

By: Hope, Solis

H.B. No. 1326

Substitute the following for H.B. No. 1326:

By: Hartnett

C.S.H.B. No. 1326

A BILL TO BE ENTITLED

AN ACT

1
2 relating to community supervision and corrections departments and
3 to the immunity of certain judges for administrative acts in
4 connection with those departments.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 76.002(a), Government Code, is amended
7 to read as follows:

8 (a) The district judge or district judges trying criminal
9 cases in each judicial district and the statutory county court
10 judges trying criminal cases in the county or counties served by the
11 judicial district shall:

12 (1) establish a community supervision and corrections
13 department; and

14 (2) approve the department's budget and community
15 justice plan [~~employ district personnel as necessary to conduct~~
16 ~~presentence investigations, supervise and rehabilitate defendants~~
17 ~~placed on community supervision, enforce the conditions of~~
18 ~~community supervision, and staff community corrections~~
19 ~~facilities~~].

20 SECTION 2. Section 76.003(a), Government Code, is amended
21 to read as follows:

22 (a) A community justice council must be established by the
23 [~~district judge or district~~] judges described by Section 76.002 in
24 each jurisdiction served by a department, unless a board or council

1 that was in existence on September 1, 1991, is performing duties
2 substantially similar to those imposed on a community justice
3 council under this section. The council shall provide continuing
4 policy guidance and direction for the development of community
5 justice plans and community corrections facilities and programs.

6 SECTION 3. Section 76.004, Government Code, is amended to
7 read as follows:

8 Sec. 76.004. DEPARTMENT DIRECTOR; FISCAL OFFICER. (a) The
9 [~~district judge or~~] judges described by Section 76.002 shall
10 appoint a department director who must meet, at a minimum, the
11 eligibility requirements for officers established under Section
12 76.005.

13 (a-1) The department director shall perform or delegate the
14 responsibility for performing the following duties:

15 (1) overseeing the daily operations of the department;

16 (2) preparing annually or biennially a budget for the
17 department;

18 (3) negotiating and entering into contracts on behalf
19 of the department;

20 (4) establishing policies and procedures for all
21 functions of the department;

22 (5) developing personnel policies and procedures,
23 including disciplinary proceedings; and

24 (6) establishing procedures and practices through
25 which the department will address an employment-related grievance.

26 (b) The department director shall employ a sufficient
27 number of officers and other employees to conduct presentence

1 investigations, supervise and rehabilitate defendants placed on
2 community supervision, enforce the conditions of community
3 supervision, and staff community corrections facilities. A person
4 employed under this subsection is an employee of the department and
5 not of the judges or judicial districts [~~perform the professional~~
6 ~~and clerical work of the department~~].

7 (c) The [~~district judge or~~] judges described by Section
8 76.002 may appoint for the department a fiscal officer, other than
9 the county auditor. The fiscal officer is responsible for:

10 (1) managing and protecting funds, fees, state aid,
11 and receipts to the same extent that a county auditor manages county
12 funds and funds of other local entities;

13 (2) ensuring that financial transactions of the
14 department are lawful and allowable; and

15 (3) prescribing accounting procedures for the
16 department.

17 (d) The [~~district judge or~~] judges described by Section
18 76.002 may appoint a person as fiscal officer only after
19 investigating the person and determining that the person is:

20 (1) a person of unquestionably good moral character
21 and intelligence; and

22 (2) a financial officer with at least two years'
23 experience in auditing and accounting.

24 (e) A fiscal officer appointed under this section, before
25 beginning employment and not later than the 20th day after the date
26 of appointment, shall:

27 (1) take an oath stating that the person meets the

1 qualifications required by this section and will not have a
2 personal interest in any contract entered into by the department;
3 and

4 (2) execute a good and sufficient surety bond that:

5 (A) is in the amount of \$5,000 or more;

6 (B) is approved by and payable to the [~~district~~
7 ~~judge or~~] judges described by Section 76.002; and

8 (C) is conditioned on the faithful performance by
9 the fiscal officer of the officer's duties.

10 (f) The [~~district judge or~~] judges described by Section
11 76.002 shall set the annual compensation of a fiscal officer
12 appointed under this section, and the department shall pay all
13 costs related to the functions of the fiscal officer.

14 (g) Subsections (c)-(f) do not diminish the rights of the
15 following officers or entities to examine and audit accounts,
16 records, receipts, and expenditures of a department:

17 (1) the county auditor of a county served by the
18 department;

19 (2) the comptroller; [~~and~~]

20 (3) the state auditor; and

21 (4) the division.

22 SECTION 4. Chapter 76, Government Code, is amended by
23 adding Section 76.0045 to read as follows:

24 Sec. 76.0045. JUDICIAL RESPONSIBILITIES; IMMUNITY. (a)

25 The responsibility of a judge described by Section 76.002 for
26 personnel decisions is limited to the appointment of a department
27 director and a fiscal officer.

1 (b) The responsibility of a judge described by Section
2 76.002 for budgetary decisions is limited to:

3 (1) appointment of a fiscal officer; and

4 (2) approval of the department's budget.

5 (c) A judge described by Section 76.002 has judicial
6 immunity in a suit arising from:

7 (1) the performance of a duty described by Section
8 76.002(a); or

9 (2) the appointment of a department director or a
10 fiscal officer or an act or failure to act by a department employee
11 or by a department director or fiscal officer.

