

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**

**April 26, 2017**

**TO:** Honorable Joan Huffman, Chair, Senate Committee on State Affairs

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: SB1938** by Hughes (Relating to the method of calculating the salary of state judges.), As Introduced

**Estimated Two-year Net Impact to General Revenue Related Funds** for SB1938, As Introduced: an impact of \$0 through the biennium ending August 31, 2019.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

<b>Fiscal Year</b>	<b>Probable Net Positive/(Negative) Impact to General Revenue Related Funds</b>
2018	\$0
2019	\$0
2020	(\$4,103,943)
2021	(\$10,704,391)
2022	(\$17,140,697)

**All Funds, Five-Year Impact:**

<b>Fiscal Year</b>	<b>Probable Savings/(Cost) from General Revenue Fund</b>
2018	\$0
2019	\$0
2020	(\$4,103,943)
2021	(\$10,704,391)
2022	(\$17,140,697)

**Fiscal Analysis**

The bill would amend the Government Code to establish a formula for calculating the state salary of a state judge and would set annual limits on state salary increases resulting from this formula. The bill would set judicial salaries for district judges and appellate court justices as a percentage of the salary of a Justice of the Supreme Court of Texas or Judge of the Court of Criminal Appeals,

other than the Chief Justice or Presiding Judge. A district judge's state salary would be set at 82.5 percent of a judge or justice of the two highest appellate courts and a Court of Appeal's Justice at 91 percent.

The bill would amend the Government Code to establish the salary for a justice of the two highest appellate courts to be a summation of the following components as of January 1 each year:

1. One-third of the average state salary of justices, excluding chief justices, on the highest appellate courts of the nine most populous states, excluding Texas.
2. One-third of the federal salary of a judge of a United State Court of Appeals.
3. One-third of the average starting base salary of first-year associate attorneys employed with the five private law firms with the largest number of licensed attorneys in Texas.

The Office of Court Administration would be required to collect and provide information on items #1 and #2 above and the State Bar of Texas would be required to collect and provide information on item #3 above to the Legislative Budget Board not later than February 1st each year. The Legislative Budget Board would be required to calculate the salary based on the formula and notify the Comptroller of this amount no later than March 1st of each year.

The Comptroller would be required to adjust salaries paid to judges and justices on October 1st of each year at the rate calculated by the LBB, but the bill would limit annual salary increases to not more than the greater of either a four percent increase or the annual increase of the consumer price index for all urban consumers.

The Comptroller would be required to publish the calculated salary in the Texas Register not later than May 1st of each year. The bill would also repeal Government Code, Chapter 35, which establishes the Judicial Compensation Commission on August 31, 2021.

The bill would take effect on January 1, 2019.

## **Methodology**

According to the National Center for State Courts, the average salary of justices, excluding chief justices, on the highest appellate courts among the nine most populous states, excluding Texas, for fiscal year 2017 is \$186,991. For purposes of calculating the formula to determine the salary of a justice or judge of either the Supreme Court of Texas or Court of Criminal Appeals as provided in the bill, the contribution from this formula component is \$62,330.33.

According to the Federal Government, the average salary in fiscal year 2017 for a United States Court of Appeals Judge is \$217,600. For purposes of calculating the formula to determine the salary of a justice or judge of either the Supreme Court of Texas or Court of Criminal Appeals as provided in the bill, the contribution from this formula component is \$72,533.33.

According to the National Association of Law Placement and the State Bar of Texas, the average starting base salary for a first-year associate attorney employed by one of the five private law firms with the largest number of attorneys licensed in the state in fiscal year 2017 is \$180,000. For purposes of calculating the formula to determine the salary of a justice or judge of either the Supreme Court of Texas or Court of Criminal Appeals as provided in the bill, the contribution from this formula component is \$60,000.0

In sum, the target salary based on the formula as provided in the bill for a justice or judge of either the Supreme Court of Texas or Court of Criminal Appeals is \$194,864 ( $\$62,330.33 + \$72,533.33 + \$60,000.00$ ). This target salary amount is 16.0 percent higher than the current salary of a justice or judge of either the Supreme Court of Texas or Court of Criminal Appeals. In addition, it is projected that the annual increase in the Consumer Price Index for All Urban Consumers would be lower than four percent from fiscal year 2020 through 2022. Therefore, this estimate assumes that the four percent increase on annual judicial salary increases would be the controlling variable beginning on October 1, 2019, the first date upon which the Comptroller is required to change the salary of a justice or judge of either the Supreme Court of Texas or Court of Criminal Appeals.

This four percent increase would apply to fiscal years 2020 through 2022 for purposes of determining the increased salary amount for a justice or judge of either the Supreme Court of Texas or Court of Criminal Appeals. This amount and all estimated amounts in fiscal year 2020 would be prorated for 11 out of 12 months due to the salary change not going into effect until October 1, 2019.

