

TEXAS MUNICIPAL COURTS EDUCATION CENTER



2019 86th Legislative Update

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In the wake of the *Salinas* case, appellate courts have ruled that several other courts costs do not serve a legitimate criminal justice purpose. As more court costs were found unconstitutional, local governments questioned whether the loss of revenue would negatively impact vital services. This uncertainty was particularly pressing for those services funded by local government entities with the proceeds from court costs. To address this issue, S.B. 346 attempts to consolidate court costs in a revenue-neutral manner. The new system may be substantially easier to comply with and audit. It also preemptively prevents potential budgetary problems that both the state and local governments could face if additional costs are ruled unconstitutional, especially mid-budget cycle.

S.B. 346 also amends current law relating to the consolidation, allocation, classification, and repeal of certain criminal court costs and other court-related costs, fines, and fees. An amendment made to the bill made in the final weeks of session contained an array of procedural changes pertaining to the administrative, civil, and criminal consequences of fines, fees, and costs. The procedural changes are detailed in a separate summary on page 48.

Without a doubt, S.B. 346 is a significant reorganization of the state's court costs, and is likely the largest such change since the creation of the Consolidated Fee more than 10 years ago. Despite the scale of the overhaul, the changes appear to be palatable to those on the administrative side of processing or collecting court costs. Representatives from the County and District Clerks' Association, the Justice of the Peace and Constables Association, and the Texas State Troopers Association all testified in favor of the bill.

As the bill's "Statement of Intent" indicates, one purpose of the bill was to anticipate and prevent the negative consequences of certain costs or allocations being found unconstitutional by the state's highest criminal court. However, the bill makes a number of changes that will need to be carefully considered and implemented by municipal courts. In addition, some changes that do not seem at first blush to have a direct relation to municipal court processes may nonetheless have far reaching consequences within the court system.

Section by Section Analysis:

Section 1: State Consolidated Fee and New Local Consolidated Fee

S.B. 346 amends Section 133.102.(a)(3) of the Local Government Code to increase the Consolidated Fee from \$40 to \$62 on conviction for a nonjailable misdemeanor offense. This includes convictions for criminal violations of municipal ordinances, other than a conviction of an offense relating to a pedestrian or the parking of a motor vehicle. Additionally, S.B. 346 amends Section 133.102(e) of the Local Government Code to change the allocation percentage of the Consolidated Fee and adds new funds to the allocation.

S.B. 346 also amends Subtitle C, Title 4, of the Local Government Code by adding Chapter 134 (Criminal Fees Payable to Local Government). This addition includes Section 134.103, which creates a Local Consolidated Fee. Under this section, a person convicted of a nonjailable misdemeanor is assessed a fee of \$14. This fee is collected upon criminal conviction and remitted to the municipal treasury. Additionally, S.B. 346 requires that municipal treasuries maintain new accounts for these fees: (1) Municipal Court Building Security Fund; (2) Local Truancy and Prevention Diversion Fund; (3) Municipal Court Technology Fund; and (4) Municipal Jury Fund. The chapter further limits the authorized uses for the monies in these accounts.

Finally, S.B. 346 repeals Article 102.004 of the Code of Criminal Procedure (Jury Fee of \$3); Article 102.0174 of the Code of Criminal Procedure (Juvenile Case Manager Fund of up to \$5 by ordinance); Section 133.105 of the Local Government Code (Judicial Support Fee of \$6); Section 133.107 of the Local Government Code (Indigent Defense Fee of \$2); and Section 706.007(b), (c), and (e) of the Transportation Code (disbursement of Omnibase Fee to the Comptroller, DPS and Omnibase).

TMCEC: In a nutshell, Section 1 does two important things: it increases the existing Consolidated Fee to \$62 and creates a new Local Consolidated Fee that is \$14. To achieve this, however, a number of other amendments and repealers had to happen behind the scenes. These changes significantly change how a number of court costs are collected.

36^{EP}

State Consolidated Fee Analysis

Note: It may be easier going forward to refer to this as the State Consolidated Fee in order to differentiate it from the new Local Consolidated Fee.

S.B. 346 clearly responds to the line of cases challenging the constitutionality of various fees. These cases argue that certain costs have no relation to legitimate criminal justice purposes and so collecting these monies turns courts into tax collectors, a role that should be performed by the executive branch rather than the judiciary. See, *Peraza v. State*, 467 S.W.3d 508 (Tex. Crim. App. 2015). Most recently, in the *Salinas* case, the Court of Criminal Appeals found that two of the funds in the State Consolidated Fee were unconstitutional. In footnote 54 of the opinion, however, the Court noted “[i]f the Legislature redirects the funds to a legitimate criminal justice purpose, the entire consolidated court cost may be collected.” Following the *Salinas* opinion, the 85th Legislature passed S.B. 2053, which redistributed the funds within the State Consolidated Fee to remove the two unconstitutional funds. S.B. 346 looks like a “clean-up bill” to further attempt to head-off challenges to the State Consolidated Fee. It does this by adding seven new funds to the Consolidated Fee and redistributing the percentages apportioned to each fund. Courts may rest assured that nothing has changed regarding the collection and reporting of the State Consolidated Fee. Municipal courts will need to collect the increased \$62 amount, but the Comptroller will still be the one to apportion the fee to the now 18 different funds. However, courts do need to be aware of certain changes as some of the new funds affect other court costs.

Every percentage of the State Consolidated Fee fund apportionments is decreased except the Fair Defense Account. The Fair Defense Account has been the biggest beneficiary of the post-*Salinas* legislative changes, going from 8.0143 percent in 2015 to 17.8448 percent in 2017 to 17.8857 percent in 2020. Additionally, S.B. 346 provides that if the funds in the new Jury Service Fund ever exceed \$10 million, the Comptroller shall transfer the excess to the Fair Defense Account. Interestingly, municipal courts do not receive any of the funds deposited in that account.

The bill repackages the previously existing Truancy Prevention and Diversion *Fund* under 102.015 of the Code of Criminal Procedure. It is now called the Truancy Prevention and Diversion *Account* and is found in Section 133.125 of the Local Government Code as a fund within the State Consolidated Fee. This means that municipal courts will no longer be separately collecting the \$2 fee as a court cost. Consequently, courts will also no longer be retaining \$1 of that fee. The language regarding retaining 50 percent of the fee if a court “has established or is attempting to establish a juvenile case manager program” is struck in its entirety along with the separate \$2 fee. Instead, the Comptroller will apportion 2.5956%, or