

SUBJECT: Increasing compensation and revising retirement benefits of state judges

COMMITTEE: Judiciary — committee substitute recommended

VOTE: 7 ayes — Hartnett, Hughes, Alonzo, Gonzales, Hopson, Straus, Van Arsdale

0 nays

1 present not voting — Keel

1 absent — Solis

SENATE VOTE: On final passage, March 30 — 29-0-1 (Lindsay present, not voting)

WITNESSES: For — Maxine Barkan, League of Women Voters of Texas; Susan A. Spataro; Linda Thomas, Judicial Section of the State Bar of Texas, Council of Chief Justices; (*On committee substitute*: Martha Hill Jamison); (*Registered, but did not testify*: George S. Christian, Texas Association of Defense Counsel; Robert M. Fillmore; David D. Garcia, Denton County Statutory Courts; Jay Harvey, Texas Trial Lawyers Association; Adele Hedges; Martha Hill Jamison; Wallace B. Jefferson; Phil Johnson; Mary Lou Keel; Alma W. Lopez, Fourth Court of Appeals; Cindy McCauley, Lyondell Chemical Company; Steve McKeithen, Ninth Court of Appeals; Julie W. Moore, Occidental Petroleum Corporation; Josh Morris; Lynn Nabers, Alliance for Judicial Funding; Lee Parsley, Texans for Lawsuit Reform; Edward G. Pickle, Shell Oil Co.; Brian Quinn; Judge Dean Rucker; Lucinda Saxon, Texas Association of Business; Tab R. Urbantke; Virgil Vahlenkamp, Denton County Statutory Courts; Regelio Valdez, 13th Court of Appeals; Travis E. Vanderpool; James T. Worthen, 12th Court of Appeals-Tyler.)

Against — None

On — Mark Davidson, Harris County District Judges.

BACKGROUND: **Judicial salaries.** Texas Government Code sec. 659.012 defines the pay rate of all state judges. Each judge's salary is tied to the salary of the justices on the Supreme Court. Justices on the Court of Criminal Appeals earn as much as a Supreme Court justice, appellate court justices earn 95 percent of the salary of a Supreme Court justice, and district court judges earn 90 percent of a Supreme Court justice's salary. In addition, the chief justice or the presiding judge of each court is entitled to an additional \$2,500. The salary of the chief justice of the appellate court must be at least \$500 less than the salary of justices of the Supreme Court.

County commissioner courts may provide up to a \$15,000 a year supplement to justices of appellate courts in their county for judicial and administrative services. County commissioners may also supplement the salaries of district judges of courts residing in their county in varying amounts as set by the Government Code, sec. 32. An appellate judge's salary, including county supplements, may not exceed \$1,000 less than the salary of a Supreme Court justice. Compensation paid to a district judge, including county supplements, may not exceed \$2,000 less than the salary paid to a Supreme Court justice. Judges may receive additional compensation for serving on a juvenile board, the amount of which varies according to the county. Counties must supplement the salaries from the county's general funds.

Retirement benefits. Each judge, justice, and commissioner of the Supreme Court, Court of Criminal Appeals, courts of appeals, or district courts is required to join the Judicial Retirement System Plan. Each judge must contribute 6 percent of the judge's annual salary to the plan. These contributions cease after 20 years of service credit, and retirement benefits do not increase for judges who continue to serve after that time. The retirement benefit is then 60 percent of the applicable salary for judges who have accrued 20 years of service.

Retirement benefits of elected officials are tied to the state salary of a district judge. The standard retirement annuity for service credited in the elected class of membership is equal to the number of years of service credit in that class times 2 percent of the state salary of district judges.

DIGEST: **Judicial salaries.** CSSB 368 would raise judges' salaries on the Supreme Court and Court of Criminal Appeals from \$113,000 a year to \$150,000 a year; on the 14 Courts of Appeals from \$107,000 a year to \$137,500 a year; and for district judges from \$102,700 a year to \$125,000 a year. The

judges' salaries would be tied to the salary of district judges, with a Supreme Court justice earning 120 percent of a district judge's salary and a court of appeals judge earning 110 percent of a district judge's salary.

