

BILL ANALYSIS

Senate Research Center

H.B. 259
By: West (Duncan)
Jurisprudence
4-30-97
Engrossed

DIGEST

Currently, in order to establish a municipal court of record, the City of Odessa must hold an election. The city wishes to establish a municipal court of record without holding an election, and to appoint, rather than elect, judges to preside over this court. The city charter provides that municipal court judges be appointed since the cost of conducting a campaign would discourage many attorneys from running for the position. This bill will provide new regulations regarding municipal courts of record in Odessa.

PURPOSE

As proposed, H.B. 259 provides new regulations regarding municipal courts of record in Odessa.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 30.352(a), Government Code, to delete a reference to the municipal court of the City of Odessa (city).

SECTION 2. Amends Section 30.353, Government Code, to provide that a municipal court of record has jurisdiction, rather than exclusive original jurisdiction, in all criminal cases arising under the ordinances of the city. Deletes references to traffic offenses and the jurisdiction granted to municipal courts by state law. Sets forth the concurrent jurisdiction of a court. Provides that the court has jurisdiction over cases arising outside the territorial limits of the city under ordinances authorized by certain sections of the Local Government Code. Provides that the court has jurisdiction over Class C misdemeanor cases that are punishable by fine only.

SECTION 3. Amends Section 30.354(b), Government Code, to require the governing body of the city to appoint a municipal court judge and an alternate municipal court judge under an ordinance adopted by the governing body. Deletes existing text regarding the election of a municipal judge.

SECTION 4. Amends Section 30.355, Government Code, to delete text regarding the salary of a judge.

SECTION 5. Amends Section 30.356(b), Government Code, to authorize the governing body of the city to appoint qualified persons to sit as alternate municipal judges, who shall be known as alternate judges. Requires an alternate judge to meet the qualifications prescribed for the municipal judge. Requires the governing body to set the compensation of the alternate judges. Authorizes the municipal judge to assign an alternate judge to act for a judge who is temporarily unable to act for any reason. Provides that an alternate judge has all the powers and duties of the office while acting for the municipal judge. Deletes text providing that a temporary municipal judge serves at the pleasure of the governing body until the regular judge returns. Makes conforming and nonsubstantive changes.

SECTION 6. Amends Section 30.358(a), Government Code, to require the city manager, rather than governing body, to provide for the appointment of a clerk of the municipal courts of record.

SECTION 7. Amends Section 30.359, Government Code, to require the city, by ordinance, to provide for the appointment of a court reporter for the purpose of preserving a record in cases tried before a municipal court of record. Requires the court reporter to meet the qualifications provided by law for official court reporters. Authorizes the city, by ordinance, to provide for the use of written notes, transcribing equipment, or recording equipment, or a combination of those methods, to record the proceedings of the court. Requires the court reporter to keep the record for a certain time period. Provides that no one is required to record testimony in a case unless the judge or one of the parties requests a record. Requires a party's request for a record to be in writing and filed with the court not less than five days before the date of the trial. Requires the court reporter to certify the official record. Deletes existing text regarding court reporters.

SECTION 8. Amends Chapter 30L, Government Code, by adding Sections 30.3601, 30.3602, 30.3603, and 30.3604, as follows:

Sec. 30.3601. PROSECUTION BY CITY ATTORNEY. Requires all prosecutions in a municipal court of record to be conducted by the city attorney or an assistant or deputy city attorney.

Sec. 30.3602. COMPLAINT; PLEADING. Sets forth requirements for a complaint or pleading filed in a municipal court of record.

Sec. 30.3603. JURY. Sets forth requirements for a jury in a municipal court of record.

Sec. 30.3604. COURT RULES. Sets forth rules for cases before a municipal court of record.

SECTION 9. Amends Section 30.361, Government Code, to provide that the state has the right to an appeal as provided by Article 44.01, Code of Criminal Procedure, and for purposes of that appeal, the prosecuting attorney is the city attorney or an assistant or deputy city attorney. Requires the Ector County courts at law to be initial courts of review for appellate review of cases from a municipal court of record and to hear all appeals except in cases in which the county courts do not have jurisdiction of an appeal from a justice court, in which case the appeal shall be heard by the court that has jurisdiction of an appeal from the justice court. Requires the appellate court to determine each appeal from a municipal court of record conviction on the basis of the errors that are set forth in the defendant's motion for new trial and that are presented in the transcript and statement of facts prepared from the proceedings leading to the conviction. Prohibits an appeal from a municipal court of record from being by trial de novo. Deletes existing text regarding appeals from convictions of the municipal courts that are not of record.

