

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION**

**May 23, 2003**

**TO:** Honorable Teel Bivins, Chair, Senate Committee on Finance

**FROM:** John Keel, Director, Legislative Budget Board

**IN RE: HB3306** by Berman (Relating to certain appropriations made in support of the courts by the legislature to certain individuals and governmental entities, to the assignment of certain visiting judges, and to the Eighth, Ninth, and Eleventh courts of appeals districts.),  
**Committee Report 2nd House, Substituted**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB3306, Committee Report 2nd House, Substituted: a positive impact of \$4,736,260 through the biennium ending August 31, 2005.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

Estimated savings should be compared to funding levels sufficient to conform to current policies and law. Estimated savings should not be compared to agency Initial General Revenue/Building Block requests.

**General Revenue-Related Funds, Five-Year Impact:**

<b>Fiscal Year</b>	<b>Probable Net Positive/(Negative) Impact to General Revenue Related Funds</b>
2004	\$2,368,130
2005	\$2,368,130
2006	\$2,368,130
2007	\$2,368,130
2008	\$2,368,130

**All Funds, Five-Year Impact:**

<b>Fiscal Year</b>	<b>Probable Savings/(Cost) from GENERAL REVENUE FUND 1</b>
2004	\$2,368,130
2005	\$2,368,130
2006	\$2,368,130
2007	\$2,368,130
2008	\$2,368,130

**Fiscal Analysis**

The bill would amend provisions relating to certain appropriations made in support of the courts by the legislature to certain individuals and governmental entities, in the assignment of visiting judges, and to the Eighth, Ninth, and Eleventh courts of appeals districts. The bill would limit the amount of judicial and/or prosecutor payments, expenses, per diem, travel, salary, salary supplements, office

expenses, reimbursement of office expenses, longevity pay supplements, or any other supplements, compensation and payments of counsel, and witness expenses to that amount appropriated for that purpose in the General Appropriations Act. A positive fiscal impact could result if the Legislature appropriates less than what is currently spent for these purposes. Sections 4, 5, and 9 of the bill would take immediate effect if the bill receives the vote of two-thirds the members of each house. Otherwise, those sections of the bill would take effect September 1, 2003. Section 6 of the bill would take effect January 1, 2005.

The bill would amend the Code of Criminal Procedure to shift payments for counsel appointed prior to September 1, 1999 in death penalty cases from the Court of Criminal Appeals to the convicting court, for which counties receive reimbursements from the state, in an amount up to \$25,000 per case. No net fiscal implication to the state is anticipated for this portion of the bill because savings to the Court of Criminal Appeals would be offset by costs to the Judiciary Section, Comptroller's Department for reimbursements to counties. This portion of the bill would take effect on September 1, 2003.

The bill would amend Government Code, Chapter 22 relating to the composition of the Eighth and the Eleventh courts of appeals districts. The bill would remove Ector, Gaines, Glasscock, Martin, and Midland counties from the Eighth Court of Appeals District and would add those same counties to the Eleventh Court of Appeals District. According to the Eighth Court of Appeals, a significant percentage of the court's cases filed originate in the designated counties. The bill would move any new cases filed to the Eleventh Court of Appeals in a proportionate amount.

Under the bill, the Eighth Court of Appeals may realize savings for fewer cases filed, and the Eleventh Court of Appeals may realize costs for additional cases filed; however, due to the net effect of savings and costs, the fiscal implication to the state is not anticipated to be significant. Additionally, this estimate assumes that the bill would not effect the Supreme Court's program to equalize the dockets of the courts of appeals for the number of new cases filed each year per justice. This estimate assumes under the equalization of the dockets program, the Eighth Court of Appeals would receive more case transfers from other courts, and the Eleventh Court of Appeals would receive fewer case transfers.

The bill would amend Government Code, Chapter 22 relating to the number of justices for the eighth and ninth courts of appeals districts. The bill would reduce the number of justices on the Eighth Court of Appeals from three to two. Under the bill, the reduction would take place when a vacancy occurs or the term of a justice expires on December 31, 2004, whichever occurs first. This portion of the bill would take effect September 1, 2003. The bill would also increase the number of justices on the Ninth Court of Appeals from two to three, effective January 1, 2005. To the extent that the Eighth Court of Appeals would realize possible savings in judicial salary, related legal and administrative salary, and other related expenses from the reduction in number of one justice, those savings would be offset by increased costs to the Ninth Court of Appeals for the increase in number of one justice. This estimate assumes the justice at the Eighth Court of Appeals stays in office until December 31, 2004.

