

BILL ANALYSIS

Senate Research Center
78R16519 YDB-D

H.B. 1940
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Criminal Justice
5/21/2003
Committee Report (Amended)

DIGEST AND PURPOSE

In 2001, the 77th Legislature enacted H.B. 178, which created a longevity supplement for assistant prosecutors in offices with felony jurisdiction and mandated that counties pay this supplement out of the county general fund. H.B. 178 also provided that the state was to reimburse the counties for amounts expended for these supplements. A county seeking reimbursement was to certify to the comptroller on a quarterly basis the amount of reimbursement that the particular county was entitled to receive. The comptroller was then to issue a warrant to the county for that amount.

The 77th Legislature also provided for a contingency appropriation to fund this supplement, but this was reduced in conference committee to an inadequate level. Even this has not been available as no funds have ever been certified.

The attorney general ruled that the counties remained obligated for the payment of the longevity supplement despite the lack of reimbursement by the state as originally envisioned by H.B. 178 (Opinion No. JC-0438; December 3, 2001).

H.B. 1940 retains most of the provisions of the current law, but makes plain that counties have no obligation to pay the longevity supplement unless state funds are appropriated for that purpose. H.B. 1940 establishes a Felony Prosecutor Supplement Fund in the state treasury, with the funds being generated by a \$10 cost assessed to sureties on the posting of each surety bond on Class B misdemeanors and more serious offenses.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 41.252(a), Government Code, to provide that an assistant prosecutor is entitled to longevity pay, rather than longevity pay to be included in the assistant prosecutor's monthly compensation, if the assistant prosecutor meets certain conditions.

SECTION 2. Amends Section 41.253(a), Government Code, to provide an exception and make nonsubstantive changes.

SECTION 3. Amends Section 41.255, Government Code, by amending Subsections (a), (d), and (e) and adding Subsections (f) and (g), as follows:

(a) Requires the county to pay a longevity pay supplement under this subchapter to the extent the county receives funds from the comptroller as provided by Subsection (d), rather than out of the county general fund.

(d) Requires the county, not later than the 15th day after the start of each state fiscal quarter, to certify to the comptroller the total amount of longevity pay supplement due to all assistant prosecutors in the county for the preceding state fiscal quarter. Requires the comptroller to issue a warrant to the county for the amount certified. Requires the

comptroller to issue warrants to the counties not later than the 60th day after the first date of each state fiscal quarter. Deletes the text “the state shall reimburse a county for amounts expended for longevity pay supplements under this subchapter.”

(e) Requires the county, on the receipt of funds from the comptroller as provided by Subsection (d), to pay longevity supplements to eligible assistant prosecutors in the next regularly scheduled salary payment or in a separate payment. Deletes text stating “A county seeking reimbursement under this section shall certify to the comptroller on a quarterly basis the amount of reimbursement that the county is entitled to receive. The comptroller shall issue a warrant to the county in the amount certified.”

(f) Provides that a county is not required to pay longevity supplements if the county does not receive funds from the comptroller as provided by Subsection (d). Requires the comptroller, if sufficient funds are not available to meet the requests made by counties for funds for payment of assistant prosecutors qualified for longevity supplements, to apportion the available funds to the eligible counties by reducing the amount payable to each county on an equal percentage basis. Requires a county that receives from the comptroller an amount less than the amount certified by the county to the comptroller under Subsection (d) to apportion the funds received by reducing the amount payable to eligible assistant prosecutors on an equal percentage basis, but provides that the county is not required to use county funds to make up any difference between the amount certified and the amount received.

(g) Requires the comptroller, if previous payments under this chapter have been reduced for insufficient funds pursuant to Subsection (f), or if a county submits the required information but not in a timely manner as required by Subsection (d), to:

- (1) make a payment of the balance when the funds are available; or
- (2) carry forward the balance owed to the county and pay that amount to the county when the next payment is required.

SECTION 4. Amends Subchapter D, Chapter 41, Government Code, by adding Section 41.258, as follows:

Sec. 41.258. FELONY PROSECUTOR SUPPLEMENT FUND. (a) Provides that the felony prosecutor supplement fund is created in the state treasury.

(b) Requires a court, judge, magistrate, peace officer, or other officer taking a bail bond for an offense other than a misdemeanor punishable by fine only under Chapter 17, Code of Criminal Procedure, to require the payment of a \$10 cost by each surety posting the bail bond.

(c) Requires an officer collecting a cost under this section to deposit the cost in the county treasury in accordance with Article 103.004, Code of Criminal Procedure.

(d) Requires an officer who collects a cost due under this section to:

- (1) keep separate records of the funds collected; and
- (2) file the reports required by Article 103.005, Code of Criminal Procedure.

(e) Requires the custodian of the county treasury to:

- (1) keep records of the amount of funds on deposit that are collected under this section; and
- (2) send to the comptroller not later than the last day of the month following each calendar quarter the funds collected under this section during the preceding quarter.

(f) Authorizes a county to retain 10 percent of the funds collected under this section and retain all interest accrued on the funds if the custodian of the treasury:

- (1) keeps records of the amount of funds on deposit; and
- (2) remits the funds to the comptroller as prescribed by Subsection (e).

(g) Provides that funds collected are subject to audit by the comptroller, and funds expended are subject to audit by the state auditor.

(h) Requires the comptroller to deposit the funds received under this section in the felony prosecutor supplement fund.

(i) Requires the comptroller to pay supplements from the fund as provided by this subchapter. Authorizes, at the end of each fiscal year, any unexpended balance in the fund in excess of \$1.5 million to be transferred to the general revenue fund.

SECTION 5. Provides that this Act takes effect December 1, 2003, except that Section 4 of this Act takes effect September 1, 2003, and applies only to a bail bond taken as provided by Section 41.258, Government Code, as added by this Act, on or after that date.

LIST OF COMMITTEE AMENDMENTS

Committee Amendment No. 1:

(1) In SECTION 4 of the bill, in proposed Subsection (b), Section 41.258, Government Code (page 3, line 24), immediately before the period, insert “, provided the cost does not exceed \$20 for all bail bonds posted at that time for an individual and the cost is not required on the posting of a personal or cash bond.”

(2) In SECTION 4 of the bill, in proposed Section 41.258, Government Code (page 4, between lines 11 and 12), insert the following new Subsection (f) and reletter subsequent subsections of Section 41.258 accordingly:

(f) A surety paying a cost under Subsection (b) may apply for and is entitled to a refund of the cost not later than the 181st day after the date the state declines to prosecute an individual or the grand jury declines to indict an individual.

Committee Amendment No. 2:

(1) In SECTION 4 of the bill, in the heading to proposed Section 41.258, Government Code (page 3, line 18), after “FUND”, insert “AND FAIR DEFENSE ACCOUNT”.

(2) In SECTION 4 of the bill, in proposed Section 41.258(b), Government Code (page 3, line 23), strike “\$10” and substitute “\$15”.

(3) In SECTION 4 of the bill, in proposed Section 41.258, Government Code (page 4, lines 21 and 22), strike Subsection (h) and substitute the following:

(h) The comptroller shall deposit two-thirds of the funds received under this section in the felony prosecutor supplement fund and one-third of the funds received under this section to the fair defense account. A county may not reduce the amount of funds provided for indigent defense services in the county because of funds provided under this subsection.

(4) In SECTION 4 of the bill, in proposed Section 41.258(i), Government Code (page 4, line 23), in the first sentence, between “the” and “fund”, insert “felony prosecutor supplement.”