

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

**FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION**

**March 20, 2005**

**TO:** Honorable Robert Duncan, Chair, Senate Committee on State Affairs

**FROM:** John S. O'Brien, Deputy Director, Legislative Budget Board

**IN RE: SB368** by Duncan (Relating to the compensation of state judges and to the computation of retirement benefits for state judges and for members of the elected class of the Employees Retirement System of Texas.), **Committee Report 1st House, Substituted**

**Estimated Two-year Net Impact to General Revenue Related Funds** for SB368, Committee Report 1st House, Substituted: a positive impact of \$6,654,314 through the biennium ending August 31, 2007.

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

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

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2006	(\$116,137)
2007	\$6,770,451
2008	\$7,353,451
2009	\$7,952,451
2010	\$8,568,451

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

Fiscal Year	Probable Revenue Gain/(Loss) from <i>GENERAL REVENUE FUND 1</i>	Probable Revenue Gain/(Loss) from <i>FAIR DEFENSE 5073</i>	Probable Savings/ (Cost) from <i>GENERAL REVENUE FUND 1</i>	Probable Savings/ (Cost) from <i>GR DEDICATED ACCOUNTS 994</i>
2006	\$23,674,000	\$8,966,000	(\$23,790,137)	(\$198,177)
2007	\$30,709,000	\$13,065,000	(\$23,938,549)	(\$211,205)
2008	\$31,292,000	\$13,326,000	(\$23,938,549)	(\$211,205)
2009	\$31,891,000	\$13,593,000	(\$23,938,549)	(\$211,205)
2010	\$32,507,000	\$13,865,000	(\$23,938,549)	(\$211,205)

Fiscal Year	Probable Savings/ (Cost) from <i>FEDERAL FUNDS 555</i>	Probable Savings/ (Cost) from <i>STATE HIGHWAY FUND 6</i>	Probable Savings/ (Cost) from <i>OTHER FUNDS 997</i>
2006	(\$651,296)	(\$633,720)	(\$25,184)
2007	(\$739,377)	(\$680,648)	(\$26,735)
2008	(\$739,377)	(\$680,648)	(\$26,735)
2009	(\$739,377)	(\$680,648)	(\$26,735)
2010	(\$739,377)	(\$680,648)	(\$26,735)

## **Fiscal Analysis**

Section 1 of the bill would amend Chapter 659 of the Government Code to increase salaries for appellate court justices and judges and district court judges. For district judges, the increase is 23 percent over 2004-05 salary levels; for intermediate appellate court justices, the increase is 28 percent over 2004-05 salary levels; and, for Supreme Court and Court of Criminal Appeals justices, the increase is 33 percent over 2004-05 salary levels. The bill would also increase salaries for professional prosecutors, other felony prosecutors, and certain county attorneys, which are linked to the salary of a district judge under Chapters 41, 45, and 46 of the Government Code. The bill would allow district judges and courts of appeals justices to receive county supplements up to the maximum amounts allowed by statute.

Sections 4 and 5 of the bill consist of reporting requirements for the Office of Court Administration and the State Bar Association, neither of which have fiscal impact.

Sections 6 and 7 of the bill establish the standard service retirement annuity for elected officials and state prosecutors to equal service credited in the elected member class, times 2.3 percent of the state salary for a district judge, which is the benefit formula currently provided by the Employees Retirement System (ERS) board rule. Because of the increase in the district judge salary, the bill, if enacted would increase retirement benefits for elected officials and state prosecutors, and have an actuarial effect on the ERS.

Sections 8-15 of the bill allow members of judicial retirement system plans to elect to make contributions after 20 years of service, up to an additional 10 years of service. Currently members contribute 6 percent of salary up to 20 years of service. The retirement benefit is currently 60 percent of the applicable salary for members who have accrued 20 years of service. The bill would allow the retirement benefit to be increased by 2 percent of the applicable salary for each year the member makes contributions after 20 years of service, up to a maximum of 80 percent of the applicable salary.

Sections 16, 18, and 23 of the bill creates a new \$7 fee for convictions and deferred adjudications in criminal cases in district, county-level, justice of the peace, and municipal courts, excluding cases for pedestrian or parking-related offenses. The Comptroller would deposit \$3 of each fee collected under these sections to the credit of the General Revenue-Dedicated Fair Defense Account No. 5073. Section 18 of the bill would authorize a municipal treasurer to deposit 60 cents of each fee collected to the municipal treasury and a county treasurer to deposit 10 percent (70 cents) of each fee collected to the county treasury.

Sections 17 and 19-22 of the bill create a new \$37 fee for civil cases filed in district and county-level courts, which is assumed to be deposited to the General Revenue Fund.

Sections 18 and 19 of the bill dedicate the new criminal and civil fees to court-related purposes for the support of the judiciary.

Section 24 of the bill exempts collection of the new criminal and civil fee from Government Code, Section 51.607 (Senate Bill 325, Seventy-eighth Legislature, Regular Session), which provides that new fees are not imposed on court cases until January 1 of the year following the effective date of legislation enacting the fee.

The bill would take effect September 1, 2005.

