

- SUBJECT:** Allowing all counties to charge a records archive fee
- COMMITTEE:** County Affairs — favorable, without amendment
- VOTE:** 6 ayes — Lewis, W. Smith, Chisum, Farabee, Flynn, Quintanilla
- 0 nays
- 3 absent — Casteel, Farrar, Olivo
- WITNESSES:** For — Jim Allison, County Judges and Commissioners Association of Texas; Martha Doty Freeman, Texas Historical Research Advisory Board; Laura Hughes, Kaufman County Clerk; Cynthia Mitchell
- Against — None
- On — Jeane Brunson, County and District Clerks Association of Texas
- BACKGROUND:** Local Government Code, ch. 118, subch. B identifies the mandatory and permissive fees charged by county clerks, other than court fees. Mandatory noncourt fees charged by county clerks under the subchapter range from \$1 for oath administration to \$30 for a marriage license.
- Records management and preservation fee.** Sec. 118.011(b)(2) authorizes county clerks to set and collect a records management and preservation fee of up to \$5. The clerk may use the fee only for managing and preserving records, including for automation purposes. In a county adjacent to an international boundary, the county clerk must prepare an annual written plan for funding the record management and preservation service, submit it for public hearing and approval by the commissioners court, and deposit the collected fee into a separate records management and preservation account in the county's general fund.
- Records archive fee.** The 77th Legislature enacted HB 370 by Hinojosa, authorizing the commissioners courts of counties adjacent to an international boundary to adopt, as part of their annual budgets and during a public meeting, a records archive fee of up to \$5. The county clerk can charge the

records archive fee to any person, but the authorization expires September 1, 2008. Sec. 118.025 stipulates that the records archive fee:

- is for preservation and restoration services performed by the county clerk in maintaining any record the county clerk is authorized to accept for filing and that was filed before January 1, 1990;
- must be paid at the time a person, excluding a state agency, presents a public document to the county clerk for recording or filing;
- must be deposited in a separate records archive account in the county's general fund;
- must be posted in a conspicuous place in the county clerk's office;
- may fund only the preservation and restoration of the county clerk's records archive; and
- may not fund the purchase, lease, or development of certain computer software to index public records geographically.

The statute defines deterioration as any naturally occurring process or a natural disaster that results in the destruction or partial destruction of a public document. Preservation is any process that suspends or reduces the deterioration of public documents or that provides public access to documents in a manner that reduces the risk of deterioration, unless it is providing public access to public documents indexed geographically. Restoration is any process that permits the visual enhancement of a public document, including making the document more legible.

The county clerk must prepare an annual written plan for funding the preservation and restoration of the records archive. The commissioners court must publish notice of a public hearing on the plan in a newspaper of general circulation in the county at least 15 days before the date of the hearing. After the public hearing, the county commissioners court considers the preservation and restoration plan.

The county may spend excess funds after completing the plan only for the purpose of managing and preserving records under sec. 118.0216. After completing preservation and restoration, the commissioners may not order the collection of another archive preservation and restoration fee.

DIGEST: HB 1377 would allow county commissioners courts across the state to adopt a fee of up to \$5 for restoring and preserving any record that county clerks are authorized to accept for filing and that was filed before January 1, 1990.

The bill would take effect September 1, 2003.

SUPPORTERS SAY: HB 1377 would make funding available for more county clerks to preserve original county maps and documents, some of which date to the 19th century. These documents are irreplaceable, authentic records that provide the most reliable sources of legal data and that state agencies, universities, the U.S. Army Corps of Engineers, oil and gas concerns, private foundations, and individuals consult periodically. Many of the records also have value to historians, but they have deteriorated over the years and need restoration. This bill would allow counties other than border counties to generate funds to save these records.

The existing records management and preservation fee and other fees do not cover the cost of restoring deteriorating records in many counties. Under sec. 118.0216, most county clerks must spend the management fee on scanning, microfilming, and indexing recent filings, rather than on restoring older records, which requires different processes, expertise, and expenditures. Nor do the records management or other fees cover adequately the costs that some county archives incur in restoring older records subjected to flooding or other disasters.

While some larger counties may be able to dedicate portions of their records management and preservation fees to pay for archive restoration, other counties lack the resources to do so. Smaller counties whose clerks do not receive a large number of filings on which they can assess a management and preservation fee have a special need for an archive fee dedicated to restoring ancient records. Also, county funds once available for archive restoration now are being used for criminal justice expenses. HB 1377 would require the most appropriate users — those who file records with counties and who often research county archives — to pay the cost of the needed restoration.

The bill would contain safeguards to prevent clerks from charging unnecessary archive fees. A county clerk could charge the fee only if the county commissioners court approved a specific plan to accomplish

restoration of pre-1990 filings. The fee could be deposited only in a separate archive account of the county, and fee collection could not continue beyond the completion of the restoration plan. Also, authority for the existing records archive fee is scheduled to expire in 2008.

OPPONENTS
SAY:

HB 1377 would authorize counties across the state to assess an unnecessary fee. County clerks already may collect up to \$5 per filing for managing and preserving records they archive, including those that date to the 19th Century. Because the law authorizing that fee has no expiration date, clerks should be able to accomplish record-keeping automation and record preservation in an increasingly systematic and efficient manner over time. Depending on a county's size, the management and preservation fee alone already accounts for large annual fee collections — often in the hundreds of thousands of dollars — that should fund adequately the county clerks' obligations to maintain and preserve all records. Other existing fees also provide county clerks substantial assets to fulfill their responsibilities.

OTHER
OPPONENTS
SAY:

The bill should require county clerks to seek assistance from the State Library and Archives Commission (LAC) in developing their plans for restoring ancient records. Most county clerks lack the expertise that LAC can provide in advancing a plan for restoring ancient records, which LAC ultimately is responsible for preserving.

NOTES:

The companion bill, SB 1731 by Gallegos, was reported favorably, without amendment, by the Senate Intergovernmental Relations Committee on May 5 and recommended for the Senate Local and Uncontested Calendar.

A bill in the 76th Legislature in 1999, SB 1193 by Lucio, contained similar provisions, though not limited to border counties. SB 1193 passed the Senate but died in the House County Affairs Committee. A bill in the 75th Legislature in 1995, SB 436 by Lucio, would have established a records archive fee not to exceed \$10 and had other provisions similar to those of CSHB 370. SB 436 passed both houses but was vetoed by then-Gov. George W. Bush, who said it would create “new, excessive fees for filing of any public document.”