The bill would amend Government Code, Chapters 74 and 75 relating to the assignment of certain active, retired or former justices or judges as visiting judges. The bill would set certain requirements for persons eligible to serve as visiting judges and would amend procedures relating to objections to the assignment of a visiting judge. The bill would allow the state to compensate visiting judges serving for a half day or less in an amount equal to one-half of the amount the judge would be entitled for serving a full day. The bill would provide that no visiting judge serving in a statutory county court would receive compensation from the state.

The bill would take effect September 1, 2003.

## **Methodology**

According to the Judiciary Section, Comptroller's Department, visiting judges served 3,708 days in courts of appeals in fiscal year 2002. Of this amount, 21 percent (778.7 days) were served by former judges or justices who received an average of \$414 pay per day. Assuming 20 percent of these days were half days, which under the bill would be compensated at a rate of \$207 per day, the state would realize a savings of \$32,237 in each fiscal year: [20 percent of 778.7 days = 155.7 days; 155.7 days x \$207/day = \$32,237.]

Additionally, 79 percent of the total 3,708 days served in fiscal year 2002 (2929.3 days) were served by retired judges or justices who received an average of \$431 pay per day. Assuming 20 percent of these days were half days, which under the bill would be compensated at a rate of \$215.5 per day, the state would realize a savings of \$126,254 in each fiscal year: [20 percent of 2929.32 days = 585.9 days; 585.9 days x \$215.5/day = \$126,254.]

Also according to the Judiciary Section, Comptroller's Department, visiting judges served 21,031 days in district courts in fiscal year 2002. Of this amount, 15 percent (3,154.6 days) were served by former judges who received an average of \$333 pay per day. Assuming 20 percent of these days were half days, which under the bill would be compensated at a rate of \$166.50 per day, the state would realize a savings of \$105,050 in each fiscal year: [20 percent of 3154.6 days = 630.9 days; 630.9 days x \$166.50/day = \$105,050.]

Additionally, 85 percent of the total 21,031 days served in fiscal year 2002 (17,876.4 days) were served by retired judges who received an average of \$365 pay per day. Assuming 20 percent of these days were half days, which under the bill would be compensated at a rate of \$184 per day, the state would realize a savings of \$657,850 in each fiscal year: [20 percent of 17,876.4 days = 3,575.3 days; 3,575.3 days x \$184/day = \$657,850.]

Finally, the Judiciary Section, Comptroller's Office indicates during fiscal year 2002 visiting judges served 3,503 days in civil and criminal statutory county courts at an average of \$413 pay per day. Eliminating state compensation for visiting judge assignments in statutory county courts would result in potential savings of \$1,446,739 per fiscal year. [3,503 days x \$413/day = \$1,446,739.]

This estimate does not include possible savings to the state for assignments of active judges as visiting judges. An active judge, as a state employee receiving a state salary, would serve as a visiting judge in addition to the judge's regular duties, and would receive no extra compensation.

### **Local Government Impact**

Costs to local governmental entities to implement some provisions of the bill would depend on the amount of funds made available in the General Appropriations Act.

With regard to death penalty habeas representation costs, no fiscal implication to units of local government is anticipated because the state reimburses counties for payments made to death penalty counsel appointed by convicting courts, in an amount up to \$25,000 per case.

With regard to the Eighth, Ninth, and Eleventh courts of appeals districts, no fiscal implication to units of local government is anticipated.

With regard to county-level visiting judge payments, according to the Comptroller's Office, the criminal statutory county court in Bexar County paid used visiting judges 487 days in fiscal year 2002. At an average cost of \$413 per day to the extent the state may realize savings under the provisions of the bill, Bexar County may incur costs of \$201,131 in fiscal year 2004 and each year thereafter, assuming the same use of visiting judges in county-level courts. Similar savings to the state offset by costs to the following counties based upon use of visiting judges would be as follows: Travis County, \$48,734 (118 days at \$413/day); Montgomery County, \$36,344 (88 days at \$413/day); and Henderson County, \$4,543 (11 days at \$413/day).

**Source Agencies:** 201 Supreme Court of Texas, 211 Court of Criminal Appeals, 212 Office of Court Administration, Texas Judicial Council, 228 Eighth Court of Appeals District, El Paso, 229 Ninth Court of Appeals District, Beaumont, 231 Eleventh Court of Appeals District, Eastland, 304 Comptroller of Public Accounts

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