The bill would cap county supplements at \$7,500. A county could supplement district judges' salaries from any available funds.

Retirement benefits. CSSB 368 would allow a judge who accrued more than 20 years of service credit to file an application with the retirement system to continue making contributions for up to an additional 10 years of service credit. In each additional year of service, the participating judge would contribute 6 percent of the judge's salary and receive retirement benefits of up to 80 percent of the applicable salary at retirement. The bill sets forth the formula for determining the amount of service retirement annuity a judge would receive.

The bill would increase the multiplier to determine the standard service retirement annuity for elected officials to 2.3 percent of the state salary of a district judge for each year of service credit.

Data collection. Every two years, the Office of Court Administration (OCA) would be required to collect data on the judicial turnover rate. This data would include the rate at which state judges resigned from office or chose not to seek re-election and why they so chose. The report also would include how Texas state judges' salaries compared with the state judges in the five states closest in population to Texas, as well as how judges' salaries compared with the average salary of lawyers in private practice in Texas.

The purpose of this report would be to ensure that the compensation of state judges was adequate and appropriate. The report would have to be filed by December 1 with the governor, the lieutenant governor, the speaker of the House, and the chairs of the House and Senate committees with jurisdiction over the judiciary or appropriations. The OCA would be required to begin collecting data by December 1, 2005.

The State Bar of Texas would have to collect data every two years on attorney compensation in Texas, beginning by December 1, 2005. The report would be filed by December 1 with the governor, the lieutenant governor, the speaker of the House, and the chairs of the House and Senate committees with jurisdiction over the judiciary or appropriations.

Increase in fees. The bill would increase fees for civil and criminal cases. Individuals convicted of any offense, other than a pedestrian or parking offense, would pay an additional \$4 fee. Sixty cents of this fee would go to the general fund of the municipality to promote the efficient operation of municipal court and the investigation, prosecution, and enforcement of municipal and state offenses. The other \$3.40 would be deposited in the judicial fund. The bill would add a \$37 civil case filing fee in district or county courts to be used for the judiciary fund.

SB 638 would repeal the Government Code, secs. 32.002 through 32.253, addressing county supplements to district judges. Government Code, sec. 659.0125, requiring certain local administrative judges to be paid an additional \$5,000 above their regular salaries, also would be repealed.

The bill would take effect on Sept. 1, 2005.

**SUPPORTERS
SAY:**

Judicial salaries. Texas ranks 39th in its pay to judges and ranks last in judicial salaries among the 10 largest states. State judges make important decisions that affect the entire state. In order to attract and maintain the highest quality judges, the judicial salaries must keep pace with the salary in the private sector. The average salary of a licensed attorney with an equivalent amount of experience as a state judge is about \$190,000 a year. Because judges can make significantly more money in the private sector, the current judicial salary discourages judges from remaining on the bench.

Low pay encourages high turnover rates and makes it difficult to attract the most experienced candidates to the bench. The average tenure in the Supreme Court and the Court of Appeals is less than one full elected term. The average tenure of a district judge is only two terms. However, the learning curve for a judge can be from two to three years. Texas' low judicial salary discourages judges from remaining on the bench, which inevitably impacts the quality of justice in Texas.

Retirement system. One purpose of a pension system is to provide an incentive for employees to stay on the job. However, the current retirement system discourages judges from remaining on the bench after they reach retirement age. Under current law, after 20 years of judicial service, judges no longer can increase retirement benefits by continuing to pay into the retirement system. Many judges receive a maximum pension of 60 percent of their salaries even if they work 15 years beyond

retirement age. Instead of encouraging judges to retire at the earliest opportunity, this bill would provide an incentive for judges to remain on the bench by giving them a way to increase their retirement benefits for an additional 10 years. As a result, Texas would retain more experienced and highly qualified judges.

