

BILL ANALYSIS

Senate Research Center
78R10303 YDB-D

H.B. 461
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Jurisprudence
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Engrossed

DIGEST AND PURPOSE

The Government Code provides for the assignment of "visiting" judges to hear cases in the district courts and the courts of appeals. Currently, litigants may object to a particular judge only once if the judge is "retired" but an unlimited number of times if the judge is "former." These terms are not defined in the statute, and confusion has resulted. In addition, various parties have raised concerns regarding the experience and qualifications of certain visiting judges.

H.B. 461 amends the Government Code to clarify the definition of the various categories of visiting judges and to specify their qualifications. The bill also sets forth procedures for the assignment of these judges and for the objections thereto by litigants.

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 74.003, Government Code, by amending Subsection (b) and adding Subsections (f) and (g), as follows:

(b) Requires a retired justice or judge, to be eligible for assignment under this subsection, to meet certain requirements.

(f) Provides that for the purposes of Subsection (b)(1), a month of service is calculated as a calendar month or a portion of a calendar month in which a justice or judge was authorized by election or appointment to preside.

(g) Provides that Subsection (b)(1) does not apply to a retired justice of the supreme court.

SECTION 2. Amends Section 74.041, Government Code, by adding Subdivisions (4)-(7), as follows:

(4) Defines "active judge."

(5) Defines "former judge."

(6) Defines "retired judge."

(7) Defines "senior judge."

SECTION 3. Amends Section 74.053, Government Code, as follows:

Sec. 74.053. New heading: OBJECTION TO JUDGE ASSIGNED TO A TRIAL COURT. (a) Requires the order of assignment to state whether the judge is an active, former, retired, or senior judge and requires the presiding judge to, if it is reasonable and practicable and if time permits, give notice of the assignment to each attorney

representing a party to the case that is to be heard in whole or part by the assigned judge, when a judge is assigned to a trial court under this chapter.

(b) No change made to this subsection.

(c) Requires an objection under this section to be filed not later than the seventh day after the date the party receives actual notice of the assignment or before the date the first hearing or trial, including pretrial hearings, commences, whichever date occurs earlier. Authorizes the presiding judge to extend the time to file an objection under this section on written motion by a party who demonstrates good cause. Deletes text relating to certain actions over which the assigned judge is to preside.

(d) Prohibits an assigned, rather than a former, judge or justice who was defeated in the last primary or general election for which the judge or justice was a candidate for the judicial office held by the judge or justice, rather than not a retired judge, from sitting in a case if either party objects to the judge or justice.

(e) Provides that an active judge assigned under this chapter is not subject to an objection.

(f) Authorizes notice of assignment, for purposes of this section, to be given and an objection to an assignment to be filed by electronic mail.

(g) Defines “party.”

SECTION 4. Amends Sections 74.054(a) and (b), Government Code, as follows:

(a) Prohibits certain judges, except as provided by Subsections (b) and (c), from being assigned as provided by this chapter by the presiding judge of the administrative region in which the assigned judge resides.

(b) Prohibits an active, rather than a regular, statutory county court judge from being assigned to hear a matter pending in a district court outside the county of the judge’s residence.

SECTION 5. Amends Section 74.055, Government Code, by amending Subsections (c) and (e) and adding Subsections (f) and (g), as follows:

(c) Requires a retired or former judge, to be eligible to be named on the list, to meet certain requirements.

(e) Provides that for the purposes of Subsection (c)(1), a month of service is calculated as a calendar month or a portion of a calendar month in which a judge was authorized by election or appointment, rather than election or appointment by the governor, to preside.

(f) Provides that a former or retired judge is ineligible to be named on the list if the former or retired judge is identified in a public statement issued by the State Commission on Judicial Conduct (SCJC) as having resigned or retired from office in lieu of discipline.

(g) Requires a former or retired judge named on the list to immediately notify the presiding judge of a full investigation by SCJC into an allegation or appearance of misconduct or disability by the judge. Provides that a judge who does not notify the presiding judge of an investigation as required by this subsection is ineligible to remain on the list.

SECTION 6. Amends Section 75.551, Government Code, as follows:

(a) Requires the order of assignment to state whether the judge or justice is an active,

former, retired, or senior judge or justice, when a judge or justice is assigned to an appellate court under this chapter or Chapter 74.

(b) Deletes text relating to prohibiting a party to an appeal from in the same case from objecting in an appellate court to the assignment of a judge or justice under Section 74.053(b) and under this subsection.

(c) Requires an objection under this section to be filed not later than the seventh day after the date the party receives actual notice of the assignment or before the date the case is submitted to the court, whichever date occurs earliest. Authorizes the court to extend the time to file an objection under this section on a showing of good cause. Deletes text relating to requiring an objection under this section to be filed before the first hearing in which the assigned judge or justice is assigned to sit.

(d) Prohibits a judge or justice who was defeated in the last primary or general election for which the judge or justice was a candidate for the judicial office held by the judge or justice from sitting in an appellate case if either party objects to the judge or justice. Deletes text relating to prohibiting a former judge or justice who was not a retired judge or justice from sitting in an appellate case if either party objects to the judge or justice.

(e) Provides that an active judge assigned under this chapter is not subject to an objection.

(f) Authorizes notice of an assignment, for purposes of this section, to be given and an objection to an assignment to be filed by electronic mail.

(g) Defines “party.”

SECTION 7. Repealer: Section 74.055(d) (relating to a former district judge who has served as judge of more than one district court not being required to meet the 48 months of service requirement to be eligible to be named on the list), Government Code.

SECTION 8. (a) Makes application of the change in law made by Sections 3 and 6 prospective.

(b) Makes the application of Sections 1, 4, 5, and 7 prospective, except as provided by Subsection (c).

(c) Provides that the change in law made by Sections 1, 4, 5, and 7 of this Act does not apply to a person who immediately before the effective date of this Act meets the eligibility requirements to be assigned by the chief justice of the supreme court under Section 74.003(b) or Chapter 75, Government Code, or to be named on a list of retired and former judges under Section 74.055(c), Government Code, other than the certification requirement under Section 74.055(c)(6), Government Code, and the former law is continued in effect for determining that person's eligibility for those purposes.

SECTION 9. Effective date: September 1, 2003.