

BILL ANALYSIS

C.S.S.B. 1107
By: Duncan
Judicial Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Government Code provides for the assignment of “visiting” judges to hear cases in the trial courts and in the courts of appeals. C.S.S.B. 1107 is an outgrowth of interim discussions regarding improvements to the visiting judges program and also contains provisions regarding the compensation of certain visiting judges.

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.S.B. 1107 amends the Government Code to provide that notwithstanding any other law, the salary of a judge or a former or retired judge of a statutory probate court assigned under certain circumstances to serve in a statutory county court or constitutional county court shall be paid by the state in the same manner as the salary of a retired district judge assigned to serve in a district court or statutory county court. The bill also requires that the presiding judge certify to the state a determination of such assigned judges’ salaries. The bill also cleans up numerous mis-numbered sections and redundant provisions.

The bill 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 or after notice by the Commission of a full investigation into an allegation of misconduct. 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 also provides for certain calculations regarding months of service and states that notwithstanding any other provision of law, an active district court judge may be assigned to hear a matter pending in an appellate court.

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 or after notice by the Commission of a full investigation into an allegation of misconduct. 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 amends Section 74.061, Government Code by providing that the salary of a judge assigned to serve in a statutory county court at law shall be paid by the state only if that court has the civil jurisdiction of a district court. The bill also provides that a judge who sits as an assigned judge for half a day or less shall be compensated in an amount that is equal to one-half of the amount to which the judge would be entitled for sitting as an assigned judge for a full day.

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 specifies that a visiting or assigned state district judge is not entitled to receive service credit in either judicial retirement system for any month in which the judge makes a payroll contribution that is less than the amount of payroll contribution of a full time district judge. A visiting or assigned state district judge is not considered to have made the required monthly contribution until the judge offsets any deficiency with a direct payment to the retirement system or through an actual cash reduction of future state salary.

The bill also repeals sections of the Government Code made inconsistent with the bill.

EFFECTIVE DATE

September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute provides for the compensation by the state of visiting statutory probate court judges under certain circumstances.

The substitute provides, in several sections, that in order to be eligible to serve as a visiting judge, a judge must not have been publicly reprimanded or censured by the State Commission on Judicial Conduct (the “Commission”) or resigned in lieu of such discipline or upon notice of a full investigation by the Commission into an allegation of misconduct. The original required notice of formal proceedings by the Commission.

The substitute states that the experience requirements do not apply to a retired justice of the supreme court. The original did not contain this provision.

The substitute adds a definition for “senior judge.”

The substitute adds a provision that the order of assignment, for both trial and appellate judges, must state

whether the judge is an active, former, retired or senior judge.

The substitute adds a provision making a judge ineligible for the visiting judge list if he or she is identified in a public statement issued by the Commission as having resigned or retired in lieu of discipline. It also requires a judge to immediately notify the presiding judge of a full investigation by the Commission into an allegation or appearance of misconduct by the judge.

The original eliminated state funding for the salary of any visiting judge serving in a statutory county court. The substitute only does so for judges serving in statutory county courts that do not have the civil jurisdiction of a district court.

The substitute deletes a provision in the original that provided that the chief justice may assign any judge that may be assigned by the presiding judge of an administrative region under Section 74.054, Government Code.

The substitute also deletes a provision in the original that stated notwithstanding any other law, a former, retired, or active judge is not entitled to compensation paid by the state when the judge sits as an assigned judge for a statutory county court.

The substitute adds a provision in reference to a judge assigned to an appellate court stating that an active judge is not subject to an objection.