

By: Hegar  
(Gallego)

S.B. No. 480

A BILL TO BE ENTITLED

AN ACT

relating to certain appeals from judgments of municipal courts of record.

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

SECTION 1. Article 4.03, Code of Criminal Procedure, is amended to read as follows:

Art. 4.03. COURTS OF APPEALS. The Courts of Appeals shall have appellate jurisdiction coextensive with the limits of their respective districts in all criminal cases except those in which the death penalty has been assessed. 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. Subsection (a), Section 30.00027, Government Code, is amended to read as follows:

(a) The appellant has the right to appeal to the court of appeals if:

(1) the fine assessed against the defendant exceeds \$100 and ~~if~~ the judgment is affirmed by the appellate court; or

(2) the sole issue is the constitutionality of the

1 statute or ordinance on which a conviction is based.

2           SECTION 3. The changes in law made by this Act apply to an  
3 appeal pending or filed on or after the effective date of this Act,  
4 regardless of the date the judgment being appealed was entered.

5           SECTION 4. This Act takes effect immediately if it receives  
6 a vote of two-thirds of all the members elected to each house, as  
7 provided by Section 39, Article III, Texas Constitution. If this  
8 Act does not receive the vote necessary for immediate effect, this  
9 Act takes effect September 1, 2011.

1 COMMITTEE AMENDMENT NO. 1

2 Amend S.B. No. 480 by adding appropriately numbered sections  
3 to read as follows:

4 SECTION \_\_\_\_\_. Chapter 29, Government Code, is amended by  
5 adding Subchapter A-1 to read as follows:

6 SUBCHAPTER A-1. RECUSAL OR DISQUALIFICATION OF MUNICIPAL JUDGES

7 Sec. 29.051. DEFINITIONS. In this chapter:

8 (1) "Active judge" means a person who holds office as a  
9 district court judge or statutory county court judge.

10 (2) "Presiding judge" means the presiding judge of a  
11 municipal court, including a municipal court of record.

12 (3) "Regional presiding judge" means the presiding  
13 judge of the administrative judicial region appointed under Section  
14 74.005.

15 Sec. 29.052. MOTION FOR RECUSAL OR DISQUALIFICATION. (a) A  
16 party in a hearing or trial in a municipal court, including a  
17 municipal court of record, may file with the clerk of the court a  
18 motion stating grounds for the recusal or disqualification of the  
19 municipal judge. The grounds may include any disability of the  
20 judge to preside over the case.

21 (b) A motion for the recusal or disqualification of a  
22 municipal judge must:

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

25 (2) be verified; and

26 (3) state with particularity the alleged grounds for  
27 recusal or disqualification of the judge based on:

1           (A) personal knowledge that is supported by  
2 admissible evidence; or

3           (B) specifically stated grounds for belief of the  
4 allegations.

5           (c) A motion for recusal or disqualification must be filed  
6 at the earliest practicable time before the beginning of the trial  
7 or other hearing if a judge is assigned to a case 10 or fewer days  
8 before the date set for a trial or hearing.

9           Sec. 29.053. NOTICE. A party filing a motion for recusal or  
10 disqualification under this subchapter shall serve on all other  
11 parties or their counsel:

12                 (1) copies of the motion; and

13                 (2) notice that the movant expects the motion to be  
14 presented to the judge three days after the filing of the motion  
15 unless the judge orders otherwise.

16           Sec. 29.054. STATEMENT OPPOSING OR CONCURRING WITH MOTION.  
17 A party may file with the clerk of the court a statement opposing or  
18 concurring with a motion for recusal or disqualification at any  
19 time before the motion is heard.

20           Sec. 29.055. PROCEDURE FOLLOWING FILING OF MOTION; RECUSAL  
21 OR DISQUALIFICATION WITHOUT MOTION. (a) Before further proceedings  
22 in a case in which a motion for the recusal or disqualification of a  
23 municipal judge has been filed, the judge shall:

24                 (1) recuse or disqualify himself or herself; or

25                 (2) request the regional presiding judge to assign a  
26 judge to hear the motion.

27           (b) A municipal judge who with or without a motion recuses

1 or disqualifies himself or herself:

2 (1) shall enter an order of recusal or  
3 disqualification and:

4 (A) if the municipal judge is not the presiding  
5 judge, request the presiding judge to assign any other judge of the  
6 municipal court, including the presiding judge, to hear the case;

7 (B) if the municipal judge is the presiding  
8 judge, request the regional presiding judge to assign another  
9 judge of the municipal court to hear the case; or

10 (C) if the municipal judge serves in a  
11 municipality with only one municipal judge, request the regional  
12 presiding judge to assign a judge of another municipal court in the  
13 county to hear the case; and

14 (2) may not take other action in the case, except that  
15 a judge who recuses himself or herself for good cause may take  
16 other action as stated in the order in which the action is taken.

17 (c) A municipal judge who does not recuse or disqualify  
18 himself or herself:

19 (1) shall forward, in original form or certified copy,  
20 an order of referral, the motion, and all opposing and concurring  
21 statements to the regional presiding judge; and

22 (2) may not take other action in the case during the  
23 time after the filing of the motion for recusal or disqualification  
24 and before a hearing on the motion, except for good cause stated in  
25 the order in which the action is taken.

