

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

April 20, 2009

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

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

IN RE: SB498 by Wentworth (Relating to the release of a criminal defendant on partial bail and to the procedures governing a cash bond.), **As Introduced**

The fiscal impact to the State cannot be determined.

The bill would amend various sections of the Code of Criminal Procedure and Government Code to allow magistrates to release certain defendants on partial bail, by deposit of a cash bond or the submission of a surety bond in an amount that is less than the total amount of bail set, if paying full bail would present an unreasonable hardship on the defendant.

Under the bill, magistrates would be allowed to impose conditions on the partial bail release as if defendants were released on personal bond. A release on partial bail would not constitute a bail reduction under the terms of Article 17.091, Code of Criminal Procedure. Cash bonds would be subject to the same \$15 court cost assessed on a bail bond surety.

The bill would amend Article 17.02, Code of Criminal Procedure, to require the deposit of cash funds into an interest-bearing account. Counties would also be allowed to impose a 10 percent additional fee for administration of bail and cash bonds. The cash funds deposited would be refunded less any administration fee upon the defendant's compliance and subsequent court order.

The bill would make some conforming amendments and other nonsubstantive amendments.

The bill would take effect September 1, 2009.

The Comptroller of Public Accounts reports that the agency has no data relating to those arrested persons who cannot be released on their own recognizance or personal bond, into the custody of their lawyer, or by bail bond surety and would be required to post a cash bond for release from jail. Additionally, the amount of court costs that would be refunded by application cannot be determined. Therefore, the fiscal impact to Assistant Prosecutor Supplement Fund 0303 cannot be determined.

Local Government Impact

According to the County and District Clerk's Association of Texas, the court clerk can currently retain 10 percent of interest earned, or up to \$50, of bonds posted, with the exception of family law cases. Because the bill would require deposit into an interest bearing account for every cash bond, and because the account would be maintained for a very short period, the association states that it would be a very time-consuming process and would produce very little interest. For similar reasons, the Montgomery County Auditor assumes a county could experience either a positive or a negative fiscal impact.

The Tarrant County District Clerk's Office used figures from fiscal year 2008 to provide an estimated possible revenue gain under provisions of the bill. The county reports that \$550,228 was paid into the court registry for criminal cash bonds in fiscal year 2008. Assuming an annual investment yield of 1.16 percent with 1 percent per year increase, the invested cash bond balance remains relatively constant during the 5-year period of the estimate, and that the commissioners court approves the

maximum administrative fee of 10 percent each year, the county would experience a revenue gain of \$58,523 in fiscal year 2010; \$61,599 in fiscal year 2011; \$64,657 in fiscal year 2012; \$67,728 in fiscal year 2013; and \$70,804 in fiscal year 2014.

The Williamson County Clerk's Office anticipates a revenue loss of \$5,732, as the provisions of the bill would result in a lower percentage for the administrative fee than currently collected.

The Travis County District Clerk's Office reports that current practices in Travis County align with provisions of the bill; therefore, there would be no fiscal impact to the county.

The fiscal impact to the counties would depend on the number of applicable releases and current practices compared to requirements within the bill.

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: JOB, ESi, DB