

- SUBJECT:** State fiscal matters related to the judiciary
- COMMITTEE:** Appropriations — favorable, without amendment
- VOTE:** 25 ayes — Pitts, Turner, Aycock, Button, Chisum, Crownover, Darby, Dukes, Eiland, Giddings, Gooden, Hochberg, Johnson, S. King, Margo, McClendon, D. Miller, Otto, Patrick, Riddle, Schwertner, Shelton, Torres, Villarreal, Zerwas
- 0 nays
- 2 absent — Martinez, Morrison
- WITNESSES:** None
- BACKGROUND:** Texas Constitution, Art. 3, sec. 35 limits bills to one subject, except for general appropriations bills, which can include various subjects and accounts. However, this provision has been interpreted as prohibiting the general appropriations bill from changing substantive law. In other words, appropriations bills deal only with spending. Because the levels of funding in an appropriations bill assume certain programmatic changes, the statutory changes required to meet that funding level are contained in other legislation.
- On April 3, the House passed HB 1 by Pitts, the House version of the general appropriations bill for fiscal 2012-13, and the bill was reported favorably, as substituted, by the Senate Finance Committee on April 21. For further discussion of issues in the state budget, see HRO State Finance Report Number 82-4, *CSHB 1: The House Appropriations Committee's Proposed Budget for Fiscal 2012-13*, March 31, 2011.
- DIGEST:** HB 3648 would amend portions of the Government Code and other statutes as required to implement provisions for the judiciary in the general appropriations act for fiscal 2012-13.
- Agency authorizations.** CSHB 3648 would authorize state agencies that receive appropriations under Article 4, judiciary, of the general appropriations act to reduce or recover expenditures by:

- consolidating required reports or publications and filing or delivering them exclusively by electronic means;
- extending the effective period of any license, permit, or registration granted or administered by the agency;
- entering into a contract with another governmental entity or a private vendor to perform the agency's duties;
- adopting additional eligibility requirements for people who receive benefits from the agency to ensure the benefits were received by the most deserving people, consistent with the purpose for the benefits;
- allowing agency communications with people and required agency documents delivered to or by the agency, including applications, notices, billing statements, receipts, and certificates, to be delivered by email or through the Internet; and
- adopting and collecting fees to cover agency costs.

Payments not to exceed general appropriations act amounts. HB 3648 would prohibit payments, including those for salaries, travel and office expenses, from exceeding the amounts authorized in the general appropriations act for various positions, including visiting judges, district judges, prosecuting attorneys, and nonresident witnesses, regardless of other law. Supplements and salary reimbursements to counties for prosecutors, county judges, and lawyers appointed to death penalty cases also would be limited to the amounts set in the general appropriations act, regardless of other law.

Longevity pay for prosecutors. HB 3648 would change payments to counties for longevity pay supplements for assistant prosecutors. If sufficient funds were not available to meet the requests made by counties in a given period, the county would not be entitled to receive the balance of the funds at a later date, and the longevity pay program would be suspended to the extent of any insufficiency.

Process server certification fees. HB 3648 would allow the Process Server Review Board to recommend fees to the Texas Supreme Court that would be charged for process server certification and certification renewal. The Texas Supreme Court would have to approve the recommended fees before the fees could be collected. Fees would be prorated to cover periods less than a full term. The entire certification renewal fee would be required on the expiration date of the prorated period. The fees established by HB 3648 would apply to persons who held or applied for a process server certification on or after the bill's effective date.

The Office of Court Administration of the Texas Judicial System (OCA) would be required to set up a certification division to oversee the regulatory programs assigned to it. The OCA would be authorized to collect the certification and renewal fees, which then would be sent to the comptroller for deposit into the General Revenue Fund. Fees collected would be available to be appropriated to the OCA to support the process server and guardian regulatory programs.

HB 3648 would authorize the Process Server Review Board members, who would not be entitled to compensation, to receive reimbursement for actual and necessary expenses incurred in traveling and performing official board duties.

Judicial and Court Personnel Training Fund. HB 3648 would change the classification of the Judicial and Court Personnel Training Fund from an account in the state treasury to a dedicated account in the General Revenue Fund. Because the moneys would then already be in the General Revenue Fund, the bill would eliminate a provision that required balances in excess of \$500,000 to be transferred to the General Revenue Fund at the end of each fiscal year.

Juror pay. HB 3648 would eliminate the statutory rate of \$40 currently provided to jurors as reimbursement for travel and other expenses, and would eliminate the \$34 reimbursement rate paid by the state to the county to cover a portion of that cost. Instead of referencing a specific dollar amount, the bill would tie the amount paid by the county to a juror and the amount reimbursed by the state to a county to the amounts provided in the general appropriations act for those purposes.

If reimbursement to a county for juror pay is reduced under current law, the bill would allow the comptroller, as provided by rule, to apportion the payment of the balance owed, and would eliminate the requirement that the comptroller pay the balance owed to the county when sufficient money was available or with the next payment. The comptroller's rules could permit a different rate of reimbursement for each quarterly payment.

Effective Date. The bill would take effect September 1, 2011.

