

BILL ANALYSIS

C.S.H.B. 462
By: Gallego
Judicial Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Roughly 20 states and US territories charge fees to certain nonresident attorneys who wish to participate in proceedings in that state or territory's courts. These fees range from \$50 in California to \$5,000 in the Northern Marianas Islands, with the average being \$201 (excluding the \$5,000 outlier) and the median being \$138. This money is used mostly to fund indigent legal services.

By way of example, Oregon charges \$250 and received 276 applications in FY 2002, raising approximately \$69,000. As a rough estimate of the sums that a similar \$250 fee may raise in Texas, Oregon had approximately 150,000 civil cases filed in the last year in which data is available, while Texas had roughly 585,000 cases filed.

C.S.H.B. 462 requires that a \$250 fee be charged to certain nonresident attorneys requesting permission to participate in Texas court proceedings. This money is to be used to fund programs that provide legal services for the indigent. C.S.H.B. 462 mandates that the Board of Law Examiners (the "Board") collect this fee, primarily to give the Board a more accurate count of the number of nonresident attorneys participating in court proceedings in Texas.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Supreme Court of Texas in SECTION 1 (Section 82.0361, Government Code) of this bill.

ANALYSIS

C.S.H.B. 462 amends the Government Code to define "nonresident attorney" and to require a nonresident attorney requesting permission to participate in proceedings in a court in this state to pay a fee of \$250 for each case in which the attorney is requesting to participate. The attorney shall pay the fee to the Board of Law Examiners before filing a motion to participate with the applicable court as provided by rules adopted by the Supreme Court of Texas.

C.S.H.B. 462 requires the Board of Law Examiners to remit the fees collected to the comptroller on a quarterly basis, and specifies that these funds are to be deposited to the credit of the basic civil legal services account of the judicial fund for use in programs that provide basic civil legal services to the indigent. The bill also specifies that the Supreme Court may waive or reduce this fee for a nonresident attorney who seeks to represent an indigent person.

EFFECTIVE DATE

September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

H.B. 462 would charge a nonresident attorney the \$250 fee for each court in which he or she appeared.

An attorney participating in the same case at the trial, appellate and supreme court levels would thus pay three \$250 fees. The Substitute charges the fee on a per-case basis. An attorney in the above example would pay only one \$250 fee.

The Substitute changes the manner of fee collection. Under H.B. 462, the court clerks would collect the fees. The substitute directs the Board of Law Examiners to collect the fees. The Substitute also contains proof-of-payment provisions for nonresident attorneys.

The Substitute mandates that all of the fees collected are to be used for basic civil legal services for the indigent. Of the fees collected at the appellate or district court levels, H.B. 462 required only 50% of these fees to be utilized for this purpose.

The Substitute also provides that the Supreme Court may adopt rules to waive or reduce the \$250 fee for nonresident attorneys seeking to represent an indigent person. H.B. 462 contained no such provision.