

SUBJECT: Creating a judicial compensation commission

COMMITTEE: Judicial Affairs — favorable, without amendment

VOTE: 6 ayes — Thompson, Hartnett, Capelo, Deshotel, Jim Solis, Uresti

0 nays

3 absent — Garcia, Hinojosa, Shields

SENATE VOTE: On final passage, April 15, 1999 — voice vote

WITNESSES: None

BACKGROUND: The Legislature establishes salaries for members of the Texas Supreme Court, the Court of Criminal Appeals, the 14 courts of appeal, and the 396 district courts. Salaries of all state officers, including state judges, are set in the General Appropriations Act. Government Code sec. 659.012 establishes a formula for determining judicial salaries based on the salary set by the Legislature for a Supreme Court justice.

DIGEST: SB 71 would amend the Government Code to create the Judicial Compensation Commission, contingent on approval of constitutional authorization by SJR 10 by Brown. The bill would require the commission to make a biennial report to the Legislature recommending salaries to be paid for members of the Texas Supreme Court, the Court of Criminal Appeals, the courts of appeals, and the district courts. The commission would be required to consider the following factors:

- ! skill and experience required of the particular judgeship;
- ! time required of the particular judgeship;
- ! value of compensable service performed compared with that in other states, the federal government, and salaries of private sector attorneys;
- ! cost of living changes;
- ! comparable compensation of public officials paid by the state, including state constitutional officeholders, deans, presidents, and chancellors of the public university systems, district attorneys, chiefs of police, county attorneys, and city attorneys in large cities;

- ! other relevant factors normally considered in determining judicial compensation, including the level needed to attract the most highly qualified individuals in the state.

Recommendations would be binding unless rejected by the Senate or the House of Representatives by majority vote before enactment of the General Appropriations Act for the subsequent biennium. Unless rejected by a house of the Legislature, the comptroller would have to make payments for the salaries recommended by the commission, effective September 1 following the biennial report. The recommendations would be binding and have the full force of law.

The bill would define the membership of the commission, structure, and the procedure and grounds for removal of a commission member. The commission would consist of nine members appointed by the governor with the advice and consent of the Senate. Members would serve staggered terms of six years with the terms of three members expiring February 1 of each odd-numbered year. The governor would name a presiding officer.

The bill would repeal Government Code, sec. 659.012, the judicial salary formula.

SB 71 would take effect whenever SJR 10, the proposed constitutional amendment creating the Judicial Compensation Commission, takes effect.

SUPPORTERS
SAY:

SB 71 would create an independent panel to determine the proper level of state judicial salaries based on clear criteria. In the past, the Legislature's determination of judicial salaries has been a political hot potato, due in part to the connection of judicial salaries to the legislative retirement plan. Following an evaluation of the Texas judicial system, the Texas Commission on Judicial Efficiency recommended establishment of a commission responsible for making judicial salary recommendations.

SB 71 would base salary increases in part on market forces and other objective factors, such as comparable salaries paid other top state officials. Currently, Texas judicial salaries lag behind those paid in other states. By considering the judicial salaries of other states, in addition to those of private sector attorneys,

Texas would be assured of continuing to attract and retain the high quality judges that the people of Texas deserve.

The elected Legislature would retain a large role in the determination of judicial salaries because either the House or the Senate could veto the commission's recommendation. Nothing would preclude the Legislature from overriding the commission's recommendations and setting different salaries.

SB 71 would not take effect unless voters approved SJR 10, which would provide the opportunity for the voters to decide this important issue.

OPPONENTS
SAY:

SB 71 would give the commission powers that are best reserved to the Legislature. The Legislature is elected to make the difficult decisions, such as setting judicial salaries, often involving controversial political questions. Judicial salaries should be determined by elected officials, not by commission members appointed by the governor, especially since setting these salaries involves spending taxpayer dollars.

Granting an appointed commission even limited lawmaking authority would set a bad precedent and blur the separation of powers. It would stand the lawmaking process on its head, allowing an executive-appointed commission to make law subject to veto by the Legislature in setting salaries for the judicial branch.

NOTES:

The enabling constitutional amendment, SJR 10 by Brown, which would create a Texas Judicial Compensation Commission, is on today's Constitutional Amendments Calendar.

An identical bill, SB 328 by Brown, passed in the Senate during the 1997 legislative session, but died in the House Calendars Committee.