

SUBJECT: Allowing former probate court judges to serve as assigned judges

COMMITTEE: Judicial Affairs — favorable, without amendment

VOTE: 9 ayes — Thompson, Hartnett, Alonzo, Duncan, Goodman, Nixon, Solis, Willis, Zbranek
0 nays

WITNESSES: None

BACKGROUND: Former and retired judges of Texas district courts, constitutional county courts and statutory county courts are allowed to serve as assigned judges under Government Code sec. 74.054. However, Government Code sec. 25.0022 allows only *retired* probate judges to sit as visiting judges.

DIGEST: HB 673 would allow any former or retired probate judge to be assigned as a visiting judge and would provide the same daily compensation for both. The bill would take immediate effect if approved by two thirds of the membership of each house.

SUPPORTERS SAY: Both retired and former judges in every other type of court are allowed to sit as visiting judges for those courts, yet former probate justices are currently excluded. Until this year, there were no former probate judges who had not left the bench by retiring. There is no reason why former probate court judges should be treated differently from former judges of other courts.

Visiting judges are an essential part of the operation of the Texas court system and help alleviate some of the overflow of cases. These judges already have the training and experience necessary to try the cases and are subject to the same rules as elected or appointed judges.

OPPONENTS SAY: The visiting judge program has been criticized by several district attorneys and even members of the Texas Supreme Court. Several bills working their way through the Legislature would modify the visiting judges program to make it easier for attorneys who do not want to appear before visiting

judges to object. Until it is clear what changes should be made to this program, it should not be expanded.

The use of visiting judges allows the state to avoid addressing the real problem — that Texas needs more courts but cannot create them because until the state reforms the way that judges are selected the U.S. Justice Department will not allow new courts. Some opponents of the judicial selection system say the visiting judge system should be abolished in order to force resolution of the issue of judicial selection.

NOTES:

SB 516 by Henderson, reported favorably by the Senate Jurisprudence Committee, would specify qualifications for assigning visiting judges and allow for objections to assigned judges.

SB 903 by Henderson would define a former judge as one who is not retired and was not defeated in a reelection bid. This bill is pending in the Senate Jurisprudence Committee.

SB 1448 by Wentworth, reported favorably by the Senate Jurisprudence Committee, would allow add former judges to the statute allowing for visiting judges for the Texas Supreme Court, Court of Criminal Appeals and Courts of Appeals.