SUPPORTERS
SAY:

The changes made in HB 3648 would result in an estimated net positive fiscal note impact of \$23,964,992 in general revenue funds for fiscal 2012-2013.

Agency authorizations. These authorizations would give agencies flexibility and control in reducing or recovering expenditures in ways other than those specifically identified in this bill. They have in-depth knowledge of their programs and operations and could find ways to meet program needs while maximizing the use of appropriated funds.

Longevity pay for prosecutors. The state funds for longevity pay supplements for county prosecutors are derived from a percentage of surety bond posting costs. The collections have thus far been sufficient for the state to make its quarterly payments, and there is no indication those funds would diminish. Prosecutors would in all likelihood continue to receive these state longevity supplements even though this bill would provide that if a shortfall did happen in a quarterly payment, the comptroller would not be required to make up the shortfall when funds later were available. The county is not required under current law to pay longevity supplements if the county does not receive funds from the comptroller, so the county would not be financially harmed by this change in law.

Process server certification fees. CSHB 3648 would relieve Texas taxpayers of the burden of paying for services provided by the Office of Court Administration (OCA) in regulating process servers. The Process Server Review Board was established by Texas Supreme Court order in 2005, and the OCA has been administering the process server certification program since its inception without requiring fees. About 6,000 process servers benefiting from the program have essentially received free services for the past six years. Fees generated by CSHB 3648 would pay for the program and would allow process servers to support the regulation of their profession as other professionals do. Process servers receive a three-year license.

If an annual fee of \$75 was recommended and approved, the bill could generate more than \$1 million a year. The bill would authorize the use of the fee revenue for OCA's process server and guardian regulatory programs, which would be the most efficient use of the money, given that the same staff works on both programs and the current guardian program fees do not cover its costs. It would not be practical or efficient to hire separate staff to oversee these regulatory programs just to match the revenue source. If a Sunset date for the fee were established in 2013, as SB 1582 would do, it could result in some process servers paying the fee

and others not paying the fee, since process servers have a three-year license.

Many process servers who would be affected by this fee have expressed support for it. The Texas Process Servers Association, one of the oldest process servers' organizations in Texas, voted unanimously to support HB 1614, which also would authorize this fee.

Judicial and Court Personnel Training Fund. The General Revenue Fund would realize \$22,376,000 in fiscal 2012-13 by reclassifying the Judicial and Court Personnel Training Fund administered by the Court of Criminal Appeals from an "other fund" in the state treasury to a general revenue account.

Juror pay. The changes in the bill would result in a sum certain for juror pay in the general appropriations act that would be paid quarterly to the counties in different amounts, depending on the reimbursement claims coming in each quarter. The comptroller could set by rule a maximum reimbursement of \$40 paid for each juror so that a county could get only what they paid out and no more, regardless of the reimbursements filed in that quarter.

OPPONENTS
SAY:

Agency authorizations. Sec. 1.02(4) is too broadly worded and would give state agencies authority to change program eligibility, services, and benefits without legislative direction or oversight.

Longevity pay for prosecutors. Although funding for this program has been stable, the Legislature could decide to reduce the appropriation out of the surety bond cost fund. It would make more sense to continue to allow back pay to be paid if and when it became available.

Process server certification fees. HB 3648 would increase the fees for the clients of process servers. This increase then would add to the costs of services for the clients of attorneys and other professionals who use process servers. Although the fee was backed by a large process server organization, the number of process servers the organization represents is very small relative to the number who would be affected. The organization's membership of more than 1,000 members amounts to just one-sixth representation of all process servers in Texas.

Any process server certification fee established should be set in an amount just high enough to cover the costs of the process server regulatory program and no more. HB 3648 inappropriately would allow fee revenue from process servers to be used for the guardian regulatory program. In addition, the fee itself should be capped and a Sunset date established, as would be done with the Senate version, SB 1582.

Juror pay. Juror pay could be significantly reduced, which would go against the rationale of the \$40 a day minimum reimbursement amount intended to encourage jurors to serve. An unlikely but potential problem with not having exact amounts in statute is that counties could end up getting reimbursed by the state more than \$40 a day per juror, more than what they paid, if very few counties file for the reimbursement.

OTHER
OPPONENTS
SAY:

Process server certification fees. HB 3648 would allow an unauthorized entity to obtain funding to regulate the process server industry. Since Texas lawmakers did not create the Process Server Review Board by statute, the Legislature cannot fund the board's regulation. This would violate the principle of government separation of powers. Since the legislative intent has been to allow the process server industry to go unregulated, HB 3648 is unnecessary. Bills with process server certification fees were not passed during the past two legislative sessions, so previous lawmakers saw no need to fund this program.

NOTES:

SB 1582 by Ogden, which has similar provisions concerning fiscal matters involving the judiciary, passed the Senate by 24-7 (Birdwell, Carona, Davis, Ellis, Fraser, Gallegos, Harris) on April 29 and was referred to the House Appropriations Committee on May 2.

HB 1614 by Gooden, which also would authorize process server certification fees, passed the House by 101-46 on April 18 and was referred to the Senate Jurisprudence Committee on April 26.