

**SUBJECT:** Supplemental \$50 court cost fee for certain intoxication offenses

**COMMITTEE:** Criminal Jurisprudence — committee substitute recommended

**VOTE:** 9 ayes — Gallego, Christian, Fletcher, Kent, Miklos, Moody, Pierson, Vaught, Vo

0 nays

2 absent — Hodge, Riddle

**WITNESSES:** For — Rickey Bates, City of Galena Park Police; (*Registered, but did not testify*: John Chancellor, Texas Police Chiefs Association; Mark Mendez, Tarrant County; Craig Pardue, Dallas County; Michael Vasquez, Texas Conference of Urban Counties)

Against — None

On — Janette Ansolabehere and Mack Cowan, Texas Department of Public Safety

**BACKGROUND:** In 1992, Code of Criminal Procedure, art. 102.016 required a person convicted of certain intoxication offenses to pay \$30 in addition to other court costs, regardless of whether the person was incarcerated, placed on probation, or received deferred adjudication. A county that maintained a certified breath alcohol testing program could retain \$22.50 of the \$30 fee to defray program costs, provided that the program did not use the services of a certified technical supervisor forensic scientist employed by the Department of Public Safety (DPS). The remaining \$7.50 was remitted to the comptroller for future appropriation to DPS for running the statewide breath alcohol testing program.

In 1998, the Legislature amended art. 102.016 and added art. 102.075. As revised, art. 102.016 eliminated the separate \$30 fee and provided that counties and cities could retain \$22.50 of each court cost collected under the newly added art. 102.075 for each conviction of offenses under Penal Code, ch. 49, except for class C misdemeanors.

The 78th Legislature in 2003 repealed art. 102.075 and replaced it with Local Government Code, sec. 133.102, which has the current fee schedule and allocations. The Legislature did not separately amend Code of Criminal Procedure, art. 102.016, so it continues to refer to the repealed Code of Criminal Procedure, art. 102.075.

According to the Legislative Budget Board, DPS provides a certified technical supervisor for breath alcohol testing for 234 out of Texas's 254 counties. The remaining 20 counties do not use a DPS supervisor.

**DIGEST:**

CSHB 2389 would require a defendant convicted of one of seven intoxication offenses to pay a \$50 breath alcohol testing program fee as a court cost. The fee would apply to the following intoxication offenses:

- driving while intoxicated, under Penal Code, sec. 49.04;
- driving while intoxicated with a child passenger, under sec. 49.045;
- flying while intoxicated, under sec. 49.05;
- boating while intoxicated, under sec. 49.06;
- assembling or operating an amusement ride while intoxicated, under sec. 49.065;
- intoxication assault, under sec. 49.07; and
- intoxication manslaughter, under sec. 49.08.

**Fee retention and remittal.** CSHB 2389 would authorize a municipal or county treasury to retain \$5 of the \$50 fee for administrative costs. CSHB 2389 also would authorize a municipal or county treasury in a county that maintained one or more certified breath alcohol testing programs without the assistance of a DPS certified technical supervisor to retain \$45 of the \$50 fee for program expenses. The county custodians would be required to remit the remaining funds, if any, to the comptroller not later than the last day of the first month following each calendar quarter.

**Use of remitted funds.** After the comptroller received the remitted funds, CSHB 2389 would require that the funds be deposited to the credit of the breath alcohol testing account in the General Revenue Fund. The Legislature could appropriate the deposited funds to DPS for use in running the statewide certified breath alcohol testing program.

**Requiring a county to provide breath testing services for certain municipalities.** CSHB 2389 would require a county that maintained one or more certified breath alcohol testing programs and did not use the

services of a certified DPS technical supervisor to provide the services of a certified supervisor to a municipality that:

- has a population of more than 10,000; and
- does not use the services of a certified DPS technical supervisor.

**Division of \$50 fee among multiple governmental entities.** For counties or municipalities that maintained two or more certified breath alcohol testing programs and did not use the services of a certified DPS technical supervisor, CSHB 2389 would require division of the court costs collected from the \$50 fee, other than the \$5 portion retained for administrative costs, according to the percentage of breath alcohol tests performed by each testing program.

Before the last day of the first month following each calendar quarter, the custodian of a municipal or county treasury would have to send the divided portions of the collected court costs to each certified breath alcohol testing program in the county that employs or contracts with a certified technical supervisor.

**Persons considered “convicted.”** A person would be considered convicted under CSHB 2389 if:

- a sentence was imposed on the person;
- the person received community supervision or deferred adjudication; or
- the court deferred its final disposition of the person’s case.

**Deposit of collected funds.** CSHB 2389 would authorize the custodian of a municipal or county treasury to deposit non-remitted funds collected from the \$50 fee in interest-bearing accounts and retain the earned interest.

**Reporting requirements.** The custodian of a municipal or county treasury would have to keep records of all funds received from the fee and provide an annual report of all funds received and disbursed to the comptroller, DPS, and to each agency in the county served by the court that participated in or maintained a certified breath alcohol testing program. The comptroller would have to approve the form of the report.

**Continuing fees for municipalities.** For a county that charged fees to a municipality in the county before January 1, 2009, to support the county’s

breath alcohol testing program, CSHB 2389 would permit the county to continue to charge the fee only to cover the portion of the program's costs not covered by other funds allocated to or retained by the county for that purpose.

**Miscellaneous amendments to other statutory provisions.** CSHB would amend provisions in the Government Code to allow the clerk of a district court, a statutory county court, and a county court to collect the \$50 fee as a court cost.

**Effective date.** The bill would apply only to a fee collected on conviction of an offense committed on or after its September 1, 2009 effective. An offense of which any element occurred before the effective date would be treated as though it was committed before the effective date.

**SUPPORTERS  
SAY:**

CSHB 2389 would restore and increase funding to counties that manage their own certified breath alcohol testing programs without the assistance of DPS technical supervisors. The bill would correct an apparent oversight by the 78th Legislature in 2003 that repealed and consolidated the fee provisions of Code of Criminal Procedure, art. 102.075 into Local Government Code, ch. 133 but did not amend Code of Criminal Procedure, art. 102.016 to refer to the consolidated provisions. As a result, counties that provided self-funded breath testing programs to law enforcement lost the ability to retain funds to defray the costs of maintaining these programs. CSHB 2389 would carry out the Texas Judicial Council's recommendation that the Legislature enact the needed statutory change to correct Code of Criminal Procedure, art. 102.016.

By creating a dedicated fee to supplement costs for breath alcohol testing programs, CSHB 2389 would help ensure that the 20 counties that pay for their own breath testing programs continue to provide technical supervision services to law enforcement agencies. A new fee also would ensure that the existing fees and court costs dedicated for other purposes would not be changed. The retention increase from \$22.50 to \$45 is necessary to offset increasing costs related to technological advances in breath test programs and general inflation. Finally, the additional fee would only affect those actually convicted of an intoxication offense.

**OPPONENTS  
SAY:**

CSHB 2389 would impose yet another court cost on defendants, many of whom already lack adequate financial resources to pay the fees and court costs required of them under existing law.

NOTES:

The committee substitute differs from the original bill by adding Article 102.0161 to the Code of Criminal Procedure, rather than amending current law. It would require the custodians of municipality and county treasuries to remit funds not retained and by requiring the comptroller to deposit the funds to the credit of the breath alcohol testing program account in the general revenue fund. It also added various provisions relating to record-keeping, deposit of funds, retaining earned interest, and reporting on funds received and disbursed.