

By: Gallego

H.B. No. 461

A BILL TO BE ENTITLED

AN ACT

relating to the assignment of certain retired or former judges as visiting judges.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 74.003, Government Code, is amended by amending Subsection (b) and adding Subsections (f) and (g) to read as follows:

(b) The chief justice of the supreme court may assign a qualified retired justice or judge of the supreme court, of the court of criminal appeals, or of a court of appeals to a court of appeals for active service regardless of whether a vacancy exists in the court to which the justice is assigned. To be eligible for assignment under this subsection, a retired justice or judge must:

(1) have served as an active justice or judge for at least 96 months in a district, statutory probate, statutory county, or appellate court, including at least 48 months in an appellate court;

(2) not have been removed from office;

(3) certify under oath to the chief justice of the supreme court, on a form prescribed by the chief justice, that:

(A) the justice or judge has never been publicly reprimanded or censured by the State Commission on Judicial Conduct; and

(B) the justice or judge:

1 (i) did not resign or retire from office
2 after the State Commission on Judicial Conduct notified the justice
3 or judge of the commencement of a full investigation into an
4 allegation or appearance of misconduct or disability of the justice
5 or judge as provided in Section 33.022 and before the final
6 disposition of that investigation; or

7 (ii) if the justice or judge did resign from
8 office under circumstances described by Subparagraph (i), the
9 justice or judge was not publicly reprimanded or censured as a
10 result of the investigation;

11 (4) annually demonstrate that the justice or judge has
12 completed in the past state fiscal year the educational
13 requirements for active appellate court justices or judges; and

14 (5) certify to the chief justice of the supreme court a
15 willingness not to appear and plead as an attorney in any court in
16 this state for a period of two years.

17 (f) For the purposes of Subsection (b)(1), a month of
18 service is calculated as a calendar month or a portion of a calendar
19 month in which a justice or judge was authorized by election or
20 appointment to preside.

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

23 SECTION 2. Section 74.053, Government Code, is amended to
24 read as follows:

25 Sec. 74.053. OBJECTION TO ~~ASSIGNED~~ JUDGE ASSIGNED TO A
26 TRIAL COURT. (a) When a judge is assigned to a trial court under
27 this chapter:

1 (1) the order of assignment must state whether the
2 judge is an active, former, or retired judge; and

3 (2) the presiding judge shall, if it is reasonable and
4 practicable and if time permits, give notice of the assignment to
5 each attorney representing a party to the case that is to be heard
6 in whole or part by the assigned judge.

7 (b) If a party to a civil case files a timely objection to
8 the assignment, the judge shall not hear the case. Except as
9 provided by Subsection (d), each party to the case is only entitled
10 to one objection under this section for that case. A party's
11 entitlement to an objection under this section is not affected by
12 the filing of an objection by another party to the case.

13 (c) An objection under this section must be filed not later
14 than the seventh day after the date the party receives actual notice
15 of the assignment or before the date the first hearing or trial,
16 including pretrial hearings, commences, whichever date occurs
17 earlier. The presiding judge may extend the time to file an
18 objection under this section on written motion by a party who
19 demonstrates good cause [~~over which the assigned judge is to~~
20 ~~preside~~].

21 (d) An assigned [~~A former~~] judge or justice who was defeated
22 in the last primary or general election for which the judge or
23 justice was a candidate for the judicial office held by the judge or
24 justice [~~not a retired judge~~] may not sit in a case if either party
25 objects to the judge or justice.

26 (e) For purposes of this section, notice of an assignment
27 may be given and an objection to an assignment may be filed by

1 electronic mail.

2 SECTION 3. Section 74.055, Government Code, is amended by
3 amending Subsections (c) and (e) and adding Subsections (f) and (g)
4 to read as follows:

5 (c) To be eligible to be named on the list, a retired or
6 former judge must:

7 (1) have served as an active ~~[a]~~ judge for at least 96
8 ~~[48]~~ months in a district, statutory probate, statutory county, or
9 appellate court;

10 (2) have developed substantial experience in the
11 judge's area of specialty;

12 (3) not have been removed from office;

13 (4) certify under oath to each ~~[the]~~ presiding judge,
14 on a form prescribed by the state board of regional judges, that:

15 (A) the judge has never been publicly reprimanded
16 or censured by the State Commission on Judicial Conduct; and

17 (B) the judge:

18 (i) did not resign or retire from office
19 after ~~[having received notice that formal proceedings by]~~ the State
20 Commission on Judicial Conduct notified the judge of the
21 commencement of a full investigation into an allegation or
22 appearance of misconduct or disability of the judge ~~[had been~~
23 instituted] as provided in Section 33.022 and before the final
24 disposition of that investigation; or

25 (ii) if the judge did resign from office
26 under circumstances described by Subparagraph (i), the judge was
27 not publicly reprimanded or censured as a result of the

1 investigation [~~the proceedings~~];

2 (5) annually demonstrate that the judge has completed
3 in the past state fiscal [~~calendar~~] year the educational
4 requirements for active district, statutory probate, and statutory
5 county court judges; and

6 (6) certify to the presiding judge a willingness not
7 to appear and plead as an attorney in any court in this state for a
8 period of two years.

