

**SUBJECT:** Transferring audits of the court fee collection program to the OCA

**COMMITTEE:** Criminal Jurisprudence — favorable, without amendment

**VOTE:** 5 ayes — Gallego, Hartnett, Aliseda, Carter, Zedler  
0 nays  
4 absent — Burkett, Christian, Y. Davis, Rodriguez

**WITNESSES:** For — (*Registered, but did not testify:* John Dahill, Texas Conference of Urban Counties; T.J. Patterson, City of Fort Worth; Celeste Villarreal, Texas Municipal Courts Association; Monty Wynn, Texas Municipal League)  
Against — None  
On — Carl Reynolds, Office of Court Administration

**BACKGROUND:** Code of Criminal Procedure, Art. 103.0033 establishes a mandatory program to improve the collection of court costs, fees, and fines imposed in criminal cases for counties with a population greater than 50,000 and municipalities with a population greater than 100,000. Local governments may be granted a waiver from participating in the program if participating would not be cost effective. The comptroller is charged with periodically auditing local governments to ensure compliance with provisions of the cost improvement program.

A municipality or county may retain 10 percent of the money collected from criminal and civil fees as a service fee for the collection if it remits the remainder of the fees to the comptroller within a specific timeframe. If an audit determines that a local government did not comply with provisions of the cost improvement program, it cannot retain a service fee of 10 percent of fines for criminal and civil infractions or penalties for late payments of criminal fines.

**DIGEST:** HB 2949 would amend the Code of Criminal Procedure to remove responsibility from the comptroller for auditing cities and counties that

participate in the collection improvement program. The bill would assign the duties to the Office of Court Administration (OCA).

The bill also would repeal current law prohibiting a local government from retaining a 10 percent service fee for criminal and civil infractions or penalties for late payments of criminal fines if they did not comply with the cost improvement program.

The bill would take effect September 1, 2011.

**SUPPORTERS  
SAY:**

HB 2949 would make sensible changes to court fee collection practices and in so doing, generate additional funds for the state of Texas.

The bill would reassign the responsibility for auditing local governments required to participate in the collection improvement program from the comptroller to the OCA. This would allow auditors in the Comptroller's Office to focus on other concerns, such as auditing payments of mixed beverage and sales taxes. Audit responsibilities for the collection improvement program, which was established in 2005 to improve local collection of court fees and fines by creating standard collection and enforcement procedures and practices, rightfully should be located with the OCA.

The OCA could hire auditors specifically for the purposes of reviewing compliance with the collection program. Since the program concerns specific court fees and fines, the OCA is better positioned to manage audits of participation in the collection program than is the comptroller, who generally focuses on direct tax payments. The bill would maximize economy of location by housing auditing of program compliance with the agency charged with administering the program.

Making the collection program voluntary for some local entities, such as counties, could have a significant fiscal impact. One estimate indicates that the collection program has increased local revenue by an average of \$60 million yearly. If the program were made voluntary for counties, the state could lose a significant portion of the increased collections.

**OPPONENTS  
SAY:**

HB 2949 would miss an opportunity to make a meaningful change to the cost collection program, which unfairly requires medium and large cities and counties to adopt specific collection processes and procedures without providing them with the license to tailor their own programs. A bill under

consideration in the Senate, SB 1059 by Nichols, would allow counties to implement their own collection programs that would not be subject to audit. The bill would preserve the collection program requirement for cities, which are better equipped to implement and administer the program than counties.

If participation in the collection program was voluntary for counties, the OCA could administer the auditing function with fewer resources. Under this scenario, the OCA could trim the auditors needed from eight to two, saving funds in employee benefits while still ensuring compliance among municipalities. Counties that had already implemented a successful collection program could maintain those programs, modifying them to suit their specific needs.

The committee-approved version of the bill would remove penalties for local governments whose collection programs did not stand up to an audit. This would have a significant negative fiscal impact by reducing participation rates in the program — a 50 percent decline in participation could revenue collection by \$20 million a year.

NOTES:

The author plans to offer a floor amendment that would delete provisions in sections two and three of the bill that repeal penalties on local governments for failing an audit.

The Legislative Budget Board (LBB) estimates the bill would have a positive fiscal impact of \$4.4 million through fiscal 2013. The fiscal note cites a comptroller estimate that moving the audits to the OCA would save \$4.4 million in fiscal 2012 and \$4.5 million in fiscal 2013.

According to the fiscal note, this gain would be partially offset by \$1.7 million in fiscal 2012 and each year following from reduced compliance with the collection improvement program. The gain also would be offset by repealing penalties to local governments for noncompliance, but the comptroller was not able to estimate the resulting loss.

HB 3790 by Pitts, which includes similar provisions transferring the auditing duties from the comptroller to the OCA, is on today's Major State Calendar.