

## **BILL ANALYSIS**

C.S.H.B. 1445  
By: Thompson, Senfronia  
Judiciary & Civil Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Current law requires the comptroller of public accounts to credit to the judicial fund for approved programs that provide basic civil legal services to the indigent the net amount of certain civil penalties that are recovered in an action by the attorney general and caps the amount of such allocations at \$10 million per state fiscal biennium. C.S.H.B. 1445 seeks to increase the amount that may be credited to the judicial fund for indigent legal service programs by raising the cap on those allocations and adding to the sources that provide such funding.

### **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. 1445 amends the Government Code to require the attorney general to immediately pay into the state treasury money received for restitution, in addition to money received for a debt or a penalty. The bill requires the comptroller of public accounts to credit to the judicial fund for programs approved by the Supreme Court of Texas that provide basic legal services to the indigent the net amount of civil restitution recovered by the attorney general in an action brought by the attorney general arising from conduct that violates a consumer protection, public health, or general welfare law, if, on the hearing of an ex parte motion filed by the attorney general after the entry of a judgment awarding civil restitution, the court enters a judgment or order that the restitution be credited to the judicial fund for such programs and the court determines, based on the facts and circumstances of the case, that it is impossible or impracticable to identify injured parties or determine the degree to which each claimant was injured and entitled to recover, that the cost of administering a claim procedure will disproportionately reduce the amount of restitution available for the payment of individual claims, or that the claims of all identifiable persons eligible to receive restitution have been paid without exhausting the funds available for restitution. The bill requires the attorney general to notify the Legislative Budget Board if a court enters a judgment or order that restitution be credited to the judicial fund and requires the attorney general to distribute that restitution in accordance with the court judgment or order.

C.S.H.B. 1445 raises from \$10 million to \$50 million the cap on the total amount that may be credited for each state fiscal biennium to the judicial fund for programs approved by the supreme court that provide basic civil legal services to the indigent from civil penalties or restitution recovered in an action by the attorney general. The bill specifies that provisions relating to the payment into the state treasury and allocation of debts, penalties, or restitution recovered by the attorney general do not limit the common law authority or other statutory authority of the attorney general to seek and obtain cy pres distribution from a court.

### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.

## COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1445 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

### INTRODUCED

SECTION 1. The heading to Section 402.007, Government Code, is amended to read as follows:

Sec. 402.007. PAYMENT TO TREASURY; ALLOCATION OF CERTAIN MONEY RECEIVED BY ATTORNEY GENERAL [~~PENALTIES~~].

SECTION 2. Section 402.007, Government Code, is amended by amending Subsections (b) and (c) and adding Subsections (d) and (e) to read as follows:

(b) Subject to Subsection (d) [~~(e)~~], the comptroller shall credit to the judicial fund for programs approved by the supreme court that provide basic civil legal services to the indigent the net amount of:

(1) a civil penalty that is recovered in an action by the attorney general in any matter actionable under Subchapter E, Chapter 17, Business & Commerce Code, after deducting amounts allocated to or retained by the attorney general as authorized by law, unless:

(A) [~~(1)~~] another law requires that the penalty be credited to a different fund or account; or

(B) [~~(2)~~] the judgment awarding the penalty requires that the penalty be paid to another named recipient; or

(2) civil restitution recovered by the attorney general in an action brought by the attorney general arising from conduct that violates a consumer protection, public health, or general welfare law, if the court:

(A) determines that, based on the facts and circumstances of the case:

### HOUSE COMMITTEE SUBSTITUTE

Same as introduced version. (*See Section 1 below*)

SECTION 1. Section 402.007, Government Code, is amended to read as follows:

Sec. 402.007. PAYMENT TO TREASURY; ALLOCATION OF CERTAIN MONEY RECEIVED BY ATTORNEY GENERAL [~~PENALTIES~~].

(a) The attorney general shall immediately pay into the state treasury money received for a debt, a [~~or~~] penalty, or restitution.

(b) Subject to Subsection (d) [~~(e)~~], the comptroller shall credit to the judicial fund for programs approved by the supreme court that provide basic civil legal services to the indigent the net amount of:

(1) a civil penalty that is recovered in an action by the attorney general in any matter actionable under Subchapter E, Chapter 17, Business & Commerce Code, after deducting amounts allocated to or retained by the attorney general as authorized by law, unless:

(A) [~~(1)~~] another law requires that the penalty be credited to a different fund or account; or

(B) [~~(2)~~] the judgment awarding the penalty requires that the penalty be paid to another named recipient; or

(2) civil restitution recovered by the attorney general in an action brought by the attorney general arising from conduct that violates a consumer protection, public health, or general welfare law, if, on the hearing of an ex parte motion filed by the attorney general after the entry of a judgment awarding civil restitution, the court:

(A) determines that, based on the facts and circumstances of the case:

(i) it is impossible or impracticable to identify injured parties;  
(ii) it is impossible or impracticable to determine the degree to which each claimant was injured and entitled to recover; or  
(iii) the cost of administering a claim procedure is prohibitive due to a low probability of recovery for each claimant;  
and

(B) enters a judgment or order that the restitution be distributed by the attorney general.

(c) Notwithstanding Subsection (b)(2), if a court judgment or order specifies that restitution is to be distributed in a manner other than the manner provided by this section, the attorney general shall distribute that restitution in accordance with the court judgment or order. The attorney general shall notify the Legislative Budget Board and the court when the distribution of restitution under a court judgment or order is complete.

(d) The total amount credited to the judicial fund for programs approved by the supreme court that provide basic civil legal services to the indigent under Subsection (b) may not exceed \$50 [\$10] million per state fiscal biennium.

(e) The provisions of this section do not diminish the common law authority or other statutory authority of the attorney general to seek and obtain cy pres distribution from a court.

SECTION 3. The change in law made by this Act applies only to a civil penalty or civil restitution that is received by the attorney general on or after the effective date of this Act.

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

(i) it is impossible or impracticable to identify injured parties;  
(ii) it is impossible or impracticable to determine the degree to which each claimant was injured and entitled to recover;

(iii) the cost of administering a claim procedure will disproportionately reduce the amount of restitution available for the payment of individual claims; or  
(iv) the claims of all identifiable persons eligible to receive restitution have been paid without exhausting the funds available for restitution; and

(B) enters a judgment or order that the restitution be credited to the judicial fund for programs approved by the supreme court that provide basic civil legal services to the indigent.

(c) If a court enters a judgment or order that restitution be credited to the judicial fund, the attorney general shall notify the Legislative Budget Board and shall distribute that restitution in accordance with the court judgment or order.

(d) The total amount credited to the judicial fund for programs approved by the supreme court that provide basic civil legal services to the indigent under Subsection (b) may not exceed \$50 [\$10] million per state fiscal biennium.

(e) The provisions of this section do not limit the common law authority or other statutory authority of the attorney general to seek and obtain cy pres distribution from a court.

SECTION 2. Same as introduced version.

SECTION 3. Same as introduced version.

receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.