

BILL ANALYSIS

C.S.H.B. 461
By: Gallego
Judicial Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Government Code provides for the assignment of “visiting” judges to hear cases in the district courts and in 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.

C.S.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

It is the committee’s opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 461 amends the Government Code to define “active judge,” “former judge,” “retired judge,” and “senior judge.” The bill provides that in order to be eligible for assignment to a court of appeals, a retired justice or judge (unless a retired justice of the supreme court) must have at least 96 months of active service in a district, statutory probate, statutory county or appellate court, and that at least 48 of these 96 months must be at the appellate level. Such judges must not have been removed from office nor publicly reprimanded nor censured by the State Commission on Judicial Conduct (the “Commission”) nor have resigned in lieu of discipline. Such judges must also meet certain continuing education requirements and certify a willingness not to appear and plead as an attorney in any court in the state for a period of 2 years.

The bill provides that when a visiting judge is assigned to a trial court, the order of assignment must state whether the judge is an active, former, retired or senior judge, and that each party is only entitled to one objection. A “party” is defined to include multiple parties aligned in a case as determined by the presiding judge. An “active” judge is not subject to objection, but an assigned judge or justice who was defeated for re-election to his or her current bench may not sit in a case if either party objects. The bill also specifies what constitutes timely objection and provides that notice of a judge’s assignment and a party’s objection thereto can be filed by electronic mail.

The bill amends Section 74.054 of the Government Code to specify more clearly the provisions for assignment of active and senior judges, and to state that an active statutory county court judge may not be assigned to hear a matter pending in a district court outside the county of the judge’s residence.

The bill also amends the Government Code to specify that to be named on the list of retired or former judges subject to assignment, a retired or former judge must have served as an active judge for at least 96 months in a district, statutory probate, statutory county, or appellate court. In addition, such judges must not have been removed from office, nor publicly reprimanded or censured by the State Commission on

Judicial Conduct, nor have resigned in lieu of discipline. A former or retired judge named on the list must also immediately notify the presiding judge of the commencement of a full investigation by the Commission into an allegation or appearance of misconduct or disability by the judge. A judge failing to do this is ineligible to remain on the list. To remain on the list, a judge must also complete certain continuing education requirements.

The bill also requires the order of assignment for an appellate court to state whether the judge or justice is an active, former, retired or senior judge or justice. Each party is only entitled to one objection. A “party” is defined to include multiple parties aligned in a case as determined by the presiding judge. An “active” judge is not subject to objection, but an assigned judge or justice who was defeated for re-election to his or her current bench may not sit in a case if either party objects. The bill also specifies what constitutes timely objection and provides that notice of a judge’s assignment and a party’s objection thereto can be filed by electronic mail.

The bill also repeals a section of the Government Code made inconsistent with C.S.H.B. 461.

EFFECTIVE DATE

September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The original allowed any party to a case to object to an assigned judge. The substitute defines “party” to include multiple parties aligned in a case as determined by the presiding judge.

The substitute specifically defines “active judge,” “former judge,” “retired judge,” and “senior judge,” and adds the classification “senior” judge.

The substitute provides that an active judge is not subject to an objection.