Total estimated costs for this bill are \$4,105,048 in fiscal year 2020, \$10,704,391 in fiscal year 2021, and \$17,140,697 in fiscal year 2022. These costs are traditionally met through a mix of General Revenue Fund and Judicial Fund No. 573 funding; however, over the past several fiscal years Judicial Fund No. 573 revenues have not been sufficient to meet all judicial salary obligations. Due to this, General Revenue funding has been used to meet remaining obligations. Therefore, this estimate assumes General Revenue funding would be needed to cover the full state obligations of any judicial salary increase and increase in salary and salary supplements for positions statutorily linked to a district judge's salary.

Under provisions of the bill, the salary of a justice or judge of either the Supreme Court of Texas or Court of Criminal Appeals increases from \$168,000 to \$174,720 in fiscal year 2020 (an increase of \$6,720 from current salary levels), to \$181,709 in fiscal year 2021 (an increase of \$13,709 from current salary levels), and to \$188,977 in fiscal year 2022 (an increase of \$20,977 from current salary levels).

The Chief Justice of the Supreme Court of Texas and the Presiding Judge of the Court of Criminal Appeals each receive an additional annual state salary supplement of \$2,500 based on current law. Based on the bill, these two positions would see a salary increase from \$170,500 to \$177,220 in fiscal year 2020, to \$184,209 in fiscal year 2021, and to \$191,477 in fiscal year 2022 with increases from this bill that equal those of the other judges of the court over these same years. The total estimated cost for this judicial pay raise, including related benefits, for the 18 justices and judges of the two highest appellate courts is \$126,800 in fiscal year 2020, \$285,408 in fiscal year 2021, and \$436,730 in fiscal year 2022.

Under provisions of the bill, the salary of a Court of Appeals Justice would be 91 percent of a justice or judge of either the Supreme Court of Texas or Court of Criminal Appeals. This would be an increase from \$154,000 to \$158,995 in fiscal year 2020 (an increase of \$4,995 from current salary levels), to \$165,355 in fiscal year 2021 (an increase of \$11,355 from current salary levels), and to \$171,969 in fiscal year 2022 (an increase of \$17,969 from current salary levels).

The 14 Chief Justices of the 14 Court of Appeals each receive an additional annual state salary supplement of \$2,500 based on current law. Based on the bill, these 14 positions would see a salary increase from \$156,500 to \$161,495 in fiscal year 2020, to \$167,855 in fiscal year 2021, and to \$174,469 in fiscal year 2022 with increases from this bill that equal those of the other Justices of the Courts of Appeals over these same years. The total estimated cost for this judicial pay raise, including related benefits, for the 80 justices of the 14 Courts of Appeals is \$418,909 in

fiscal year 2020, \$1,050,683 in fiscal year 2021, and \$1,662,698 in fiscal year 2022.

Under provisions of the bill, the salary of a District Judge would be 82.5 percent of a justice or judge of either the Supreme Court of Texas or Court of Criminal Appeals. This would be an increase from \$140,000 to \$144,144 in fiscal year 2020 (an increase of \$4,144 from current salary levels), to \$149,910 in fiscal year 2021 (an increase of \$9,910 from current salary levels), and to \$155,906 in fiscal year 2022 (an increase of \$15,906 from current salary levels). The total estimated cost for this judicial pay raise, including related benefits, for 466 District Court judges is \$2,024,336 in fiscal year 2020, \$5,341,257 in fiscal year 2021, and \$8,573,249 in fiscal year 2022.

The salary of the judge of a multicounty statutory county court is 100 percent of a district judge's salary. Under provisions of the bill, this position's salary would increase from \$140,000 to \$144,144 in fiscal year 2020 (an increase of \$4,144 from current salary levels), to \$149,910 in fiscal year 2021 (an increase of \$9,910 from current salary levels), and to \$155,906 in fiscal year 2022 (an increase of \$15,906 from current salary levels). The total estimated cost for this judicial pay raise, including related benefits, is \$4,344 in fiscal year 2020, \$11,462 in fiscal year 2021, and \$18,398 in fiscal year 2022.

The salary of the state prosecuting attorney is 100 percent of a district judge's salary. Under provisions of the bill, the state salary for this position would increase from \$143,500 to \$144,144 in fiscal year 2020 (an increase of \$644 from current salary levels), to \$149,910 in fiscal year 2021 (an increase of \$6,410 from current salary levels), and to \$155,906 in fiscal year 2022 (an increase of \$12,406 from current salary levels). Related benefits increases resulting from this bill for this position would be \$514 in fiscal year 2020, \$1,552 in fiscal year 2021, and \$2,491 in fiscal year 2022.

The state salary of professional prosecutors is 100 percent of a district judge's salary. Based on the bill, the state salary for these positions would increase from \$140,000 to \$144,144 in fiscal year 2020 (an increase of \$4,144 from current salary levels), to \$149,910 in fiscal year 2021 (an increase of \$9,910 from current salary levels), and to \$155,906 in fiscal year 2022 (an increase of \$15,906 from current salary levels). The total estimated cost for this pay raise for the 157 district attorneys compensated pursuant to Government Code, Section 46.002, including related benefits, is \$648,326 in fiscal year 2020, \$1,703,636 in fiscal year 2021, and \$2,734,506 in fiscal year 2022. The total estimated cost of the salary increase for the four district attorneys and felony prosecutors earning 80 percent of a District Judge's salary is \$13,214 in fiscal year 2020, \$34,724 in fiscal year 2021, and \$55,736 in fiscal year 2022. The total estimated cost of the salary increase for the Oldham County Attorney, which by law is \$28,500 less than a district attorney receiving 80 percent of a District Judge's salary, is \$4,129 in fiscal year 2020, \$10,851 in fiscal year 2021, and \$17,417 in fiscal year 2022.