## **Methodology**

Based on the bill, the salary of district judge would increase to \$125,000, effective September 1, 2005 (427 FTEs). The salary of an appellate justice or judge on the Supreme Court or the Court of Criminal Appeals would equal 120 percent of this amount or \$150,000 (18 FTEs). The Chief Justice of the Supreme Court and the Presiding Judge of the Court of Criminal Appeals would receive an additional salary supplement of \$500 over 2004-05 levels. The salary of a justice on each of the 14 Courts of Appeals would equal 110 percent of a district judge's salary, or \$137,500 (80 FTEs). Each chief justice of the 14 Courts of Appeals would receive an additional state salary supplement of \$2,000 over

2004-05 levels. The total estimated cost of the judicial pay raise, including related benefit costs, is \$33,840,826 in 2006-07 (\$16,865,413 in fiscal year 2006 and \$16,975,413 in fiscal year 2007). Of this amount, \$7,350,000 (\$3,620,000 in fiscal year 2006 and \$3,730,000 in fiscal year 2007) is additional funding for Judicial Retirement System Plan One (JRS I) annuity payments, which is a pay-as-you-go retirement plan. According to the Employees Retirement System (ERS), these amounts are partially offset by increased contributions from Judicial Retirement System Plan I (JRS I) members of \$821,000 in 2006-07.

Based on the bill, the salary of professional prosecutors would be \$125,000 effective September 1, 2005 (140 FTEs). The salary of prosecutors earning 80 percent of the salary of a district judge would be \$100,000 (13 FTEs). The salary of the Oldham County Attorney, which by law is \$28,500 less than district attorneys receiving 80 percent of a district judge's salary, would be \$71,500. Funding requirements for state-paid prosecutors, including salary and related benefit costs, would increase by \$3,786,576 per fiscal year or \$7,573,152 for the 2006-07 biennium.

By law (Chapter 46, Government Code), salary supplements paid to county attorneys are linked to the salary of a district judge. If this bill is enacted, salary supplements would increase by \$980,525 per fiscal year or \$1,961,050 for the 2006-07 biennium.

State law (Section 811.006 of the Texas Government Code) provides that benefit changes may not be implemented if the result is a period to amortize the unfunded liability of the retirement system by more than 31 years. Based on an ERS actuarial analysis, the state contribution rate required to achieve a 30-year funding period would increase from 7.121 percent of payroll, as determined by the actuarial valuation of August 31, 2004, to 7.561 percent of payroll in fiscal year 2006 and 7.888 percent in fiscal year 2007 as a result of passage of this bill. The biennial General Revenue cost attributable to the bill, and associated with a contribution rate increase from 7.121 percent to 7.888 percent of payroll, is estimated to be \$4,353,658 (\$2,157,623 in fiscal year 2006 and \$2,196,035 in fiscal year 2007) and \$7,520,000 in All Funds for 2006-07 (as reflected in the Fiscal Impact table).

The bill, if enacted, would increase the actuarial liabilities of the Judicial Retirement System Plan II (JRS II). However, based on the most recent actuarial valuation (August 31, 2004), the actuarial value of JRS II assets exceeds actuarial accrued liabilities and the contribution rate exceeds normal costs. Since the plan is overfunded, no fiscal impact in 2006-07 is anticipated to result from the passage of this bill. There may be a fiscal impact in future years, but the JRS actuary provided no estimates.

### **Civil and Criminal Case Revenue**

According to the Comptroller, the new \$37 fee on civil cases filed in district and county-level courts and a new \$7 fee on criminal case convictions and deferred adjudications in district, county-level, justice of the peace, and municipal courts created by this bill would generate \$53,562,000 in new revenue to the General Revenue Fund in 2006-07 (\$23,018,000 in fiscal year 2006 and \$30,544,000 in fiscal year 2007).

The bill would dedicate \$3 of a new \$7 criminal fee to the credit of the General Revenue-Dedicated Fair Defense Account No. 5073. According to the Comptroller, the bill would generate \$22,031,000 in new revenue for the Fair Defense Account (\$8,966,000 in fiscal year 2006 and \$13,065,000 in fiscal year 2007).

The Comptroller's revenue estimates were based on historical data, and adjusted for growth, indigency waivers, phased-in implementation for the first year, and local governments' share of the new fees.

### **Local Government Impact**

The bill would allow counties to retain ten percent and municipalities to retain 60 cents (8.6 percent) of a \$7 fee imposed upon conviction of any offense (other than those relating to pedestrians or parking). This estimate assumes the proposed fee would result in new revenue to counties and municipalities of \$1,559,539 in fiscal year 2006 and \$2,120,973 in fiscal year 2007.

The bill would allow counties to retain ten percent of a \$37 fee imposed upon the filing of any civil suit in a district or statutory county court. This estimate assumes the proposed fee would result in new revenue to counties of \$1,097,936 in fiscal year 2006 and \$1,493,193 in fiscal years 2007.

**Source Agencies:** 304 Comptroller of Public Accounts, 327 Employees Retirement System, 201 Supreme Court of Texas, 211 Court of Criminal Appeals, 212 Office of Court Administration, Texas Judicial Council

**LBB Staff:** JOB, SR, ZS, TB, KJG