

BILL ANALYSIS

C.S.H.B. 2174
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties observe that funds generated from the Interest on Lawyers Trust Accounts program are a primary source of funding for civil legal aid in Texas. Interested parties note that due to historically low interest rates, revenue from the program for legal aid is falling, creating a strain on available resources for Texans in need of civil legal services and indigent defense and for needed court technology and resources. The parties observe that while a legislative appropriation to cover the funding shortfall would be ideal, such an appropriation is unlikely. The parties assert that legislation, as an alternative, is needed to propose a document recording fee on documents filed with a county clerk and to propose a new court cost assessed on convictions of certain offenses in justice and municipal courts. C.S.H.B. 2174 seeks to address matters relating to the establishment of the judicial access and improvement account to provide funding for basic civil legal services, indigent defense, and other needs through court costs imposed to fund the account.

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. 2174 amends the Government Code to establish the judicial access and improvement account as an account in the general revenue fund and to require the appropriation of money in the account only as provided by the bill's provisions. The bill authorizes the Texas Supreme Court to use an amount determined by the supreme court, not to exceed \$1 million annually, to phase in electronic filing and retrieval in Texas courts. The bill requires an amount equal to 70 percent of the remainder of the money in the account to be deposited to the credit of the basic civil legal services account of the judicial fund for use in programs approved by the supreme court that provide basic civil legal services to indigents and requires an amount equal to 30 percent of the remainder of the money to be deposited to the credit of the fair defense account.

C.S.H.B. 2174 authorizes the supreme court, in consultation with the judicial committee on information technology, to enter into an agreement with the Office of Court Administration of the Texas Judicial System to implement the electronic filing and retrieval in Texas courts, including acquiring the necessary technology, software, and data storage. The bill authorizes the comptroller of public accounts to retain two percent of the money remitted to the comptroller for deposit in the judicial access and improvement account and requires the comptroller to use the money to audit and administer fund balances and to ensure the timely deposit of money in the appropriate accounts as required by the bill's provisions. The bill exempts money dedicated to the judicial access and improvement account from provisions of the Government Code regarding the use of dedicated revenue.

C.S.H.B. 2174 amends the Local Government Code to increase the amount of the additional filing fee that a district court clerk is required to collect on the filing of any family law civil

action or proceeding requiring a filing fee to fund civil legal services for the indigent from \$5 to \$15 for family law cases and proceedings and from \$10 to \$20 for any other case. The bill makes conforming changes relating to those increases.

C.S.H.B. 2174 requires a person convicted in a municipal or justice court of an offense, other than an offense relating to a pedestrian or the parking of a motor vehicle, to pay as a court cost, in addition to other costs, a fee of \$5 to be used to fund basic civil legal services and criminal defense for indigents and electronic filing in Texas courts through the judicial access and improvement account. The bill requires the custodian of money in the municipal or county treasury, as appropriate, to remit the fee to the comptroller in the manner provided by provisions of law relating to the reporting, collection, and remittance of criminal and civil fees payable to the comptroller. The bill requires the comptroller to credit the remitted fee to the credit of the judicial access and improvement account. The bill authorizes a municipality or county to retain five percent of the money collected from such fees. The bill makes conforming changes.

C.S.H.B. 2174 amends the Government Code to require the clerk of the justice or municipal court, as appropriate, to collect the fee from the defendant. The bill requires the comptroller and the office of court administration, if in any state fiscal biennium the legislature does not appropriate any money in the judicial access and improvement account for the purposes provided under the bill's provisions, to notify each clerk of a justice or municipal court, as appropriate, not to assess fees and court costs that are to be deposited in the judicial access and improvement account during the state fiscal biennium and prohibits a clerk of a justice or municipal court from assessing those fees and court costs during that state fiscal biennium.

C.S.H.B. 2174 requires the comptroller and the office of court administration, if in any state fiscal biennium the legislature appropriates only a portion of the money to the judicial access and improvement account for the purposes provided under the bill's provisions, to proportionally adjust the amount of the fees and court costs that are to be assessed and deposited in the judicial access and improvement account during that state fiscal biennium. The bill requires the comptroller and the office of court administration to notify each clerk of a justice or municipal court, as appropriate, of the amount of those fees and court costs to be assessed during the state fiscal biennium and requires such a clerk to assess the amount of the fees and court costs determined by the comptroller during that state fiscal biennium.

C.S.H.B. 2174 makes provisions of law relating to the implementation of new or amended court costs and fees inapplicable to a court cost or fee imposed under the bill's provisions. The bill makes its provisions applicable to the costs imposed on or after September 1, 2011, for conviction of an offense committed on or after the effective date of the bill, if the bill receives a vote of two-thirds of all members elected to each house as required for immediate effect, and makes its provisions applicable to the costs imposed on or after January 1, 2012, for an offense committed on or after the effective date of the bill if the bill does not receive such a vote.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2174 differs from the original by requiring money in the judicial access and improvement account to be appropriated only as provided by the bill's provisions, whereas the original authorizes money in the account to be appropriated only as provided by the bill's provisions. The substitute differs from the original by reducing the amount that the Texas Supreme Court is authorized to use to phase in electronic filing and retrieval in Texas courts from \$13 million in the original to \$1 million in the substitute.

C.S.H.B. 2174 omits a provision included in the original authorizing the supreme court to use up

to \$1 million of the appropriated money to provide state law library services. The substitute differs from the original by requiring an amount equal to 70 percent of the remainder of the money to be deposited to the credit of the basic civil legal services account of the judicial fund and an amount equal to 30 percent of the remainder to be deposited to the credit of the fair defense account, whereas the original requires the remainder of the money to be divided in equal amounts and deposited to the credit of those accounts.

C.S.H.B. 2174 differs from the original, in the bill provision authorizing the comptroller of public accounts to retain a percentage of the money remitted for deposit in the judicial access and improvement account, by requiring the comptroller, among other purposes, to use the money to administer fund balances, whereas the original contains no such requirement.

C.S.H.B. 2174 contains provisions not included in the original increasing the amount of the additional filing fee that a district court clerk is required to collect on the filing of any civil action or proceeding requiring a filing fee to fund civil legal services for the indigent.

C.S.H.B. 2174 omits provisions included in the original requiring a county clerk to collect a document recording fee of \$4 at the time of the filing of a document in the records of the office of the clerk; requiring the clerk to send the fee to the comptroller for deposit in the judicial access and improvement account; and authorizing the clerk to retain five percent of the money collected as a document recording fee.

C.S.H.B. 2174 contains provisions not included in the original establishing the duties of the comptroller, the Office of Court Administration of the Texas Judicial System, and a clerk of a justice or municipal account regarding fees and court costs that are to be assessed and deposited to the judicial access and improvement account during a state fiscal biennium in which the legislature appropriates only a portion of the money to the account for the purposes provided by the bill's provisions.

C.S.H.B. 2174 differs from the original by making its provisions applicable to the costs imposed on or after September 1, 2011, or January 1, 2012, as applicable, for conviction of an offense that occurs on or after the effective date of the bill, whereas the original makes its provisions applicable only to court costs imposed on conviction of an offense committed on or September 1, 2011, if the bill receives the vote required for immediate effect, or on or after January 1, 2012, if the bill does not receive such a vote. The substitute omits a provision included in the original making its provisions applicable only to fees imposed for services rendered by a county clerk on or after September 1, 2011.

C.S.H.B. 2174 contains a provision not included in the original making its provisions relating to certain additional filing fees collected by a district court clerk applicable only to a civil action or proceeding filed in district court on or after the effective date of the bill. The substitute differs from the original in nonsubstantive ways.