

BILL ANALYSIS

C.S.H.B. 3475
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties assert that important issues remain unresolved in provisions of law relating to a municipal judge who sits in for a recused or disqualified municipal judge and that these issues are not evident in other Texas trial courts. Among the issues is a concern that the law governing recusal or disqualification in a municipal court is complicated by the variance in municipal court organization authorized by state law. To further complicate matters, it has been observed that there is widespread disagreement about the applicability of certain Texas rules of civil procedure. The interested parties note that these rules generally do not govern criminal proceedings, but that a recent Texas judicial opinion held that, absent clear legislative intent, certain rules involving the procedures for the recusal of a judge apply in criminal cases. The parties contend that there is a conflict in law between that opinion and state law that has resulted in disagreement among municipal judges, the presiding judges of the administrative judicial regions, and attorneys. The parties assert that legislation is needed to address this issue and C.S.H.B. 3475 seeks to address these questions by making changes relating to the recusal and disqualification of municipal 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.H.B. 3475 amends the Government Code to authorize a party in a hearing or trial in a municipal court, including a municipal court of record, to file with the clerk of the court a motion stating grounds for the recusal or disqualification of the municipal judge. The bill authorizes such grounds to include any disability of the judge to preside over the case. The bill requires such a motion to be filed at least 10 days before the date of the hearing or trial, be verified, and state with particularity the alleged grounds for recusal or disqualification based on personal knowledge that is supported by admissible evidence, or specifically stated grounds for belief of the allegations. The bill requires such a motion to be filed at the earliest practicable time before the beginning of the trial or other hearing if a judge is assigned to a case 10 or fewer days before the date set for a trial or hearing.

C.S.H.B. 3475 requires a party filing such a motion for recusal or disqualification to serve on all other parties or their counsel copies of the motion and notice that the movant expects the motion to be presented to the judge three days after the filing of the motion unless the judge orders otherwise. The bill authorizes a party to file with the clerk of the court a statement opposing or concurring with a motion for recusal or disqualification at any time before the motion is heard.

C.S.H.B. 3475 requires a municipal judge, before further proceedings in a case in which a motion for the recusal or disqualification of such a judge has been filed, to recuse or disqualify himself or herself or request the regional presiding judge to assign a judge to hear the motion. The bill requires a municipal judge who with or without a motion recuses or disqualifies himself

or herself to enter an order of recusal or disqualification and, if the municipal judge is not the presiding judge, request the presiding judge to assign any other judge of the municipal court, including the presiding judge, to hear the case; if the municipal judge is the presiding judge, request the regional presiding judge to assign another judge of the municipal court to hear the case; or, if the municipal judge serves in a municipality with only one municipal judge, request the regional presiding judge to assign a judge of another municipal court in the county to hear the case.

C.S.H.B. 3475 prohibits a municipal judge who with or without motion recuses or disqualifies himself or herself from taking other action in the case, except the bill authorizes a judge who recuses himself or herself for good cause to take other action as stated in the order in which the action is taken. The bill requires a municipal judge who does not recuse or disqualify himself or herself to forward, in original form or certified copy, an order of referral, the motion, and all opposing and concurring statements to the regional presiding judge and prohibits such a judge from taking other action in the case during the time after the filing of the motion for recusal or disqualification and before a hearing on the motion, except for good cause stated in the order in which the action is taken.

C.S.H.B. 3475 requires a regional presiding judge who receives a request for the assignment of a judge to hear a motion to recuse or disqualify to immediately set a hearing before the regional presiding judge, an active judge, or a judge on the list of judges who are eligible to serve on assignment under provisions of law relating to certain retired and former judges; cause notice of the hearing to be given to all parties or their counsels; and make any other orders, including orders on interim or ancillary relief in the pending cause as justice may require. The bill authorizes a judge who hears such a motion for recusal or disqualification to also hear any amended or supplemented motion for recusal or disqualification filed in the case. The bill authorizes such a hearing or the hearing of such an amended or supplemented motion to be conducted by telephone if none of the parties to the action object.

C.S.H.B. 3475 requires the judge who hears a motion for recusal or disqualification that is granted after a hearing is conducted as provided by the bill's provisions to enter an order of recusal or disqualification and, if the judge who was the subject of the motion is not the presiding judge, request that the presiding judge assign any other judge of the municipality, including the presiding judge, to hear the case; if the judge who was the subject of the motion is the presiding judge, request the regional presiding judge to assign another judge of the municipality to hear the case; or, if the judge subject to recusal or disqualification is located in a municipality with only one municipal judge, request the regional presiding judge to assign a judge of another municipal court in the county to hear the case. The bill requires the presiding judge, if the presiding judge is unable to assign a judge of the municipality to hear a case when a municipal judge is recused or disqualified under the bill's provisions because there are not any other municipal judges in the municipality or because all the municipal judges have been recused or disqualified or are otherwise unavailable to hear the case, to request the regional presiding judge to first assign a municipal judge from another municipality in the county or, if necessary, assign a municipal judge from a municipality in an adjacent county to hear the case. The bill authorizes the regional presiding judge, if the regional presiding judge is unable to assign a judge to hear a case when a municipal judge is recused or disqualified under the bill's provisions because there are not any other municipal judges in the county or because all the municipal judges have been recused or disqualified or are otherwise unavailable to hear the case, to assign a municipal judge from a municipality in an adjacent county to hear the case.

C.S.H.B. 3475 authorizes a party, after a municipal court of record has rendered a final judgment in a case, to appeal an order that denies a motion for recusal or disqualification as an abuse of the court's discretion. The bill prohibits a party from appealing an order that grants a motion for recusal or disqualification. The bill authorizes a judge, if a party files a motion to recuse or disqualify under the bill's provisions and it is determined by the judge hearing the motion, at the hearing and on motion of the opposing party, that the motion to recuse or disqualify is brought

solely for the purpose of delay and without sufficient cause, to find in the interest of justice the party filing the motion in contempt.

