

BILL ANALYSIS

Senate Research Center
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H.B. 3398
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Intergovernmental Relations
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The County Treasurers' Association of Texas has identified statutes that require modification to align current statutory language with current county treasury practices and procedures.

H.B. 3398 relates to the office of county treasurer.

RULEMAKING AUTHORITY

Rulemaking authority is previously granted to the Texas State Library and Archives Commission is modified in SECTION 7 (Section 113.008, Local Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 103.003(b), Code of Criminal Procedure, to authorize a community supervision and corrections department and a county treasurer to collect money payable under this title with the written approval of the clerk of the court or fee officer, and to collect money payable as otherwise provided by law.

SECTION 2. Amends Articles 103.004(a) and (c), Code of Criminal Procedure, as follows:

(a) Requires an officer who collects recognizances, bail bonds, fines, forfeitures, judgments, jury fees, and other obligations recovered in the name of the state under any provision of this title except as provided by Subsection (c), rather than Subsections (b) and (c), to deposit the money in the county treasury not later than the next regular business day after the date that the money is collected. Requires the officer, if it is not possible for the officer to deposit the money in the county treasury by that date, to deposit the money in the county treasury as soon as possible, but not later than the fifth, rather than the third, regular business day after the date that the money is collected.

(c) Authorizes the commissioners court of a county with a population of less than 50,000 to authorize an officer who is required to deposit money under Subsection (a) to deposit the money in the county treasury not later than the 15th, rather than the 30th, day after the date that the money is collected.

SECTION 3. Amends Chapter 83, Local Government Code, by adding Sections 83.008 and 83.009, as follows:

Sec. 83.008. SURETY BOND ON ASSISTANT TREASURERS, DEPUTIES, AND EMPLOYEES; SELF-INSURANCE. (a) Requires the county treasurer, if a county treasurer employs only one assistant or deputy, to execute a surety bond or a blanket surety bond to cover the assistant or deputy and to execute a schedule surety bond or a blanket surety bond to cover all other employees of the office. Requires the county treasurer, if a county treasurer employs more than one assistant or deputy, to execute a blanket surety bond to cover the assistants or deputies and other employees of the office.

(b) Authorizes the county, instead of a county treasurer obtaining a bond as required by Subsection (a), to self-insure against losses that would have been covered by the bond.

(c) Requires that the bond under this section be conditioned in the same manner and be for the same amount as the bond for the county treasurer under Section 83.002 (Bond). Requires that the bond be made payable to the county judge for the use and benefit of the county treasurer.

Sec. 83.009. ASSISTANT TREASURER OR TREASURY DEPUTY. (a) Requires that the appointment of an assistant treasurer or treasury deputy be in writing, be signed by the county treasurer, and bear the seal of the county court.

(b) Requires a person appointed as an assistant treasurer or treasury deputy, before beginning to perform the duties of office, to take and subscribe the official oath, which, together with the certificate of the officer administering the oath, is required to be endorsed on the appointment. Requires that the appointment and oath be deposited and recorded in the county clerk's office.

(c) Provides that an assistant treasurer or treasury deputy acts in the name of the county treasurer as directed by the county treasurer and is authorized to perform all official acts that the county treasurer is authorized to perform at the discretion of the county treasurer.

SECTION 4. Amends Sections 111.0707 and 111.07075, Local Government Code, as follows:

Sec. 111.0707. SPECIAL BUDGET FOR REVENUE FROM INTERGOVERNMENTAL CONTRACTS. (a) Creates this subsection from existing text.

(b) Requires the county treasurer to notify the county auditor of the receipt of all revenue from intergovernmental contracts not previously included in a special budget or the annual budget for that fiscal year.

Sec. 111.07075. SPECIAL BUDGET FOR REVENUE RECEIVED AFTER START OF FISCAL YEAR. (a) Creates this subsection from existing text.

(b) Requires the county treasurer to notify the county auditor of the receipt of all revenue from a new source not anticipated before the adoption of the budget and not previously included in a special budget or the annual budget for that fiscal year.

SECTION 5. Amends Subchapter A, Chapter 112, Local Government Code, by adding Section 112.0045, as follows:

Sec. 112.0045. DELEGATION TO COUNTY TREASURER. Authorizes the county treasurer, with the approval of the county clerk and the commissioners court, to perform the duties of the county clerk under Section 112.004 (Accounts Kept for Officers by County Clerk).

SECTION 6. Amends Subchapter A, Chapter 113, Local Government Code, by adding Section 113.0001, as follows:

Sec. 113.0001. Defines "depository," "depository account," "money," and "treasury."

SECTION 7. Amends Section 113.008, Local Government Code, as follows:

Sec. 113.008. New heading: RECONCILIATION OF DEPOSITORY ACCOUNTS. (a) Requires the county depository to provide statements of all bank activity and documentation supporting a statement's transactions not less than once a month to the county treasurer. Deletes existing text requiring the county depository to provide all canceled checks and warrants and supporting statements to the county treasurer.

