

SUBJECT: Additional civil filing fee for Bexar County courthouse improvements

COMMITTEE: Judiciary — committee substitute recommended

VOTE: 5 ayes — Hartnett, Homer, Gonzales, Goolsby, Krusee

0 nays

4 absent — Hopson, Alonzo, R. Cook, Hughes

WITNESSES: For — Betty Bueché, Bexar County Commissioner Court and Bexar County Judge

Against — None

DIGEST: CSHB 2272 would permit district courts, probate courts, and county courts in Bexar County to collect an additional fee of up to \$15 for filing of civil cases. The fee would be used for the construction, renovation, or improvement of the facilities that house the Bexar County civil and criminal courts.

These fees would be collected in the same manner as other fees, fines, or costs. The court clerk would send the fees to the county treasurer or other appropriate official at least once a month to be deposited in a dedicated account.

The collection of the fee would occur over a 12-month period beginning October 1, contingent on the commissioners court adopting resolutions authorizing the fee and requiring the county to spend \$1 for each dollar spent from the dedicated account. The county could make the required expenditure at any time, regardless of when the expenditure from the dedicated account occurred.

The resolutions would have to be filed with appropriate parties no later than September 1 prior to the first period in which the fee would be collected. The collection of fees would continue for each successive 12-month period until the resolution was rescinded or until October 1, 2022. A resolution to rescind the fee collection would have to be adopted and

submitted to appropriate officials by September 1 to cease the collection of fees for the next 12-month period.

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, 2007.

**SUPPORTERS
SAY:**

CSHB 2272 would help fund the restoration of the historic Bexar County Courthouse and adjoining Justice Center in the fairest fashion by having court users help maintain the justice facilities that they use. The Bexar County Courthouse is unique in that it is the largest historic courthouse in Texas at 268,000 square feet, more than twice the size of any other historic courthouse. Because of its size and age — the building is more than 110 years old — the funding need is great to keep the facility safe and functional and to preserve its historic character.

Bexar County already has tapped available funding resources, which have not addressed all of the safety concerns necessary to keep the full facility open to the public even over the short term. The community has raised almost \$7 million through the Hidalgo Foundation, including \$4.9 million dedicated to the interior and exterior renovation of the century-old structure. In addition, the county has appropriated more than \$10.5 million since 2000. Finally, the Bexar County Courthouse already has received a grant of \$3 million from the Texas Courthouse Preservation Program and at most could receive \$3 million more.

There is only so much that county government can contribute to courthouse preservation, restoration, and improvement in light of other pressing local needs. The county estimates that it still needs \$28 million to complete interior restoration in public areas alone. The funds raised by the civil filing fee authorized by CSHB 2272 would in part address the critical need to bring the courthouse up to code for entry and exit requirements on the fourth and fifth floors. An additional \$3 million is needed to replace the historic roof, which has not been replaced since 1926. There also is a need to address a bat infestation in the roof. A \$15 fee would generate an estimated \$940,000 annually, and this revenue could be capitalized or used as a dedicated stream of funds. These funds first would be directed to address the critical safety issues.

A general obligation bond taxing all citizens in Bexar County would not be the most prudent method of financing the restoration. Bonds waste

taxpayer dollars in long-term interest costs. In addition, Bexar County already is at bonding capacity because of the need to pay for other facilities, particular those supporting services for juveniles. A filing fee would be more fair and cost-effective because it appropriately would have users of the justice facilities pay for restorations to ensure their continued access to justice.

There is precedent for this bill in the enactment of HB 3586 by Hartnett by the 77th Legislature in 2001, which established a \$15 filing fee for restoration of the Dallas County Courthouse. Dallas County successfully has used these fees to fund restoration of the old, county courthouse, and this funding mechanism has not been challenged.

CSHB 2272 would not violate the open courts doctrine that featured in *LeCroy v. Hanlon*, 713 S.W.2d 335 (TX 1986), in which the Texas Supreme Court found a court filing fee unconstitutional. The constitutional issue in that case revolved around the fact that Lubbock County's filing fee was directed to state general revenue and not the court system. The *LeCroy* decision stated, "The major defect with the filing fee is that it is a general revenue tax on the right to litigate: the money goes to other statewide programs besides the judiciary." CSHB 2272 clearly would direct funds to the judiciary for use solely in the renovation and necessary upkeep of the courthouse and justice facilities. Inherent to renovations to maintain the functionality of the courthouse is the need to use materials and techniques that preserve the historical character of the building.

Finally, any person for whom the burden of a filing fee was so great that it would prevent their access to the court system could file a pauper's affidavit to have filing fees waived. The bill would not affect justice of the peace courts that have jurisdiction over small claims cases. Small claims courts are the jurisdiction under which many people of lesser means file their cases.

OPPONENTS
SAY:

Higher fees limit access to courts by individuals without the financial means to pay the fees. The effectiveness of the judicial system can be judged in part by the accessibility of the courts to ordinary citizens. Court costs in Texas already include a variety of fees, creating a particular burden for the poor. A \$15 fee might seem insignificant, but the Legislature should consider carefully the total impact that so many "small" fees would have on someone involved in a case. Rather than increasing court fees to pay for restoration and preservation of its courthouse, Bexar

County should issue general obligation bonds or pursue additional grant support.

There are constitutional questions surrounding the ability to use a court fee for the restoration of a court building. In *LeCroy v. Hanlon*, the Texas Supreme Court ruled that “filing fees cannot go for non-court-related purposes.” The ruling further states that when reviewing the assessment of filing fees on litigants, the argument should be based on an individual rights perspective rather than a societal perspective. While it could be argued that society would benefit from the assessment of fees to preserve an historic building, this ignores the individual right guaranteed by the Constitution that litigants should not have to “pay a tax for general welfare programs as a condition to being allowed their right of access to the courts.” The historic restoration of a court building, especially for purposes unrelated to the structural integrity of the building, is not fundamentally related to the ability of a citizen to access justice.

OTHER
OPPONENTS
SAY:

CSHB 2272 should not sunset the assessment of the Bexar County filing fee for civil cases in 2022. Given the size and historical value of the Bexar County Courthouse, it would be beneficial for the county to be able to assess fees, even if the fee were smaller, in perpetuity to finance ongoing maintenance on court facilities.

In addition, counties and their citizens generally do not take enough responsibility for the preservation of their historic buildings. It would be worthwhile to give all counties with historic courthouses the opportunity to assess small fees on civil cases for the preservation of facilities.

NOTES:

The original version of HB 2272 also would have permitted the assessment of a fee on civil cases in Bexar County justice courts and would have ceased the fee assessment in 2020 rather than 2022.

HB 2272 originally was recommended for the Local and Consent Calendars Committee, which transferred it to the Calendars Committee.

The companion bill, SB 793 by Van de Putte, was heard and left pending by the Senate Jurisprudence Committee on April 11.