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OPEN RECORDS DIVISION

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OPINION COMMITTEE

July 29, 2008

RQ-0731-GA

Via CMRRR# 7007 0710 0005 4790 3903

Honorable Greg Abbott
Attorney General of Texas
Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

FILE # ML-45781-08
I.D. # 45781

RE: Request for Attorney General Opinion

Dear Attorney General Abbott:

I request your opinion on the following question:

Whether a County must consider Government Code § 659.0445 Longevity Pay For State Judges And Justices when determining the salary for a statutory county court judge in accordance with Government Code § 25.0005?

RELEVANT STATUTES

Government Code § 25.0005 prescribes the salaries of statutory county court judges as follows:

§ 25.0005. JUDGE'S SALARY. (a) A statutory county court judge, other than a statutory county court judge who engages in the private practice of law, shall be paid a total annual salary set by the commissioners court at an amount that is not less than \$1,000 less than the total annual salary received by a district judge in the county. A district judge's or statutory county court judge's total annual salary includes contributions and supplements, paid by the state or a county, other than contributions received as compensation under Section 74.051.

(b) Subject to any salary requirements otherwise imposed by this chapter for a particular court or county, the commissioners court sets the salary of each statutory county court judge who engages in the private practice of law.

(c) The salary shall be paid in equal monthly installments.

(d) Notwithstanding Section 25.0001(a), this section prevails over any other law that limits a particular statutory county court judge to an annual salary of less than the amount provided by Subsection (a), but does not affect a salary minimum set by other law that equals or exceeds the amount provided by Subsection (a).

The 80th Legislature amended § 25.0005 by SB600 (Exhibit A) while concurrently enacting SB1519 adding Section 659.0445 to the Government Code effective September 1, 2007 giving longevity pay to certain state judges and justices (Exhibit B).

§ 659.0445. LONGEVITY PAY FOR STATE JUDGES AND JUSTICES. (a) A judge or justice who receives a salary paid by the state, is a member of the Judicial Retirement System of Texas Plan One or the Judicial Retirement System of Texas Plan Two, and is an active judge, as defined by Section 74.041, is entitled to longevity pay as provided by this section.

(b) The monthly amount of longevity pay under this section to which a judge or justice described by Subsection (a) is entitled:

(1) is \$20 for each year of service credited in the applicable retirement system, subject to Subsection (c); and

(2) is calculated and becomes payable beginning with the month following the month in which the judge or justice completes 16 years of service for which credit is established in the applicable retirement system.

(c) A judge or justice may not receive longevity pay for more than 16 years of service credited in the applicable retirement system.

STATEMENT OF FACTS

Fort Bend County has five district judges, three of whom receive \$140,000 in annual salary composed of state salary, juvenile board pay and a county supplement. Two of the five district court judges receive Benefit Replacement Pay (BRP) in accordance with Government Code Sections 659.122 and 659.123, which is an additional \$1,026.72 each. The same two district judges have completed more than 16 years of service and qualify for the Longevity Pay contemplated by § 659.0445 in the amounts of \$3,840.00. Each of the two district judges receives a total annual salary of \$144,866.72. See attached Exhibit C.

Fort Bend County has four statutory county court judges, three of whom receive \$139,000 in annual salary composed of county salary and juvenile board pay. The amount is one thousand dollars less than a district judge.

One of the four statutory county court judges receives an additional \$1,026.00 for a total of \$140,027 because the Fort Bend County Commissioners Court sitting in 1995 chose to increase the salary of the then-sitting statutory county court judges by a similar amount to the state's BRP for the district judges. See attached Exhibit C. The same statutory county court judge also has completed more than 16 years of service.

It has been suggested that since that statutory county court judge is similarly situated to the two district judges receiving the longevity pay by serving more than 16 years, he is entitled to receive the \$3,840.00 to remain no less than \$1,000 less than the total annual salary received by those two district judges.

Fort Bend County has continued to pay the statutory county court judges a salary paid to a district judge without consideration of the additional longevity pay of § 659.0445.

ARGUMENT

Senate Bill 1519 also amended Government Code Sections 831.011 (6-a) and (9-a), each to state that "State salary does not include the amount of any longevity payable under Section 659.0445." Both are in reference and apply only to state retirement systems.

Fort Bend County's statutory county court judges do not participate in either Judicial Retirement System of Texas Plan, thus are not eligible to receive credited service which is the requirement to receive the longevity pay.

The Legislature provides supplemental information on bills. The House Research Organization bill analysis for SB1519 estimated the number of eligible judges to be 109 (Exhibit D). The Fiscal Note of the 80th Legislature for SB1519 indicates that "No fiscal implication to units of local government is anticipated." (Exhibit E) The Fiscal Note of the 80th Legislature for SB600 states "To the extent the bill would require local clerks to collect and report fees and court costs to pay the salary supplements, no significant fiscal implication to units of local government is anticipated." (Exhibit F)

Section 25.0005 states "an amount that is not less than \$1,000 less than the total annual salary received by a **district** judge in the county." [bold added]. Unfortunately, no wording such as "a similarly situated district judge" was inserted; merely, "a district judge."

Representative Will Harnet, who was House Sponsor of both SB1519 and SB600 has penned in a letter dated September 7, 2007, "...it was my legislative intent that SB1519 would also affect county level judges' salary, because the existing salary statutes for county level judges mandate that judge's salary calculation include a state judge's base salary and any contribution or supplement paid by the state or county." (Exhibit G)

A more strict application of SB1519 would entail paying each county judge the "not less than \$1000.00 less than" amount regardless of whether they had completed 16 years of service or not, since no "similarly situated" wording was inserted.

