

BILL ANALYSIS

C.S.H.B. 764
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Under current law, there are different standards for qualification to serve as a visiting judge in a district, county, or statutory county court and statutory probate.

CSHB 764 modifies eligibility requirements for a former or retired judge of a statutory probate court to be assigned to hold court as a visiting judge in a statutory probate court, raising the standards for qualification to that of the standards for qualification to serve as a visiting judge in a district, county, or statutory county court. The bill clarifies that the change in law made by Chapter 315 (H.B. 3306), Acts of the 78th Legislature, Regular Session, 2003, requiring a retired judge or former judge to have served a term as an active judge for at least 96 months in certain courts, does not apply to a person who was serving a term as an active judge on August 31, 2003, and who, on completion of that term, met all but one certain eligibility requirement to be named on a list of judges for potential assignment as a visiting judge under provisions for such judges as those requirements existed on August 31, 2003.

RULEMAKING AUTHORITY

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

ANALYSIS

CSHB 764 amends the Government Code to modify eligibility requirements and add eligibility requirements for a former or retired judge of a statutory probate court to be assigned to hold court as a visiting judge in a statutory probate court. The bill requires a former or retired judge of a statutory probate court to certify under oath to the presiding judge of the statutory probate courts that the judge did not resign from office after the State Commission on Judicial Conduct notified the judge of the commencement of a full investigation into an allegation or appearance of misconduct or disability of the judge and before the final disposition of that investigation, rather than that the judge did not resign from office after having received notice that formal proceedings regarding such an allegation or appearance had been instituted by the commission and before the final disposition of the proceedings. The bill requires the judge to certify under oath to the presiding judge that the judge has never been publicly reprimanded or censured by the commission and that the judge, if the judge resigned from office because of the commencement of a full investigation into an allegation or appearance of misconduct or disability of the judge and before the final disposition of that investigation, was not publicly reprimanded or censured as a result of the investigation. The bill required the judge to annually demonstrate that the judge has completed in the past state fiscal year the educational requirements for an active statutory probate court judge, to have served as an active judge for at least 96 months in a district, statutory probate court, statutory county, or appellate court, and to have developed substantial experience in the judge's area of specialty.

CSHB 764 establishes that the change in law made by Chapter 315, (H.B. 3306), Acts of the 78th Legislature, Regular Session, 2003, requiring a retired judge or former judge to have served as an active judge for at least 96 months in a district, statutory probate, statutory county, or appellate court, does not apply to a person who was serving a term as an active judge on August 31, 2003.

CSHB 764 makes the requirement that a judge annually demonstrate that the judge has completed educational requirements to be eligible for assignment for assignment applicable only to an assignment of a visiting judge appointed on or after September 1, 2010. The bill makes its provisions relating to the other requirements inapplicable to a person who immediately before the effective date of the bill meets the eligibility requirements to be assigned by the presiding judge as a visiting judge in a statutory probate court, county court, or any statutory court exercising probate jurisdiction.

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The committee substitute of the bill provides that a reprimand of censure issued by the State Commission on Judicial Conduct subject to SECTION 1 of this bill, and as amended by this bill, applies only to a reprimand or censure issued on or after the effective date of this bill.