

SUBJECT: Vesting the Lavaca County attorney with the duties of a district attorney

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 9 ayes — Lewis, Farrar, Farney, Gooden, Hernandez Luna, Hunter, K. King, Raymond, S. Thompson

0 nays

WITNESSES: For — John Stuart Fryer, Micah Harmon, and Tramer Woytek, Lavaca County; Heather McMinn, 25th Judicial District of Texas

Against — None

On — Robert Kepple, District and County Attorneys Association

BACKGROUND: Government Code, sec. 43.112 established the 25th Judicial District. Its elected felony prosecutor has jurisdiction in Gonzales, Guadalupe, and Lavaca counties.

The Professional Prosecutors Act, Government Code, ch. 46 ties the salary of elected prosecutors covered by the act to the salary of a state district judge, which is \$125,000. To receive the higher salary, an elected prosecutor must give up his or her private civil practice.

DIGEST: HB 696 would remove Lavaca County from the list of counties that elect the felony prosecutor of the 25th Judicial District. The bill would grant the Lavaca County Attorney the duties and powers of a district attorney. The Lavaca County Attorney would be added to the Professional Prosecutors Act.

The bill would take effect on September 1, 2013.

SUPPORTERS SAY: HB 717 would increase the efficiency of law enforcement in Lavaca County. The 25th Judicial District has seen a sharp rise in population and economic activity related to the development of oil and gas deposits in the Eagle Ford shale formation across South Texas. Guadalupe County, which houses the Judicial District's felony prosecutor in Seguin, is expanding the

most, as the city of San Antonio spreads east. The increase in population and the oil and gas boom has led to an increase in crime in the district.

The current prosecutor is too far away and too focused outside of Lavaca to fully attend to the county's needs. This has resulted in too many suspects released from the county jail after 90 days because no timely indictment has been made. Lavaca County saw an 81 percent increase in felony cases in fiscal 2012, a year in which it had 78 active felony cases. In comparison, Guadalupe County had 713 active cases in district courts, so the local felony prosecutor, as a matter of efficiency, must focus attention on Guadalupe County. Lavaca County does not have enough cases to merit full-time attention, and it is expensive for the prosecutors and investigators in Seguin to make the three-hour round trip to the Lavaca County courthouse in Hallettsville. Having a local full-time felony prosecutor would improve efficiency and the speed with which cases were prosecuted, justifying the small additional cost in the fiscal note.

There is precedent for granting the county attorney the same duties as a district attorney. Lavaca County would be among 27 other counties in which a county attorney has been granted the authority to perform the duties of a district attorney.

The Legislature historically has added felony prosecutor offices to the Professional Prosecutors Act when the prosecutor has requested it. The exception was when the 82nd Legislature did not move two prosecutors into the act because of a lack of funding for spending increases. Since the state has seen a dramatic increase in revenue, it can afford to add the Lavaca County Attorney's Office to the Professional Prosecutors Act, especially with the corresponding benefits to law and order. Finally, there are counties with smaller felony dockets that have prosecutors under the professional prosecutor's act.

**OPPONENTS
SAY:**

HB 717 would be an inefficient use of state and local funds. Lavaca County is too small to warrant its own felony prosecutorial staff. Including Lavaca County within the 25th Judicial District's prosecutorial resources is the most responsible use of public funds. According to the fiscal note, the bill would cost the state \$184,334 in general revenue and \$124,262 from the judicial fund through the biennium.

NOTES:

A related bill, HB 696, by Kleinschmidt, would remove Gonzales County from the 25th Judicial district and would vest its county attorney with the

powers and responsibilities of a district attorney. It was passed by the House on April 26.

CSSB 1 includes a rider in article 11 that would raise the annual salary of state district court judges by 10 percent to \$137,500.