QUESTIONS PRESENTED

When Commissioners Court sets a total annual salary to be paid to a statutory county court judge (who does not engage in the private practice of law), in setting it at an amount that is not less than \$1,000 less than the total annual salary (including contributions and

supplements, paid by the state or a county, except under Section 74.051) received by “a district judge in the county,” should the Commissioners Court make reference to “a district judge in the county” generically and apply a general salary amount (i.e., not an amount that is specific to, and variable with, each individual district judge), or should the Commissioners Court make specific reference to a similarly situated “district judge in the county” (and set the amount that is specific to, and variable with any such individual district judge)?

Must a county consider Government Code § 659.0445 Longevity Pay For State Judges And Justices when determining the salary for a statutory county court judge in accordance with Government Code § 25.0005?

Sincerely,



Roy L. Cordes, Jr.
County Attorney
Fort Bend County

Enclosures:

Senate Bill 600 of 80th Legislature
Senate Bill 1519 of 80th Legislature
Table of salaries for Fort Bend County district and statutory court judges
SB1519 House Research Organization bill analysis
SB1519 Fiscal Note
SB600 Fiscal Note
Representative Harnet's letter dated September 7, 2007



S.B. No. 600

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AN ACT

relating to compensation paid to statutory county court judges and certain court-related fees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsections (a) and (b), Section 25.0005, Government Code, are amended to read as follows:

(a) A statutory county court judge, other than a statutory county court judge who engages in the private practice of law [~~or a judge in whose court fees and costs under Sections 51.702(a) and (b) are not collected~~], shall be paid a total annual salary set by the commissioners court at an amount that is not less than [~~at least equal to the amount that is~~] \$1,000 less than the total annual salary received by a district judge in the county [~~on August 31, 1999~~]. A district judge's or statutory county court judge's total annual salary includes contributions and supplements, paid by the state or a county, other than contributions received as compensation under Section 74.051.

(b) Subject to any salary requirements otherwise imposed by this chapter for a particular court or county, the commissioners court sets the salary of each statutory county court judge who engages in the private practice of law [~~or in whose court fees and costs under Sections 51.702(a) and (b) are not collected~~].

SECTION 2. Subsection (a), Section 25.0015, Government Code, is amended to read as follows:

1 (a) Beginning on the first day of the state fiscal year, the
2 state shall annually compensate each county [~~that collects the~~
3 ~~additional fees and costs under Sections 51.702(a) and (b)] in an~~
4 amount equal to 60 percent of the state salary of a district court
5 judge in the county [~~\$35,000~~] for each statutory county court judge
6 in the county who:

- 7 (1) does not engage in the private practice of law; and
8 (2) presides over a court with at least the
9 jurisdiction provided by Section 25.0003[~~, and~~
10 [~~(3) except as provided by Section 25.0005(d), is not~~
11 ~~excluded from the application of Section 25.0003 or Section~~
12 ~~25.0005]~~.

13 SECTION 3. Subsection (a), Section 133.105, Local
14 Government Code, is amended to read as follows:

15 (a) A person convicted of any offense, other than an offense
16 relating to a pedestrian or the parking of a motor vehicle, shall
17 pay as a court cost, in addition to all other costs, a fee of \$6 [~~\$4~~]
18 to be used for court-related purposes for the support of the
19 judiciary.

20 SECTION 4. Subsection (a), Section 133.154, Local
21 Government Code, is amended to read as follows:

22 (a) In addition to other fees authorized or required by law,
23 the clerk of a district court, statutory county court, or county
24 court shall collect a fee of \$42 [~~\$37~~] on the filing of any civil
25 suit to be used for court-related purposes for the support of the
26 judiciary.

27 SECTION 5. Subsection (f), Section 25.0292, Government

1 Code, is amended to read as follows:

2 (f) The Commissioners Court of Burnet County shall set the
3 salary of each judge of a county court at law who engages in the
4 private practice of law [~~or in whose court fees and costs under~~
5 ~~Sections 51.702(a) and (b) are not collected~~].

6 SECTION 6. The heading to Section 51.702, Government Code,
7 is amended to read as follows:

8 Sec. 51.702. ADDITIONAL FEES AND COSTS IN [CERTAIN]
9 STATUTORY COUNTY COURTS.

10 SECTION 7. Subsection (a), Section 51.702, Government Code,
11 is amended to read as follows:

12 (a) The [~~Except as provided by Subsection (g), in addition~~
13 ~~to all other fees authorized or required by other law, the~~] clerk of
14 a statutory county court shall collect a \$40 filing fee in each
15 civil case filed in the court to be used for court-related purposes
16 for the support of the judiciary.

17 SECTION 8. Section 101.062, Government Code, is amended to
18 read as follows:

19 Sec. 101.062. DISTRICT COURT FEES: ADDITIONAL FILING FEE
20 FOR SUPPORT OF JUDICIARY. The clerk of a district court shall
21 collect on the filing of a civil suit an additional filing fee of
22 \$42 [~~\$37~~] under Section 133.154, Local Government Code, to be used
23 for court-related purposes for the support of the judiciary.

