

- SUBJECT:** Increasing certain records fees charged by district and county clerks
- COMMITTEE:** Judiciary and Civil Jurisprudence — favorable, without amendment
- VOTE:** 9 ayes — Lewis, Farrar, Farney, Gooden, Hernandez Luna, Hunter, K. King, Raymond, S. Thompson
- 0 nays
- WITNESSES:** For — Sherri Adelstein; Laura Hinojosa; Teresa Kiel; Cynthia Mitchell; (*Registered, but did not testify:* Jim Allison, County Judges and Commissioners Association of Texas; John Dahill, Texas Conference of Urban Counties; Joyce Hudman, Brazoria County Clerk; Jim Jackson, Kofile Preservation; Seth Mitchell, Bexar County Commissioners Court; Craig Pardue, Dallas County; Caroline Woodburn, Potter County District Clerk)
- Against — None
- On — John Rothermel, Stewart Title Guaranty Company
- BACKGROUND:** Government Code, sec. 51.305(b) allows district clerks to collect a filing fee of up to \$5 to maintain district court records and archives. Local Government Code, sec. 118.011(b) allows county clerks to charge a fee of up to \$5 for ongoing records management and preservation. County clerks also may charge a fee of up to \$5 for records archival projects under Local Government Code, sec. 118.011(f).
- DIGEST:** HB 1513 would increase the cap for the district court records archive fee collected by district clerks to \$10 from \$5. It also would increase the cap for the records management and preservation fee and records archive fee collected by county clerks to \$10 from \$5.
- The bill would take effect on September 1, 2013, and increases would apply only to fees that become payable on or after that date.
- SUPPORTERS SAY:** HB 1513 would give district and county clerks needed additional funds to preserve and archive irreplaceable records in a timely manner. Clerks are

stretched to maintain day-to-day record-processing efforts and lack the necessary funds to start new archival or preservation projects for old and decaying files. Increased record-preservation fees would allow district and county clerks to help clear project backlogs and even start additional preservation efforts. The bill would provide the tools needed to meet records preservation and retention standards at levels required by state law and certain best-practice guidelines.

The higher fees would not have a chilling effect on real estate in Texas because locally enacted increases would be too small. The Denton County Clerk, whose office is in one of the fastest-growing counties in the United States, estimated a real-estate transaction would have cost \$15 more if the increased fees were in place in 2012. Further, the funds would allow district and county clerks to better maintain the records their constituents and local businesses rely on. These improvements would outweigh any increased burden on filers.

The bill should not be bracketed by county population size because large counties often need the additional funding as much as smaller counties. Often larger counties face larger backlogs than counties with smaller populations because of a larger volume of filings. HB 1513 would provide clerks in all counties the flexibility to set their records preservation fees at a rate of up to \$10. If a clerk's office finished its archival projects or did not need the additional funding, those offices would not be required to raise their fees and likely would not do so.

It is not necessary to restrict county budgetary decisions regarding collection and use of the fees because current oversight is sufficient. In each case, the fees are either initiated or approved by elected county commissioners courts or clerks and their collection and use are monitored by county auditors. Some fees are only temporary and expire once an archive project funded with the fees has been paid off.

**OPPONENTS
SAY:**

By increasing these fees, HB 1513 could particularly chill the Texas real-estate market because every real estate transaction would be subject to one or multiple fee increases. These higher filing fees would make transactions more expensive, skewing the market. While this might not prevent any one particular transaction from taking place, increased filing fees would have an effect over time.

The bill should be bracketed so that only counties with smaller

populations were able to increase these fees. Larger counties already have enough filings to raise necessary funds. For example, Harris County received more than 4,700 real property filings on a recent business day. If the county clerk's office collected both the increased records-management and preservation fees and the records archive fees it would have collected \$94,000, an increase of \$47,000 attributable to the fees proposed in HB 1513. These are substantial sums for which there is no possible need. Large counties have either completed their records preservation backlog or will do so in the foreseeable future. At some point these fees amount to a tax on filings.

Moreover, commissioners courts would be tempted to reduce a clerk's budget by the amount of the fee increase and spend it elsewhere. To prevent this, the bill should prohibit a county from reducing a district's or county clerk's budget used for carrying out official duties by the amount collected through increased records-management fees.

NOTES:

The companion bill, SB 1229 by West, was referred to the Senate Jurisprudence Committee on March 13.