

SUBJECT: Increasing compensation for state judges and adding court fees

COMMITTEE: Judiciary — favorable, without amendment

VOTE: 6 ayes — Hartnett, Hughes, Alonzo, Gonzales, Solis, Van Arsdale
0 nays
1 present not voting — Hopson
2 absent — Keel, Straus

WITNESSES: No public hearing

BACKGROUND: **Judicial salaries.** Government Code, sec. 659.012 defines the minimum pay of all state judges, and sec. 659.011 states that the salaries of all state officers and employees are provided by the biennial appropriations act. In some cases, state judicial salaries may be supplemented by county funds.

Each judge's salary is tied to the salary of the justices on the Supreme Court. Judges on the Court of Criminal Appeals earn the same salary as a Supreme Court justice. Government Code sec. 659.012 requires a minimum state salary of \$102,463 for Supreme Court justices, and the general appropriations act for fiscal 2004-05 set the state salary for associate justices on the Supreme Court at \$113,000 and at \$115,000 for the chief justice.

A court of appeals justice earns 95 percent of the salary of a Supreme Court justice, except that the total salary must be at least \$1,000 less than a Supreme Court justice's. The chief justice of a court of appeals is entitled to an additional \$2,500. However, the salary of the chief justice of the appellate court must be at least \$500 less than the salary of a Supreme Court justice.

A district court judge earns 90 percent of a Supreme Court justice's salary. However, the total amount of a district court judge's salary must be at least \$2,000 less than the salary of a Supreme Court justice. In certain large counties, administrative district judges are entitled to an additional \$5,000. (For more information on judicial salaries, please see Table 1 on the following page.)

Table 1: Judicial Salary Summary
(Fiscal 2005)

Judge	State salary	County supplement	Total
Supreme Court - Chief Justice	\$115,000	N/A	\$115,000
Supreme Court - Justice	\$113,000	N/A	\$113,000
Court of Criminal Appeals - Presiding Judge	\$115,000	N/A	\$115,000
Court of Criminal Appeals - Judge	\$113,000	N/A	\$113,000
Court of Appeals - Chief	\$107,850	up to \$4,650	\$112,500
Court of Appeals - Justice	\$107,350	up to \$4,650	\$112,000
District Judge - Local Admin. Judge who serves in county with more than 6 district courts	\$106,700 ¹	up to \$9,300 ²	\$116,000 ^{1,2}
District Judge	\$101,700	up to \$9,300 ²	\$111,000 ²

¹ Includes \$5,000 state supplement. Government Code, sec. 659.0125.

² Except for district judges in Collin, Ellis, Harris, Hill, Tarrant, Travis and Williamson counties, the state salary of a district judge whose county supplement exceeds \$9,300 will be reduced by the amount of the excess so that the maximum salary the judge receives from state and county sources is \$111,000. Government Code, secs. 659.012, 32.043, 32.070, 32.101, 32.109, 32.220, 32.227 and 32.246. In fiscal 2004, the salary of 111 district judges ranged from \$116,732 to \$131,000.

Source: Adapted from data provided by the Office of Court Administration

Under Government Code, ch. 31, counties in each of the 14 courts of appeal districts may provide up to \$15,000 a year, subject to some limitations, to supplement the salaries of the justices of appellate courts in their counties for judicial and administrative services. Counties also may supplement the salaries of district judges of courts located in their counties in varying amounts as set by Government Code, ch. 32. Judges may receive additional compensation for serving on a juvenile board, the amount of which varies according to the county. The 78th Legislature in 2003 enacted a series of provisions that allowed some large counties to pay salaries in excess of the statutory limits on judicial salaries, which authority will expire on September 1, 2007.

Under Government Code, sec. 41.013 and ch. 46, the state pays the salaries and retirement benefits of elected felony prosecutors, and the salaries are tied to the salaries of district judges. About 92 percent of the state's 155 elected felony prosecutors are paid 100 percent of a district judge's salary, and the rest are paid 80 percent of a district judge's salary.

Under Government Code, sec. 21.006, the judicial fund is a separate fund in the state treasury that can be used only for court-related purposes for the support of the judicial branch.

Retirement benefits of elected officials are tied to the state salary of a district judge.

DIGEST:

HB 11 would raise judicial salaries, institute a new fee on criminal court convictions and civil court filings, and require the collection of data about judicial turnover. The bill would take effect December 1, 2005.

Judicial salaries. HB 11 would increase judges' salaries and base appellate court salaries on the salary of district judges, instead of Supreme Court justices. District court judges' minimum annual state salaries would rise from \$101,700 to \$125,000. A district judge's salary, including county supplements and extrajudicial services performed for the county, would have to be at least \$5,000 less than that of an appellate court justice.

Appellate court justices, other than chief justices, would have minimum annual state salaries of 110 percent of district judges, meaning that their minimum salaries would rise from \$107,350 to \$137,500. Appellate court justices' salaries, including county supplements and compensation for extrajudicial services performed for the county, other than chief justices, would have to be at least \$5,000 less than the salary for a Supreme Court justice.