24 SECTION 9. Section 101.081, Government Code, is amended to
25 read as follows:

26 Sec. 101.081. STATUTORY COUNTY COURT FEES AND COSTS. The
27 clerk of a statutory county court shall collect fees and costs as

1 follows:

2 (1) court cost in certain civil cases to establish and
3 maintain an alternative dispute resolution system, if authorized by
4 the county commissioners court (Sec. 152.004, Civil Practice and
5 Remedies Code) . . . not to exceed \$10;

6 (2) appellate judicial system filing fees:

7 (A) First or Fourteenth Court of Appeals District
8 (Sec. 22.2021, Government Code) . . . not more than \$5;

9 (B) Second Court of Appeals District (Sec.
10 22.2031, Government Code) . . . not more than \$5;

11 (C) Fourth Court of Appeals District (Sec.
12 22.2051, Government Code) . . . not more than \$5;

13 (D) Fifth Court of Appeals District (Sec.
14 22.2061, Government Code) . . . not more than \$5; and

15 (E) Thirteenth Court of Appeals District (Sec.
16 22.2141, Government Code) . . . not more than \$5;

17 (3) an official court reporter fee, County Court at
18 Law No. 2 of Bexar County (Sec. 25.0172, Government Code) . . . \$3;

19 (4) a court reporter fee when testimony is taken in a
20 county court at law in McLennan County (Sec. 25.1572, Government
21 Code) . . . \$3;

22 (5) a stenographer fee, if a record or part of a record
23 is made:

24 (A) in a county court at law in Hidalgo County
25 (Sec. 25.1102, Government Code) . . . \$20; and

26 (B) in a county court at law in Nolan County (Sec.
27 25.1792, Government Code) . . . \$25;

- 1 (6) jury fee (Sec. 51.604, Government Code) . . . \$22;
- 2 (7) an additional filing fee:
- 3 (A) for each civil case filed to be used for
- 4 court-related purposes for the support of the judiciary[~~—if~~
- 5 ~~authorized by the county commissioners court~~] (Sec. 51.702,
- 6 Government Code) . . . \$40;
- 7 (B) to fund the improvement of Dallas County
- 8 civil court facilities, if authorized by the county commissioners
- 9 court (Sec. 51.705, Government Code) . . . not more than \$15; and
- 10 (C) for filing any civil action or proceeding
- 11 requiring a filing fee, including an appeal, and on the filing of
- 12 any counterclaim, cross-action, intervention, interpleader, or
- 13 third-party action requiring a filing fee, to fund civil legal
- 14 services for the indigent (Sec. 133.153, Local Government Code)
- 15 . . . \$5;
- 16 (8) for filing an application for registration of
- 17 death (Sec. 193.007, Health and Safety Code) . . . \$1;
- 18 (9) fee for judge's services on an application for
- 19 court-ordered mental health services (Sec. 574.031, Health and
- 20 Safety Code) . . . not to exceed \$50;
- 21 (10) fee for prosecutor's services on an application
- 22 for court-ordered mental health services (Sec. 574.031, Health and
- 23 Safety Code) . . . not to exceed \$50;
- 24 (11) for filing a suit in Comal County (Sec. 152.0522,
- 25 Human Resources Code) . . . \$4;
- 26 (12) additional filing fee to fund contingency fund
- 27 for liability insurance, if authorized by the county commissioners

1 court (Sec. 82.003, Local Government Code) . . . not to exceed \$5;
2 (13) civil court actions (Sec. 118.052, Local
3 Government Code):
4 (A) filing of original action (Secs. 118.052 and
5 118.053, Local Government Code):
6 (i) garnishment after judgment (Sec.
7 118.052, Local Government Code) . . . \$15; and
8 (ii) all others (Sec. 118.052, Local
9 Government Code) . . . \$40;
10 (B) filing of action other than original (Secs.
11 118.052 and 118.054, Local Government Code) . . . \$30; and
12 (C) services rendered after judgment in original
13 action (Secs. 118.052 and 118.0545, Local Government Code):
14 (i) abstract of judgment (Sec. 118.052,
15 Local Government Code) . . . \$5; and
16 (ii) execution, order of sale, writ, or
17 other process (Sec. 118.052, Local Government Code) . . . \$5;
18 (14) probate court actions (Sec. 118.052, Local
19 Government Code):
20 (A) probate original action (Secs. 118.052 and
21 118.055, Local Government Code):
22 (i) probate of a will with independent
23 executor, administration with will attached, administration of an
24 estate, guardianship or receivership of an estate, or muniment of
25 title (Sec. 118.052, Local Government Code) . . . \$40;
26 (ii) community survivors (Sec. 118.052,
27 Local Government Code) . . . \$40;

- 1 (iii) small estates (Sec. 118.052, Local
2 Government Code) . . . \$40;
- 3 (iv) declarations of heirship (Sec.
4 118.052, Local Government Code) . . . \$40;
- 5 (v) mental health or chemical dependency
6 services (Sec. 118.052, Local Government Code) . . . \$40; and
- 7 (vi) additional, special fee (Secs. 118.052
8 and 118.064, Local Government Code) . . . \$5;
- 9 (B) services in pending probate action (Secs.
10 118.052 and 118.056, Local Government Code):
- 11 (i) filing an inventory and appraisalment
12 after the 120th day after the date of the initial filing of the
13 action (Sec. 118.052, Local Government Code) . . . \$25;
- 14 (ii) approving and recording bond (Sec.
15 118.052, Local Government Code) . . . \$3;
- 16 (iii) administering oath (Sec. 118.052,
17 Local Government Code) . . . \$2;
- 18 (iv) filing annual or final account of
19 estate (Sec. 118.052, Local Government Code) . . . \$25;
- 20 (v) filing application for sale of real or
21 personal property (Sec. 118.052, Local Government Code) . . . \$25;
- 22 (vi) filing annual or final report of
23 guardian of a person (Sec. 118.052, Local Government Code) . . .
24 \$10; and
- 25 (vii) filing a document not listed under
26 this paragraph after the filing of an order approving the inventory
27 and appraisalment or after the 120th day after the date of the

