

BILL ANALYSIS

C.S.S.B. 41
By: Zaffirini
Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

According to the Office of Court Administration of the Texas Judicial System, there are 223 distinct civil court filing fees. This system is needlessly complex to administer and track. Specifically, it is labor-intensive for state and local personnel to ensure that the proper portion of each fee is retained locally, remitted to the state, or deposited in the appropriate dedicated revenue account. Moreover, some courts have held that several civil filing fees are unconstitutional, threatening the ability of vital programs to retain funding from filing fees. C.S.S.B. 41 would consolidate civil court filing fees and establish a streamlined system while remaining revenue neutral to the greatest extent possible. The new system would be simpler for local officials to administer, the state to audit, and litigants to navigate and would cure current constitutional issues.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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.S.B. 41 relates to the consolidation and allocation of state civil court costs, increasing certain civil court costs, and the repeal of certain civil court costs and fees.

Consolidated Court Costs

Consolidated Civil Fees Payable to the Comptroller of Public Accounts

C.S.S.B. 41 amends the Local Government Code to change provisions relating to the consolidated civil fees for filing a civil suit in a district court as follows:

- replaces the \$45 fee for family law cases and proceedings and \$50 fee for any other type of case with a single \$137 filing fee for an applicable case in a district court;
- creates a \$45 fee for any action other than the original action in a district court;
- expands the applicability of the provisions to include the filing of any civil, probate, guardianship, or mental health case in a statutory county court, statutory probate court, or county court, to which the \$137 filing fee and \$45 fee for any other action apply; and
- creates a \$21 fee for filing an action and for any action other than the original action in a civil case in a justice court.

The bill specifies that fees that are paid using the statewide electronic filing system must be collected and remitted directly to the treasury by the Office of Court Administration of the Texas

Judicial System (OCA) and fees that are paid to an officer of the court must be collected and remitted to the comptroller of public accounts.

C.S.S.B. 41, with respect to the requirement for the comptroller to allocate such fees to certain accounts and funds, makes the following changes:

- provides for allocations to the statewide electronic filing system fund and judicial court personnel training fund from the \$137 filing fee in a district court, statutory county court, statutory probate court, or county court;
- sets minimum percentages that the judicial fund, the basic civil legal services account of the fund, the statewide electronic filing system fund, and the judicial and court personnel training fund must receive from that filing fee;
- requires the comptroller to make allocations to the basic civil legal services account, the statewide electronic filing system fund, and the judicial and court personnel training fund from the \$45 fee for any action other than the original action in a district court, statutory county court, statutory probate court, or county court and sets minimum percentages that each account and fund must receive from that fee; and
- requires the comptroller to make allocations to the basic civil legal services account, the statewide electronic filing system fund, and the judicial and court personnel training fund from the \$21 justice court fees and sets minimum percentages that each account and fund must receive from those fees.

Consolidated Civil Fees Payable to a Local Government

C.S.S.B. 41 provides for the consolidation and standardized collection of fees payable to a local government in civil cases by an officer of a court for deposit in a county treasury or an officer of a county for deposit in the county treasury. The bill sets out provisions relating to the collection and remittance of civil fees for deposit in the county treasury.

C.S.S.B. 41 sets out the following civil fees for certain cases, which a person must pay in addition to all other costs:

- a local consolidated filing fee of \$213 for any civil case, except a probate, guardianship, or mental health case, and a \$35 subsequent filing fee for any such civil case in a district court, statutory county court, or county court;
- a local civil filing fee of \$223 for any probate, guardianship, or mental health case and a \$75 fee for any action other than an original action for such a case in a statutory county court, statutory probate court, or county court; and
- a local consolidated civil fee of \$33 for a civil case and any action other than an original action for a civil case in a justice court.

C.S.S.B. 41 requires the county treasurer to allocate such fees to specified accounts and funds so that each receives to the extent practicable, utilizing historical data as applicable, the same amount of money the account or fund would have received if the fees for the accounts and funds had been collected and reported separately and provides for the minimum percentage that each account and fund must receive. The bill specifies the manner in which money collected as civil fees before January 1, 2022, must be distributed.

