

BILL ANALYSIS

C.S.H.B. 2389
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Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

S.B. 502, 78th Legislature, Regular Session, 2003, consolidated the way court costs are collected on conviction of a defendant. Prior to that enactment, the law authorized a fee to help defray the costs of employing technical supervisor forensic scientists to support the breath alcohol testing program. S.B. 502 removed the authorization needed by counties that do not use the services of a Department of Public Safety (DPS) technical supervisor forensic scientist to continue to retain \$22.50 from the fee assessed for certain intoxication convictions. It is necessary to restore the funding to offset the cost of the services of a technical supervisor forensic scientist to support the breath alcohol testing program and increase the fee to cover the increased costs of providing technical supervision services.

C.S.H.B. 2389 sets the supplemental breath alcohol testing program fee on conviction of certain intoxication offenses at \$50. The bill directs a county that maintains a certified breath alcohol testing program and that does not use the services of a DPS technical supervisor to provide technical supervisor services on request to cities within the county that have a population of 10,000 or more. The bill allows a county to retain \$5 of the funds collected from the fees for administrative costs and allows a county that does not use the services of a DPS technical supervisor forensic scientist to retain \$45 to help defray the cost of hiring or contracting with a technical supervisor forensic scientist or maintaining and supporting a program. The bill requires the custodian of a municipal or county treasury to remit the funds not retained to the comptroller for deposit in the breath alcohol testing account in the general revenue fund to be appropriated by the legislature for use by the DPS in the implementation, administration, and maintenance of the statewide certified breath alcohol testing program.

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. 2389 amends the Code of Criminal Procedure to authorize the custodians of municipal and county treasuries to deposit funds from supplemental costs collected for a breath alcohol testing program in interest-bearing accounts and retain interest earned on the funds for the municipality or county. The bill requires the custodians to keep records of funds received and disbursed and to provide a yearly report of all such funds to the comptroller of public accounts, the Department of Public Safety, and to each agency in the county served by the court that participates in or maintains a certified breath alcohol testing program. The bill requires the comptroller to approve the form of the report.

C.S.H.B. 2389 requires a court to require a defendant, on conviction of certain intoxication offenses, to pay a \$50 breath alcohol testing program fee as a court cost. The bill authorizes the custodian of a municipal or county treasury to retain \$5 of each supplemental court cost collected for a breath alcohol testing program for administrative costs. The bill authorizes the

custodian of a municipal or county treasury in a county in which one or more certified testing programs are maintained by the county or a municipality that do not use the services of a certified technical supervisor to defray the costs of hiring or contracting with a technical supervisor for the program or programs or the costs of maintaining and supporting the program or programs, to retain the remaining \$45 of each supplemental court cost collected for a testing program, in addition to any other court cost relating to the testing program to which the county is entitled under state law regarding costs for breath alcohol testing or state law regarding consolidated fees on conviction.

C.S.H.B. 2389 requires a county that maintains one or more certified testing programs that do not use the services of a certified technical supervisor to provide to a municipality in the county, on request, the services of a certified technical supervisor if the municipality has a population of more than 10,000 and does not use the services of a certified technical supervisor. The bill requires the custodian of a municipal or county treasury in a county in which two or more certified testing programs are maintained by the county or a municipality in the county that do not use the services of a certified technical supervisor to divide the supplemental court costs collected for a breath alcohol testing program, other than the portion collected for administrative costs, according to the percentage of breath alcohol tests performed on persons suspected of committing certain intoxication offenses by each of the testing programs in the county that employs or contracts with a certified technical supervisor.

C.S.H.B. 2389 provides that for purposes of the supplemental costs paid for a breath alcohol testing program, a person is considered convicted if a sentence is imposed on the person, the person receives community supervision or deferred adjudication, or a court defers final disposition.

C.S.H.B. 2389 requires the custodian of a municipal or county treasury to keep records of the amount of supplemental funds on deposit collected for a testing program and to send to each testing program in the county that employs or contracts with a certified technical supervisor, before the last day of the first month following each calendar quarter, the appropriate portion of the supplemental court costs collected for the preceding quarter for a breath alcohol testing program excluding administrative costs.

C.S.H.B. 2389 requires the custodian of a municipal or county treasury, not later than the last day of the first month following each calendar quarter, to remit the supplemental funds collected for a testing program during the preceding quarter to the comptroller, other than the amount the municipality or county is authorized to retain for that period, in a manner directed by the comptroller. The bill requires the comptroller to deposit the funds received to the credit of the breath alcohol testing account in the general revenue fund. The bill authorizes the legislature to appropriate the deposited money to the Department of Public Safety for use by the department in the implementation, administration, and maintenance of the statewide certified breath alcohol testing program. The bill authorizes a county that, before January 1, 2009, charged fees to a municipality in the county to support the county's breath alcohol testing program to continue to charge a fee to a municipality in the county only to cover the portion of the costs of the testing program not covered by other funds allocated to or retained by the county for that purpose.

H.B. 2389 amends the Government Code to make conforming changes relating to the \$50 supplemental breath alcohol testing program fee collected from a defendant on conviction of an intoxication offense in a district, statutory county, and county court, as applicable.

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2389 differs from the original by retaining current law relating to costs for breath alcohol testing programs, rather than amending those provisions as in the original, and by creating a new subchapter relating to supplemental costs for breath alcohol testing programs. The substitute sets forth provisions not in the original relating to deposit of those funds, retaining interest earned, keeping records, and reporting on funds received and disbursed. The substitute adds provisions not in the original requiring the custodians to remit the funds from supplemental costs, other than the retained portion, to the comptroller of public accounts and requiring the comptroller to deposit the funds to the credit of the breath alcohol testing account in the general revenue fund for purposes of the statewide certified breath alcohol testing program.

C.S.H.B. 2389 authorizes the custodian of a municipal or county treasury to retain \$45 of the supplemental court cost, in addition to amounts retained from court costs relating to a breath alcohol testing program to which the county is entitled, whereas the original increases from \$22.50 to \$45 the amount of court costs collected relating to a breath alcohol testing program the custodian is authorized to retain.

C.S.H.B. 2389 makes conforming changes relating to the supplemental \$50 fee paid on conviction of certain intoxication offenses in a district, statutory county, and county court, whereas the original makes conforming changes relating to the \$50 fee paid on conviction of those offenses in those courts.