C.S.H.B. 3475 specifies that an active judge who is assigned to hear a motion to recuse or disqualify a municipal judge under the bill's provisions is not entitled to additional compensation other than travel expenses. The bill entitles a judge assigned to hear a motion to recuse or disqualify who is not an active judge to compensation of \$450 per day of service, prorated for any day for which the judge provides less than a full day of service, and travel expenses. The bill entitles a municipal judge assigned under the bill's provisions to hear a case in a court other than the one in which the judge resides or serves to compensation provided by law for judges in similar cases and travel expenses. The bill requires the municipality in which a case subject to the bill's provisions is pending to pay the compensation and travel expenses due or incurred under the bill's provisions.

C.S.H.B. 3475 requires the secretary of the municipality in a municipality with a municipal court, including a municipal court of record, or the employee responsible for maintaining the records of the municipality's governing body to notify the Texas Judicial Council of the name of each person who is elected or appointed as mayor, municipal court judge, or clerk of a municipal court and each person who vacates such an office. The bill requires the secretary or employee to notify the judicial council not later than the 30th day after the date of the person's election or appointment to office or vacancy from office. The bill defines "active judge," "presiding judge," and "regional presiding judge."

C.S.H.B. 3475 repeals Section 29.012, Government Code, relating to sitting for a disqualified or recused judge, and Section 22.073(c), Local Government Code, relating to a secretary of a municipality's duty to report certain matters to the Texas Judicial Council.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 3475 contains provisions not included in the original defining "active judge" and "regional presiding judge." The substitute omits a provision included in the original defining "county judge."

C.S.H.B. 3475 differs from the original by requiring a municipal judge in a case in which a motion for recusal or disqualification has been filed to request the regional presiding judge to assign a judge to hear the motion, whereas the original requires such a municipal judge to request the assignment of a judge to hear the motion by forwarding the motion and opposing and concurring statements to the applicable judge.

C.S.H.B. 3475 differs from the original, in a bill provision setting out the requirements and procedures for a municipal judge who recuses or disqualifies himself or herself, by specifying that the provision applies to such a judge who performs the action with or without a motion, whereas the original does not include this specification. The substitute differs from the original in that same bill provision by including the presiding judge among the persons whom a municipal judge who is not the presiding judge can assign to hear a case and by requiring a municipal judge who is the presiding judge and who recuses or disqualifies himself or herself to request the regional presiding judge to assign another judge of the municipal court to hear the case, whereas the original requires a municipal judge who is not the presiding judge to request that the presiding judge assign another judge of the municipal court to hear the case and requires a municipal judge who is the presiding judge of the court, to request the county judge to assign another judge of a municipal court located in the county to hear the case.

C.S.H.B. 3475 differs from the original by requiring a municipal judge who serves in a municipality with only one municipal judge to request the regional presiding judge to make the judicial assignment, whereas the original requires such a judge to request the county judge to make the assignment. The substitute omits an exception included in the original excepting a municipal judge from the prohibition against taking other action in a case for a judge who is disqualified from the case. The substitute differs from the original by requiring a municipal judge who does not recuse himself or herself to forward certain statements to the regional presiding judge, whereas the original requires the statements to be forwarded to the presiding judge or county judge.

C.S.H.B. 3475 differs from the original, in a bill provision relating to a hearing on a motion to recuse or disqualify a judge, by requiring a regional presiding judge who receives the request for the assignment of a judge to hear the motion to set a hearing before the regional presiding judge, an active judge, or a judge on the list of judges who are eligible to serve on assignment, whereas the original requires a presiding judge or a county judge to set the hearing before himself or herself or some other municipal judge designated by the presiding judge or county judge. The substitute contains a provision not included in the original authorizing the hearing to be conducted by telephone.

C.S.H.B. 3475 differs from the original in provisions setting out the procedures for judicial assignment by a presiding judge or regional presiding judge, whereas the original sets out these procedures for assignment by a presiding judge or county judge. The substitute contains provisions not included in the original authorizing a presiding judge, if the judge is unable to assign an appropriate judge for certain reasons to hear a case, to request the regional presiding judge to first assign a municipal judge from another municipality in the county or, if necessary, to assign a municipal judge from an adjacent county, and authorizing the regional presiding judge to make that assignment.

C.S.H.B. 3475 differs from the original by making provisions relating to a finding of contempt apply in the event a party files a motion to recuse or disqualify, whereas the original makes those provisions apply only in the event a party files a motion to recuse. The substitute omits a provision included in the original relating to a county judge's authority to assign certain judges. The substitute differs from the original by establishing that an active judge assigned to hear a motion to recuse or disqualify a municipal judge is not entitled to additional compensation other than travel expenses, entitling a judge assigned in such cases who is not an active judge to certain compensation per day of service and travel expenses, and entitling certain municipal judges assigned to such cases to compensation provided by law for regular judges in similar cases and travel expenses, whereas the original provides that a judge assigned under the bill's provisions receives compensation and travel expenses as provided by law for regular judges in similar cases. The substitute contains provisions not included in the original requiring the municipality in which a case subject to its provisions is pending to pay the compensation and travel expenses due or incurred under its provisions.

C.S.H.B. 3475 differs from the original by requiring the secretary of a municipality, or the employee responsible for maintaining certain records, to notify the Texas Judicial Council to provide certain information, whereas the original does not include a reference to such employee.

C.S.H.B. 3475 contains a provision not included in the original repealing Section 22.073(c), Local Government Code. The substitute contains a transition provision not included in the original. The substitute differs from the original in nonsubstantive ways reflective of certain bill drafting conventions.