

By: Duncan

S.B. No. 1107

A BILL TO BE ENTITLED

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AN ACT

relating to the assignment of certain justices or judges as visiting judges and to service credit in the judicial retirement system for certain visiting judges.

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

SECTION 1. The heading to Section 74.003, Government Code, is amended to read as follows:

Sec. 74.003. ASSIGNMENT OF JUSTICES AND JUDGES FOR APPELLATE COURTS [~~JUDGES~~].

SECTION 2. 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, with at least 48 of those months in an appellate court;
- (2) not have been removed from office;
- (3) certify under oath to the chief justice of the

1 supreme court, on a form prescribed by the chief justice, that the
2 justice or judge did not resign from office after having received
3 notice that formal proceedings by the State Commission on Judicial
4 Conduct had been instituted as provided in Section 33.022 and
5 before the final disposition of the proceedings;

6 (4) annually demonstrate that the justice or judge has
7 completed in the past calendar year the educational requirements
8 for active appellate court justices or judges; and

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

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

16 (g) Notwithstanding any other provision of law, an active
17 district court judge may be assigned to hear a matter pending in an
18 appellate court.

19 SECTION 3. Sections 74.041 and 74.053, Government Code, are
20 amended to read as follows:

21 Sec. 74.041. DEFINITIONS. In this chapter:

22 (1) "Active judge" means a person who holds a judicial
23 office.

24 (2) "Administrative region" means an administrative
25 judicial region created by Section 74.042.

26 (3) "Former judge" means a person who has served as an
27 active judge in a district, statutory probate, statutory county, or

1 appellate court, but who is not a retired judge.

2 (4) [~~(2)~~] "Presiding judge" means the presiding judge
3 of an administrative region.

4 (5) "Retired judge" means:

5 (A) a retiree; or

6 (B) a person who has served as an active judge for
7 at least 96 months in a statutory probate or statutory county court
8 and has retired under the Texas County and District Retirement
9 System.

10 (6) [~~(3)~~] "Retiree" means a person who has retired
11 under the Judicial Retirement System of Texas, the Judicial
12 Retirement System of Texas Plan One, or the Judicial Retirement
13 System of Texas Plan Two.

14 Sec. 74.053. OBJECTION TO [~~ASSIGNED~~] JUDGE ASSIGNED TO A
15 TRIAL COURT. (a) When a judge is assigned to a trial court under
16 this chapter the presiding judge shall, if it is reasonable and
17 practicable and if time permits, give notice of the assignment to
18 each attorney representing a party to the case that is to be heard
19 in whole or part by the assigned judge.

20 (b) If a party to a civil case files a timely objection to
21 the assignment, the judge shall not hear the case. Except as
22 provided by Subsection (d), each party to the case is only entitled
23 to one objection under this section for that case.

24 (c) An objection under this section must be filed not later
25 than the seventh day after the date that the party receives actual
26 notice of the assignment or before the date that the first hearing
27 or trial, including pretrial hearings, commences, whichever date

1 occurs earlier. The presiding judge may extend the time to file an
2 objection under this section on written motion by a party who
3 demonstrates good cause [~~over which the assigned judge is to~~
4 ~~preside~~].

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

10 (e) In this section, "party" includes multiple parties
11 aligned in a case as determined by the presiding judge.

12 (f) For purposes of this section, notice of an assignment
13 may be given and an objection to an assignment may be filed by
14 electronic mail.

15 (g) An active district judge assigned under this chapter is
16 not subject to objection.

17 SECTION 4. Subsections (a) and (b), Section 74.054,
18 Government Code, are amended to read as follows:

19 (a) Except as provided by Subsections (b) and (c), the
20 following judges may be assigned as provided by this chapter by the
21 presiding judge of the administrative region in which the assigned
22 judge resides:

23 (1) an active [~~a regular~~] district, constitutional
24 county, or statutory county court judge in this state;

25 (2) a senior [~~district or appellate~~] judge [~~who is a~~
26 ~~retiree under Subtitle D or E of Title 8,~~] who has consented to be
27 subject to assignment[~~7~~] and who is on the list maintained by the

1 presiding judge under this chapter;

2 (3) a former district or appellate judge, retired or
3 former statutory probate court judge, or retired or former
4 statutory county court judge who certifies to the presiding judge a
5 willingness to serve and who is on the list maintained by the
6 presiding judge as required by this chapter;

7 (4) a retiree or a former judge whose last judicial
8 office before retirement was justice or judge of the supreme court,
9 the court of criminal appeals, or a court of appeals and who has
10 been assigned by the chief justice to the administrative judicial
11 region in which the retiree or former judge resides for
12 reassignment by the presiding judge of that region to a district or
13 statutory county court in the region; and

14 (5) an active judge or justice of the supreme court,
15 the court of criminal appeals, or a court of appeals who has had
16 trial court experience.

17 (b) An active [~~A regular~~] statutory county court judge may
18 not be assigned to hear a matter pending in a district court outside
19 the county of the judge's residence.

