

BILL ANALYSIS

S.B. 40
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Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties assert that the amount of the required bond for certain judges who preside over guardianship or probate proceedings is inadequate considering the number of cases these judges handle and the value of the estates in question. S.B. 40 seeks to increase the amount of the bond required for certain judges presiding over these cases.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 40 amends the Government Code to replace the requirement for the judge of a statutory county court to execute a bond as prescribed by law for county judges with the requirement for such a judge to execute a bond before beginning the office's duties that is payable to the treasurer of the county; is in the amount set by the commissions court of not less than \$1,000 nor more than \$10,000, or, for a judge presiding in the court over guardianship or probate proceedings as defined in the Estates Code, not less than \$100,000 for a court in a county with a population of 125,000 or less, or not less than \$250,000 for a court in a county with a population of more than 125,000; and includes conditions that the judge will faithfully perform all duties of office and, for a judge presiding in the court over guardianship or probate proceedings, to perform the duties required by the Estates Code. The bill requires such a bond to be approved by the commissioners court. The bill authorizes a county, in lieu of the bond prescribed for a judge presiding in the court over guardianship or probate proceedings, to obtain insurance against losses caused by the gross negligence of such a judge in performing the duties of office and requires the county commissioners court to pay the premium for the insurance out of the county's general funds. The bill establishes that these provisions control over a specific provision for a particular court or county that attempts to create a requirement for a bond or insurance that conflicts with these provisions and makes these provisions inapplicable to a judge of a statutory county court who does not preside over guardianship proceedings; a judge of a statutory court who executes a bond, obtains insurance, or self-insures; or a judge who presides over a county criminal court.

S.B. 40 increases the amount of the bond that a county judge presiding in the county court over guardianship or probate proceedings must execute before beginning the duties of the office from not less than \$1,000 nor more than \$10,000 to not less than \$100,000 for a court in a county with a population of 125,000 or less, or not less than \$250,000 for a court in a county with a population of more than 125,000. The bill removes the requirement that the bond executed by a

county judge before beginning the duties of the office include the conditions that the judge will pay all money that comes into his hands as county judge to the person or officer entitled to it; pay to the county all money illegally paid to the judge out of county funds; and not vote or consent to pay out county funds for other than lawful purposes. The bill instead requires that the bond include conditions that the judge will faithfully perform all duties of office and, for a county judge presiding in the county court over guardianship or probate proceedings, to perform the duties required by the Estates Code. The bill authorizes a county, in lieu of the bond required for a county judge presiding in the county court over guardianship or probate proceedings, to obtain insurance against losses caused by the gross negligence of the judge in performing the duties of office and requires the county commissioners court to pay the premium for the insurance out of the county's general funds.

S.B. 40 requires a judge of a statutory county court, a statutory probate court, or a constitutional county court who is serving on the bill's effective date to comply with the applicable bond requirements, as amended by the bill, not later than November 1, 2017.

EFFECTIVE DATE

September 1, 2017.