C.S.S.B. 41 requires a county treasurer to maintain in the county treasury a fund or account to which money is allocated under the bill's provisions to the extent that the fund or account is not required by other law. Money in such an account may be used only for the purposes provided by the bill. The bill authorizes an account or fund maintained in a county treasury under these provisions to be administered by or at the direction of the county commissioners court. The bill sets out provisions relating to the use of money allocated to certain accounts and funds.

Appellate Judicial System

C.S.S.B. 41 amends the Government Code to replace provisions relating to the appellate judicial system in each court of appeals district with the following provisions:

- an appellate judicial system fund is established for each court of appeals for the following purposes:
 - to assist the court of appeals in the processing of appeals filed with the court of appeals from the county courts, statutory county courts, statutory probate courts, and district courts in the counties the court of appeals serves; and
 - to defray costs and expenses incurred in the operation of the court of appeals;
- for purposes of funding the system, the following is required:
 - each county treasurer must allocate to the fund the portion of the local consolidated filing fee set by the bill;
 - the clerk of each statutory probate court in the county must collect a \$5 fee and pay it to the county treasurer; and
 - the county treasurer must monthly forward the money to the clerk of the court of appeals for deposit in the fund; and
- the chief justice of each court of appeals is responsible for the management of the fund and has sole discretion on use of the money in the fund, except that the money must be used for purposes consistent with the purposes for which the fund was established.

Removals; Statutory Fee Schedule; Repeals

C.S.S.B. 41 removes the duty of the state to pay part of the salary of a presiding judge of a statutory probate court from additional filing fees in statutory probate courts and amounts specifically appropriated and the duty of counties to pay the remainder of the salary and expenses of the presiding judge.

C.S.S.B. 41 removes the authorization for the following costs and fees in certain counties:

- court reporter fees in civil actions in Bexar County Courts at Law Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15;
- court reporter fees in civil and probate cases in McLennan County Courts at Law;
- stenographer fees in each civil, criminal, or probate case in Hidalgo County Courts at Law; and
- stenographer fees in each civil and probate case in the 1st Multicounty Court at Law.

C.S.S.B. 41 removes the authorization for the following fees:

- an additional filing fee for each suit in a district court for purposes of a contingency fund to provide errors and omissions insurance and coverage from burglary, theft, robbery, counterfeit currency, or destruction; and
- an additional fee for a petition for an order of nondisclosure of criminal history record information.

C.S.S.B. 41 removes the duty of the clerk of a district court, county court, statutory county court, or a statutory probate court to collect an electronic filing fee for any civil action or proceeding requiring a filing fee.

With respect to the statutory fee schedule for district clerks, the bill makes the following changes:

- creates a \$1 fee per page or part of a page for the preparation of the clerk's record on appeal;
- increases the fee for approving a bond from \$4 to \$5; and
- specifies fees for certain certified and noncertified papers, in paper or electronic form, and depending on the number of pages.

C.S.S.B. 41 amends the Local Government Code to remove the authorization for an additional filing fee for each suit in a county court for purposes of a contingency fund to provide errors and omissions insurance. With respect to the statutory fee schedule for county courts, the bill makes the following changes:

- creates a \$1 fee per page or part of a page for the preparation of the clerk's record for appeal;
- creates a \$5 fee for searching files or records to locate a cause when the docket number is not provided or to ascertain the existence of an instrument or record in the county clerk's office;
- increases the fee for issuing an abstract of judgment from \$5 to \$8;
- increases the fee for execution, order of sale, writ, or other process from \$5 to \$8;
- increases the fee for approving and recording bond from \$3 to \$5;
- increases the fee for issuing an original document and one copy, or each additional set of an original and one copy, from \$4 to \$8;
- specifies fees for noncertified papers, in paper or electronic form, and depending on the number of pages;
- removes the filing fee for an original action in a county civil court;
- removes the filing fee for an action other than an original action in a county civil court;
- removes the filing fee for a probate original action in a county probate court;
- removes the filing fee for an adverse probate action in a county probate court;
- removes the additional special fee for each original action in a county probate court;
- removes the supplemental court-initiated guardianship fee for a probate original action or adverse probate action in a county probate court; and
- removes the supplemental public probate administrator fee for a probate original action or adverse probate action in a county probate court.