1 initial filing of the action, whichever occurs first (Secs. 118.052
2 and 191.007, Local Government Code), if more than 25 pages . . .
3 \$25;

4 (C) adverse probate action (Secs. 118.052 and
5 118.057, Local Government Code) . . . \$40; and

6 (D) claim against estate (Secs. 118.052 and
7 118.058, Local Government Code) . . . \$2;

8 (15) other fees (Sec. 118.052, Local Government Code):

9 (A) issuing document (Secs. 118.052 and 118.059,
10 Local Government Code):

11 (i) original document and one copy (Sec.
12 118.052, Local Government Code) . . . \$4; and

13 (ii) each additional set of an original and
14 one copy (Sec. 118.052, Local Government Code) . . . \$4;

15 (B) certified papers (Secs. 118.052 and 118.060,
16 Local Government Code):

17 (i) for the clerk's certificate (Sec.
18 118.052, Local Government Code) . . . \$5; and

19 (ii) a fee per page or part of a page (Sec.
20 118.052, Local Government Code) . . . \$1;

21 (C) noncertified papers, for each page or part of
22 a page (Secs. 118.052 and 118.0605, Local Government Code) . . .
23 \$1;

24 (D) letters testamentary, letter of
25 guardianship, letter of administration, or abstract of judgment
26 (Secs. 118.052 and 118.061, Local Government Code) . . . \$2;

27 (E) safekeeping of wills (Secs. 118.052 and

1 118.062, Local Government Code) . . . \$5;

2 (F) mail service of process (Secs. 118.052 and
3 118.063, Local Government Code) . . . same as sheriff; and

4 (G) records management and preservation fee
5 (Secs. 118.052, 118.0546, and 118.0645, Local Government Code)
6 . . . \$5;

7 (16) additional filing fee to fund the courthouse
8 security fund, if authorized by the county commissioners court
9 (Sec. 291.008, Local Government Code) . . . not to exceed \$5;

10 (17) additional filing fee for filing documents not
11 subject to certain filing fees to fund the courthouse security
12 fund, if authorized by the county commissioners court (Sec.
13 291.008, Local Government Code) . . . \$1;

14 (18) additional filing fee to fund the courthouse
15 security fund in Webb County, if authorized by the county
16 commissioners court (Sec. 291.009, Local Government Code) . . . not
17 to exceed \$20;

18 (19) court cost in civil cases other than suits for
19 delinquent taxes to fund the county law library fund, if authorized
20 by the county commissioners court (Sec. 323.023, Local Government
21 Code) . . . not to exceed \$35;

22 (20) fee for deposit of a will with the county clerk
23 during testator's lifetime (Sec. 71; Texas Probate Code) . . . \$3;

24 (21) court cost for each special commissioner in an
25 eminent domain proceeding (Sec. 21.047, Property Code) . . . as
26 taxed by the court, \$10 or more;

27 (22) fee for county attorney in a suit regarding a

1 railroad company's failure to keep roadbed and right-of-way in
2 proper condition (Art. 6327, Vernon's Texas Civil Statutes) . . .
3 \$10;

4 (23) court fees and costs, if ordered by the court, for
5 a suit filed by an inmate in which an affidavit or unsworn
6 declaration of inability to pay costs is filed by the inmate (Sec.
7 14.006, Civil Practice and Remedies Code) . . . the lesser of:

8 (A) 20 percent of the preceding six months'
9 deposits to the inmate's trust account administered by the Texas
10 Department of Criminal Justice under Section 501.014, Government
11 Code; or

12 (B) the total amount of court fees and costs;

13 (24) monthly payment for remaining court fees and
14 costs after the initial payment for a suit in which an affidavit or
15 unsworn declaration of inability to pay costs is filed by the inmate
16 (Sec. 14.006, Civil Practice and Remedies Code) . . . the lesser
17 of:

18 (A) 10 percent of that month's deposit to the
19 inmate's trust account administered by the Texas Department of
20 Criminal Justice under Section 501.014, Government Code; or

21 (B) the total amount of court fees and costs that
22 remain unpaid;

23 (25) the following costs not otherwise charged to the
24 inmate under Section 14.006, Civil Practice and Remedies Code, if
25 the inmate has previously filed an action dismissed as malicious or
26 frivolous (Sec. 14.007, Civil Practice and Remedies Code):

27 (A) expenses of service of process;

1 (B) postage; and
2 (C) transportation, housing, or medical care
3 incurred in connection with the appearance of the inmate in the
4 court for any proceeding;

5 (26) the official court reporter's fee taxed as costs
6 in civil actions in a statutory county court:

7 (A) in Bexar County Courts at Law:

8 (i) Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12
9 (Sec. 25.0172, Government Code) . . . taxed in the same manner as
10 the fee is taxed in district court; and

11 (ii) No. 2 (Sec. 25.0172, Government Code)
12 . . . \$3;

13 (B) in Galveston County (Sec. 25.0862,
14 Government Code) . . . taxed in the same manner as the fee is taxed
15 in civil cases in the district courts; and

16 (C) in Parker County (Sec. 25.1862, Government
17 Code) . . . taxed in the same manner as the fee is taxed in civil
18 cases in the district courts;

19 (27) a stenographer's fee as costs in each civil,
20 criminal, and probate case in which a record is made by the official
21 court reporter in a statutory county court in Nolan County (Sec.
22 25.1792, Government Code) . . . \$25;