20 SECTION 5. Subsections (c) and (e), Section 74.055,
21 Government Code, are amended to read as follows:

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

24 (1) have served as an active [~~a~~] judge for at least 96
25 [~~48~~] months in a district, statutory probate, statutory county, or
26 appellate court;

27 (2) have developed substantial experience in the

1 judge's area of specialty;

2 (3) not have been removed from office;

3 (4) certify under oath to the presiding judge, on a
4 form prescribed by the state board of regional judges, that the
5 judge did not resign from office after having received notice that
6 formal proceedings by the State Commission on Judicial Conduct had
7 been instituted as provided in Section 33.022 and before the final
8 disposition of the proceedings;

9 (5) annually demonstrate that the judge has completed
10 in the past calendar year the educational requirements for active
11 district, statutory probate, and statutory county court judges; and

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

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

19 SECTION 6. Section 74.057, Government Code, is amended by
20 adding Subsection (c) to read as follows:

21 (c) The chief justice may assign any judge that may be
22 assigned by the presiding judge of an administrative region under
23 Section 74.054. An assignment by the chief justice under this
24 section is not subject to objection under Section 74.053.

25 SECTION 7. Section 74.061, Government Code, is amended by
26 amending Subsection (c) and adding Subsections (j) and (k) to read
27 as follows:

1 (c) The salary of a retired judge or justice while assigned
2 under this chapter shall be paid out of money appropriated from the
3 general revenue fund for that purpose in an amount equal to the
4 compensation received from state and county sources of the judge of
5 the court to which he is assigned. The salary of a retired judge or
6 justice while assigned shall be determined pro rata for the period
7 of time that the judge or justice actually sits as the assigned
8 judge. The salary of a retired statutory county court judge
9 assigned under this chapter to serve in a district court [~~or~~
10 ~~statutory county court~~] shall be paid by the state in the same
11 manner as the salary of a retired district judge assigned under this
12 chapter to serve in a district court [~~or statutory county court~~] is
13 paid by the state.

14 (j) A judge or justice who sits as an assigned judge for half
15 a day or less shall be compensated in an amount that is equal to
16 one-half of the amount to which a judge or justice is entitled for
17 sitting as an assigned judge for a full day under this section.

18 (k) Notwithstanding any other provision of law, a former,
19 retired, or active judge is not entitled to compensation paid by the
20 state when the judge sits as an assigned judge for a statutory
21 county court.

22 SECTION 8. Section 75.551, Government Code, is amended by
23 amending Subsections (c) and (d) and adding Subsections (e) and (f)
24 to read as follows:

25 (c) An objection under this section must be filed not later
26 than the seventh day after the date that the party receives actual
27 notice of the assignment or before the date that the case is

1 submitted to the court, whichever date occurs earlier. The court
2 may extend the time to file an objection under this section on a
3 showing of good cause [~~first hearing in which the assigned judge or~~
4 ~~justice is assigned to sit~~].

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

10 (e) In this section, "party" includes multiple parties
11 aligned in a case as determined by the appellate court.

12 (f) For purposes of this section, notice of an assignment
13 may be given and an objection to an assignment may be filed by
14 electronic mail.

15 SECTION 9. Subchapter B, Chapter 835, Government Code, is
16 amended by adding Section 835.104 to read as follows:

17 Sec. 835.104. CONTRIBUTIONS FOR VISITING DISTRICT JUDGES.
18 A visiting or assigned state district judge is not entitled to
19 receive service credit in either judicial retirement system for any
20 month in which the judge makes a payroll contribution that is less
21 than the amount of payroll contribution of a full-time district
22 judge. A visiting or assigned state district judge is not
23 considered to have made the required monthly contribution until the
24 judge offsets any deficiency with a direct payment to the
25 retirement system or through an actual cash reduction of future
26 state salary.

27 SECTION 10. Subchapter B, Chapter 840, Government Code, is

1 amended by adding Section 840.107 to read as follows:

2 Sec. 840.107. CONTRIBUTIONS FOR VISITING DISTRICT JUDGES.

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

12 SECTION 11. Subsection (d), Section 74.055, Government
13 Code, is repealed.

14 SECTION 12. (a) Sections 74.053 and 75.551, Government
15 Code, as amended by this Act, apply only to a case that is pending or
16 commences on or after September 1, 2003.

17 (b) Except as provided by Subsections (a) and (c) of this
18 section, this Act applies only to the assignment of a judge or
19 justice under Chapter 74 or 75, Government Code, made on or after
20 September 1, 2003. An assignment made before September 1, 2003, is
21 governed by the law in effect at the time the assignment is made,
22 and that law is continued in effect for that purpose.

23 (c) This Act does not apply to a person who immediately
24 before September 1, 2003, meets the eligibility requirements to be
25 assigned by the chief justice of the supreme court under Subsection
26 (b), Section 74.003, or Chapter 75, Government Code, or to be named
27 on a list of retired and former judges under Subsection (c), Section

1 74.055, Government Code, other than the certification requirement
2 under Subdivision (6), Subsection (c), Section 74.055, Government
3 Code, and the former law is continued in effect for determining that
4 person's eligibility for those purposes.

5 SECTION 13. This Act takes effect September 1, 2003.