

SUBJECT: Expanding private contracting for collecting court fees

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Hinojosa, Dunnam, Keel, Talton, Kitchen, Martinez Fischer
0 nays
3 absent — Garcia, Green, Shields

SENATE VOTE: On final passage, April 23 — 29-0

WITNESSES: For — Thomas M. Giamboi, Municipal Services Bureau; *Registered but did not testify:* Jim Allison, County Judges and Commissioners Association of Texas; Randy Sims, Brazos County Commissioners Court; Dwain James, American Collectors Association of Texas

Against — Russ Duncan, Governmental Collectors Association of Texas

BACKGROUND: Code of Criminal Procedure, art. 103.003 allows district and county attorneys, clerks of district and county courts, sheriffs, constables, and justices of the peace to collect court costs and fees that defendants are required to pay. A community supervision and corrections (probation) department also can collect this money in Harris County (a county with a population of 2.8 million or more).

Art. 103.0031 allows a county commissioners court to enter into a contract with a public or private vendor to collect fines, fees, restitution, and other costs ordered to be paid by a court serving the county.

VACS, art. 6701d-28 allows a court to collect or authorize a fee related to the collection of delinquent fines for motor vehicle misdemeanors, such as parking or moving violations, from a person who owes a fine that is more than 30 days overdue. The maximum fee is 20 percent of the amount of the fine or \$50, whichever is less. The article does not apply to Austin or any other municipality that has “disannexed territory previously annexed for limited purposes and which employs the practice of immobilization of motor

vehicles with a mechanical device unless all parking meters in the municipality accept any coins minted by the United States which have a value between five cents and 25 cents.” The article does not prevent a court, municipality, or county from using any other lawful means to enforce a judgment.

DIGEST:

CSSB 1778 would amend Code of Criminal Procedure, art. 103.003 to state that the article would not limit the authority of a commissioners court to contract with a private attorney or private vendor for the provision of collection services under art. 103.0031.

The bill would amend art. 103.0031 to allow the commissioners court of a county or the governing body of a municipality to enter into a contract with a private attorney or a public or private vendor to collect debts and accounts receivable, such as fines, fees, restitution, and other debts or costs, other than forfeited bonds, ordered to be paid by a court serving the county or a court serving the municipality, as appropriate.

The commissioners court or governing body that entered into the contract could authorize additional collection fees of 30 percent on top of each debt or account receivable that was more than 60 days past due and had been referred to an attorney or vendor for collection. The defendant would not be liable for the collection fee if the court of original jurisdiction determined the defendant was indigent, had insufficient resources or income, or was otherwise unable to pay all or part of the underlying fine or cost.

If the private attorney or vendor collected an amount from the defendant that was less than the total amount owed, including collection costs, the amount of costs collected that otherwise would be sent to the comptroller and the amount that the county or municipality could retain would be reduced by an equal percentage in order to compensate the attorney or vendor fully, not to exceed the percentage agreed upon in the contract.

CSSB 1778 would repeal VACS, art. 6701d-28, relating to the collection of delinquent fines or motor vehicle misdemeanors.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2001.

**SUPPORTERS
SAY:**

CSSB 1778 would provide an incentive to counties to collect fines, fees, and court costs. Currently, when a county pursues collection of delinquent fines, it pays between 5 and 30 percent of the amount collected to a collection agency. After deducting the amount of the fine that goes to the state and to the collection agency, the county often is left with little money. This bill would require the defendant to pay the collection cost, which would mean that counties would not lose revenue and would have greater incentive to pursue collection.

CSSB 1778 would be a boon to taxpayers. The current statewide collection rate for fines, fees, and court costs imposed on defendants is unacceptably low. When these costs go uncollected, both the state and local communities lose money, estimated to be in the tens of millions of dollars annually. Not only would taxpayers benefit from having more dollars collected from defendants, they no longer would have to subsidize efforts – via county collection costs – to make defendants pay up.

This bill would not impose unreasonable costs on defendants. They would not be subject to collection costs if they paid fines within 60 days of a due date or if a court found them unable to afford collection costs. In addition, a rate of 30 percent for collection services is reasonable. In other states with similar statutes, such as Mississippi, Kansas, and Florida, rates range from 33 to 40 percent. If the collection fee is set too low, private agencies will not be able to cover the cost of collecting payment and will not contract with local governments.

**OPPONENTS
SAY:**

This bill would exclude public, local government programs that collected delinquent fines from being able to charge defendants a collection fee. Although these programs typically charge only a 5 to 7 percent fee, this bill would undercut them and force them out of business. For example, if a defendant were delinquent in paying a \$100 fine, an in-house collection program would keep \$5 and give the county the remaining \$95. If this bill were enacted, a private agency could charge the defendant \$130, give the county \$100, and keep \$30. The county would have the incentive to contract

with a private collection agency that was more expensive to the defendant because the cost to the county would be smaller. This bill should allow public collection agencies to charge their fee on top of the fine so that the playing field for collection agencies is level.

CSSB 1778 actually would result in less revenue for state and local governments. In-house, government collection agencies successfully collect delinquent fees at a rate of 75 to 94 percent of what is assigned for collection. Private, third-party vendors, on the other hand, average only a 5 to 30 percent success rate in collecting what is assigned. If counties were encouraged to drop their in-house programs and use private collection agencies, their revenue could drop. In addition, the bill would allow private collection agencies that did not collect the full amount of a fine to keep a percentage of what they collected as their fee, further reducing the amount going to the state and counties.

This bill would impose a usurious collection rate on defendants. In-house collection agencies are successful while charging only 5 to 7 percent of a fine. The legislated maximum rate should be closer to this level.

NOTES:

The Senate-passed version of SB 1778 would not allow the governing body of a municipality to enter into a contract for debt collection, nor would it specifically include private attorneys as those eligible for a contract. It would not exclude forfeited bonds from debt collection.

The Senate-passed bill would amend VACS, art. 6701d-28 to state that the article did not limit the authority of the governing body of a municipality or a commissioners court to contract with a public or private vendor for collection services. Parallel to the changes made in the Code of Criminal Procedure, it would allow a municipality or commissioners court entering into a contract to authorize collection fees in the amount of 30 percent on each debt or account receivable more than 60 days past due that had been referred for collection. The defendant would be liable for the collection fees if the court of original jurisdiction determined the defendant was indigent, had insufficient resources or income, or otherwise was unable to pay all or part of the underlying fine or costs.