23 (28) in Brazoria County, in matters of concurrent
24 jurisdiction with the district court, fees (Sec. 25.0222,
25 Government Code) . . . as prescribed by law for district judges
26 according to the nature of the matter;

27 (29) in Nueces County, in matters of concurrent

1 jurisdiction with the district court, with certain exceptions, fees
2 (Sec. 25.1802, Government Code) . . . equal to those in district
3 court cases;

4 (30) security deposit on filing, by any person other
5 than the personal representative of an estate, an application,
6 complaint, or opposition in relation to the estate, if required by
7 the clerk (Sec. 12, Texas Probate Code) . . . probable cost of the
8 proceeding;

9 (31) security deposit on filing, by any person other
10 than the guardian, attorney ad litem, or guardian ad litem, an
11 application, complaint, or opposition in relation to a guardianship
12 matter, if required by the clerk (Sec. 622, Texas Probate Code)
13 . . . probable cost of the guardianship proceeding;

14 (32) for a hearing or proceeding under the Texas
15 Mental Health Code (Subtitle C, Title 7, Health and Safety Code) as
16 costs (Secs. 571.017 and 571.018, Health and Safety Code) . . .
17 reasonable compensation to the following persons appointed under
18 the Texas Mental Health Code:

- 19 (A) attorneys;
- 20 (B) physicians;
- 21 (C) language interpreters;
- 22 (D) sign interpreters; and
- 23 (E) masters;

24 (33) for a hearing or proceeding under the Texas
25 Mental Health Code (Subtitle C, Title 7, Health and Safety Code) as
26 costs (Sec. 571.018, Health and Safety Code):

- 27 (A) attorney's fees;

- 1 (B) physician examination fees;
- 2 (C) expense of transportation to a mental health
3 facility or to a federal agency not to exceed \$50 if transporting
4 within the same county and not to exceed the reasonable cost of
5 transportation if transporting between counties;
- 6 (D) costs and salary supplements authorized
7 under Section 574.031, Health and Safety Code; and
- 8 (E) prosecutors' fees authorized under Section
9 574.031, Health and Safety Code;
- 10 (34) expenses of transporting certain patients from
11 the county of treatment to a hearing in the county in which the
12 proceedings originated (Sec. 574.008, Health and Safety Code) . . .
13 actual expenses unless certain arrangements are made to hold the
14 hearing in the county in which the patient is receiving services;
- 15 (35) expenses for expert witness testimony for an
16 indigent patient (Sec. 574.010, Health and Safety Code) . . . if
17 authorized by the court as reimbursement to the attorney ad litem,
18 court-approved expenses;
- 19 (36) fee for judge's services for holding a hearing on
20 an application for court-ordered mental health services (Sec.
21 574.031, Health and Safety Code) . . . as assessed by the judge, not
22 to exceed \$50;
- 23 (37) expenses to reimburse judge for holding a hearing
24 in a hospital or location other than the county courthouse (Sec.
25 574.031, Health and Safety Code) . . . reasonable and necessary
26 expenses as certified;
- 27 (38) fee for services of a prosecuting attorney,

1 including costs incurred for preparation of documents related to a
2 hearing on an application for court-ordered mental health services
3 (Sec. 574.031, Health and Safety Code) . . . as assessed by the
4 judge, not to exceed \$50; and

5 (39) a fee not otherwise listed in this section that is
6 required to be collected under Section 25.0008, Government Code
7 (Sec. 25.0008, Government Code), in a county other than Brazos,
8 Cameron, Ellis, Guadalupe, Harris, Henderson, Liberty, Moore,
9 Nolan, Panola, Parker, Starr, Victoria, and Williamson . . . as
10 prescribed by law relating to county judges' fees.

11 SECTION 10. Section 101.083, Government Code, is amended to
12 read as follows:

13 Sec. 101.083. STATUTORY COUNTY COURT FEES: ADDITIONAL
14 FILING FEE FOR SUPPORT OF JUDICIARY. The clerk of a statutory
15 county court shall collect on the filing of a civil suit an
16 additional filing fee of \$42 [~~\$37~~] under Section 133.154, Local
17 Government Code, to be used for court-related purposes for the
18 support of the judiciary.

19 SECTION 11. Section 101.123, Government Code, is amended to
20 read as follows:

21 Sec. 101.123. COUNTY COURT FEES: ADDITIONAL FILING FEE FOR
22 SUPPORT OF JUDICIARY. The clerk of a county court shall collect on
23 the filing of a civil suit an additional filing fee of \$42 [~~\$37~~]
24 under Section 133.154, Local Government Code, to be used for
25 court-related purposes for the support of the judiciary.

26 SECTION 12. Section 102.022, Government Code, is amended to
27 read as follows:

1 Sec. 102.022. COURT COST ON CONVICTION FOR SUPPORT OF
2 JUDICIARY. A person convicted of any offense, other than an offense
3 relating to a pedestrian or the parking of a motor vehicle, shall
4 pay a cost on conviction of \$6 [~~\$4~~] under Section 133.105, Local
5 Government Code.

6 SECTION 13. The following provisions of the Government Code
7 are repealed:

- 8 (1) Subsections (e), (f), and (g), Section 25.0005;
- 9 (2) Subsections (b) and (c), Section 25.0015;
- 10 (3) Section 25.0016;
- 11 (4) Subsection (e), Section 25.0362; and
- 12 (5) Subsections (f) through (m), Section 51.702.

