

BILL ANALYSIS

S.B. 373
By: Duncan
County Affairs
Committee Report (Unamended)

BACKGROUND AND PURPOSE

S.B. 373 identifies county treasurers and county auditors statutes that require modification to bring current statutory language in alignment with current county treasury practices, procedures, and verbiage, and creates a new statute prescribing the bond and oath requirement for assistant treasurer and treasury deputies and updates education requirements for new treasurers. It makes changes to the Local Government Code to provide for the appointment of assistant treasury deputies and details the surety bond required for assistant treasurers and treasury deputies.

S.B. 373 changes certain terms to reflect current terminology. It clarifies and modernizes language for the reconciliation of bank statements. It amends the Local Government Code to expand the statute to cover any other person who collects county funds and deletes outdated language pertaining to the deposit of money collected by a fee officer.

S.B. 373 amends current law relating to the office of county treasurer.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas State Library and Archives Commission is modified in SECTION 7 (Section 113.008, Local Government Code) of this bill.

ANALYSIS

SECTION 1. Amends Article 103.003(b), Code of Criminal Procedure, to authorize a community supervision and corrections department and a county treasurer to collect money payable under this title with the written approval of the clerk or the court or fee officer, and to collect money payable as otherwise provided by law.

SECTION 2. Amends Articles 103.004(a) and (c), Code of Criminal Procedure, as follows:

(a) Requires an officer who collects recognizances, bail bonds, fines, forfeitures, judgments, jury fees, and other obligations recovered in the name of the state under any provision of this title to deposit the money in the county treasury not later than the next regular business day after the date that the money is collected, except as provided by Subsection (c), rather than except as provided by Subsections (b) and (c). Requires the officer, if it is not possible for the officer to deposit the money in the county treasury by that date, to deposit the money in the county treasury as soon as possible, but not later than the fifth regular business day after the date that the money is collected, rather than the third regular business day after the date that the money is collected.

(c) Authorizes the commissioners court of a county with a population of less than 50,000 to authorize an officer who is required to deposit money under Subsection (a) to deposit the money in the county treasury not later than the 15th, rather than 30th, day after the date that the money is collected.

SECTION 3. Amends Section 83.003(a), Local Government Code, as follows:

(a) Requires a person who first takes office as county treasurer to complete successfully an introductory course of instruction in the performance of the duties of county treasurer:

(1) within one year after the date on which the person takes office if elected to a full term; or

(2) at the earliest available date if appointed by the commissioners court or elected to an unexpired term of county treasurer.

Makes a nonsubstantive change.

SECTION 4. Amends Chapter 83, Local Government Code, by adding Sections 83.008 and 83.009, as follows:

Sec. 83.008. SURETY BOND ON ASSISTANT TREASURERS, DEPUTIES, AND EMPLOYEES; SELF-INSURANCE. (a) Requires a county treasurer, if the county treasurer employs only one assistant or deputy, to execute a surety bond to cover the assistant or deputy and to execute a schedule surety bond or blanket surety bond to cover all other employees of the office. Requires a county treasurer, if the county treasurer employs more than one assistant or deputy, to execute a blanket surety bond to cover the assistants or deputies and all other employees of the office.

(b) Authorizes a county to self-insure against losses that would have been covered by the bond instead of a county treasurer obtaining a bond as required by Subsection (a).

(c) Requires that the bond under this section be conditioned in the same manner and to be for the same amount as the bond for the county treasurer under Section 83.002 (Bond). Requires the bond to be made payable to the county judge for the use and benefit of the county treasurer.

Sec. 83.009. ASSISTANT TREASURER OR TREASURY DEPUTY. (a) Requires that the appointment of an assistant treasurer or treasury deputy be in writing, be signed by the county treasurer, and bear the seal of the county court.

(b) Requires a person appointed as an assistant treasurer or treasury deputy, before beginning to perform the duties of office, to take and subscribe the official oath, which, together with the certificate of the officer administering the oath, must be endorsed on the appointment. Requires that the appointment and oath be deposited and recorded in the county clerk's office.

(c) Provides that an assistant treasurer or treasury deputy acts in the name of the county treasurer as directed by the county treasurer and authorizes an assistant treasurer or treasury deputy to perform all official acts that the county treasurer may perform at the discretion of the county treasurer.

