

- SUBJECT:** Higher county fee cap to fund alternative dispute resolution systems
- COMMITTEE:** Civil Practices — favorable, without amendment
- VOTE:** 5 ayes — Nixon, Gattis, Y. Davis, King, Woolley
0 nays
4 absent — Capelo, Hartnett, Krusee, Rose
- WITNESSES:** For — Kathy Bivings-Norris, Dispute Resolution Center Director’s Council, Texas Mediation Trainers Roundtable, and Dispute Resolution Center of Montgomery County; Kris Donley, Dispute Resolution Center of Travis County

Against — None

On — John C. Fleming, State Bar of Texas
- BACKGROUND:** Alternative dispute resolution (ADR) centers have existed in Texas since 1981. Currently, 17 centers across the state operate with volunteer mediators. These centers are designed to provide dispute resolution to the public at a low cost. Parties may seek ADR at any time during a case, even before filing suit, and a judge may require that parties attempt to resolve the case through ADR before trial is set.

Civil Practice and Remedies Code, chapter 152 governs county ADR systems and allows counties to set fees for court filings to fund these systems. Sec. 152.004 authorizes a county commissioners court to set fees for certain civil cases filed in county and district courts, not to exceed \$10 per case. Sec. 152.005 authorizes a county with a population of 2.5 million or more (Harris) to set fees for certain justice court cases, not to exceed \$3 per case.
- DIGEST:** HB 538 would authorize any county commissioners court to set a fee of up to \$5 per case for certain cases filed in justice courts to fund ADR systems. It would raise the cap on fees charged in district and county courts for this purpose to \$15 per case. This bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

HB 538 would give counties needed authority to increase their fees for certain court cases to ensure that all parties have access to ADR services. For most ADR centers, these optional fees provide at least half of their funding. While the number of cases requiring ADR has increased and so has inflation, the fee cap has not increased since 1987.

Simply authorizing counties to raise these fees does not mean that all counties will increase them. County commissioners monitor the fee amounts and the use of the fees to make sure that they reflect local need. Some counties do not exercise their authority to charge these fees. If the fee for filing suit is too high for a party, that party can file a pauper's affidavit to avoid paying the fee. This existing safeguard keeps courthouse doors open to all litigants.

ADR deals with all types of civil cases and helps trial judges reduce their dockets. Although ADR is not a replacement for a trial, it provides a way to dispose of cases efficiently and inexpensively in a manner that often leaves all parties more satisfied than a trial. Often, ADR can resolve a case in 45 to 60 days that would take one year or more to resolve in court. ADR saves costs in counties of all sizes. For example, Montgomery County saves approximately \$2.25 million a year in court expenses through ADR, and Travis County saves \$9 million a year. ADR gives parties a chance to resolve their disputes, often with no court involvement, sooner and often at a lower cost to the parties, courts, and the state.

Because these filing fees are charged to all parties in civil cases, any burden is spread evenly. ADR centers primarily serve litigants who cannot afford to hire a private mediator. Many centers charge a service or application fee to help cover their costs. Because the current court filing fees reflect 1987 values, ADR centers are having to charge higher service or application fees to litigants, making it more likely that litigants who cannot afford private mediators will not be able to afford the volunteer mediators at the ADR center either. Without additional funding, ADR centers will be forced to cut their services. This would deny justice to those most in need of help.

**OPPONENTS
SAY:**

By allowing these filing fees to increase, HB 538 would reduce access to courts. The proliferation of more and higher court fees threatens to price justice beyond the range of those who cannot afford these costs. No filing fees should be increased without first determining the impact on access to

courts. Also, it is unfair to require every party that files a claim to pay a potentially higher fee for ADR services benefitting a relative few.

NOTES:

During the 77th Legislature in 2001, the House passed an identical bill, HB 1364 by Goodman, which died in the Senate Jurisprudence Committee.

The companion bill, SB 184 by Janek, has been referred to the Senate Jurisprudence Committee.