(b) Provides that the county depository provide the information required by Subsection (a) to the official responsible for the account if the checks and orders

are payable from funds under the direct authority of an official other than the county treasurer as provided by statute and the official has not delegated the responsibility for reconciliation under Subsection (g). Deletes existing text providing that Subsection (a) does not apply if the checks and warrants are payable from funds under the direct authority of an official other than the county treasurer as provided by statute.

(b-1) Authorizes the official to request the county treasurer to be responsible for the reconciliation of the checks and orders payable from the funds that are under the direct authority of the official. Deletes existing text providing that the exemption provided by this subsection does not apply if the official requests the county treasurer to be responsible for the reconciliation of the checks and warrants payable from the funds that are under the direct authority of the official.

(c) Requires that the county depository, in fulfilling the requirements of Subsection (a), provide, at the direction of the county treasurer and in accordance with the rules adopted by the Texas State Library and Archives Commission (TSLAC), originals, optical images, or electronic images of canceled checks and orders, rather than original canceled checks and warrants; deposit detail; debit and credit memoranda; or electronic transmission detail, rather than optical images of the front and back of canceled checks and warrants if the optical images are retained in accordance with the rules adopted by TSLAC.

(d) Requires the county treasurer to reconcile all balances and transactions for each treasury account in the county depository's statement of activity to the transactions and balances shown on the treasurer's records, rather than the canceled checks and warrants with the account records of the depository, and to ensure all financial adjustments are made regarding the depository account as required.

(e) Provides that, in this section, a reference to the county treasurer includes a person performing the duties of the county treasurer.

(f) Requires an official with special funds in the depository bank to reconcile all balances and transactions in the statement of activity to the transactions and balances shown on the official's records and, each month, ensure all financial adjustments resulting from the reconciliation are reported to the county auditor for entry in the general set of records and reflected in the cash receipts and disbursement registers of the county treasurer.

(g) Authorizes an official to designate the county treasurer to reconcile and report the official's special accounts to the county auditor. Requires an official who fails to reconcile special accounts monthly to transfer responsibility for account reconciliation to the county treasurer. Provides that unless the official and county treasurer set another period in writing for the duration of a transfer under this section, the transfer is effective for the duration of the term of office for the designating officer.

SECTION 8. Amends Sections 113.021 and 113.022, Local Government Code, as follows:

Sec. 113.021. New heading: **REQUIREMENT THAT MONEY BE DEPOSITED WITH COUNTY TREASURER; INTEREST.** (a) Requires that the fees, commissions, funds, and other money belonging to a county be deposited with the county treasurer by the person, rather than officer, who collects the money. Makes a conforming change.

(b) Requires the county treasurer to deposit the money in the county depository in the proper fund, rather than a special fund, to the credit of the person or department collecting the money, rather than the officer who collected the money. Deletes existing text providing that, if the money is fees, commissions, or other compensation collected by an officer who is paid on a salary basis, the appropriate

special fund is the applicable salary fund created under Chapter 154 (Compensation of District, County, and Precinct Officers on Salary Basis.)

(c) Provides that the interest accruing on the money in the fund, rather than special fund, is for the benefit of the county in accordance with other law.

Sec. 113.022. TIME FOR MAKING DEPOSITS. (a) Requires a county officer or other person who received money, rather than funds, to deposit the money with the county treasurer on or before the next regular business day after the date on which the money is received. Requires the officer or person, if this deadline cannot be met, rather than is not met, to deposit the money, without exception, on or before the fifth, rather than seventh, business day after the day on which the money is received. Makes conforming changes. Deletes existing text authorizing the commissioners court, however, in a county with fewer than 50,000 inhabitants, to extend the period during which funds are required to be deposited with the county treasurer, but prohibits the period from exceeding 30 days after the date the funds are received.

(b) Makes conforming changes.

SECTION 9. Amends the heading to Section 113.041, Local Government Code, to read as follows:

Sec. 113.041. DISBURSEMENT OF MONEY BY COUNTY TREASURER; PAYMENT BY CHECK OR ELECTRONIC TRANSMISSION; LOST OR DESTROYED INSTRUMENT.

SECTION 10. Amends Section 113.041(c), (d), (e), and (g), Local Government Code, as follows:

(c) Prohibits the county treasurer from disbursing, rather than paying, money out of the county treasury without an order for payment, rather than a certificate or warrant, from an officer who is authorized by law to issue the order. Makes a conforming change.

(d) Prohibits the treasurer, if the county treasurer doubts the legality or propriety of an order, rather than an order, decree, certificate, or warrant, presented to the treasurer for payment, from making the payment. Requires the treasurer to report the matter to the commissioners court for the court's consideration and direction. Authorizes the treasurer to require that the claim supporting the order be verified by an affidavit.