C.S.S.B. 41 removes the requirement that fees in a pending probate action be paid in cash. The bill includes a subpoena in the definition of "document" for purposes of the fee for issuing an original document and one copy by the clerk of a county court.

C.S.S.B. 41 repeals specified provisions in the Civil Practice and Remedies Code, Family Code, Government Code, Health and Safety Code, Human Resources Code, Local Government Code, Occupations Code, Property Code, Transportation Code, and Revised Statutes authorizing a variety of court costs and fees. The bill repeals provisions authorizing the following court costs and fees:

- an interpreter fee;
- a court cost for using a certified copy of appointments to a court in a proceeding;
- a court cost for purposes of financing an alternative dispute resolution system in a county court, district court, or justice court;
- reimbursement fees relating to a teen court program;
- costs and fees relating to deferred adjudication and dismissal on completion of a teen dating violence court program;
- fees relating to a disposition hearing in a juvenile court and establishing the juvenile probation diversion fund;
- a juvenile delinquency prevention fee;
- fees for felony delinquent conduct offenses that require DNA testing;
- a cost for a child's court-ordered attendance in a drug education program or alcohol awareness program;
- a judgment on a child's parent or other person responsible for the child to support the child's placement outside the child's home;
- additional filing fees for a suit requesting the adoption of a child;
- a district court records archive fee and provisions establishing the district court records technology fund;
- certain fees due at filing in a district court;
- a court reporter service fee;

- a jury fee in a district court;
- additional filing fees in statutory county courts, statutory probate courts, and certain county courts;
- additional filing fees for civil cases for purposes of court record preservation;
- additional filing fees for certain actions and proceedings in district courts, statutory county courts, constitutional county courts, and justice courts for basic civil legal services for indigents;
- additional filing fees in district courts, statutory county courts, county courts, and justice courts for support of the judiciary;
- an electronic filing fee for any civil action or proceeding requiring a filing fee in a justice court;
- a family protection fee;
- a judicial and court personnel training fee;
- a court cost to preserve a record by any means approved by an associate judge in the absence of a court reporter or by agreement of the applicable parties;
- a court cost for filing a report of divorce or annulment with the vital statistics unit of the Department of State Health Services;
- a security fee for a civil case filed in a county court, county court at law, or district court;
- a filing fee for a vehicle towing and booting hearing;
- a fee for an eminent domain proceeding for each special commissioner at the proceeding;
- a filing fee for a hearing on payment of tolls; and
- a bond in connection with an appeal of a finding that the organization of a water control and preservation district and proposed improvements is feasible and practicable, would be a public benefit or utility, and that related money for the improvement is necessary.

C.S.S.B. 41 repeals provisions authorizing the following court costs and fees in certain counties:

- additional filing fees for civil cases in the following counties:
 - Dallas County;
 - Bexar County;
 - Hays County;
 - Rockwall County;
 - Travis County;
 - Hidalgo County;
 - Cameron County;
 - Willacy County; and
 - Starr County;
- divorce, annulment, or voiding of marriage fee in Harris County;
- divorce and contempt fees in Orange County;
- filing fees for adoption cases in Orange County;
- filing fees for adoption cases in Wichita County;
- certain transaction fees for a suit for spousal support or a suit affecting the parent-child relationship in Harris County;
- child or spousal support service fees in Collin County;
- child or spousal support service fees in Johnson County;
- child or spousal support service fees, contempt fees, and filing fees for adoption cases in Montague County;
- child support service fees in Nueces County;
- child support service fees in Smith County;
- court reporter fees in civil actions in Galveston County statutory court;
- court reporter fees in civil actions in Parker County Court at Law; and
- a security fee in a civil case filed in the county court, county court at law, or a district court in Webb County.

