

- SUBJECT:** Recusal of a statutory probate judge or other judge hearing probate matters
- COMMITTEE:** Judiciary and Civil Jurisprudence — committee substitute recommended
- VOTE:** 7 ayes — Lewis, Farrar, Farney, Gooden, K. King, Raymond, S. Thompson
- 0 nays
- 2 absent — Hernandez Luna, Hunter
- WITNESSES:** For — Pat Ferchill; Guy Herman, Probate Court of Travis County; Lin Morrisett
- Against — Michael Easton; Susan C. Norman
- BACKGROUND:** According to the Office of Court Administration, statutory probate courts are a type of county court at law with jurisdiction over probate, guardianship, and mental-health matters. They are led by the presiding statutory probate court judge.
- Among other duties, presiding judges of administrative judicial districts rule on most issues surrounding the recusal and disqualification of statutory probate court judges.
- DIGEST:** HB 3669 would conform the recusal statutes of statutory probate judges and other judges who hear probate matters to the newly amended Texas Rules of Civil Procedure, 18A and 18B, which govern the recusal of other judges in civil matters.
- Assignment powers of the presiding judge of the statutory probate courts.** The bill would vest the presiding judge of the statutory probate courts with the power to hear or rule on a referred motion of recusal or disqualification or assign a judge to hear and rule on a referred motion of recusal or disqualification. The presiding judge of the statutory probate courts also would be allowed to assign a presiding judge of the administrative judicial region to hear and rule on a referred motion of recusal or disqualification with the consent of the presiding judge of the administrative judicial region. The presiding judge would not be allowed

to assign a judge of a statutory probate court served by the judge who was the subject of the motion or recusal or disqualification.

If the presiding judge of the statutory probate courts were the subject of an order of recusal or disqualification, the chief justice of the Supreme Court would assign a regional presiding judge, a statutory probate judge, or a former or retired judge of a statutory probate court to hear the case.

**Fees and enjoinders.** HB 3669 would allow a judge who heard a motion for recusal or disqualification, after notice and a hearing, to:

- award attorney's fees and expenses if the motion was groundless and filed in bad faith to harass or was brought for unnecessary delay and without sufficient cause; and
- enjoin the movant from filing other recusal motions in the case without the prior written consent of the presiding judge of the statutory probate courts.

**Self-recusal.** If a judge recused himself or herself and the judge served a statutory probate court located in a county with only one statutory probate court, the judge would ask the presiding statutory probate judge to assign a replacement. If the recusing judge served a county with more than one statutory probate court, the judge would ask the clerk of the statutory probate courts to randomly assign a replacement from the other statutory probate court judges.

**County judge recusal.** HB 3669 would allow visiting judges to be assigned for probate, guardianship, and mental health matters when a county judge was recused.

**Conforming amendments.** The bill would remove several references in the code to presiding judges of administrative judicial regions. The bill would transfer much of their decision-making power regarding recusals and disqualifications of probate judges to the presiding statutory probate court judge.

**Effective date.** The bill would take effect on September 1, 2013. The changes in recusal and disqualification law would apply only to a motion for recusal or disqualification made on or after the effective date.

SUPPORTERS

HB 3669 more closely conforms the recusal and disqualifications of

**SAY:** statutory probate judges to standard recusal rules for civil judges found in the Texas Rules for Civil Procedure, 18A and 18B. These rules reflect current best practices for impartiality and efficiency.

The bill also would largely remove presiding judges of judicial administrative regions from the probate judge recusal and disqualification process. The bill would do this because there have been too many costly delays in waiting for the overworked administrative judges to decide recusal matters and make replacement appointments. The bill would increase judicial efficiency by directing the presiding judge of the statutory probate courts to largely decide these recusal matters.

The bill would allow the presiding judge of the statutory probate courts to award attorney's fees against vexatious recusal motions and enjoin further motions where appropriate. This would prevent abuse of the recusal system and help reserve it only for instances when it was truly appropriate.

HB 3669 would not result in abuse of recusal statutes by statutory probate court judges. The Supreme Court of Texas, the Commission on Judicial Conduct, and other oversight bodies and officials would continue to monitor judges to prevent such abuse.

**OPPONENTS  
SAY:** There are too few statutory probate court judges in Texas to allow them to police themselves for recusals and disqualifications. The current recusal system is largely determined by the presiding judges of administrative judicial districts. These judges are removed enough from the small and insular world of probate to ensure proper and even-handed hearings of recusal motions