

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

May 8, 2019

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

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
 Legislative Budget Board

IN RE: HB2384 by Leach (Relating to judicial compensation and assignment, the contributions to, benefits from, membership in, and administration of the Judicial Retirement System of Texas Plan One and Plan Two, and the compensation and retirement benefits of certain prosecutors and other members of the elected class of the Employees Retirement System of Texas.), **As Engrossed**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2384, As Engrossed: a negative impact of (\$71,991,951) through the biennium ending August 31, 2021.

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:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2020	(\$35,976,229)
2021	(\$36,015,722)
2022	(\$36,107,555)
2023	(\$36,107,555)
2024	(\$36,107,555)

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from <i>General Revenue Fund</i> 1	Probable Savings/(Cost) from <i>Federal Funds</i> 555
2020	(\$35,976,229)	(\$354,550)
2021	(\$36,015,722)	(\$354,550)
2022	(\$36,107,555)	(\$354,550)
2023	(\$36,107,555)	(\$354,550)
2024	(\$36,107,555)	(\$354,550)

Fiscal Analysis

The bill would amend the Family and Government Codes to modify the compensation structure of certain judges and state prosecuting attorneys and make adjustments to their retirement systems.

The bill would increase the statutory floor for the state salary for a district court judge from \$125,000 to \$140,000 and would clarify that this amount would be the state base salary for this position in addition to continuing the current authority for the salary to be set at an amount established in the General Appropriations Act (\$140,000 for the 2018-19 biennium) every two years. The bill would also make conforming changes to maintain statutory linkages of those judicial and prosecutor positions that are linked to a district judge's state base salary.

The bill would set the amount of the state contribution to each county with a statutory county court or statute probate court at 60 percent of the salary of a district judge each fiscal year (\$84,000).

The bill would set the benchmark salary used in the formula to calculate the state supplement paid to eligible county prosecutors to be the state annual salary paid to a district judge with comparable years of service.

The bill would modify the state compensation of district court judges, statutory county court judges, statutory probate court judges, appellate court judges, the state prosecuting attorney, and professional prosecutors through establishment of a tiered, tenure-based structure with the state salary of a judge or prosecutor equal to 110 percent of a district judge's state base salary for four or more years of service, 120 percent of a district judge's state base salary for between eight and twelve years of service, and 130 percent of a district judge's state base salary for more than 12 years of service.

The bill would expand eligibility for the constitutional county court judge salary supplement from only those positions where at least 40 percent of the functions that the judge performs are judicial functions to all constitutional county court judges. The bill would set the salary of associate judges employed by the Office of Court Administration (OCA) that hear and dispose of cases in child protection and child support courts to 90 percent of a district judge's salary, or \$126,000. The bill would modify the state compensation paid to a presiding judge of an administrative judicial region to be a percentage of the state base salary for a district court judge.

The bill would change the calculation of retirement annuities for retirees of Judicial Retirement System Plan One (JRS-I) and Judicial Retirement System Plan Two (JRS-II) and district attorneys who retire from the Employees Retirement System (ERS) on or after the effective date. The bill would also increase JRS-I and JRS-II member contribution rates from 7.5 to 9.5 percent.

The bill would require the ERS medical board, instead of the Chief Justice of the Supreme Court, to certify disability determinations for the purposes of disability retirement.

The bill would take effect September 1, 2019.

Methodology

State judicial compensation is traditionally met through a mix of General Revenue and Judicial Fund No. 573 funding, however for 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 the remaining obligations. Therefore, this estimate assumes General Revenue funding would be needed to cover the full state obligations for these provisions.

Under the provisions of the bill, the salary for an associate judge employed by OCA for operation of child protection and child support courts would be equal to 90 percent of the state base salary paid to a district court judge, or \$126,000. OCA anticipates operating 25 child protection courts and 43 child support courts for the 2020-21 biennium. Associate judge salaries for these courts range from \$110,495 to \$111,930. Based on OCA's analysis, the cost to increase the salaries of these associate judges to levels provided in the bill would be \$1,066,604 each fiscal year. These costs would be partially offset by \$354,550 in federal funds to support the administration of Title IV-D child support cases that is provided to the Office of Court Administration through an Interagency Contract with the Office of Attorney General, for a net annual increase of \$712,054 in General Revenue.