13 SECTION 14. The imposition of a cost of court under Section
14 133.105, Local Government Code, as amended by this Act, applies
15 only to an offense committed on or after the effective date of this
16 Act. An offense committed before the effective date of this Act is
17 covered by the law in effect when the offense was committed, and the
18 former law is continued in effect for that purpose. For purposes of
19 this section, an offense was committed before the effective date of
20 this Act if any element of the offense was committed before that
21 date.

22 SECTION 15. This Act takes effect October 1, 2007.

S.B. No. 600

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 600 passed the Senate on March 28, 2007, by the following vote: Yeas 30, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 600 passed the House on May 15, 2007, by the following vote: Yeas 142, Nays 2, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor



S.B. No. 1519

1 AN ACT
2 relating to longevity pay for certain state judges and justices.
3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
4 SECTION 1. Section 659.042, Government Code, is amended to
5 read as follows:
6 Sec. 659.042. EXCLUSIONS. The following are not entitled
7 to longevity pay under this subchapter:
8 (1) a member of the legislature;
9 (2) an individual who holds a statewide office that is
10 normally filled by vote of the people, except as provided by Section
11 659.0445;
12 (3) an independent contractor or an employee of an
13 independent contractor;
14 (4) a temporary employee;
15 (5) an officer or employee of a public junior college;
16 (6) an academic employee of a state institution of
17 higher education; or
18 (7) a state employee who retired from state employment
19 on or after June 1, 2005, and who receives an annuity based wholly
20 or partly on service as a state officer or state employee in a
21 public retirement system, as defined by Section 802.001, that was
22 credited to the state employee.
23 SECTION 2. Subsection (a), Section 659.044, Government
24 Code, is amended to read as follows:

1 (a) Except as provided by Subsections (e) and (f) and
2 Section 659.0445, the monthly amount of longevity pay is \$20 for
3 every two years of lifetime service credit.

4 SECTION 3. Subchapter D, Chapter 659, Government Code, is
5 amended by adding Section 659.0445 to read as follows:

6 Sec. 659.0445. LONGEVITY PAY FOR STATE JUDGES AND JUSTICES.

7 (a) A judge or justice who receives a salary paid by the state, is
8 a member of the Judicial Retirement System of Texas Plan One or the
9 Judicial Retirement System of Texas Plan Two, and is an active
10 judge, as defined by Section 74.041, is entitled to longevity pay as
11 provided by this section.

12 (b) The monthly amount of longevity pay under this section
13 to which a judge or justice described by Subsection (a) is entitled:

14 (1) is \$20 for each year of service credited in the
15 applicable retirement system, subject to Subsection (c); and

16 (2) is calculated and becomes payable beginning with
17 the month following the month in which the judge or justice
18 completes 16 years of service for which credit is established in the
19 applicable retirement system.

20 (c) A judge or justice may not receive longevity pay for
21 more than 16 years of service credited in the applicable retirement
22 system.

23 SECTION 4. Subsection (a), Section 814.103, Government
24 Code, is amended to read as follows:

25 (a) Except as provided by Subsection (b), the standard
26 service retirement annuity for service credited in the elected
27 class of membership is an amount equal to the number of years of

S.B. No. 1519

1 service credit in that class, times two percent of the state salary,
2 excluding longevity pay payable under Section 659.0445 and as
3 adjusted from time to time, being paid a district judge.

4 SECTION 5. Section 831.001, Government Code, is amended by
5 adding Subdivision (6-a) to read as follows:

6 (6-a) "State salary" does not include the amount of
7 any longevity pay payable under Section 659.0445.

8 SECTION 6. Section 836.001, Government Code, is amended by
9 adding Subdivision (9-a) to read as follows:

10 (9-a) "State salary" does not include the amount of
11 any longevity pay payable under Section 659.0445.

12 SECTION 7. This Act takes effect September 1, 2007.

S.B. No. 1519

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1519 passed the Senate on April 19, 2007, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1519 passed the House on May 16, 2007, by the following vote: Yeas 147, Nays 0, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor

District Judge and County Court at Law Salary Comparison Spreadsheet

District Judges by Seniority	State Salary	Juvenile Board Pay	County Supplement	Benefit Replacement Pay	State Longevity	Total
Thomas R. Culver III	\$125,000.00	\$7,200.00	\$7,800.00	\$1,026.72	\$3,840.00	\$144,866.72
Brady G. Elliott	\$125,000.00	\$7,200.00	\$7,800.00	\$1,026.72	\$3,840.00	\$144,866.72
Robert J. Kern	\$125,000.00	\$7,200.00	\$7,800.00			\$140,000.00
Clifford J. Vasek	\$125,000.00	\$7,200.00	\$7,800.00			\$140,000.00
Ronald R. Pope	\$125,000.00	\$7,200.00	\$7,800.00			\$140,000.00

County Court at Law Judges by Seniority	County Salary	Juvenile Board Pay	Added for BRP	Total
Walter S. McMeans	\$131,800.00	\$7,200.00	\$1,027.00	\$140,027.00
Susan G. Lowery	\$131,800.00	\$7,200.00		\$139,000.00
Sandy Bielstein	\$131,800.00	\$7,200.00		\$139,000.00
Ben W. "Bud" Childers	\$131,800.00	\$7,200.00		\$139,000.00

Benefits Replacement Pay (BRP) came about during the Legislative session in 1995, when the State ceased paying the employee's portion of FICA. Those employees, including judges, who were employed at the time, were grandfathered in and that amount was added to their pay as a "Benefits Replacement Pay". This was limited to the amount required to pay the contribution at that date, limited to a maximum of \$957.65 and the amount to pay retirement on that amount. The total amount turned out to be \$1,026.72, and this is the amount added to the pay of the judges who were sitting at that date. The pertinent statute is Government Code Section 659.122-123.

