

- SUBJECT:** Longevity pay for certain assistant prosecutors
- COMMITTEE:** Judicial Affairs — favorable, without amendment
- VOTE:** 6 ayes — Hartnett, Deshotel, Garcia, Solis, Talton, Uresti
0 nays
3 absent — Thompson, Capelo, Hinojosa
- WITNESSES:** For — Yolanda de Leon; Tim Cole; Barry Macha; *Registered but did not testify:* Chuck Noll, Harris County District Attorney's Office
Against — None
- DIGEST:** HB 178 would establish longevity pay for assistant district attorneys, assistant criminal district attorneys, and assistant county attorneys to county attorneys compensated by the state to perform the duties of a district attorney.
- An assistant prosecutor would be eligible for longevity pay if he or she were a full-time employee on the first workday of the month, was not on leave without pay on the first workday of the month, and had accrued at least four years of lifetime credit not later than the last day of the preceding month. An assistant prosecutor's eligibility would have to be certified by the district attorney, criminal district attorney, or county attorney.
- The monthly amount of longevity pay would be \$20 for each year of lifetime service credit, effective beginning with the month following the month in which the fourth year of lifetime service credit was accrued. The longevity pay could not be more than \$20 per month per year of lifetime service credit regardless of the number of positions held or the number of hours worked each week. An assistant prosecutor's total longevity pay could not exceed \$5,000 annually.
- An assistant prosecutor who received a salary that was equal to or more than 80 percent of a state district judge's salary and who received longevity pay could not engage in the private practice of law. Assistant prosecutors to whom this prohibition applied could complete all civil cases that did not

conflict with the interest of any of the district's counties in which the assistant prosecutor served and that were pending in court before the assistant prosecutor who exceeded the salary cap.

The longevity pay supplement would be paid out of the county general fund. A county could not reduce the assistant prosecutor's salary to offset the pay supplement. Counties who shared an assistant prosecutor would have to apportion the pay supplement according to their population ratios. The state would have to reimburse the county for amounts spent for longevity pay. A county seeking reimbursement would have to certify to the amount to the comptroller quarterly, and the comptroller would have to issue a warrant to the county in that amount.

If an assistant prosecutor ceased to work full-time after the first workday of a month but otherwise qualified for longevity pay, the compensation for the month would have to include the full longevity pay.

Assistant prosecutors would accrue lifetime service credit for full-time, part-time, or temporary employment. An assistant prosecutor on leave without pay for an entire month would not accrue lifetime service credit for that month. Assistant prosecutors who simultaneously held two or more positions that each accrued lifetime service credit would accrue credit for only one of the positions. An assistant prosecutor who began working on the first workday of a month in a position that accrued lifetime service credit would be considered to have begun working on the first day of the month.

The bill would take effect January 1, 2002.

**SUPPORTERS
SAY:**

HB 178 would entitle assistant prosecutors to receive a state supplement to their county salaries as a reward for long service. County attorneys typically handle many cases on behalf of the state. These attorneys represent the state in felony criminal cases, yet they receive no part of their salaries from the state. HB 178 would address this inconsistency by paying for state work with state funds.

The bill especially would benefit assistant prosecutors in rural counties, who are not paid as much as assistant prosecutors who provide substantially similar legal services in larger counties. With the state supplemental funds

provided by this bill, rural county attorneys would receive a reasonable living wage.

HB 178 would improve retention of qualified, experienced attorneys in assistant prosecutor positions. Texas now has more than 1,600 assistant prosecutors, only about half of whom have more than four years of service. Training an assistant prosecutor takes about three years. After gaining experience, the assistant prosecutors often join the private sector for higher pay. HB 178 would provide an incentive for experienced attorneys to stay, benefitting the state.

HB 178 would not result in a large cost to state general revenue, nor would assistant prosecutors receive a windfall. The bill would prohibit assistant prosecutors who received the supplement from engaging in the private practice of law if their salaries were equal to or more than 80 percent of the salary paid to a state district judge. Longevity pay also would be limited to \$5,000 annually. The supplement provided by this bill would be a sound investment in guaranteeing and improving the quality of assistant prosecutors.

OPPONENTS
SAY:

According to the bill's fiscal note, HB 178 would cost the state \$131,200 in general revenue in fiscal 2002 and about \$196,800 each year thereafter. Rather than just pay the assistant prosecutors more, the state also should increase state prosecutors' responsibilities for representing the state.

State employees qualify for longevity pay after five years, but HB 178 would provide assistant prosecutors with longevity pay after four years. If assistant prosecutors' supplements are to be paid out of state general revenue, the same rule qualifying period should apply to them.

NOTES:

The 76th Legislature in 1999 enacted a related bill, SB 1099 by Wentworth, awarding supplemental salary compensation to county attorneys.