The state salary supplements paid to the state's 171 county attorneys are linked to the salary of a district judge. If enacted, the bill would increase salary supplements for these positions by \$166,537 in fiscal year 2020, by \$434,402 in fiscal year 2021, and by \$697,328 in fiscal year 2022.

The state salary supplements paid to the 220 constitutional county judges whose functions are at least 40 percent judicial functions is 18 percent of a district judge's salary. The bill would increase this salary supplement from \$25,200 to \$25,946 in fiscal year 2020 (an increase of \$746 from current supplement levels), to \$26,984 in fiscal year 2021 (an increase of \$1,784 from current supplement levels), and to \$28,063 in fiscal year 2022 (an increase of \$2,863 from current supplement levels). The total estimated cost of the salary supplement increase for these

constitutional county judges is \$150,427 in fiscal year 2020, \$392,426 in fiscal year 2021, and \$629,884 in fiscal year 2022.

The state salary supplements paid to the 240 statutory county judges is 60 percent of a district judge's salary. The bill would increase this salary supplement from \$84,000 to \$86,486 in fiscal year 2020 (an increase of \$2,486 from current supplement levels), to \$89,946 in fiscal year 2021 (an increase of \$5,946 from current supplement levels), and to \$93,544 in fiscal year 2022 (an increase of \$9,544 from current supplement levels). The total estimated cost of the salary supplement increase for these statutory county judges is \$546,920 in fiscal year 2020, \$1,427,040 in fiscal year 2021, and \$2,290,560 in fiscal year 2022.

Based on an Employee Retirement System (ERS) and the Judicial Retirement System Plan II (JRS II) actuarial analyses, no additional State contribution would be required with the enactment of the bill due to the bill not amending any of the benefit or contribution provisions included in Government Code, Sections 811.006 and 840.106. However, the unfunded actuarial accrued liabilities for both ERS and JRS II would increase due to the enactment of the bill.

The ERS current total contribution rate of 19.5 percent covers the 12.28 percent normal cost rate and the remaining contribution of 7.22 percent is sufficient to pay down the existing unfunded actuarial accrued liability over a period of 38 years. However, the bill would increase the currently unfunded actuarial accrued liabilities by \$22.2 million but would not extend the time necessary to pay down the liability.

The JRS II current total contribution rate of 23.123 percent covers the 21.05 percent normal cost rate and the remaining contribution of 2.073 percent is sufficient to amortize unfunded actuarial accrued liability over a period of 76 years. However, the bill would increase the currently unfunded actuarial accrued liabilities by \$5.1 million and would extend the amortization period from 76 years to infinite; this would make the JRS II more unsound.

### **Local Government Impact**

The bill would have a negative fiscal impact to counties due to increases in local salary supplements paid to state positions and increases in county-level judge and prosecutor positions with local compensation that is statutorily linked to a district judge's salary.

A Court of Appeals justice may receive a local salary supplement in addition to a state salary through funding provided by counties that reside within each of the Courts of Appeals' districts. The total amount of this salary supplement is limited to an amount that results in a combined salary for a Court of Appeals Justice that is \$5,000 less than the state salary paid to a justice of the Texas Supreme Court and limits the combined salary of a Chief Justice of a Court of Appeals to \$2,500 less than a justice of the Texas Supreme Court. Therefore, any increase in a Supreme Court of Texas justice salary raises the maximum additional compensation a Court of Appeals justice may receive from a local source. According to the Judicial Compensation Commission, 92 percent of Courts of Appeals Justices currently receive the maximum combined salary allowed by law.

A District Court judge is eligible to receive a combined salary in an amount not to exceed \$5,000 less than the total salary of a Court of Appeals Justice. Therefore, any increase in a Court of Appeals Justice salary raises the maximum additional compensation a district court judge may receive from a local source. According to the Judicial Compensation Commission, 72 percent of Courts of Appeals Justices currently receive the maximum combined salary allowed by law.

Statutory court judges must be paid a local salary in an amount that is not less than \$1,000 less

than the total combined salary received by a district judge in the county. Therefore, any increase in a district judge's salary would have a corresponding increase in the local contribution to statutory county court judge salaries.

District attorneys compensated pursuant to Government Code, Section 46.002 may receive a local supplement in an amount of not less than the local supplement paid to a county's highest-paid district judge. Therefore, any increase in a district judge's local supplement would have a corresponding increase in the local contribution to these district attorneys.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 304  
Comptroller of Public Accounts, 327 Employees Retirement System

**LBB Staff:** UP, AG, MW, GDz, LBO, GP