By encouraging judges to remain longer on the bench, this bill would save money. When a judge retires, the state must pay retirement benefits equal to between 50 percent and 60 percent of salary, plus the annual salary of the replacement judge. So when a judge retires, the state effectively must pay 160 percent of the judge's salary to replace the judge. For a judge who remains on the bench after retirement age, the state need pay only the judge's salary. The judicial retirement system would not be affected significantly and would remain actuarially sound.

Filing fee. An increase in the filing fees would be the only way to afford a judicial pay raise at this time, which would help to ensure that those in court received the highest quality justice. Individuals who could not afford the filing fees could always file an affidavit in court to waive court costs.

OPPONENTS
SAY:

Judicial salaries. Judges are adequately compensated because they earn significantly more than most Texans. The private sector is not an appropriate standard by which to compare a judge's salary because pay in a private law firm is vastly higher than most other occupations, even other areas of the legal profession. Individuals are attracted to the bench not for the salary, but for the desire, prestige, and the privilege of public service. Moreover, it is unreasonable to expect that a judge's salary could compete with earnings in the private sector.

Retirement benefits. According to the fiscal note, this bill would increase costs to the state in fiscal 2006-07 and could require that the judicial retirement system receive additional contributions to remain actuarially sound. State judges currently are well compensated while serving on the bench, and many retire with substantial pensions in the neighborhood of \$60,000 a year. There is no pressing need for a new mechanism to extend their retirement benefits.

Increase in filing fees. A judge's salary has historically been and should continue to be funded through general revenue, not through an increase in filing fees. The increase in filing fees would add to the cost burden on

civil litigants. Many people cannot afford the existing costs and fees, especially parties in divorce and child custody cases, which make up a significant number of the filed civil cases.

OTHER
OPPONENTS
SAY:

Provisions requiring a portion of the criminal fee to go to the indigent defense fund should not have been removed from the bill. This fee would have increased state funding for indigent defense by \$13.9 million a year beginning in fiscal 2007, doubling the amount the state currently spends on indigent defense. Texas ranks nearly last in the nation on spending for indigent defense which has severely impacted the quality of indigent defense in Texas.

Capping county supplements would result in a continuing, high turnover rate among judges in urban areas. Judges can earn significantly more in large urban cities such as Dallas, San Antonio, and Houston. In order to continue to attract the highest quality judges to the bench in these areas, counties should have the flexibility to pay more than a \$7,500 supplement.

NOTES:

The substitute included provisions limiting counties' supplemental pay to judges. It also lowered the additional fee in criminal cases from \$7 to \$4 and removed a provision that would have required \$3 of the collected fee to go to the fair defense account. The substitute also would repeal sessions laws and sections of the Government Code dealing with compensation to state judges.

According to the fiscal note, the total estimated cost of the judicial pay raise would be \$33,840,826 in fiscal 2006-07, including \$7,550,000 for annuity payments from the Judicial Retirement System Plan One, which is a pay-as-you-go system and would be partially offset by increased member contributions of \$821,000. The fee increases would generate an estimated \$53,562,000 in new revenue for the judicial fund in fiscal 2006-07 and \$4,406,000 for municipalities.

The salaries of professional prosecutors are tied to judicial salaries and therefore would increase, costing an additional \$7,573,152 in fiscal 2006-07.

According to the fiscal note and the actuarial impact statement, the statutory increase from 2.0 to 2.3 in the percentage multiplier for calculating retirement annuities for the elected class of the Employees Retirement System would make no difference since it would reflect a

change already made by the ERS board four years ago. However, since the retirement annuity for the elected class is based on the salary of district judges, the salary increase proposed by CSSB 368 would increase ERS's unfunded liability by \$52.9 million in fiscal 2006, to \$941.7 million. To achieve the required 31-year funding period and cover the additional cost of the bill, the state contribution to ERS, currently 6.0 percent of payroll, would need to increase from 7.483 percent in fiscal 2006 to 7.561 percent. Retired state employee annuities may not increase until ERS is fully funded. The Senate-passed version of SB 1, the general appropriations bill for fiscal 2006-07, included an increase in the annual state contribution rate to 6.45 percent, which also is included in the Art. 11 wish list for the House-passed version.