SECTION 5. Amends Sections 111.0707 and 111.07075, Local Government Code, as follows:

Sec. 111.0707. SPECIAL BUDGET FOR REVENUE FROM INTERGOVERNMENTAL CONTRACTS. (a) Creates this subsection from existing text. Makes no further changes.

(b) Requires the county treasurer to notify the county auditor of the receipt of all revenue from intergovernmental contracts not previously included in a special budget or the annual budget for that fiscal year.

Sec. 111.07075. SPECIAL BUDGET FOR REVENUE RECEIVED AFTER START OF FISCAL YEAR. (a) Creates this subsection from existing text. Makes no further changes.

(b) Requires the county treasurer to notify the county auditor of the receipt of all revenue from a new source not anticipated before the adoption of the budget and not previously included in a special budget or the annual budget for that fiscal year.

SECTION 6. Amends Subchapter A, Chapter 113, Local Government Code, by adding Section 113.0001, as follows:

Sec. 113.0001. DEFINITIONS. Defines, in this chapter, "depository," "depository account," "money," and "treasury."

SECTION 7. Amends Section 113.008, Local Government Code, as follows:

Sec. 113.008. New heading: RECONCILIATION OF DEPOSITORY ACCOUNTS. (a) Requires the county depository to provide statements of all bank activity and documentation supporting a statement's transactions not less than once a month, rather than requiring the county depository to provide all canceled checks and warrants and supporting statements, to the county treasurer.

(b) Requires the county depository to provide the information required by Subsection (a) to the official responsible for the account if:

(1) the checks and orders for payment, rather than warrants, are payable from funds under the direct authority of an official other than the county treasurer as provided by statute; and

(2) the official has not delegated the responsibility for reconciliation under Subsection (b-1).

Deletes existing text providing that Subsection (a) does not apply if the checks and warrants are payable from funds under the direct authority of an official other than the county treasurer as provided by statute.

(b-1) Creates this subsection from existing text. Authorizes the official to request the county treasurer to be responsible for the reconciliation of the checks and orders for payment payable from the funds that are under the direct authority of the official. Requires an official who fails to reconcile the official's special accounts monthly to transfer responsibility for account reconciliation to the county treasurer, except as provided by Subsection (g). Provides that the transfer is effective for the duration of the term of office for the designating officer unless the official and county treasurer set another period in writing for the duration of a transfer under this section. Deletes existing text providing that the exemption provided by this subsection does not apply if the official requests the county treasurer to be responsible for the reconciliation of the checks and warrants payable from the funds that are under the direct authority of the official.

(c) Requires the county depository, in fulfilling the requirements of Subsections (a) and (b), rather than Subsection (a), to provide, at the direction of the county treasurer and in accordance with the rules adopted by the Texas State Library and Archives Commission (TSLAC), originals, optical images, or electronic images of:

(1) canceled checks, rather than original canceled checks, and orders for payment, rather than warrants;

(2) deposit detail;

(3) debit and credit memoranda; or

(4) electronic transmission detail.

Deletes existing text requiring the county depository to provide, at the direction of the county treasurer, optical images of the front and back of canceled checks and

warrants if the optical images are retained in accordance with the rules adopted by TSLAC. Makes a nonsubstantive change.

(d) Requires the county treasurer to:

(1) reconcile all balances and transactions for each treasury account in the county depository's statement of activity to the transactions and balances shown on the treasurer's records; and

(2) ensure all financial adjustments are made regarding the depository account as required.

Deletes existing text requiring the county treasurer to reconcile the canceled checks and warrants with the account records of the depository.

(e) Makes no changes to this subsection.

(f) Requires an official with special funds in the depository bank, except as provided by Subsection (g), to:

(1) reconcile all balances and transactions in the statement of activity to the transactions and balances shown on the official's records; and

(2) each month, ensure all financial adjustments resulting from the reconciliation are reported to the county auditor for entry in the general set of records and reflected in the cash receipts and disbursement registers of the county treasurer.

(g) Provides that Subsections (b-1) and (f)(2) do not apply to a special fund administered by an attorney representing the state under Chapter 18 (Search Warrants), 47 (Disposition of Stolen Property), or 59 (Forfeiture of Contraband), Code of Criminal Procedure.

SECTION 8. Amends Sections 113.021 and 113.002, Local Government Code, as follows:

Sec. 113.021. New heading: REQUIREMENT THAT MONEY BE DEPOSITED WITH COUNTY TREASURER; INTEREST. (a) Replaces references to "officer" with references to "person."