9 (e) For purposes of Subsection (c)(1), a month of service is
10 calculated as a calendar month or a portion of a calendar month in
11 which a judge was authorized by election or appointment [~~by the~~
12 ~~governor~~] to preside.

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

17 (g) A former or retired judge named on the list shall
18 immediately notify the presiding judge of a full investigation by
19 the State Commission on Judicial Conduct into an allegation or
20 appearance of misconduct or disability by the judge. A judge who
21 does not notify the presiding judge of an investigation as required
22 by this subsection is ineligible to be named on the list.

23 SECTION 4. Section 75.551, Government Code, is amended to
24 read as follows:

25 Sec. 75.551. OBJECTION TO JUDGE OR JUSTICE ASSIGNED TO AN
26 APPELLATE COURT. (a) When a judge or justice is assigned to an
27 appellate court under this chapter or Chapter 74:

1 (1) the order of assignment must state whether the
2 judge or justice is an active, former, retired, or senior judge or
3 justice; and

4 (2) [↯] the person who assigns the judge or justice
5 shall, if it is reasonable and practicable and if time permits, give
6 notice of the assignment to each attorney representing a party to
7 the case that is to be heard in whole or part by the assigned judge
8 or justice.

9 (b) A judge or justice assigned to an appellate court may
10 not hear a civil case if a party to the case files a timely objection
11 to the assignment of the judge or justice. Except as provided by
12 Subsection (d), [↯]

13 ~~[(1)]~~ each party to the case is entitled to only one
14 objection under this section for that case in the appellate court~~[↯~~
15 ~~and~~

16 ~~[(2) a party to an appeal may not in the same case~~
17 ~~object in an appellate court to the assignment of a judge or justice~~
18 ~~under Section 74.053(b) and under this subsection].~~ A party's
19 entitlement to an objection under this section is not affected by
20 the filing of an objection by another party to the case.

21 (c) An objection under this section must be filed not later
22 than the seventh day after the date the party receives actual notice
23 of the assignment or before the date the case is submitted to the
24 court, whichever date occurs earlier. The court may extend the time
25 to file an objection under this section on a showing of good cause
26 ~~[first hearing in which the assigned judge or justice is assigned to~~
27 ~~sit].~~

1 (d) A [~~former~~] judge or justice who was defeated in the last
2 primary or general election for which the judge or justice was a
3 candidate for the judicial office held by the judge or justice [~~not~~
4 ~~a retired judge or justice~~] may not sit in an appellate case if
5 either party objects to the judge or justice.

6 (e) For purposes of this section, notice of an assignment
7 may be given and an objection to an assignment may be filed by
8 electronic mail.

9 SECTION 5. Section 74.055(d), Government Code, is repealed.

10 SECTION 6. (a) The change in law made by Sections 2 and 4
11 of this Act applies only to a case that is pending or commences on or
12 after the effective date of this Act.

13 (b) Except as provided by Subsection (c) of this section,
14 the change in law made by Sections 1, 3, and 5 of this Act applies
15 only to the assignment of a judge or justice under Chapter 74 or 75,
16 Government Code, made on or after the effective date of this Act.
17 An assignment made before the effective date of this Act is governed
18 by the law in effect at the time the assignment is made, and that law
19 is continued in effect for that purpose.

20 (c) The change in law made by Sections 1, 3, and 5 of this
21 Act does not apply to a person who immediately before the effective
22 date of this Act meets the eligibility requirements to be assigned
23 as a visiting judge by the chief justice of the supreme court under
24 Section 74.003(b) or Chapter 75, Government Code, or to be named on
25 a list of retired and former judges under Section 74.055(c),
26 Government Code, other than the certification requirement under
27 Section 74.055(c)(6), Government Code, and the former law is

1 continued in effect for determining that person's eligibility for
2 those purposes.

3 SECTION 7. This Act takes effect September 1, 2003.