

- SUBJECT:** Extending assistant prosecutor longevity pay to assistant county attorneys
- COMMITTEE:** Judiciary — favorable, without amendment
- VOTE:** 6 ayes — Hartnett, Hopson, Alonzo, R. Cook, Gonzales, Goolsby
0 nays
3 absent — Homer, Hughes, Krusee
- WITNESSES:** For — Scott Brumley, Potter County Attorney’s Office (*Registered, but not testifying*); Jim Kuboviak, Brazos County Attorney’s Office; Barry Macha; David P. Weeks
Against — None
- BACKGROUND:** Government Code, ch. 41, subch. D concerns longevity pay for assistant prosecutors. Sec. 41.251(1) defines “assistant prosecutor” as an assistant district attorney, an assistant criminal district attorney, or an assistant county attorney to a county attorney compensated by the state to perform the duties of a district attorney.

Sec. 41.258 establishes the felony prosecutor supplement fund, which is funded by the surety of bail bonds and provides supplements to counties for felony prosecutor longevity pay.
- DIGEST:** HB 1356 would rename the felony prosecutor supplement fund the “assistant prosecutor supplement fund.” It would change the definition of “assistant prosecutor” in Government Code, ch. 41, subch. D to include all assistant county attorneys.

The bill also would update the numbering in Government Code, sec. 103.022 to incorporate changes made by the 79th Legislature in 2005.

The bill would take effect September 1, 2007.

**SUPPORTERS
SAY:**

HB 1356 would further ensure the public has access to superior prosecutors. Under current law, because prosecutors working in the public sector are underpaid in comparison to those working as private attorneys, a felony prosecutor supplement fund was established to provide longevity pay to assistant felony prosecutors who have served a government entity for four years or more. Long-term assistant felony prosecutors are not elected officials, and they provide a valuable service to district and county attorneys. Likewise, assistant misdemeanor prosecutors serve in the public interest and should be afforded the same longevity pay. Without a financial mechanism that encourages seasoned attorneys to work in the public sector, local governments will continue to lose their best litigators to the private sector, making it harder for local governments to prosecute criminals.

This bill would put unexpended balances to good use without creating additional costs for the state. The felony prosecutor supplement fund currently is financed with a portion of a \$15 fee assessed on the surety of bail bonds. One-third of the money collected supports the fair defense account, which funds indigent criminal defense. The other two-thirds supports the felony prosecutor supplement fund. When this fund was created, no money was earmarked for assistant misdemeanor prosecutors simply because it was unclear whether the fund would raise enough money to support pay for this subset of public prosecutors. It is now clear that the fund has enough money to pay the \$600,000 needed annually to extend longevity pay to all assistant prosecutors. This fund has operated since 2004 with a minimum balance of \$1.5 million, and unexpended balances above that amount have been swept into general revenue each fiscal biennium.

Should additional longevity pay deplete the minimum balance of this account, the fee assessed on bail bonds could be increased to avoid costs to the state. In the meantime, fees collected for the purpose of supporting prosecutor longevity pay should not be spent to support other state programs. Instead, these unexpended balances should be used to support the justice system. To that end, this bill would rename the account the “assistant prosecutor supplement fund” and make all assistant attorneys eligible for longevity pay.

**OPPONENTS
SAY:**

This bill would create a fund that could become insolvent and require additional funding sources in the near future. While the felony prosecutor supplement fund may have an additional \$600,000 to expend this year,

making these payments would reduce the minimum balance in this account over time. In fiscal 2004, the account only had \$150,000 above the \$1.5 million minimum. In 2005 and 2006, only \$400,000 was raised above the minimum. If this bill had been in effect since fiscal 2004, the account balance would only be \$650,000, putting longevity pay for all assistant prosecutors at peril in just a few years unless the fee was raised or the comptroller reduced longevity pay across the board. The state should not alter an account that has been a source of additional general revenue by potentially allowing it to become insolvent within a decade.

NOTES:

According to the fiscal note, the bill would cost the felony prosecutor supplement fund an additional \$600,000 each fiscal year for longevity pay for an additional 300 assistant county attorneys.

The companion bill, SB 844 by Hinojosa, passed the Senate by 30-0 on April 11 and has been referred to the House Judiciary Committee.