

BILL ANALYSIS

C.S.H.B. 1940
By: Luna
Judicial Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In 2001, the 77th Legislature enacted H.B. 178, which created a longevity supplement for assistant prosecutors in offices with felony jurisdiction and mandated that counties pay this supplement out of the county general fund. H.B. 178 also provided that the state was to reimburse the counties for amounts expended for these supplements. A county seeking reimbursement was to certify to the comptroller on a quarterly basis the amount of reimbursement that the particular county was entitled to receive. Afterward, the comptroller was to issue a warrant to the county for that amount.

The 77th Legislature also provided for a contingency appropriation to fund this supplement, but this was reduced in conference committee to an inadequate level. Even this has not been available as no funds have ever been certified.

Unfortunately for the counties, the Attorney General ruled that they remained obligated for the payment of the longevity supplement despite the lack of reimbursement by the state as originally envisioned by H.B. 178 (Opinion No. JC-0438; December 3, 2001).

C.S.H.B. 1940 retains most of the provisions of the current law, but makes plain that counties have no obligation to pay the longevity supplement unless state funds are appropriated for that purpose. In order to provide these funds in today's challenging fiscal environment, C.S.H.B. 1940 establishes a Felony Prosecutor Supplement Fund in the state treasury, with the funds being generated by a \$10 cost assessed to sureties on the posting of each surety bond on Class B misdemeanors and more serious offenses.

The Comptroller estimates that the longevity pay supplement will require approximately \$5 million in the next biennium. Estimates by the Texas District and County Attorneys Association covering approximately 90 counties show a revenue generation potential of roughly \$2.8 million annually.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1940 amends the Government Code to provide that counties shall pay the longevity pay supplement only to the extent they receive funds from the comptroller for that purpose. If sufficient funds are not available from the state to meet the counties' requests as certified to the comptroller, the comptroller shall apportion the available funds to the eligible counties by reducing the amount payable to each county on an equal percentage basis. Counties that do not receive the full amount requested shall apportion the funds received to eligible assistant prosecutors on an equal percentage basis, but are not obligated to make up the difference between the amount certified and the amount received from the state. The bill sets forth procedures and timing for certification to the comptroller and the payment of these funds.

The bill also provides that an assistant prosecutor is entitled to longevity pay if he or she is a full time

employee on the last day of a state fiscal quarter, is not on leave without pay on the last day of a state fiscal quarter, and has accrued at least four years of lifetime service not later than the last day of the month preceding the last month of a state fiscal quarter.

The bill creates a Felony Prosecutor Supplement Fund in the state treasury. A court, judge, magistrate, peace officer, or other officer taking a bail bond for an offense other than a misdemeanor punishable by a fine only under the Code of Criminal Procedure shall require the payment of a \$10 cost by each surety posting the bail bond.

The bill provides procedures for the collection, deposit, and custody of these costs, and permits a county to retain 10% of the funds collected, in addition to all interest, under certain conditions. The remaining funds are to be sent to the comptroller and deposited in the felony prosecutor supplement fund. At the end of each fiscal year, any unexpended balance in the fund in excess of \$1.5 million shall be transferred to the general revenue fund

EFFECTIVE DATE

December 1, 2003, except that the section of the Act creating the Felony Prosecutor Supplement Fund takes effect September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute amends the language of the original to clarify any ambiguities surrounding the term “pro-rata” in cases where funds are not sufficient to meet all of the certifications by the counties. The substitute also requires the comptroller to issue warrants to the counties within 60 days after the first day of each state fiscal quarter, versus 30 days as specified by the original.

The substitute also provides that if insufficient funds are available for a particular payment, the comptroller shall carry that amount forward and shall pay it when funds are available or when the next payment is required. This carry-forward provision also applies to counties that do not submit required information on a timely basis.

The substitute changes the term “fee” used in the original’s provision for the felony prosecutor supplement fund to the term “cost.”

The original provided that a county may retain as a collection fee 10% of the funds collected (as the felony prosecutor supplement fund). The substitute deletes the words “as a collection fee,” but continues to permit the counties to retain 10% of the funds collected.

The original provided that an unexpended balance in excess of \$1 million shall be transferred to the general revenue fund. The substitute raises this to \$1.5 million.

The substitute changes the effective date of the part of the bill originally effective from January 1, 2004 to December 1, 2003.