

SUBJECT: Court clerk duties regarding court registry funds

COMMITTEE: Judicial Affairs — favorable, with amendments

VOTE: 6 ayes — Thompson, Hartnett, Clark, Shields, Solis, Zbranek
0 nays
3 absent — Crabb, Garcia, Luna

WITNESSES: For — Bonnie Wolbrueck and Dianne Wilson, Texas County and District Clerks Association; Amalia Rodriguez Mendoza, Travis County District Clerk's Office; Charles Barcarisse, Harris County District Clerk's Office
Against — None

DIGEST: HB 2270 would allow funds paid to a court registry to be deposited in interest bearing accounts in federally insured banks. Ninety percent of any interest earned would be credited back to the account; the remaining 10 percent would be deposited in the county's general fund to cover administrative expenses. Any interest earned on the funds would be subject to the appropriate federal taxes. On those funds for which a non-interest bearing account was established, the clerk would still be allowed to deduct an administrative fee upon withdrawal; that fee could be no higher than the greater of five percent of the total amount deposited or \$50.

Under HB 2270, all funds would be designated as "registry funds" rather than "trust funds." The bill would require a federally insured bank or any bank in the county to apply as a depository institution for registry funds. Upon the approval of the commissioners of the county, the clerk could require such banks to provide interest earning accounts for the deposit of registry funds. The county would have to advertise or give notice of the opportunity to submit an application to be a depository for registry funds.

HB 2270 would make clerks responsible, in a custodial capacity, for funds deposited from numerous sources, including funds of minors or persons determined to be non compos mentos (not of sound mind), funds tendered in an interpleader action or paid to satisfy a judgment, child support funds held

for more than three days, cash bonds or cash bail bonds, funds in an eminent domain proceeding, and any other funds tendered for deposit into the court registry.

HB 2270 would provide procedures for the withdrawal of funds from the registry of the court and transfer to a new depository institution should the commissioner's court select a new institution. It also would allow a clerk to pay an order on unpaid court costs from a deposited cash bond if the costs remained unpaid for 45 days after the appellate court issued its mandate in an appeal for which the bond was tendered.

The bill also would address situations where a minor or incapacitated person with no legal guardian but a "next friend" has funds deposited in the court registry. The next friend could invest those funds in any interest bearing account with a federally insured bank. The clerk, upon a written order granting authority, could invest such funds in any manner permitted for registry funds, including interest bearing accounts, U.S. treasury bills, eligible interlocal pools, or eligible no-load money market funds regulated by the SEC.

HB 2270 would increase continuing education requirements for court clerks from 20 hours every 24 months to 20 hours per year. Three of these hours would have to deal with registry funds handled by the clerk.

HB 2270 would take effect September 1, 1997 and would apply to funds held in the registry of the court on or after that date.

**SUPPORTERS
SAY:**

HB 2270 was developed cooperatively by legislative committees of the County and District Clerks Association, County Judges and Commissioners Association, County Auditors Association and County Treasurers Association in order to more clearly define the duties of county and district clerks with regard to fund deposited with court registries and to allow the deposit of registry funds in interest earning accounts.

Registry funds currently deposited with banks do not earn interest and are, thus, almost a free loan to the bank from the people who deposit the funds. If the funds were deposited in interest bearing accounts, both the person for whom the funds are deposited and the county would receive interest

earnings on the funds. In many cases, the funds deposited are significant amounts, especially for bonds and amounts tendered in interpleader actions. Allowing the money deposited to earn interest would allow these funds to remain productive even while being tied up awaiting a decision of a court or other parties to an action.

The deposit of registry funds in interest bearing accounts would be left entirely to the discretion of the county commissioner's court. If the county did not wish to adopt the procedures established for interest bearing registry funds, it could choose to continue to deposit funds as in the past. However, the additional clarifications of the duties of the clerk regarding funds deposited would still apply to those counties.

HB 2270 would institute significant protections to ensure that any funds deposited would be safe when deposited. All allowed investments are considered the safest for protecting the initial deposit and providing a reasonable rate of return.

**OPPONENTS
SAY:**

While the bill would allow 10 percent of the interest earned on trust accounts to go to administrative costs, in some counties that amount would be insufficient to cover administration. Additionally, some counties have arrangements with banks to accept earnings credits in lieu of interest on accounts. If banks were required to pay interest on these accounts, the counties earning credits would lose them and be required to pay for additional bank services previously covered by those credits.

NOTES:

The committee amendments would require compliance with federal tax laws for interest earned on accounts deposited with the court, allow the clerk to place funds in an interest-bearing account only upon approval by the commissioner's court, and allow a clerk to pay an order on unpaid court costs from a deposited cash bond if the cost remained unpaid for 45 days.

The companion bill, SB 1304 by Ellis, passed the Senate on April 18 and was reported favorably by the House Judicial Affairs Committee on May 5, making it eligible to be considered in lieu of HB 2270.