Supreme Court justices, other than the chief justice, would have minimum annual state salaries of 120 percent of district judges, meaning that their minimum state salaries would rise from \$113,000 to \$150,000.

Chief justices and presiding judges of appellate courts would continue to be entitled to a salary that was at least \$2,500 more than that of other justices or judges on their courts. However, the combined salary of an appellate court chief justice would have to be at least \$2,500, instead of \$500, less than the salary of a Supreme Court justice.

HB 11 would institute a new limit on the salary paid to a district judge serving on a juvenile board. The total combined salary for these judges would have to be at least \$5,000 less than the salary of an appellate court justice.

The amount of salary supplement that certain county judges are entitled to from the state would be increased from \$10,000 to \$15,000. This would apply if at least 40 percent of the judge's functions were judicial.

District judges and courts of appeal justices could receive county supplements up to the caps in HB 11. The bill would remove the statutory limit of \$15,000 annually that counties may provide to supplement appellate court salaries and instead would allow counties in the 14 courts of appeal districts to supplement these salaries up to limits set by HB 11. The compensation would be for all extrajudicial services.

HB 11 would repeal several current law provisions covering county supplements to district court judges' salaries in specific counties and would authorize counties to pay district court judges additional compensation for extrajudicial services as long as compensation did not exceed the limits set by HB 11. The bill would repeal the authority for certain counties to supplement a judge's pay in excess of the limits in current law, resulting in these counties being governed by the provisions of HB 11.

The bill would appropriate \$41 million in fiscal 2006-07 to fund the annual salary increases and related benefit costs in HB 11 and for new district courts created by SB 1189 by Wentworth in the regular session of the 79th Legislature.

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 have to include the rate at which state judges resigned from office or chose not to seek reelection and why they so chose. The report also would have to include how Texas state judges' salaries compared with the salaries of similar state judges in the five states closest in population to Texas and how Texas judges' salaries compared with the average salary of lawyers in private practice in Texas.

The report would be designed to ensure that the compensation of state judges was adequate and appropriate. It would have to be filed by December 1 of even-numbered years, 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 February 1, 2006.

Fees on criminal and civil cases. HB 11 would increase fees in civil and criminal cases. A person convicted of any offense, other than a pedestrian or parking offense, would pay an additional \$4 in court costs. Sixty cents of this fee would go to the general fund of the municipality or county to promote the efficient operation of municipal courts and the investigation, prosecution, and enforcement of municipal and state offenses. The other \$3.40 would be deposited in the state judicial fund. The bill also would add a \$37 civil case filing fee in district courts, statutory county courts, and county courts, to be deposited in the judicial fund.

**SUPPORTERS
SAY:**

Judicial salaries. In order to attract and maintain the highest quality judges, Texas must raise its judicial salaries. State judges make important decisions that affect the entire state, and their pay should be commensurate with their responsibilities, duties, and skills. Currently, Texas ranks 39th among states in judicial salaries. HB 11 would address this situation by giving needed, modest raises to the state's judges, who have not had a salary increase since 1997.

Low pay results in high turnover rates and makes it difficult to attract the most experienced candidates to the bench. Texas has been losing judges at all levels of the judiciary. While Supreme Court justices and judges on the Court of Criminal Appeals have six-year terms, the approximate average tenure of a Supreme Court justice is only six years and four months, and the approximate average tenure of a judge on the Court of Criminal Appeals is only five years and four months. When a learning curve is taken into account, this leaves little experience on the courts.

To attract and maintain quality judges, judicial salaries must be raised to compete with private sector and other public service salaries. The salary of state judges often is less than that of a first-year associate at a large law firm. Judges often can double or triple their salaries by returning to the private sector. Even judges who choose a different form of public service, such as teaching or serving on the federal bench, can increase their salaries by 40 percent or more.

The low judicial salaries paid in Texas discourage experienced judges from remaining on the bench, which inevitably affects the quality of justice and leads to inefficiency and uncertainty. Inexperienced judges can cause slower trials, delayed decisions, and new trials, which can have an economic impact on Texas because businesses prefer to invest in states with strong, stable judiciaries. One economic study reported that a

relatively modest increase in judicial salaries would more than pay for itself through increased business activity and state revenue.

HB 11 would retain the traditional hierarchy of judges' salaries in Texas while allowing counties to supplement salaries up to a specific level. This would provide enough flexibility for local areas to adjust salaries as needed while establishing some statewide uniformity. It is important to keep a statewide hierarchy of judges' salaries, not just a hierarchy within each county. Allowing counties to supplement judicial salaries to any level they choose would lead to unacceptable statewide variances in judicial salaries and could lessen or change the role of the Legislature in setting statewide judicial policies.

HB 11 is not the vehicle to undertake a change to sever the link between the pensions of the elected class and judicial salaries. Any change in this arrangement should be considered independently of this bill. Legislators receive low pay for their hard work, making many sacrifices during the course of their public service, and for those who serve long enough to qualify, their pensions are a fair part of their compensation.

Fees on criminal and civil cases. Monies from the state judicial fund are traditionally appropriated — along with general revenue — to pay judicial salaries. Depositing the fees generated by HB 11 in the judicial fund in no way would tie judicial pay directly to decisions made by judges. This mechanism is simply a method of finance that would not create a judicial conflict of interest.

