

SUBJECT: Allowing a county or city to contract for collection services in certain cases

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Keel, Denny, Ellis, Hodge, Pena, Talton

0 nays

3 absent — Riddle, Dunnam, P. Moreno

SENATE VOTE: On final passage, April 28 — 30-0-1 (Hinojosa present, not voting)

WITNESSES: *(On House companion bill, HB 3159:)*

For — Tomas J. Franco, City of Corpus Christi Municipal Court, Rene Mendoza; Thomas Giamboi, Municipal Services Bureau; Rodolfo G. Tamez, Municipal Court, City of Corpus Christi

Against — Robert J. Barfield

BACKGROUND: Code of Criminal Procedure, sec. 103.0031 allows the governing body of a county or municipality to contract with a private attorney or vendor for collection of fines or fees ordered paid by a court serving the county or municipality. The county or municipality can allow the private contractor to charge collection fees to the defendant in addition to the debt ordered by the court. This fee can be 30 percent of a debt that is more than 60 days overdue. An indigent defendant or a defendant unable to pay the debt is not subject to any collection fee.

Transportation Code, ch. 682 governs administrative adjudication of vehicle parking and stopping offenses in municipalities with populations of 500,000 or more, or municipalities with populations of 30,000 or more that operate under a council-manager form of government. Sec. 682.010 allows an order stating the amount of a fine for an offense to be enforced by impounding the vehicle, placing a device on the vehicle that prohibits its movement, imposing an additional fine, or denying or revoking a parking or operating permit.

DIGEST:

SB 782 would alter the collection of fees by contractors of a municipality or county. The bill would allow the commissioners court of a county or governing body of a municipality to enter into a contract for collection of:

- debts such as fines, fees, court costs, and restitution ordered paid by a court or hearing officer serving the county or municipality; and
- amounts in cases in which the accused failed to appear as promised in a written notice to appear, in compliance with a lawful summons, in compliance with a court's lawful order, or as specified in a citation charging the accused with a parking or stopping offense.

The county or municipality could authorize a collection fee of 30 percent on each owed amount that was more than 60 days past due and referred to a contractor for collection. The fee would not apply to a case dismissed by a court of competent jurisdiction or to any amount that had been satisfied through community service or time-served credit. The fee could be applied to any remaining balance after partial credit for community service or time served that was more than 60 days overdue. Unless otherwise provided in the contract, the court would calculate a collection fee and receive all fees, including the collection fee. In cases in which the accused failed to appear, the 30 percent collection fee would apply to the amount communicated to the accused if the accused agreed to pay the amount or the amount ordered paid after plea or trial.

If a county or municipality contracted for collection of debts and a person paid an amount less than the aggregate total required, the allocation to the comptroller, county or municipality, and contractor would be reduced proportionately. An debt would be considered overdue if it remained unpaid on the 61st day after:

- the date that the court determined the debt should be paid, in the case of a debt ordered by a court or hearing officer; or
- the date that the accused promised to appear or was ordered to appear, in the case of an individual who had failed to appear.

A county or municipality contracting for collection services could not use the 30 percent collection fee for any purpose other than compensating the contractor. A forfeited bond would not be subject to collection services under

this bill. A communication to the accused regarding the debt owed would have to include a notice of the person's right to enter a plea or go to trial on any offense charged against the person. Changes relating to collection fees would apply to an offense committed on or after the bill's effective date.

This bill would allow the governing body of a municipality with a population of more than 1.9 million to authorize the addition of collection fees for a collection program performed by employees of the governing body.

SB 782 also would authorize a municipality to enforce a fine, cost, or fee from a vehicle parking or stopping offense by filing an action to collect the debt in a court of competent jurisdiction. The action would have to be brought in the name of the municipality served by the hearing officer and in a county in which all or part of the municipality was located. Changes relating to parking or stopping offenses would apply to a offense committed before, on, or after the bill's effective date.

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, 2003.

**SUPPORTERS
SAY:**

SB 782 would fill a gap in current law that prevents a county or municipality from contracting with a professional collection service to obtain payment of delinquent fines if an individual failed to appear for a court date. In Opinion No. JC-0516 (June 24, 2002), the attorney general determined that in the case of an individual who failed to appear for a court date after promising to do so, a fine suggested by the court could not, under current law, be collected by an independent contractor. SB 782 would amend the Code of Criminal Conduct to allow a city to use a collection agency to collect a fine in such a case.

In 2001, the 77th Legislature enacted SB 1778 by Lucio, which established a county or municipality's authority to contract for collection services in the case of failure to appear, and the law should be amended to allow meaningful application of this provision. Prior to the attorney general's opinion, the majority of cases referred to an independent collector involved defendants who had failed to appear at their hearing. It is in those cases that the services of a professional collector would be most valuable, and SB 782 would allow

counties and municipalities to take advantage of these services and collect fines owed to them.

SB 782 would save taxpayers money by allowing the full proceeds of a fine to be realized by a city or county. In instances in which a private collector could not be used, a collection fee would have to be paid out of the fine owed to the city or county. Under SB 782, a city or county could allow an independent contractor to collect a fee exclusive of the fine owed to the governmental entity, leaving the fine intact for the city or county. A collection fee of 30 percent would be reasonable, since that is the typical rate for private collection services.

The bill also would provide a means that many cities need in order to collect outstanding fines against a person liable for a parking or stopping violation. A city would be able to file an action to collect the fine, aiding in cities' collection powers.

**OPPONENTS
SAY:**

It would be inappropriate for a city or county to authorize the collection of a fine before a defendant had entered a plea on a charge and a court had made a judgment. A judge who has not rendered a decision about the violation cannot authorize a fine, and a collection agency similarly should not be given the power to collect a fine and a substantial service fee of 30 percent before a judgment had been rendered. SB 782 would open the door to this type of practice.

NOTES:

The companion bill, HB 3159 by Capelo, was considered in a public hearing by the House Criminal Jurisprudence committee and left pending.