

- SUBJECT:** Pay raises for county prosecutors
- COMMITTEE:** Judicial Affairs — committee substitute recommended
- VOTE:** 7 ayes — Thompson, Hartnett, Capelo, Garcia, Hinojosa, Shields, Uresti
0 nays
2 absent — Deshotel, Jim Solis
- WITNESSES:** For — Rob Hoffman; Tom Krampitz, Texas District and County Attorneys Association; Robert L. Busselman; Cheryll Mabray; Rick Miller; William Oxford; Edwin E. Powell, Jr.; Raymond Reese, Dewitt County Commissioners Court; Robert B. Scheske; Tim Taylor; Russell H. Wilson
Against — None
- BACKGROUND:** Under current law, the state supplements the salaries of district attorneys and criminal district attorneys. A county attorney who performs the duties of a district attorney does not receive a similar supplement.
- DIGEST:** CSHB 804 would amend Government Code, chapter 46, by including certain county prosecutors in the state-level supplemental salary compensation package paid to state prosecutors. It also would place limits on a county attorney's private practice of law.
- The bill would define a county prosecutor as a constitutional county attorney who does not have general felony jurisdiction and who is not a state prosecutor. It would define a state prosecutor to include district attorneys, criminal district attorneys, or county attorneys performing the duties of district attorney in specified counties or districts.
- Compensation.** CSHB 804 would extend state supplemental salary compensation to counties that have county prosecutors. The supplement for county prosecutors would be an amount equal to one-half of a state district judge's yearly salary, divided by the number of counties served by the state prosecutor who serves the same county that the county attorney serves, unless that formula would result in an amount less than one-sixth of a state district

court judge's salary, in which case the supplement would be one-sixth of a state district judge's salary. A county with no county prosecutor would not be entitled to receive the salary supplement.

For counties with more than one state prosecutor, the state supplement amount would be computed by determining the amount for each state prosecutor according to the formula used above, adding the amounts for each state prosecutor, and setting the state supplement amount at the lesser of the sum of those amounts or one-half of a state district judge's salary.

If the receipt of compensation based on these formulas would cause the gross salary of a county prosecutor to be higher than a state district judge's salary, or if the prosecutor refused any amount of the compensation, the excess or waived amount would have to be used to pay the county prosecutor's office expenses.

The state comptroller would have to pay to the salary fund of each affected county the authorized supplemental amount at least once a year.

The bill would specify that state prosecutors receive at least \$22,500 a year from the state to supplement salaries and expenses of the state prosecutor's office. The state prosecutor would have to submit an annual report on these expenditures to the comptroller.

Limitations on law practice. CSHB 804 would prohibit a county attorney or assistant county attorney from the private practice of law if the attorney's salary from all state and county funds was at least 80 percent of a state district judge's salary, unless the county attorney filed with the county auditor a written waiver of that amount of compensation. The waived amount would have to be used to meet the expenses of the county attorney's office.

The bill also explicitly would prohibit state prosecutors from the private practice of law and would prohibit them from accepting fees from attorneys to whom they had referred cases.

County requirements. A county commissioners court could not reduce the county funds provided to the county attorney's office as a result of the state compensation package. Government Code, chapter 41, which provides for supplemental funds for county attorneys who perform district attorney duties,

would not apply to a county served by a state prosecutor who served in specific districts or counties listed in Government Code, sec. 46.002. A county auditor's compensation could not exceed the funds received from all county sources by the highest paid elected county officer.

CSHB 804 would express as its purpose the increase in the effectiveness of law enforcement at both the felony and misdemeanor levels.

The bill would take effect September 1, 1999. The provisions limiting the county attorney's salary would not apply to county prosecutors paid more than the county's benchmark salary before that date.

**SUPPORTERS
SAY:**

CSHB 804 would permit county attorneys to receive payments from the state to supplement their county salaries, similar to the state remuneration for the other three classes of prosecutors. Currently, many county attorneys handle many cases on behalf of the state. These attorneys represent the state in cases involving child protective services, mental health and mental retardation, and domestic violence and protective orders, yet they receive no part of their salaries from the state. CSHB 804 would address this inconsistency by paying for state work with state funds.

Some rural county attorneys receive only about \$17,000 a year in salary for providing legal services substantially similar to those that county attorneys in larger venues provide. With the state supplemental funds provided by this bill, these rural county attorneys would receive a living wage. Overall, this bill would benefit 180 county attorney's offices.

CSHB 804 would go far in encouraging qualified candidates to compete for vacant posts and would improve retention of qualified, experienced attorneys in county attorney positions. County attorneys would not receive a windfall, given that the bill would limit the private practice of law under certain conditions and would require any part of a salary in excess of a state district judge's salary to be used to defray the county court's expenses. The bill would be a sound investment in guaranteeing and improving the quality of legal representation of the state's interests in county venues.

OPPONENTS
SAY:

According to the bill's fiscal note, CSHB 804 would cost the state \$9 million in general revenue during fiscal 2000-01 and each biennium after that. Rather than pay county attorneys more, the state should increase state prosecutors' responsibilities for representing the state.

NOTES:

The committee substitute changed the formula in the original bill for supplemental salary compensation for a county prosecutor in a county served by more than one state prosecutor. It also added the provision that would require the comptroller to pay the authorized salary supplement to each affected county.

The companion bill, SB 647 by Wentworth, was reported favorably as substituted by the Senate Finance Committee on April 27 and placed on the Senate Intent Calendar.

A similar bill in the 1997 legislative session, SB 1099 by Wentworth, passed the Senate, but was killed on a point of order along with all other bills on the calendar for that day.