

SUBJECT: Revising attorney requirement for municipal court of record judges

COMMITTEE: Urban Affairs — committee substitute recommended

VOTE: 6 ayes — Talton, Van Arsdale, Bailey, Edwards, Hunter, Wong

0 nays

1 absent — Menendez

WITNESSES: For — Judge Allen Gilbert, City of San Angelo

Against — None

BACKGROUND: In most municipal courts, as in justice of the peace courts, no formal record is made of the proceedings, and appeal to the county court or county court at law is *de novo*; i.e., a new trial without regard to the result in the lower court. For cities with municipal courts of record, a record is made of the trial, and any appeal is based on that record.

Government Code, ch. 30, subch. A governs municipal courts of record. In 1999, Sec. 30.00006 was amended to require a that a municipal court of record judge be a Texas resident, a United States citizen, a licensed attorney in good standing, and have two or more years of experience in practicing law in Texas. Prior to 1999, a municipal court of record judge had to be either a licensed attorney in good standing or a judge who had served the previous five years on a municipal court bench in Texas, except that a municipality with fewer than 10,000 inhabitants could appoint a judge who was not a licensed attorney.

The 1999 act also allowed all judges serving at that time, regardless of whether they qualified to be a judge under the act, to remain on the bench until the expiration of their terms. Prior to 1999, qualifications for all municipal judges were determined by the municipality.

Municipal courts have concurrent jurisdiction with justice of the peace courts within the city limits for offenses involving fine-only misdemeanors, such as

certain traffic offenses, and certain Alcoholic Beverage Code violations involving minors. They also have exclusive jurisdiction over violations of city ordinances involving fines only. Constitutional county courts can hear appeals from municipal and justice of the peace courts and have original criminal jurisdiction for some misdemeanor cases. Judges of municipal courts that are not record courts, constitutional county courts, and justice of the peace courts are not required to be attorneys.

**DIGEST:** CSHB 2083 would require that a municipal judge of a court of record be either a licensed attorney in good standing with at least two years of experience in practicing law in Texas or be a person who has served as a judge in Texas for four or more years before being appointed.

The bill would take effect September 1, 2003.

**SUPPORTERS SAY:** By allowing bench experience to factor into the qualifications for being a municipal judge of record, this bill would allow a municipality to put a non-attorney on the bench if the municipality determined that such a candidate was most qualified for the position. The law prior to 1999 allowed municipalities to determine the qualifications for their municipal judges and many took experience into account. A non-attorney judge with four or more years experience as a judge, such as a municipal judge of a non-record court or a justice of the peace, would know the law and understand the process well enough to preside over a municipal court of record, and there is no reason to prevent a municipality from appointing such a candidate.

This bill would apply the same qualification standards to judges for constitutional county courts as for municipal courts. Under current law, it is easier to become a constitutional county court judge than a municipal judge, which makes no sense because constitutional courts can hear appeals from municipal courts. CSHB 2083 would fix this inequity without decreasing the quality of adjudication the parties would receive.

**OPPONENTS SAY:** This bill would make the qualifications for municipal judges of courts of record inconsistent across the state. In 1999, the Legislature enacted the requirement that a municipal judge of record be an attorney to provide uniformity among Texas municipal courts of record. Prior to this law, cities were inconsistent with regard to their qualifications for judges and there even

were great variances within the same geographic area.

**NOTES:**

The committee substitute differs from the bill as introduced by conforming it to Texas Legislative Council drafting style.