26 Sec. 29.056. HEARING ON MOTION. (a) A regional presiding  
27 judge who receives a request for the assignment of a judge to hear a

1 motion to recuse or disqualify shall:

2 (1) immediately set a hearing before the regional  
3 presiding judge, an active judge, or a judge on the list of judges  
4 who are eligible to serve on assignment under Section 74.055;

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

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

9 (b) A judge who hears a motion for recusal or  
10 disqualification under Subsection (a) may also hear any amended or  
11 supplemented motion for recusal or disqualification filed in the  
12 case.

13 (c) If none of the parties to an action object, a hearing  
14 under Subsection (a) or (b) may be conducted by telephone.

15 Sec. 29.057. PROCEDURE FOLLOWING GRANTING OF MOTION. (a)  
16 If a motion for recusal or disqualification is granted after a  
17 hearing is conducted as provided by Section 29.056, the judge who  
18 heard the motion shall enter an order of recusal or  
19 disqualification, and:

20 (1) if the judge who was the subject of the motion is  
21 not the presiding judge, request that the presiding judge assign  
22 any other judge of the municipality, including the presiding judge,  
23 to hear the case;

24 (2) if the judge who was the subject of the motion is  
25 the presiding judge, request the regional presiding judge to assign  
26 another judge of the municipality to hear the case; or

27 (3) if the judge subject to recusal or

1 disqualification is located in a municipality with only one  
2 municipal judge, request the regional presiding judge to assign a  
3 judge of another municipal court in the county to hear the case.

4 (b) If the presiding judge is unable to assign a judge of the  
5 municipality to hear a case when a municipal judge is recused or  
6 disqualified under Section 29.055 or 29.056 because there are not  
7 any other municipal judges in the municipality or because all the  
8 municipal judges have been recused or disqualified or are otherwise  
9 unavailable to hear the case, the presiding judge shall request the  
10 regional presiding judge to first assign a municipal judge from  
11 another municipality in the county or, if necessary, assign a  
12 municipal judge from a municipality in an adjacent county to hear  
13 the case.

14 (c) If the regional presiding judge is unable to assign a  
15 judge to hear a case when a municipal judge is recused or  
16 disqualified under Section 29.055 or 29.056 because there are not  
17 any other municipal judges in the county or because all the  
18 municipal judges have been recused or disqualified or are otherwise  
19 unavailable to hear the case, the regional presiding judge may  
20 assign a municipal judge from a municipality in an adjacent county  
21 to hear the case.

22 Sec. 29.058. APPEAL. (a) After a municipal court of record  
23 has rendered a final judgment in a case, a party may appeal an order  
24 that denies a motion for recusal or disqualification as an abuse of  
25 the court's discretion.

26 (b) A party may not appeal an order that grants a motion for  
27 recusal or disqualification.

1       Sec. 29.059. CONTEMPT. If a party files a motion to recuse  
2 or disqualify under this subchapter and it is determined by the  
3 judge hearing the motion, at the hearing and on motion of the  
4 opposing party, that the motion to recuse or disqualify is brought  
5 solely for the purpose of delay and without sufficient cause, the  
6 judge may in the interest of justice find the party filing the  
7 motion in contempt under Section 21.002(c).

8       Sec. 29.060. COMPENSATION. (a) An active judge who is  
9 assigned to hear a motion to recuse or disqualify a municipal judge  
10 under this subchapter is not entitled to additional compensation  
11 other than travel expenses. A judge assigned to hear a motion to  
12 recuse or disqualify who is not an active judge is entitled to:

13               (1) compensation of \$450 per day of service, prorated  
14 for any day for which the judge provides less than a full day of  
15 service; and

16               (2) travel expenses.

17       (b) A municipal judge assigned under this subchapter to hear  
18 a case in a court other than the one in which the judge resides or  
19 serves is entitled to compensation provided by law for judges in  
20 similar cases and travel expenses.

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

24       SECTION \_\_\_\_\_. Subchapter A, Chapter 29, Government Code, is  
25 amended by adding Section 29.013 to read as follows:

26       Sec. 29.013. REPORT TO TEXAS JUDICIAL COUNCIL. (a) The  
27 secretary of the municipality in a municipality with a municipal



1 court, including a municipal court of record, or the employee  
2 responsible for maintaining the records of the municipality's  
3 governing body shall notify the Texas Judicial Council of the name  
4 of:

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

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

9 (b) The secretary or employee shall notify the judicial  
10 council not later than the 30th day after the date of the person's  
11 election or appointment to office or vacancy from office.

12 SECTION \_\_\_\_\_. The following sections are repealed:

13 (1) Section 29.012, Government Code; and

14 (2) Section 22.073(c), Local Government Code.

15 SECTION \_\_\_\_\_. Subchapter A-1, Chapter 29, Government Code,  
16 as added by this Act, applies only to a hearing or trial initially  
17 filed in a municipal court on or after the effective date of this  
18 Act.

19 Gallego