

SUBJECT: State salary supplements for county prosecutors and certain county judges

COMMITTEE: Judicial Affairs— favorable, with amendment

VOTE: 7 ayes — Thompson, Clark, Garcia, Luna, Shields, Solis, Zbranek
0 nays
2 absent — Hartnett, Crabb

SENATE VOTE: On final passage, May 6 — voice vote (Harris, Galloway recorded nay, Shapleigh recorded present, not voting)

WITNESSES: No public hearing.

BACKGROUND : Under the Professional Prosecutors Act, prosecutors — district attorneys, criminal district attorneys, and county attorneys performing the duties of district attorneys — are currently paid the same salary as a state district judge: \$85,217 per year. These prosecutors also receive at least \$22,500 per year for the expenses of the office. The prosecutor is required to submit a report to the comptroller showing how such money was expended during the year.

In order to receive these funds from the state, the prosecutors are prohibited from engaging in the private practice of law or receiving a fee for referring a case to an attorney. County attorneys not performing the duties of a district attorney are not subject to the professional prosecutors law.

DIGEST: SB 1099 would create a new classification of prosecutors: county prosecutors, defined as county attorneys without general felony jurisdiction. Such prosecutors would be subject to the Professional Prosecutors Act, prohibiting them from engaging in the private practice of law or receiving a fee for referrals, only if the amount they received from state and county funds was at least 80 percent as high as the salary of a state district judge. A county prosecutor could waive any compensation above that 80 percent limit to be exempt from the restrictions on practice. The amount waived would be used for expenses of the county prosecutor’s office. A county prosecutor who received more than the salary of a state district judge on the

effective date of the bill would not be subject to the limitations on law practice.

SB 1099 would allow county prosecutors to receive a salary supplement from the state in an amount equal to one-half that of a state district judge divided by the number of counties served by the prosecutor with general felony responsibility. The total amount received could not be less than one-sixth of a state district judge's salary. A county could not reduce the salary of a county prosecutor because of this supplement, but if the supplement would allow the county prosecutor to receive a salary higher than a state district judge, the amount over that limit would be used for the expenses of the prosecutor's office.

SB 1099, as amended, also would allow a county judge to receive an annual state salary supplement of \$5,000 a year if that judge filed an affidavit with the Office of Court Administration showing that at least 40 percent of the functions the judge performed were judicial functions. SB 1099 would specify that a county auditor could not receive more in compensation and allowance than the highest paid elected county officer received from county funds.

The bill would also make corrective changes so that those sections of the professional prosecutors law that would not apply to county prosecutors would apply only to district, criminal district, and county attorneys performing the duties of a district attorney. The bill would take effect September 1, 1997.

**SUPPORTERS
SAY:**

When the professional prosecutors law was enacted in 1979, county attorneys were not included due to the fact that their duties were more local in scope. With the increased responsibilities in misdemeanor prosecutions given to county prosecutors over the years, county prosecutors now have a significant number of responsibilities imposed by the state. Because of this increased state responsibility, county attorneys should be paid at least a portion of their salary from the state.

Among the new responsibilities added to county prosecutors are increased duties related to juvenile justice, mental health hearings, family violence, chemical dependency, and drug abuse. Counties are also placing an

increased burden on county attorneys to litigate matters involving the county that have become increasingly complex, requiring an even higher degree of professionalism in the office.

County prosecutors provide essential functions in prosecuting misdemeanors. The amount of time involved in such prosecutions can force the county prosecutor to give up private practice. The amount of the salary paid to a county prosecutor by a county is a good indication of the amount of duties the county imposes on the prosecutor. Setting a cut-off point of how much county prosecutors could make before being subject to the professional prosecutors law would be appropriate in determining whether or not the prosecutor would be able to have any time to engage in the private practice of law.

In many counties, county judges perform a significant amount of judicial functions without any compensation from the state. This bill would allow such judges to receive a small supplement if a least 40 percent of their duties are judicial functions. Such a supplement could be used to attend continuing education or other functions of the judge not covered by the county.

**OPPONENTS
SAY:**

SB 1099 would allow a county attorney who received 80 percent of the salary of a district judge to continue in private practice. Under current law that amount would be \$68,173. County prosecutors could also send any excess of that amount to their office's expenses and still retain private practice. If county attorneys are to be considered professional prosecutors, they should be treated as others subject to that statute and refrain from private practice.

This bill would be a significant cost to the state, and that cost could increase with the enactment of SB 310 by Brown, increasing the salary of a state district judge to \$92,217.

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NOTES:

The committee amendment to SB 1099 would allow a county judge to receive an annual state salary supplement of \$5,000 a year if that judge filed an affidavit with the Office of Court Administration showing that at least 40 percent of the functions the judge performs were judicial functions.