SUBJECT: Collection of certain filing fees by statutory probate courts

COMMITTEE: Judiciary — committee substitute recommended

VOTE: 7 ayes — Hartnett, Homer, Hopson, Alonzo, R. Cook, Gonzales, Goolsby

                0 nays

                2 absent — Hughes, Krusee

WITNESSES: For – Guy Herman, Statutory Probate Judges of Texas

                Against — None

                On — (*Registered, but did not testify:* Glenn Karisch, Texas Academy of
                Probate Lawyers)

BACKGROUND: Under Government Code, sec. 51.704, a county commissioners court may
                authorize its statutory probate courts to collect a $40 fee for each probate,
                guardianship, mental health, or civil case filed in the court for support of
                the judiciary and the courts. These fees are sent to the comptroller and
                deposited in the judicial fund. Currently, all counties with statutory
                probate courts collect this fee, except Harris County and its four statutory
                probate courts. Texas has 17 statutory probate courts.

                Under Government Code, sec. 25.00212, the state comptroller remits to
                counties with statutory probate courts $40,000 from the judicial fund for
                each statutory probate judge in a county that also collects the $40 fee
                authorized by sec. 51.704 of the Government Code. If the comptroller
                determines that these counties collectively have deposited with the state
                more than $40,000 of these fees per probate judge, the comptroller remits
                the excess to the participating counties proportionately based on the
                percentage of the total paid by each county.

DIGEST: CSHB 2359 would amend Government Code, sec. 25.00212(a) to change
                the remittance formula for probate courts by directing the comptroller to
                remit the excess proportionately to each county that deposited more than
                $40,000 per probate judge, as adjusted in an equitable manner to reflect
                the differences in the total amounts paid to the counties.

The state would pay $5,000 of the salary of the presiding probate judge of Texas. The remainder of the judge's salary and expenses would be paid by the counties with statutory probate courts, apportioned according to the number of statutory probate courts in the county.

CSHB 2359 also would amend sec. 51.704 to require all probate courts in the state to collect the $40 fee for the support and maintenance of the probate courts.

The bill would take effect on September 1, 2007.

SUPPORTERS SAY:

CSHB 2359 would restore the original intent behind the $40 fee established by sec. 51.704 of the Government Code. When the statutory probate judges agreed to the $40 fee collection and remittance plan, they understood that some counties would receive $40,000 per judge from the comptroller even if those counties did not collect $40,000 per judge. The problem with the current system was that it was interpreted to mean that the excess collected by the counties would be proportionately distributed to *all* the counties that contributed, according to their percentage contribution of the total.

For example, if County X had one statutory probate judge and contributed $35,000 to the state pool and this happened to reflect 2 percent of the total contribution by all participating counties, County X would receive $40,000 back from the comptroller and *in addition* would receive 2 percent of the excess funds contributed. The original intent of the remittance formula was to refund the excess to the counties that had contributed *more* than $40,000 per judge to the state pool.

CSHB 2359 would change the remittance formula to reflect the original intent by ensuring that counties contributing above the minimum would have the excess they contributed returned. While some counties that did not contribute the minimum $40,000 per judge to the state would see a reduction in the funds received from the state, the change would be fair because it would be equitable, helping to keep locally raised funds local.

The bill would streamline the funding of probate courts across the state by requiring counties with probate courts to collect the $40 fee. While the change to mandatory collection would result in the loss of some local discretion concerning the fee, it would make it easier for counties to create

probate courts in the future because this funding mechanism would be required by law.

CSHB 2359 also would direct the state to pay a percentage of the salary of the presiding administrative judge of the statutory probate courts of Texas, with the remainder paid for by the counties with statutory probate courts. Under Government Code, sec. 25.0022, the presiding probate judge acts as an administrative judge for all the statutory probate courts in Texas. In this capacity the judge assigns judges to help with overburdened dockets or when judges are on leave.

When a probate judge occasionally is sued, the presiding probate judge sometimes is named as an additional defendant because of the presiding judge's administrative functions. Because the presiding judge's salary has been paid entirely by counties, it has been unclear whether the state should provide legal representation. In the past the Office of the Attorney General (OAG) has decided to represent the presiding judge but each time has had to go through a lengthy analysis to establish a legal basis for doing so.

When the state provides a portion of the presiding judge's salary, it becomes the state's responsibility to provide legal representation on issues regarding the judge's official duties. The bill would codify existing state practice and remove the need for the OAG repeatedly to establish a basis for representation. This would improve the ability of the OAG and the presiding judge to file timely responses. The $5,000 state share would come from the monies paid into the judicial fund from the $40 fee, with no additional cost to the state.

OPPONENTS
SAY:

No apparent opposition.

NOTES:

HB 2359 as filed would have required remittance in equal amounts to each county that deposited more than $40,000 per probate judge and would not have funded $5,000 of the salary of the presiding probate judge through the state.

HB 2359 originally was recommended for the Local and Consent Calendars Committee, which transferred it to the Calendars Committee.