An increase in court fees would be the most logical way to afford a judicial pay raise at this time, which would help ensure that those in the court system received the highest quality justice. Anyone who could not afford the fees could file an affidavit asking the court to waive the costs.

HB 11 is not the appropriate vehicle for a new fee to fund indigent criminal defense, and the topic may not even be germane to the bill. The debate over increased funding for indigent criminal defense should take place independently of HB 11.

Data collection. The data collection requirements in HB 11 would help the state to better evaluate judicial turnover and salaries of the judiciary in the future.

OPPONENTS
SAY:

Judicial salaries. Judges are adequately compensated. They earn significantly more than most Texans and most other public servants. Salaries in the private sector are not the appropriate benchmark by which to evaluate a judge's salary. 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. It is unreasonable to expect that a judge's salary could compete with earnings in the private sector.

HB 11 should sever the link between judicial salaries and legislative pensions so that an increase in judicial salaries did not result in an automatic increase in retirement benefits for legislators and others in the elected class. Lawmakers should not enact legislation that automatically and indirectly would boost their own pensions, especially when the Legislature has failed to fully fund the Employees Retirement System (ERS) and the Teacher Retirement System so that regular retired state employees and retired educators might receive long-delayed pension increases and has restricted future teacher retirement benefits. If legislators and other elected officials deserve higher pensions, that issue should be debated separately.

Fees on criminal and civil cases. A judge's salary historically has been and should continue to be funded through general revenue, not through fees on criminal and civil cases. Coupling an increase in judicial salaries with a fee on criminal convictions would raise questions about the appearance of judicial conflict of interest and the impartiality of judges' decisions about guilt or innocence. Many offenders have limited economic means and should not be asked to carry the burden of paying for a judicial pay raise.

The increase in civil 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:

The state should not set an arbitrary cap on judicial salaries. Counties should be able to supplement judicial salaries to any level they choose above the state salary. A statewide cap on salaries can make it difficult to recruit and retain judges in specific areas, especially large populated counties where the cost of living is higher.

The new fee that HB 11 would establish on criminal convictions should be increased and the money dedicated to supporting local governments' efforts to provide attorneys for indigent criminal defendants. State funding for indigent defense is inadequate, and the fee created by HB 11 would be an appropriate way to raise such revenue.

NOTES:

SB 6 by Duncan, the companion bill to HB 11 in the second called session, was reported favorably, without amendment, by the Senate State Affairs Committee on July 21 and is identical to HB 11.

The House passed a similar bill, also HB 11 by Hartnett, during the first called session. During floor consideration, the House removed a provision from the original bill that would have required the State Bar of Texas to collect data on attorney compensation and added provisions appropriating funds for the judicial pay raise. These changes are reflected in the current version of HB 11.

The bill approved by the House in the first called session also would have increased the statutory multiplier to determine the standard service retirement annuity for elected officials from 2 percent of the state salary of a district judge for each year of service credit to 2.3 percent. This change would have made the statutory multiplier match the one that has been used by ERS since 1991 when it raised the multiplier to 2.3 percent by rule. This provision is not in the current version of HB 11.

In the first called session, the Senate approved SB 11 by Duncan, the companion to the House's judicial pay raise bill. The Senate-approved bill would have instituted a \$7 fee on criminal convictions and designated \$3 of that fee for the fair defense account, which helps fund local indigent criminal defense efforts.

According to the fiscal note, the total estimated cost of the judicial pay raise, including related benefits, would be \$29 million for fiscal 2006-07. Of this amount, \$6.7 million would be for payments into the Judicial Retirement System Plan One, a pay-as-you-go retirement plan historically funded by general revenue. Additional general revenue costs of \$4.4 million would result from the actuarial impact of the pay raise on the ERS because the retirement costs for the elected class and state-paid prosecutors are linked to judicial salaries.

The cost of salaries and benefit increases for state-paid prosecutors would be \$6.3 million for fiscal 2006-07. State salary supplements to county attorneys that are linked to the salary of a district judge also would increase by about \$1.6 million for fiscal 2006-07. Other state supplements for constitutional county and local administrative judges that would be increased by the bill would total \$2.1 million for fiscal 2006-07.

HB 11 would raise \$45.4 million in fiscal 2006-07 from fees imposed on civil and criminal cases. Overall, the bill would result in a net surplus of \$1.6 million in the Judicial Fund No. 573 compared to judicial fund and general revenue-related costs.

During the regular session, the House and the Senate approved SB 368 by Duncan, which would have increased judicial salaries by the same amounts as in HB 11 and included other revisions concerning judicial retirement that were enacted in other legislation. The Senate adopted the conference committee report on the bill, but the bill died when the House did not consider the conference report.

Sec. 14.38 of Article 9 in SB 1, the general appropriations act for fiscal 2006-07, included funding for a judicial pay raise, contingent on passage of SB 368 or similar legislation, and for new district courts totaling \$39.5 million out of the judicial fund and \$6.7 million from general revenue. Gov. Perry line-item vetoed this provision because SB 368, or similar legislation, was not enacted.