(e) Authorizes the treasurer, if the county treasurer is satisfied that an original check or other order drawn on the county treasury by a proper authority is lost or destroyed, to issue a duplicate instrument in place of the original. Prohibits the treasurer from issuing a duplicate until an applicant has filed an affidavit with the treasurer that states that the applicant is the true owner of the original instrument and that, to the best knowledge and belief of the applicant, the original is lost or destroyed.

(g) Requires the county treasurer, if, after the issuance of the duplicate instrument, the treasurer determines that the duplicate was issued improperly or that the applicant or person to whom the duplicate was issued is not the owner of the original instrument, to immediately stop payment or demand the return of the amount paid by the county, if the duplicate is paid, rather than to immediately demand the return of the duplicate, if it is unpaid, or the return of the amount paid by the county, if the duplicate is paid. Requires the treasurer, if the person fails to return the amount of the instrument, rather than duplicate instrument or the amount of the instrument, to institute a suit for recovery, rather than a suit on the bond, through the office of the county or district attorney. Provides that the venue for the suit lies in the county in which the treasurer serves.

SECTION 11. Amends Section 113.043, Local Government Code, as follows:

Sec. 113.043. COUNTERSIGNATURE BY COUNTY AUDITOR. Prohibits the county treasurer and the county depository, in a county with a county auditor, from paying a

check or order unless it is countersigned by the county auditor to validate it as a proper and budgeted item of expenditure. Provides that this section does not apply to a check or order for jury service or for restitution collected on behalf of an individual as authorized by law. Makes conforming changes.

SECTION 12. Amends the heading to Section 113.061, Local Government Code, to read as follows:

Sec. 113.061. CLAIMS INFORMATION; PAYMENT OWED BY THE COUNTY.

SECTION 13. Amends Section 113.061, Local Government Code, by amending Subsections (a) and (b) and adding Subsections (a-1), (a-2), and (b-1), as follows:

(a) Requires the county treasurer to maintain a record of claims against the county, rather than maintain a record in which the treasurer is required to register each claim against the county.

(a-1) Requires that a claim, in counties without a county auditor, be submitted to the county treasurer for presentation to the commissioners court for approval.

(a-2) Requires that a potential claim, in a county without an auditor, be encumbered for payment by providing notice of the expenditure to the county treasurer, including a copy of the requisition or purchase. Requires the treasurer to record, rather than register, the claims as they are presented by the officer authorizing the expenditure, rather than in the order in which they are presented. Requires the treasurer to place an encumbrance against the proper account until the claim is allowed or refused by the commissioners court. Deletes existing text requiring the treasurer, if more than one claim is presented at the same time, to register them in the order of their date.

(b) Prohibits the county treasurer from paying a claim, or any part of it, until the claim has been encumbered, rather than registered. Prohibits an officer from ordering a payment of a claim, or any part of it, until the claim has been encumbered. Deletes existing text prohibiting an officer from receiving a claim, or any part of it, in payment of any indebtedness owed to the county until the claim has been registered.

(b-1) Provides that an encumbrance under this section does not guarantee approval of the claim by the official authorized to approve the claim.

SECTION 14. Amends 113.063, Local Government Code, as follows:

Sec. 113.063. New heading: CLAIMS INFORMATION LIST; INDEBTEDNESS TO THE COUNTY. (a) Deletes existing text regarding the class and register number of the claim from information to be listed in a report that the officer is required to file. Makes nonsubstantive changes.

(b) Requires the officer to give the claims and the report to the county treasurer, who is required to give the officer a receipt. Requires the treasurer to determine the time and manner of making the report. Deletes existing text requiring the treasurer to file the list with the treasurer's report in the office of the county clerk.

SECTION 15. Amends Section 114.022, Local Government Code, by adding Subsection (c), to provide that a county publishing monthly financial reports under Section 114.023 (County Auditor's Monthly Report to Commissioners Court in County with Population of More Than 225,000) that publishes its comprehensive annual financial report on its Internet website is not required to publish an exhibit under this section.

SECTION 16. (a) Repealer: Article 103.004(b) (relating to authorizing an officer to deposit the money in the county treasury), Code of Criminal Procedure.

(b) Repealers: Sections 113.061(c), (d), (e), and (f) (relating to claims registers and classes of claims), Local Government Code.

Repealer: Section 113.062 (Acknowledgement Required When Claim Paid or Credited), Local Government Code.

Repealer: Section 113.066 (Cancellation of Certain Claims), Local Government Code.

SECTION 17. (a) Requires a county treasurer required to execute a surety bond under Section 83.008, Local Government Code, as added by this Act, to execute a surety bond not later than October 1, 2009.

(b) Makes application of Section 83.009, Local Government Code, as added by this Acts prospective.

SECTION 18. Effective date: September 1, 2009.