
Committee Report (Amended)

DIGEST

Currently, Texas law is unclear in specifying how court clerks are to invest and account for registry funds accounts that are deposited with the court. Texas law requires investments to be made only with a financial institution insured under the FDIC. Due to the \$100,000 limitation for FDIC institutions, a clerk who receives more than \$100,000 in one transaction to be invested for a minor must divide the money into several FDIC institutions for investment. This can be cumbersome or even impossible in smaller counties. Additionally, there are no clear statutory directives for clerks in handling interplead funds, which can total millions of dollars, other than to deposit the funds into a county depository which may not earn interest. This bill will provide new regulations regarding funds tendered into the registry of the court.

PURPOSE

As proposed, S.B. 1304 provides new regulations regarding funds tendered into the registry of the court.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 117.001, Local Government Code, to define "clerk," "registry funds," "separate account," and "special account." Makes conforming changes.

SECTION 2. Amends Section 117.002, Local Government Code, to require any funds deposited under this chapter, except cash bail bonds, that are presumed to be abandoned to be reported and delivered to the state treasurer.

SECTION 3. Amends Chapter 117, Local Government Code, by adding Section 117.003, as follows:

Sec. 117.003. COMPLIANCE WITH FEDERAL TAX LAW FOR FUNDS HELD UNDER THIS CHAPTER. Requires, if any funds deposited under this chapter are placed into an interest bearing account, any person with a taxable interest in fund deposited to such an account to submit appropriate tax forms and provide correct information to the district or county clerk so that the interest earned on such funds can be timely and appropriately reported to the Internal Revenue Service. Provides that the information and forms provided to the district or county clerk under this section is not subject to public disclosure except to the extent necessary to effectuate compliance with federal tax law requirements. Provides that the district or county clerk is authorized to pay any or all of the interest earned on funds deposited under this chapter, without court order, to the Internal Revenue Service to satisfy tax withholding requirements.

SECTION 4. Amends Sections 117.021(a) and (c), Local Government Code, to require the commissioners court of a county at its May regular term after a general election for state and county officers to receive an application from a federally insured bank or banks in the county to be the depository for a special account held by the county clerk and the district clerks. Authorizes a contract

with the bank, upon request by the clerk and approval of the commissioners court, to include a provision that the funds in a special account earn interest. Requires a request from a clerk that an account earn interest to be made in writing, to the commissioners court within a certain time period and to be entered in the minutes of the court. Requires an application to be accompanied by a certified check or cashier's check for at least one-half of one percent of the average daily balance of the registry funds held by the county clerk and the district clerk during the preceding calendar year. Makes conforming changes.

SECTION 5. Amends Section 117.022, Local Government Code, as follows:

Sec. 117.022. New heading: NOTICE. Requires a county to advertise or give notice that the county will accept applications to be the depository for registry funds held by the county clerk and the district clerks in the same manner as notice is required under Section 116.022. Deletes existing text providing that the county is not required to give notice.

SECTION 6. Amends Section 117.023(a), Local Government Code, to make conforming changes.

SECTION 7. Amends Section 117.025, Local Government Code, to make conforming changes.

SECTION 8. Amends Section 117.026(a), Local Government Code, to make conforming changes.

SECTION 9. Amends Section 117.027, Local Government Code, to require, if the commissioners court has not selected a depository under this subchapter, a clerk holding certain items deposited into the registry of the court pending the result of a legal proceeding to seal the article in a secure package and deposit the package in an iron safe or a bank vault.

SECTION 10. Amends Chapter 117B, Local Government Code, by adding Section 117.028, as follows:

Sec. 117.028. APPLICATION OF COUNTY DEPOSITORY LAW. Provides that, except as otherwise expressly stated, the provisions of Chapter 116 relating to county depositories also apply to a depository selected under this chapter.

SECTION 11. Amends Section 117.052, Local Government Code, as follows:

Sec. 117.052. New heading: DEPOSITS OF REGISTRY FUNDS BY COUNTY AND DISTRICT CLERKS. Requires the funds deposited to be carried at the depository selected under this chapter as a special account in the name of the clerk making the deposit. Provides that a clerk is responsible for funds deposited into the registry fund from certain sources. Makes conforming changes.

SECTION 12. Amends Chapter 117C, Local Government Code, by adding Section 117.0521, as follows:

Sec. 117.0521. CUSTODIANSHIP. Requires a clerk to act only in a custodial capacity in relation to a registry fund, a special account, or a separate account. Provides that a clerk is not a trustee for the beneficial owner and does not assume the duties, obligations, or liabilities of a trustee for a beneficial owner.

