

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 2214  
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Jurisprudence  
4/30/2009  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Funding for civil legal aid in Texas, which depends primarily on interest on lawyers' trust accounts (IOLTAs), is facing a crisis not seen in the past 20 years due to expected funding cuts resulting from dramatically reduced interest rates. On December 16, 2008, the Federal Reserve lowered its benchmark interest rate to an all-time low of zero to .25 percent. Conservative estimates for the amount of IOLTA funds in 2009 are less than \$1.5 million, down from \$20 million in 2008.

Because interest rates are so low, little or no interest will accumulate, which means that the Texas Access to Justice Foundation and the 42 nonprofit programs it funds will be drastically cut or eliminated. Without IOLTA funds, core services for free legal advice and representation to low-income Texans with civil legal programs—such as landlord-tenant issues, foreclosure defense, family law matters, health and employment law, access to public benefits, and consumer issues—are in jeopardy. Alternate sources of funding must be found immediately to try to keep legal aid providers afloat. As the economy spirals downward and the number of persons who need legal services increases, the preservation of legal aid in Texas is more important than ever.

Basic civil legal services (BCLS) funds have historically supplemented IOLTA funds, allowing providers of civil legal aid to offer core legal services to more low-income Texans.

C.S.S.B. 2214 amends current law relating to a filing fee imposed on a notice of foreclosure sale to fund civil legal services for indigents.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter B, Chapter 118, Local Government Code, by adding Section 118.026, as follows:

Sec. 118.026. NOTICE OF FORECLOSURE SALE. (a) Requires a county clerk to collect a \$150 fee for a notice of sale filed under Section 51.002(b)(2) (relating to a notice of sale being filed in the office of the county clerk of each county), Property Code, from the holder of the security instrument, unless the holder is the original grantee of the security instrument. Prohibits the county clerk, if a property has more than one notice of sale filed for the property and the fee has not been refunded under Subsection (e), from collecting more than one \$150 fee from the holder of the security instrument under this subsection.

(b) Requires the county clerk to keep a separate record of the fees collected under this section and to remit the fees to the county treasurer not later than the deadline provided by Section 113.022 (Time for Making Deposits). Authorizes the county to retain not more than five percent of the fees for the county's costs for implementing and administering this section.

(c) Requires the county treasurer, on or before the last day of the month following each calendar quarter, to remit to the comptroller of public accounts

(comptroller) the money from all fees collected during the preceding quarter, except as provided by Subsection (b) or (e).

(d) Requires the comptroller to deposit the money received under Subsection (c) in the judicial fund for programs approved by the supreme court that provide basic civil legal services to the indigent.

(e) Requires the county treasurer to refund a \$150 fee collected under Subsection (a) not later than the 60th day after the date the refund is requested if:

(1) the foreclosure sale is canceled; and

(2) the holder of the security instrument provides to the county clerk documentation establishing that the foreclosure sale was canceled, and an affidavit signed by a designated representative of the holder of the security instrument indicating that the holder has not received reimbursement from the mortgagor for the fee.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: upon passage or September 1, 2009.