

BILL ANALYSIS

H.B. 764
By: Dutton
Juvenile Justice & Family Issues
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The 79th Legislature enacted Senate Bill 6, relating to protective services and family law matters, amending Section 51.961 of the Government Code. The passage of S.B.6, required county District Clerks by statute to collect and distribute a fee later deemed unconstitutional.

More specifically, an Attorney General Opinion GA-0387 dated December 28, 2005, found that the Family Protection Fee under Government Code 51.961(g) was in violation of Texas Constitution, Article I, Section 13 (open courts provision) because it amounted to a general revenue tax which placed an unconstitutional burden on the right to litigate.

H.B.764 would amend Section 51.961 of the Government Code by deleting subsection (g) which mandates payment of one-half of the fee to the Comptroller for certain state purposes and to amend subsection (d) by deleting the "one-half" language thereby returning it to its original wording and retaining the fee collected within the county.

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

- SECTION 1.** Amended Sections 51.961(a) and (d) of the Government Code, to require the commissioners court of a county to adopt a family protection fee in an amount not to exceed \$15. Additionally, the clerk shall pay a fee collected under this section to the appropriate officer of the county in which the suit is filed for deposit in the county treasury to the credit of the family protection account.
- SECTION 2.** Amends Section 101.061, Government Code, to require the clerk of a district court to collect fees and costs with respect to an additional filing fee for family protection on filing a suit for dissolution of a marriage under Chapter 6, Family Code, if authorized by the county commissioners court not to exceed \$15 and at a hearing held by an associate judge in Duval County, a court cost to preserve the record as imposed by the referring court or associate judge.
- SECTION 3.** Repeals Section 51.961(g) of the Government Code.
- SECTION 4.** This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

EFFECTIVE DATE

September 1, 2007