State Longevity Pay was enacted in the last legislative session, in Government Code Section 659.042, to pay a District Judge \$20 per month for each year of service after attaining 16 years of service. However, the amount is limited to no more than 16 years of service. So that a District Judge would begin receiving \$3840 per year after reaching the 16th year, but it will never increase after that year.





5/15/2007

- SUBJECT:** Longevity pay for judges and justices who have served at least 16 years
- COMMITTEE:** Judiciary — favorable, without amendment
- VOTE:** 8 ayes — Hartnett, Homer, Hopson, Alonzo, R. Cook, Gonzales, Goolsby, Hughes
0 nays
1 absent — Krusee
- SENATE VOTE:** On final passage, April 19 — 31-0, on Local and Unconstested Calendar
- WITNESSES:** For — Lynn Nabers, Alliance for Judicial Funding, Inc.; (*Registered, but did not testify*: Linda Thomas, Judiciary Section of the State Bar of Texas)
Against — None
- BACKGROUND:** Government Code, ch. 659, subch. D governs longevity pay for state employees. Government Code, subtitle D governs the Judicial Retirement System of Texas Plan One, and Government Code, subtitle E governs the Judicial Retirement System of Texas Plan Two. Under both systems, a judge who is at least 65 years old and has 12 years of service credit is eligible to retire and receive a service annuity.
- DIGEST:** SB 1519 would establish longevity pay for state judges and justices in Government Code, sec. 659.0445, which would entitle a judge or justice to longevity pay of \$20 a month for each year of service and would be calculated and payable beginning when the judge or justice completed 16 years of service. A judge or justice would not receive longevity pay for more than 16 years of service.
- “State salary,” for purposes of calculating retirement benefits under the Judicial Retirement System of Texas Plan One and Plan Two, would not include the amount of longevity pay for any state judge or justice. In addition, longevity pay would not factor into the calculation of a service retirement annuity for a legislator or other elected state official.

The bill would take effect September 1, 2007.

SB 1519
House Research Organization
page 2

SUPPORTERS
SAY:

SB 1519 would help the state attract and retain competent and talented individuals as state judges and justices. Studies show that inadequate salaries are a major factor in a person's decision to leave the judiciary. Almost all judges can make substantially more money in private practice, a fact that continues to draw excellent jurists away from the bench. Serving in the judiciary should be the capstone of a legal career not a stepping stone, and the financial incentives in SB 1519 could convince some of the state's most talented legal minds to remain on the bench.

The bill would encourage judges to serve several terms in order to accrue longevity pay. The average district court judge serves eight years, the average court of appeals justice serves nine years, and most judges stay for two terms or less. This can be especially costly to the state because the learning curve for new judges can be from two to three years. This inevitably impacts the quality of the judiciary and could be mitigated by encouraging experienced judges to continue in office for at least 16 years in order to receive longevity pay.

SB 1519 would not affect the pension or retirement benefits of legislators and other elected state officials. Nor would it count as state salary under either judicial retirement system.

OPPONENTS
SAY:

Judges are adequately compensated because they earn significantly more than most Texans and many other professionals. The private sector is not an appropriate standard by which to compare a judge's salary because pay in a private law firm is vastly higher than most other occupations, even other areas of the legal profession.

Individuals are attracted to the bench not for the salary, but for the desire, prestige, and the privilege of public service. If salary were the issue, it is unlikely that a judge would be swayed by the small incentives offered by SB 1519 when he or she could earn a much higher income with a private firm.

NOTES:

According to the Legislative Budget Board, SB 1519 would have a negative impact to general revenue-related funds of \$806,400 in fiscal 2008-09. The number of eligible judges is estimated to be 109, each of whom would receive \$3,840 per year for 16 or more years of service.



LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

April 30, 2007

TO: Honorable Will Hartnett, Chair, House Committee on Judiciary

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: SB1519 by Wentworth (Relating to longevity pay for certain state judges and justices.), As Engrossed

Estimated Two-year Net Impact to General Revenue Related Funds for SB1519, As Engrossed: a negative impact of (\$806,400) through the biennium ending August 31, 2009.
The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	(\$403,200)
2009	(\$403,200)
2010	(\$403,200)
2011	(\$403,200)
2012	(\$403,200)

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from GENERAL REVENUE FUND I
2008	(\$403,200)
2009	(\$403,200)
2010	(\$403,200)
2011	(\$403,200)
2012	(\$403,200)

Fiscal Analysis

The bill would provide longevity pay for active judges eligible for the Judicial Retirement System Plan I or Plan II. The amount would be \$20 per month for each year of service, calculated and payable only after 16 years of service.

Methodology

The number of eligible judges is estimated to be 109, and to not increase over time; as additional judges meet the service requirement an equal number are assumed to retire. Eligible judges would receive \$3,840 per year for 16 years of service and over.