Under the provisions of the bill, all 254 constitutional county judges are eligible to receive the constitutional county judge supplement which is equal to 18 percent of a district judge's state base salary, or \$25,200. According to the Judiciary Section, Comptroller of Public Accounts, 215 constitutional county judges received the supplement as of February, 2019, therefore, expanding this supplement to include an additional 39 judges would cost \$982,800 each year (39 judges x \$25,200).

The state salary for a district court judge as established in the General Appropriations Act for the 2018-19 biennium is \$140,000. The state salary for a Justice of the 14 Courts of Appeals (14 Courts) is 110 percent of a district judge's state salary, or \$154,000, with a Chief Justice of the 14 Courts receiving an additional \$2,500 for a state salary of \$156,500. The state salary of a Judge or Justice of the Supreme Court of Texas (Supreme Court) or the Court of Criminal Appeals (CCA) is 120 percent of a district judge's state salary, or \$168,000, with the Chief Justice of the Supreme Court and the Presiding Judge of the CCA receiving an additional \$2,500 for a state salary of \$170,500.

Under the provisions of the bill, the tenure-based compensation structure would adjust the state salaries for state judge and prosecutor positions and state supplements for county judge positions as established in the General Appropriations Act to certain percentages of that state salary depending on the judge or prosecutor's years of service: 110 percent of the state salary for between 4-8 years of service (Tier 1), 120 percent of the state salary for between 8-12 years of service (Tier 2), and 130 percent of the state salary for more than 12 years of service (Tier 3). This structure would result in state salary amounts for each state judge or prosecutor position and state supplements for county judge positions that are dependent on years of service within each tier as shown in the table below:

Type of Judge	Court	2018-19 GAA	State Base Salary of Supplement	Tier 1	Tier 2	Tier 3
Chief Justice Presiding Judge	Supreme Court CCA	\$170,500	\$170,500	\$187,300	\$204,100	\$220,900
Justice Judge	Supreme Court CCA	\$168,000	\$168,000	\$184,800	\$201,600	\$218,400
Chief Justice	14 Courts	\$156,500	\$156,500	\$171,900	\$187,300	\$202,700
Justice	14 Courts	\$154,000	\$154,000	\$169,400	\$184,800	\$200,200
District Judge	District Court	\$140,000	\$140,000	\$154,000	\$168,000	\$182,000
Statutory County Judge	County Court	\$84,000	\$84,000	\$92,400	\$100,800	\$109,200
Statutory Probate Judge	County Court	\$40,000	\$84,000	\$92,400	\$100,800	\$109,200
Multicounty Court at Law #1	Multicounty Statutory Court	\$140,000	\$140,000	\$154,000	\$168,000	\$182,000
Professional Prosecutors	Judicial Districts	\$140,000	\$140,000	\$154,000	\$168,000	\$182,000
District Attorneys	Judicial Districts	\$112,000	\$112,000	\$123,200	\$134,400	\$145,600

Under the provisions of the bill, the tenure-based compensation structure would require an additional \$603,608 in General Revenue each year (\$1,207,216 for the 2020-21 biennium) for the salaries of the Chief Justice and Justices of the Supreme Court of Texas and the Presiding Judge and Judges of the Court of Criminal Appeals; an additional \$1,739,834 in General Revenue in fiscal year 2020 and \$1,752,246 in fiscal year 2021 (\$3,492,080 for the 2020-21 biennium) for the salaries of the 14 chief justices and 66 justices of the 14 Courts of Appeals Districts; an additional \$9,463,972 in General Revenue in fiscal year 2020 and \$9,845,318 in fiscal year 2021 (\$19,309,290 for the 2020-21 biennium) for salaries of the district judges; an additional \$2,996,000 in fiscal year 2020 and \$3,063,200 in fiscal year 2021 (\$6,059,200 for the 2021-21 biennium) for salaries of the statutory county court judges; an additional \$3,001,133 in fiscal year 2020 and \$3,645,833 in fiscal year 2021 (\$6,646,966 for the 2020-21 biennium) for salaries of the state prosecuting attorneys; an additional \$159,600 each fiscal year (\$319,200 for the 2020-21 biennium) for salaries of the statutory probate court judges; and an additional \$8,167 in fiscal year 2021 for the State Prosecuting Attorney position. This estimate assumes current years of service and no turnover in the 2020-21 biennium, and factors in the 3.1 percent state judge and justice longevity pay allowed under Government Code Section 659.0445.