(b) Requires the county treasurer to deposit the money in the county depository in the proper fund, rather than a special fund, to the credit of the person or department collecting the money, rather than to the credit of the officer who collected the money. Deletes existing text providing that if the money is fees, commissions, or other compensation collected by an officer who is paid on a salary basis, the appropriate special fund is the applicable salary fund created under Chapter 154 (Compensation of District, County, and Precinct Officers on Salary Basis).

(c) Makes a conforming change.

Sec. 113.022. TIME FOR MAKING DEPOSITS. (a) Requires a county officer or other person who receives money to deposit the money with the county treasurer on or before the next regular business day after the date on which the money is received. Requires the officer or person, if this deadline cannot be met, to deposit the money, without exception, on or before the fifth, rather than the seventh, business day after the day on which the money is received. Authorizes the commissioners court in a county with fewer than 50,000 inhabitants to extend the period during which funds must be deposited with the county treasurer, but prohibits the period from exceeding 15, rather than 30, days after the date the funds are received. Makes conforming and nonsubstantive changes.

(b) Makes conforming changes.

SECTION 9. Amends the heading to Section 113.041, Local Government Code, to read as follows:

Sec. 113.041. DISBURSEMENT OF MONEY BY COUNTY TREASURER; PAYMENT BY CHECK OR ELECTRONIC TRANSMISSION; LOST OR DESTROYED INSTRUMENT.

SECTION 10. Amends Sections 113.041, Local Government Code, by amending Subsections (b), (c), (d), (e), (g), and (h), and adding Subsection (d-1), as follows:

(b) Prohibits a person, except as provided by Chapter 156 (Electronic Funds Transfer of Compensation and Reimbursement of County Officers and Employees), from spending or withdrawing money from the county treasury except by a check or order for payment, rather than by check or warrant, drawn on the county treasury, whether or not the money is in a county depository as required by law.

(c) Prohibits the county treasurer from disbursing, rather than paying, money out of the county treasury without an order for payment, rather than a certificate or warrant, from an officer who is authorized by law to issue the order. Makes a conforming change.

(d) Prohibits the county treasurer from making a payment if the treasurer doubts the legality or propriety of an order, rather than of an order, decree, certificate, or warrant, presented to the treasurer for payment. Authorizes the treasurer to require that the claim supporting the order be made available and verified by an affidavit after the claim is approved for payment by the commissioners court.

(d-1) Prohibits a county treasurer, in a county without a county auditor, from making a payment if the treasurer has reason to believe that the check or order for payment is not valid as a proper and budgeted item of expenditure. Requires the treasurer to report the matter to the commissioners court for consideration and direction.

(e) Authorizes the county treasurer to issue a duplicate instrument in place of an original check or other order drawn on the county treasury by a proper authority if the treasurer is satisfied that the original is lost or destroyed. Prohibits the treasurer from issuing a duplicate until an applicant has filed an affidavit with the treasurer that states that the applicant is the true owner of the original instrument and that, to the best knowledge and belief of the applicant, the original is lost or destroyed.

(g) Requires the county treasurer to immediately stop payment or demand the return of the amount paid by the county if the duplicate is paid if, after issuance of the duplicate instrument, the treasurer determines that the duplicate was issued improperly or that the applicant or person to whom the duplicate was issued is not the owner of the original instrument. Requires the treasurer to institute a suit for recovery, rather than a suit on the bond, through the office of the county or district attorney if the person fails to return the amount of the instrument, rather than the duplicate instrument or the amount of the instrument. Deletes existing text requiring the county treasurer, if, after issuance of the duplicate instrument, the treasurer determines that the duplicate was issued improperly or that the applicant or person to whom the duplicate was issued is not the owner of the original instrument, to immediately demand the return of the duplicate if it is unpaid.

(h) Makes a conforming change.

SECTION 11. Amends the heading to Section 113.042, Local Government Code, to read as follows:

Sec. 113.042. ENDORSEMENT BY COUNTY TREASURER; OTHER REQUIREMENTS FOR ORDER FOR PAYMENT.

SECTION 12. Amends Sections 113.042(a), (b), (e), (f), and (g), Local Government Code, as follows:

(a), (b), and (e)-(g) Makes conforming changes.

SECTION 13. Amends Section 113.043, Local Government Code, as follows:

Sec. 113.043. COUNTERSIGNATURE BY COUNTY AUDITOR. Provides that this section does not apply to a check or order for jury service or for restitution collected on behalf of an individual as authorized by law. Makes conforming changes.