C.S.S.B. 41 repeals the following provisions relating to certain court costs and fees:

- the cap on the fee for service of notice of an action related to a fraudulent court record or fraudulent lien or claim and the authorization for an alternate fee;
- the duty for the state to annually compensate each county that collects additional filing fees in statutory probate courts for each statutory probate judge in the county and to make contributions if the total amount from such fees exceeds the sum of the annual salary paid to the presiding judges of statutory probate courts and the annual compensation to each county that collects such additional fees;
- the duty for the state to annually compensate each county that collects additional filing fees in certain county courts if the county judge is entitled to an annual salary supplement from the state and to make contributions if the total amount from such fees exceeds the amount of annual compensation provided by the state;
- certain authorized uses of the additional special fee for each original action in a county probate court by Dallas County;
- the remittance of a fee for a petition or order of nondisclosure of criminal history record information to the comptroller of public accounts;
- the payment of the compensation of an associate judge from the excess contributions remitted to the county by the state; and
- the duty of the clerk of a county court or the county judge to collect and deposit a county records technology and infrastructure fee for a person who pays a records management and preservation fee or a person who pays a fee for probate matters.

Conforming Changes; Repealers

C.S.S.B. 41 amends the Civil Practice and Remedies Code, Code of Criminal Procedure, Family Code, Health and Safety Code, Human Resources Code, and Property Code to make conforming changes.

C.S.S.B. 41 repeals the following provisions:

- Sections 12.005(b) and (d), Civil Practice and Remedies Code;
- Sections 21.051 and 126.012, Civil Practice and Remedies Code;
- Sections 152.004 and 152.005, Civil Practice and Remedies Code;
- Sections 54.032(e), (g), and (h), Family Code;
- Sections 54.0325(g) and (h), Family Code;
- Section 54.0411, Family Code;
- Sections 54.0461 and 54.0462, Family Code;
- Section 54.047(f), Family Code;
- Section 54.06(a), Family Code;
- Sections 108.006(b) and (c), Family Code;
- Section 194.002(e), Health and Safety Code;
- Section 152.0492, Human Resources Code;
- Sections 152.1074(f) and (g), Human Resources Code;
- Section 152.1322, Human Resources Code;
- Sections 152.1752(b), (c), (d), and (e), Human Resources Code;
- Section 152.1844, Human Resources Code;
- Sections 152.1873, 152.1874, 152.2183, and 152.2496, Human Resources Code;
- Section 2308.457, Occupations Code;
- Section 21.047(c), Property Code;
- Section 372.107(c), Transportation Code; and
- Article 7818, Revised Statutes.

C.S.S.B. 41 repeals the following provisions of the Government Code:

- Sections 22.2021, 22.2031, 22.2041, 22.2051, 22.2061, 22.2071, 22.2081, 22.2091, 22.2101, 22.2121, 22.2131, and 22.2141;
- Sections 25.00211, 25.00212, and 25.00213;
- Section 25.0595(j);

- Section 25.0862(i);
- Section 25.1862(l);
- Sections 26.007 and 26.008;
- Section 51.305;
- Section 51.317;
- Sections 51.601(a), (a-1), (b), and (e);
- Section 51.604;
- Sections 51.702, 51.703, and 51.704;
- Sections 51.705, 51.706, 51.707, and 51.708;
- Sections 51.709, 51.710, 51.711, and 51.713;
- Sections 51.851(c), (g), and (j);
- Subchapter M, Chapter 51;
- Subchapter N, Chapter 51;
- Section 54A.110(d);
- Section 54A.205(d);
- Section 411.077(a); and
- Subtitle I, Title 2.

C.S.S.B. 41 repeals the following provisions of the Local Government Code:

- Sections 118.053, 118.054, 118.0546, and 118.055;
- Section 118.056, Local Government Code, as amended by Chapter 1001, Acts of the 76th Legislature, Regular Session, 1999;
- Sections 118.057, 118.064, 118.0645, 118.067, 118.068, and 118.069;
- Sections 118.102 and 118.122;
- Section 133.058(c);
- Sections 133.152, 133.153, and 133.154;
- Sections 291.008(a), (b), (c), and (e); and
- Section 291.009.

Implementation of New or Amended Court Costs and Fees

C.S.S.B. 41 establishes, with respect to the implementation of new or amended court costs and fees, that the provision limiting the date on which the imposition or change in the amount of court costs and fees takes effect to the next January 1 after the law takes effect does not apply to a court cost or fee if the law imposing or changing the amount of the cost or fee takes effect on or after the January 1 following the regular session of the legislature at which the law was enacted.