Under the provisions of the bill, the benchmark salary used in the formula to calculate the state supplement paid to an eligible county prosecutor would be equal to the state annual salary paid to a district judge with comparable years of service. Each county that has a county prosecutor is entitled to receive from the state supplemental salary compensation at an amount that is one-half of the benchmark salary divided by the number of counties served by the state prosecutor, unless that formula would result in an amount less than one-sixth of the benchmark salary. This compensation structure would require an additional \$925,228 in fiscal year 2020 and \$950,895 in fiscal year 2021 for a total of \$1,876,123 for the 2020-21 biennium. This analysis assumes current years of service and no turnover in the 2020-21 biennium.

Under the provisions of the bill, the state's contribution to each county with a statutory probate court would increase from \$40,000 each fiscal year to an amount equal to 60 percent of the state base salary of a district judge (\$84,000). In fiscal year 2018, the state contributed supplements to 18 statutory probate courts. This analysis assumes the same number of statutory probate courts each year, for a total increase of \$1,584,000 for the 2020-21 biennium ($\$84,000 - \$40,000 = \$44,000 \times 18 = \$792,000$ each year).

Under provisions of the bill, retirement annuities would be based on 130 percent of the state base salary for JRS-I retirees. The JRS-I system is not pre-funded and the increased annuities to members are a direct cost to the state and included in the tables above (\$10.5 million for 2020-21). Annuity calculations for future JRS-II retirees would not change, while annuities for those who previously retired would be calculated based upon the what the retiree's salary would have been on the effective date of the Act. The JRS-II system is pre-funded and the costs in the tables above (\$17.6 million for 2020-21) include both the immediate contribution cost that results from increased salaries as well as the longer-term cost of increasing liabilities and actuarially sound contribution rates.

This analysis determines that the overall net effect of adjusting salaries and annuities for district attorneys, as well as clarification of the annuity calculation for the elected class, is not significant to the Employees Retirement System. The agency anticipates that any additional work related to disability determinations could be reasonably be absorbed with current resources.

Government Code Sec. 840.106 requires that legislation providing additional benefits that increase the actuarial cost of JRS-II only be implemented if the state contribution to the system is at least equal to the normal cost plus an amount necessary to amortize the unfunded liabilities of

the new benefits structure over a 31-year period. Because the bill would increase benefits for the JRS-II fund, actuaries estimate that the state contribution would need to increase to 16.48 percent of payroll for JRS-II. The additional costs to comply with statute are estimated to average approximately \$720,000 in All Funds annually in fiscal years 2020 through 2024. Government Code 811.006 applies similarly to the ERS fund; before enhancing benefits, statute requires that the ERS Fund be actuarially sound, which is estimated to average approximately \$287.4 million in All Funds annually in fiscal years 2020 through 2024. These costs are not included in the tables above.

Local Government Impact

According to the Office of Court Administration, The salary for the regional presiding judges is apportioned to the counties that comprise the region. Under current law, the judges of the 1st, 5th, 8th, and 10th administrative judicial regions who are active judges make \$33,000; the judges of the 2nd, 3rd, 4th, and 11th administrative judicial regions make \$50,000; the judges of the 6th and 7th administrative judicial regions make \$40,000; and the judge of the 9th administrative judicial region makes \$35,000.

Under the bill, the active judges would make \$42,000 (30% of \$140,000), an increase per judge of \$9,000, or a total of \$36,000 (\$72,000 for the biennium). The judges of the 2nd, 3rd, 4th, and 11th AJRs would make \$63,000 (45% of \$140,000), an increase of \$13,000 per judge, or \$52,000 (\$104,000 for the biennium). The judges of the 6th and 7th AJRs would make \$49,000 (35% of \$140,000), an increase of \$9,000 per judge, or \$18,000 (\$36,000 for the biennium); and the judge of the 9th AJR would make \$42,000 (30% of \$140,000), an increase of \$7,000 (\$14,000 for the biennium). The total statewide biennial impact to counties would be \$226,000.

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

LBB Staff: WP, CMa, MW, GDz, LLo, LCO, SLE, SD, KFB, AF, DA