SECTION 14. Amends Section 113.046, Local Government Code, as follows:

Sec. 113.046. New heading: REGISTER OF ORDERS FOR PAYMENT ISSUED BY JUDGE OR CLERK. (a) and (b) Makes conforming changes.

SECTION 15. Amends Section 113.048(c), Local Government Code, to make a conforming change.

SECTION 16. Amends the heading to Section 113.061, Local Government Code, to read as follows:

Sec. 113.061. CLAIMS REGISTER.

SECTION 17. Amends Section 113.063, Local Government Code, as follows:

Sec. 113.063. New heading: CLAIMS INFORMATION LIST; INDEBTEDNESS TO THE COUNTY. (a) Requires each officer who collects a fine, penalty, forfeiture, judgment, tax, or other indebtedness, or payment obligation owed to the county to keep a descriptive list of those claims. Requires the officer, when the officer reports the collection, to file with the report a list that states:

- (1) the party in whose favor the claim was issued;
- (2) the receipt number issued in documentation of payment;
- (3) the name of the party paying in the claim;
- (4) the amount received; and
- (5) the purpose for which the amount was received.

Deletes existing text requiring an officer, when the officer reports the collection, to file with the report a list that includes the class and register number of the claim. Makes nonsubstantive changes.

(b) Requires the officer to give the claims and the report to the county treasurer, who shall give the officer a receipt. Requires the treasurer to determine the time and manner of making the report, rather than requiring the treasurer to file the list with the treasurer's report in the office of the county clerk.

SECTION 18. Amends Section 114.022, Local Government Code, by adding Subsection (c), to provide that a county publishing monthly financial reports under Section 114.023 (County Auditor's Monthly Report to Commissioners Court in County with Population of More Than 225,000) that publishes its comprehensive annual financial report on its Internet website is not required to publish an exhibit under this section.

SECTION 19. Amends Section 114.023(b), Local Government Code, to make a conforming change.

SECTION 20. Amends Section 115.002(c), Local Government Code, to make conforming changes.

SECTION 21. Amends Section 116.002(b), Local Government Code, to make a conforming change.

SECTION 22. Amends Section 116.115, Local Government Code, to make a conforming change.

SECTION 23. Amends Sections 116.116(a) and (c), Local Government Code, to make conforming changes.

SECTION 24. Amends the heading to Section 116.120, Local Government Code, to read as follows:

Sec. 116.120. COLLECTION OF CERTAIN OVERDUE COUNTY ORDERS FOR PAYMENT OR CHECKS.

SECTION 25. Amends Sections 116.120(a) and (b), Local Government Code, to make conforming changes.

SECTION 26. Amends Section 116.155, Local Government Code, as follows:

Sec. 116.155. New heading: FAILURE OF DEPOSITORY TO PAY CHECK OR ORDER FOR PAYMENT. Makes conforming changes.

SECTION 27. Amends Section 118.023(c), Local Government Code, to make a conforming change.

SECTION 28. Amends Section 130.902(c), Local Government Code, to make a conforming change.

SECTION 29. Amends Section 130.905(b), Local Government Code, to make conforming changes.

SECTION 30. Amends Section 130.909(c), Local Government Code, to make a conforming change.

SECTION 31. Repealer: Article 103.004(b) (relating to authorizing the commissioners court to authorize an officer who is required to deposit certain money to deposit it in the county treasury not later than the seventh regular business day after the date that the money is collected), Code of Criminal Procedure.

Repealers: Sections 113.061(c) (relating to requiring the county treasurer to register claims in certain classes), (d) (relating to requiring the treasurer to pay each claim in each class in the order in which it is registered), (e) (relating to requiring what the treasurer's register entry for each claim must contain), and (f) (relating to requiring the treasurer to indicate the claim registration number and the date of the registration on the fact of the claim), Local Government Code.

Repealer: Section 113.062 (Acknowledgment Required When Claim Paid or Credited), Local Government Code.

Repealer: Section 113.066 (Cancellation of Certain Claims), Local Government Code.

SECTION 32. (a) Requires a county treasurer required to execute a surety bond under Section 83.008, Local Government Code, as added by this Act, to execute a surety bond not later than October 1, 2011.

(b) Makes application of the change in law made by Section 83.009, Local Government Code, as added by this Act, prospective.

EFFECTIVE DATE

Effective date: September 1, 2011.