

BILL ANALYSIS

Senate Research Center

S.B. 480
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Jurisprudence
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

There are two types of municipal courts: municipal courts of record and non-record municipal courts. Appeals from decisions of both types of municipal courts are handled by county-level courts. Generally, decisions of the county-level courts concerning appeals from municipal courts can be further appealed to a state court of appeals.

However, a municipal court defendant who is fined \$100 or less cannot make a further appeal to a state court of appeals, unless the issue to be appealed is a challenge to the constitutionality of the statute on which the defendant's conviction is based. This exception only applies in non-record municipal courts and does not apply in municipal courts of record. In other words, individuals in municipal courts of record, who are fined \$100 or less, cannot challenge the constitutionality of the statute upon which their conviction is based, while individuals in non-record municipal courts, who are fined \$100 or less, can challenge the constitutionality of the statute upon which their conviction is based.

The difference between the two types of municipal courts with regard to the ability of certain defendants to pursue an appeal to a state court of appeals was recognized by the Third Court of Appeals in Austin in 2007 in the case of *Alexander v. State*. In that case, the court of appeals suggested that the legislature amend the law to give defendants in both kinds of municipal courts the ability to appeal the constitutionality of the statutes upon which their convictions are based.

S.B. 480 would create consistency between the two types of municipal courts.

S.B. 480 amends current law relating to certain appeals from judgments of municipal courts of record and to the recusal or disqualification of municipal judges.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 4.03, Code of Criminal Procedure, to provide that this Article shall not be so construed as to embrace any case which has been appealed from any inferior court to the county court, the county criminal court, or county court at law, in which the fine imposed or affirmed by the county court, the county criminal court or county court at law does not exceed one hundred dollars, unless the sole issue is the constitutionality of the statute or ordinance on which the conviction is based.

SECTION 2. Amends Chapter 29, Government Code, by adding Subchapter A-1, as follows:

SUBCHAPTER A-1. RECUSAL OR DISQUALIFICATION OF MUNICIPAL JUDGES

Sec. 29.051. DEFINITIONS. Defines, in this chapter "active judge," "presiding judge," and "regional presiding judge."

Sec. 29.052. MOTION FOR RECUSAL OR DISQUALIFICATION. (a) Authorizes 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. Authorizes the grounds to include any disability of the judge to preside over the case.

(b) Requires that a motion for the recusal or disqualification of a municipal judge:

(1) be filed at least 10 days before the date of the hearing or trial, except as provided by Subsection (c);

(2) be verified; and

(3) state with particularity the alleged grounds for recusal or disqualification of the judge based on personal knowledge that is supported by admissible evidence, or specifically stated grounds for belief of the allegations.

(c) Requires that a motion for recusal or disqualification 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.

Sec. 29.053. NOTICE. Requires a party filing a motion for recusal or disqualification under this subchapter 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.

Sec. 29.054. STATEMENT OPPOSING OR CONCURRING WITH MOTION. 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.

Sec. 29.055. PROCEDURE FOLLOWING FILING OF MOTION; RECUSAL OR DISQUALIFICATION WITHOUT MOTION. (a) Requires the judge, before further proceedings in a case in which a motion for the recusal or disqualification of a municipal 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.

(b) Provides that a municipal judge who with or without a motion recuses or disqualifies himself or herself:

(1) is required to enter an order of recusal or disqualification and:

(A) 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;

(B) 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

(C) 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; and

(2) is prohibited from taking other action in the case, except that a judge who recuses himself or herself for good cause may take other action as stated in the order in which the action is taken.

(c) Provides that a municipal judge who does not recuse or disqualify himself or herself:

(1) is required 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

(2) is prohibited 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.

Sec. 29.056. HEARING ON MOTION. (a) Requires a regional presiding judge who receives a request for the assignment of a judge to hear a motion to recuse or disqualify to:

(1) 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 Section 74.055 (List of Retired and Former Judges Subject to Assignment);

(2) cause notice of the hearing to be given to all parties or their counsel; and

(3) make any other orders, including orders on interim or ancillary relief in the pending cause as justice may require.

(b) Authorizes a judge who hears a motion for recusal or disqualification under Subsection (a) to also hear any amended or supplemented motion for recusal or disqualification filed in the case.

(c) Authorizes a hearing under Subsection (a) or (b) to be conducted by telephone if none of the parties to an action object.

Sec. 29.057. PROCEDURE FOLLOWING GRANTING OF MOTION. (a) Requires the judge who heard the motion, if a motion for recusal or disqualification is granted after a hearing is conducted as provided by Section 29.056, to enter an order of recusal or disqualification, and:

(1) 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;

(2) 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

(3) 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.

(b) 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 Section 29.055 or 29.056 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.

(c) 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 Section 29.055 or 29.056 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.

Sec. 29.058. APPEAL. (a) 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.

(b) Prohibits a party from appealing an order that grants a motion for recusal or disqualification.

Sec. 29.059. CONTEMPT. Authorizes the judge, if a party files a motion to recuse or disqualify under this subchapter 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 in the interest of justice find the party filing the motion in contempt under Section 21.002(c) (relating to punishment for contempt of court).

Sec. 29.060. COMPENSATION. (a) Provides that an active judge who is assigned to hear a motion to recuse or disqualify a municipal judge under this subchapter is not entitled to additional compensation other than travel expenses. 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.

(b) Entitles a municipal judge assigned under this subchapter 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.

(c) Requires the municipality in which a case subject to this subchapter is pending to pay the compensation and travel expenses due or incurred under this subchapter.

SECTION 3. Amends Subchapter A, Chapter 29, Government Code, by adding Section 29.013, as follows:

Sec. 29.013. REPORT TO TEXAS JUDICIAL COUNCIL. (a) 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:

(1) each person who is elected or appointed as mayor, municipal court judge, or clerk of a municipal court; and

(2) each person who vacates an office described by Subdivision (1).

(b) 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.

SECTION 4. Amends Section 30.00027(a), Government Code, to provide that the appellant has the right to appeal to the court of appeals if the fine assessed against the defendant exceeds \$100 and the judgment is affirmed by the appellate court, or the sole issue is the constitutionality of the statute or ordinance on which a conviction is based. Makes nonsubstantive changes.

SECTION 5. Repealers: Section 29.012 (Sitting for Disqualified or Recused Judge), Government Code, and Section 22.073(c) (relating to requiring the secretary 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 of the municipality), Local Government Code.

SECTION 6. Provides that the changes in law made by this Act to Article 4.03, Code of Criminal Procedure, and Section 30.00027, Government Code, apply to an appeal pending or filed on or after the effective date of this Act, regardless of the date the judgment being appealed was entered.

SECTION 7. Provides that Subchapter A-1, Chapter 29, Government Code, as added by this Act, applies only to a hearing or trial initially filed in a municipal court on or after the effective date of this Act.

SECTION 8. Effective date: upon passage or September 1, 2011.