This analysis assumes no additional Fund 573 money would be available to pay for this benefit, so the costs would be borne solely by General Revenue

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 327 Employees Retirement System

LBB Staff: JOB, MN, WM



LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

March 19, 2007

TO: Honorable Jeff Wentworth, Chair, Senate Committee on Jurisprudence

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: SB600 by Duncan (Relating to compensation paid to statutory county court judges and certain fees collected by statutory county courts.), Committee Report 1st House, Substituted

Estimated Two-year Net Impact to General Revenue Related Funds for SB600, Committee Report 1st House, Substituted: a positive impact of \$1,580,000 through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	\$790,000
2009	\$790,000
2010	\$790,000
2011	\$790,000
2012	\$790,000

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from JUDICIAL FUND 573	Probable Savings/(Cost) from JUDICIAL FUND 573	Probable Savings/(Cost) from GENERAL REVENUE FUND 1
2008	\$5,997,000	(\$6,570,000)	\$790,000
2009	\$11,784,000	(\$7,933,000)	\$790,000
2010	\$12,004,000	(\$7,933,000)	\$790,000
2011	\$12,230,000	(\$7,933,000)	\$790,000
2012	\$12,459,000	(\$7,933,000)	\$790,000

Fiscal Analysis

The bill would amend the Government Code, Chapter 25 to require the state to pay an annual salary supplement to all statutory county court judges. In addition, the bill would increase the annual salary supplement from \$35,000 to an amount equal to 60 percent of a district court judge's salary, or \$75,000. The bill would require all counties to collect the fees and court costs supporting the salary supplement program. The bill would increase the court cost from \$4 to \$6, and increase the civil suit filing fee from \$37 to \$42.

According to the Judiciary Section, Comptroller's Department, the bill as substituted would generate sufficient revenues to the Judicial Fund No. 573 to pay the estimated costs of the additional salary supplements, as shown in the table above.

The bill would repeal the requirements that the General Revenue Fund 0001 pay \$5,000 of each salary supplement and that excess contributions to the Judicial Fund 0573 be paid to counties. The bill would make conforming amendments and repeals.

The bill would take effect October 1, 2007.

Methodology

According to the Judiciary Section, Comptroller's Department, there are 218 statutory county courts, of which only 22 do not participate in the salary supplement program. The bill would require all counties to participate in the program and collect the fees and court costs to pay for the salary supplements. The bill would increase the salary supplement to 60 percent of the salary paid to a district court judge, or from \$35,000 to \$75,000, and remove the general revenue funding of \$5,000 per supplement.

The portion paid by Fund 0001, \$790,000 in obligations, would shift in obligation to the Judicial Fund 0573 by a like amount. The Judiciary Section of the Comptroller's Office estimates the total cost of the salary supplements to be \$16,350,000 in a full year and \$14,988,000 in the first year, a portion of which are already paid under state law. Of these amounts, there are sufficient revenues to cover costs of only \$8,417,000 in a full year and \$8,418,000 in the first year resulting in deficits in the account as shown above of \$7,933,000 in a full year and \$6,570,000 in the first year.

The fiscal impact for the increase in the court cost and filing fee was based on historical data, and adjusted for growth and indigency. The court costs for criminal cases were multiplied by the number of convictions, reduced to reflect historical collection rates and adjusted for an implementation lag. Likewise, the filing fee for civil suits were multiplied by the total number of filings, reduced to reflect collection rates and adjusted for implementation lag.

Currently, the program runs a surplus. Approximately \$8.5 million is generated in revenue, \$5.9 million of which is paid out in salary supplements from Fund 0573, with the remaining \$2.6 million returned to the counties as excess contributions. This bill would pay the salary supplements with the excess contribution. The incremental costs, savings, and revenue are listed in the tables.

Under the bill, Fund 0573 would initially run a deficit equal to the net of the probable costs and the revenue gained in fiscal year 2008, but beginning in fiscal 2009 additional revenues from the increase in court cost and filing fees would more than offset the additional expense to Fund 0573.

Local Government Impact

The bill would allow municipalities and counties to retain 30 cents of a \$2 increase in costs imposed upon conviction of any offense (other than those relating to pedestrians or parking). This estimate assumes the proposed \$2 increase in costs would result in new revenue to counties and municipalities of \$1,088,750 in fiscal year 2008 and \$1,306,500 in fiscal year 2009. To the extent the bill would require local clerks to collect and report fees and court costs to pay the salary supplements, no significant fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts, 212 Office of Court Administration, Texas Judicial Council

LBB Staff: JOB, MN, ZS, TB



TEXAS HOUSE OF REPRESENTATIVES

NEOL CAPITOL BUILDINGS
PO BOX 2910
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WILL HARTNETT

September 7, 2007

Judge Guy Herman
Travis County Probate Court
PO Box 1748
Austin, Texas 78767

Dear Judge Herman:

SB1519, which I carried in the House of Representatives, requires longevity pay for state judges who have served at least 16 years as a judge. As the House sponsor of SB1519, it was my legislative intent that SB1519 would also affect county level judges, because the existing salary statutes for county level judges mandate that the judges' salary calculation include a state judge's base salary and any contribution or supplement paid by the state or county. The existing salary provision for the statutory probate judges (Government Code §25.0025) mandates that these judges be paid an amount that is not less than *"the total annual salary received by a district judge in the county,"* which expressly includes *"supplements paid by the state."* Effective September 1, 2007, SB600 (which I also carried) mandates that all county level judges in Texas be paid an amount not less than \$1,000 below the *"total annual salary"* paid to a district judge from all sources, including *"supplements, paid by the state."*

My legislative intent expressed above is consistent with the long-established linkage of the compensation of county level judges to that of state judges.

This small salary increase should have no negative effect on the county budget, because SB600 more than doubled the state's salary contribution to the county's county level courts, and only applies to the few dedicated county level judges who have served at least 16 years on the bench.

Best regards,

Will Hartnett



COMMITTEE JURISDICTION CHAIRMAN
REGULATED INDUSTRIES
DISTRICT 11-