SECTION 10. Amends Section 30.362, Government Code, as follows:

Sec. 30.362. New heading: APPEAL BOND. Sets forth regulations regarding filing of an appeal bond with the municipal court of record. Deletes existing text regarding an appeal from a municipal court of record.

SECTION 11. Amends Section 30.363, Government Code, to set forth regulations for perfecting an appeal. Deletes existing text regarding notice of appeal and a motion for new trial.

SECTION 12. Amends Section 30.364, Government Code, to require the court reporter to prepare the record from the reporter's record or mechanical recordings of the proceedings. Requires the appellant to pay for the cost of the transcription. Requires the court, if the appellant is the defendant and the case is reversed on appeal, to promptly refund the cost to the defendant.

SECTION 13. Amends Section 30.365, Government Code, as follows:

Sec. 30.365. New heading: TRANSCRIPT. Requires the clerk of the municipal court of record to prepare under the clerk's hand and seal of the court a transcript of the municipal court record proceedings after payment of the transcript preparation fee required by Section 30.363, rather than on written instructions from the defendant or the defendant's attorney.

Requires the clerk to prepare the transcript under written instructions from the appellant or appellant's attorney. Requires the transcript to include copies of certain items, unless otherwise agreed by the parties in writing. Requires the appellant or appellant's attorney to file a copy of the written instructions with the clerk and to deliver a copy to the appellee or appellee's attorney. Requires the appellee or appellee's attorney to file a written direction to the clerk if additional portions of the trial proceedings in the transcript are to be included. Deletes existing text regarding notice of appeal and bills of exception.

SECTION 14. Amends Section 30.367(a), Government Code, to make nonsubstantive changes.

SECTION 15. Amends Section 30.368, Government Code, as follows:

Sec. 30.368. New heading: TRANSFER OF RECORD; FEE. Requires the parties to file the transcript and the statement of facts with the clerk of the court not later than the 60th day after the date on which the transcript preparation fee was paid. Requires the clerk to promptly forward them to the appellate court clerk. Deletes existing text regarding filing deadlines, and approval of the record.

SECTION 16. Amends Section 30.369, Government Code, to require the record and briefs on appeal, to avoid unnecessary delay, to be limited as far as possible to the questions relied on for reversal. Deletes a provision authorizing the appellate court in its discretion to extend the times for filing briefs. Makes nonsubstantive changes.

SECTION 17. Amends Section 30.370, Government Code, to delete existing text regarding the reversal of a case based on mere technicalities and review of grounds of error.

SECTION 18. Amends Section 30.371, Government Code, to require the court, in each case decided by an appellate court, to deliver a written opinion or order sustaining or overruling each assignment of error presented. Makes a nonsubstantive change.

SECTION 19. Amends Section 30.372, Government Code, to require the municipal clerk, when the clerk of the municipal court of record receives the record, to file the record and certificate with the papers in the case and note the filing on the docket. Provides that, if the municipal court of record's judgment is affirmed, further action to enforce the judgment is not necessary except to issue an execution against the defendant's property, among other actions. Makes conforming changes.

SECTION 20. Amends Section 30.374, Government Code, to provide that an appeal of a decision of the appellate court to the court of appeals is governed by the Code of Criminal Procedure, except that the transcript, briefs, and statements of facts filed in the appellate court constitute the transcript, briefs, and statement of facts on appeal to the court of appeals unless the rules of the court of criminal appeals provide otherwise. Deletes a provision requiring the record and briefs to be filed directly with the court of appeals. Makes nonsubstantive changes.

SECTION 21. Repealers: Sections 30.352(c) and 30.366, Government Code (Creation of courts by the governing body of the City of Odessa, Bills of Exception).

SECTION 22. Effective date: September 1, 1997.

SECTION 23. Emergency clause.