SECTION 13. Amends Section 117.053, Local Government Code, to require an appeal bond to be paid without a written order of the court on receipt of mandate or dismissal and funds deposited under Section 887, Probate Code, are authorized to be paid without a written order of the court. Requires the clerk to transfer any registry funds into a separate account when directed to by a written order of a court of proper jurisdiction or when the clerk is required to under Section 887, Texas Probate Code. Requires the clerk to transfer the funds into certain separate accounts. Deletes a reference regarding the release of funds. Makes conforming changes.

SECTION 14. Amends Section 117.054, Local Government Code, as follows:

Sec. 117.054. New heading: COUNTY EXPENSES PAID FROM INTEREST. Requires the clerk at the time of withdrawal, if a special or separate account earns interest, to pay in a manner directed by the court with proper jurisdiction the original amount deposited into the registry of the court and any interest credited to the account in the manner calculated in Subsection (b). Requires interest earned on a special account or a separate account to be paid in certain amounts. Deletes existing text regarding interest on funds placed in time deposits.

SECTION 15. Amends Section 117.055, Local Government Code, to require the clerk, to compensate the county for the accounting and administrative expenses incurred in handling the registry funds that have not earned interest, including funds in a special account, at the time of withdrawal, to deduct from the amount of the withdrawal a fee in an amount equal to five percent of the withdrawal but that may not exceed \$50. Requires a fee collected under this section to be deposited in the general fund of the county. Deletes existing text regarding the fee to be collected by the clerk.

SECTION 16. Amends Section 117.057, Local Government Code, to authorize the commissioners court to select another depository if the depository does not file a new bond required by an order of the commissioners court within five, rather than 15, days after the date a copy of the order is served on the depository. Makes conforming changes.

SECTION 17. Amends Section 117.058, Local Government Code, as follows:

Sec. 117.058. New heading: ACCOUNTING FOR AND DISBURSING REGISTRY FUNDS IN COUNTIES WITH POPULATION OF 190,000 OR MORE. Requires each check to be signed according to procedure established by the county auditor before delivery or payment. Deletes existing text regarding a countersignature by the county auditor. Makes conforming changes.

SECTION 18. Amends Section 117.081, Local Government Code, to make conforming and nonsubstantive changes.

SECTION 19. Amends Section 117.083, Local Government Code, as follows:

Sec. 117.083. New heading: LOSS OF REGISTRY FUNDS. Makes conforming changes.

SECTION 20. Amends Section 117.084, Local Government Code, as follows:

Sec. 117.084. New heading: DEPOSITORY TO PAY CHECK ON PRESENTMENT. Requires a depository selected under Subchapter B to pay a check drawn against funds deposited with the depository in a special or separate account on presentation of the check if the funds that are subject to the check are in the possession of the depository. Deletes existing text regarding a refusal to pay a check.

SECTION 21. Amends Section 117.121(a), Local Government Code, to authorize a clerk to make a payment without court order for unpaid court costs from a cash bond deposited in connection with an appeal after the appellate court issues its mandate in such appeal if the costs remain unpaid for 45 days after the mandate is issued.

SECTION 22. Amends Section 142.004, Property Code, by amending the heading and Subsection (a) and adding Subsection (d), as follows:

Sec. 142.004. New heading: INVESTMENT OF FUNDS. Authorizes money recovered by the plaintiff in a suit in which a minor or incapacitated person who has no legal guardian is represented by a next friend to be invested in certain items. Requires interest earned on an account invested by the clerk of the court to be paid in the same manner as interest earned on an account under Chapter 117, Local Government Code. Makes conforming changes.

SECTION 23. Amends Section 51.605(c), Government Code, to require a clerk to annually complete 20 hours of continuing education courses, including at least three hours of continuing

education courses regarding registry funds.

SECTION 24. Amends Section 2256.004, Government Code, to make a conforming change.

SECTION 25. Repealers: Sections 117.051 and 117.082, Local Government Code (Time Deposits by Commissioners Court and Offenses Related to Clerk's Performance of Office).

SECTION 26. Effective date: September 1, 1997.
Makes application of this Act prospective.

SECTION 27. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

Amendment 1.

Page 2, line 9, insert a new SECTION 3, adding Section 117.003, Local Government Code, regarding compliance with federal tax laws for funds held under this chapter, and renumbering subsequent SECTIONS.

Amendment 2.

Page 2, strike lines 19-20, and substitute "contract may, upon request by the clerk and approval of the commissioners court, include a provision that the funds in a special account earn interest. A request from the clerk that."

Amendment 3.

Page 12, strike lines 17-21, and substitute the following:

"(a) Money may be paid from the registry fund only on checks or drafts signed by the district clerk on the written order of the court with proper jurisdiction, except that the clerk may make a payment without court order for unpaid court costs from a cash bond deposited in connection with an appeal after the appellate court issues its mandate in such appeal if the costs remain unpaid for 45 days after the mandate is issued."