12 SECTION 5. Section 76.0051, Government Code, is amended to
13 read as follows:

14 Sec. 76.0051. AUTHORIZATION TO CARRY WEAPON. An officer is
15 authorized to carry a weapon while engaged in the actual discharge
16 of the officer's duties only if:

17 (1) the officer possesses a certificate of firearms
18 proficiency issued by the Commission on Law Enforcement Officer
19 Standards and Education under Section 1701.257, Occupations Code
20 [415.038]; and

21 (2) the director of the department agrees [~~and the~~
22 ~~judges participating in the management of the department agree~~] to
23 the authorization.

24 SECTION 6. Section 76.006, Government Code, is amended by
25 amending Subsections (a) and (h) and adding Subsection (j) to read
26 as follows:

27 (a) Except as provided by Subsection (c), department

1 employees are not state employees. The department shall contract
2 for all employee benefits with one county served by the department
3 and designated for that purpose by the [~~district judge or~~] judges
4 described by Section 76.002. To the extent that employee benefits
5 are provided by a county under this subsection, the employees are
6 governed by personnel policies and benefits equal to personnel
7 policies for and benefits of other employees of that county. This
8 subsection does not apply to employee benefits for group insurance
9 and related coverages provided to employees of a department through
10 the group benefits program for state employees under Chapter 1551,
11 Insurance Code.

12 (h) If under Subsection (a) the [~~district judge or~~] judges
13 described by Section 76.002 change the designation of the county
14 providing employee benefits, the [~~district judge or~~] judges may not
15 subsequently change that designation before the 10th anniversary of
16 the date on which the previous designation was made.

17 (j) The attorney general shall defend a statutory county
18 court judge in an action in state or federal court if:

19 (1) the cause of action is the result of the judge
20 performing a duty described by Section 76.002, 76.003, or 76.004;
21 and

22 (2) the judge requests the attorney general's
23 assistance in the defense.

24 SECTION 7. Section 76.009(a), Government Code, is amended
25 to read as follows:

26 (a) The [~~district judge or~~] judges described by Section
27 76.002 may expend district funds in order to provide expanded

1 facilities, equipment, and utilities if:

2 (1) the department needs to increase its personnel in
3 order to provide more effective services or to meet workload
4 requirements established under Chapter 509;

5 (2) the county or counties certify to the [~~judge or~~
6 judges described by Section 76.002 that they have neither adequate
7 space in county-owned buildings nor adequate funds to lease
8 additional physical facilities, purchase additional equipment, or
9 pay for additional utilities required by the department; and

10 (3) the county or counties provide facilities,
11 equipment, and utilities at or above the levels required by the
12 division.

13 SECTION 8. Section 76.010(c), Government Code, is amended
14 to read as follows:

15 (c) The department [~~district judge or judges~~] may authorize
16 expenditures of funds provided by the division to the department
17 for the purposes of providing facilities, equipment, and utilities
18 for community corrections facilities or state jail felony
19 facilities if:

20 (1) the community justice council recommends the
21 expenditures; and

22 (2) the division, or the state jail division in the
23 case of a state jail felony facility, provides funds for the purpose
24 of assisting in the establishment or improvement of the facilities.

25 SECTION 9. Section 509.007, Government Code, is amended to
26 read as follows:

27 Sec. 509.007. COMMUNITY JUSTICE PLAN. (a) The division

1 shall require as a condition to payment of state aid to a department
2 or county under Section 509.011 [~~and eligibility for payment of~~
3 ~~costs under Section 499.124~~] that a community justice plan be
4 submitted for the department. The community justice council shall
5 submit the plan required by this subsection. A community justice
6 council may not submit a plan under this section unless the plan is
7 first approved under Section 76.002 [~~by the district judges who~~
8 ~~manage the department served by the council~~]. The council shall
9 submit a revised plan to the division each odd-numbered year by a
10 date designated by the division. A plan may be amended at any time
11 with the approval of the division.

12 (b) A community justice plan required under this section
13 must include:

14 (1) a statement of goals and priorities and of
15 commitment by the community justice council, the [~~district~~] judges
16 who established the department and approve the department's budget
17 and community justice plan [~~manage the department~~], and the
18 department to achieve a targeted level of alternative sanctions;

19 (2) a description of methods for measuring the success
20 of programs provided by the department or provided by an entity
21 served by the department; and

22 (3) a proposal for the use of state jail felony
23 facilities and, at the discretion of the community justice council,
24 a regional proposal for the construction, operation, maintenance,
25 or management of a state jail felony facility by a county, a
26 community supervision and corrections department, or a private
27 vendor under a contract with a county or a community supervision and

1 corrections department.

2 SECTION 10. Section 76.002(b), Government Code, is
3 repealed.

4 SECTION 11. The change in law made by Section 76.0045,
5 Government Code, as added by this Act, applies only to an act or
6 failure to act by a judge, a community supervision or corrections
7 department, or a department director that occurs on or after the
8 effective date of this Act. An act or failure to act by a judge, a
9 community supervision and corrections department, or a department
10 director that occurs before the effective date of this Act is
11 governed by the law in effect on the date the act or failure to act
12 occurred, and the former law is continued in effect for that
13 purpose.

14 SECTION 12. This Act takes effect immediately if it
15 receives a vote of two-thirds of all the members elected to each
16 house, as provided by Section 39, Article III, Texas Constitution.
17 If this Act does not receive the vote necessary for immediate
18 effect, this Act takes effect September 1, 2005.