EFFECTIVE DATE

January 1, 2022.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 41 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

The substitute extends the applicability of the provisions in the engrossed establishing the state consolidated civil fees to the filing of a probate, guardianship, or mental health case in a district court, statutory county court, statutory probate court, and county court. The substitute changes the filing or action to which the \$45 fee applies from applicability to any subsequent filing to a civil case to applicability to any action other than the original action filed in the applicable court and also includes adverse probate actions among such actions, which the engrossed did not do.

Whereas both the engrossed and substitute provide for the collection and remittance of state consolidated civil fees with respect to fees paid through the statewide electronic filing system, the engrossed requires the fees to be remitted to the comptroller of public accounts while the substitute requires the fees to be remitted directly to the treasury by the Office of Court Administration of the Texas Judicial System (OCA). The substitute does not include the requirement that appeared in the engrossed for OCA to submit a report each day of fees remitted to the comptroller.

The substitute includes local civil fees for filing a probate, guardianship, or mental health case or other action in statutory county courts, statutory probate courts, and county courts, which did not appear in the engrossed. The substitute accordingly provides for the allocation of such fees. The substitute also includes a court-initiated guardianship fund, judicial education support fund, and public probate administrator fund among the accounts and funds that appeared in the engrossed and to which money from those civil fees must be allocated.

With respect to the authority of the chief justice of each court of appeals over the money in the judicial appellate system fund, the substitute includes a specification not in the engrossed that the chief justice has sole discretion on the use of the money in the fund, except that the money must be used for purposes consistent with the purposes for which the fund was established.

The substitute removes the duty of the state to pay part of the salary of a presiding judge of a statutory probate court from additional filing fees in statutory probate courts and amounts specifically appropriated and the duty of counties to pay the remainder of the salary and expenses of the presiding judge, which were not removed in the engrossed.

The substitute does not increase the amount of fees from a civil case in a court of appeals that must be deposited in the judicial fund from one-half of the fees to all of the fees, as the engrossed did.

The substitute includes a provision establishing that the provision limiting the date on which an imposition or change in the amount of court costs and fees takes effect to the next January 1 after the related law takes effect does not apply to a court cost or fee if the law imposing or changing the amount of the cost or fee takes effect on or after the January 1 following the regular session of the legislature at which the law was enacted.

The substitute removes the duty of the clerk of a statutory probate court to collect an additional filing fee for any civil action or proceeding requiring a filing fee, which is in addition to the removal of the duties of clerks of certain courts to collect additional filing fees in the engrossed.

The substitute does not change the applicability of the filing fee for a probate original action to apply to all clerical duties in connection with an original action in a statutory probate court, as in the engrossed. The substitute instead removes the filing fee altogether.

The substitute removes the following court costs and fees, which the engrossed did not do:

- the filing fee for an adverse probate action in a probate court;
- the additional special fee for each original action in a probate court;
- the supplemental court-initiated guardianship fee for a probate original action or adverse probate action in a probate court; and
- the supplemental public probate administrator fee for a probate original action or adverse probate action in a probate court.

The substitute removes the requirement that fees in a pending probate action be paid in cash, which was not in the engrossed.

The substitute repeals provisions authorizing additional filing fees in statutory probate courts and requiring the state to annually compensate each county that collects such additional fees for

each statutory probate judge in the county and to make contributions if the total amount from such additional fees exceeds the sum of the annual salary paid to the presiding judges of statutory probate courts and the annual compensation to each county that collects such additional fees, which was not in the engrossed. The substitute repeals the provision establishing the contributions fund in each county that collects such additional fees, which was not in the engrossed.

The substitute repeals a provision requiring a county judge to collect and deposit a county records technology and infrastructure fee for a person who pays a fee for probate matters.

The substitute repeals a provision authorizing certain uses of the additional special fee for each original action in a county probate court by Dallas County.

The substitute changes the effective date in the engrossed from September 1, 2021, to January 1, 2022.