

BILL ANALYSIS

Senate Research Center

H.B. 3542
By: Driver (Carona)
Jurisprudence
5-13-97
Engrossed

DIGEST

Currently, there are no municipal courts of record in the City of Rowlett. Texas law, in the absence of a local statute providing for a municipal court of record, requires appeals from a municipal court to be done by a trial de novo or a new trial. However, a local statute providing for a municipal court of record may allow the appeal to be based on the recorded errors made during the trial in lieu of a new trial. H.B. 3542 would permit the creation of municipal courts of record in the City of Rowlett and set out necessary provisions pertaining to judges, employees, appeals, rules, and procedures of the courts.

PURPOSE

As proposed, H.B. 3542 permits the creation of municipal courts of record in the City of Rowlett and sets out necessary provisions pertaining to judges, employees, appeals, rules, and procedures of the courts.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the governing body of the City of Rowlett in SECTION 1 (Section 30.01292, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 30, Government Code, by adding Subchapter HH, as follows:

SUBCHAPTER HH. ROWLETT

Sec. 30.01291. APPLICATION. Provides that this subchapter applies to the City of Rowlett (city).

Sec. 30.1292. CREATION. Authorizes the governing body of the city, by ordinance, to create a municipal court of record if it makes a certain determination. Authorizes the governing body, by ordinance, to determine the number of municipal courts of record that are required to dispose of the cases and to establish as many as are needed. Requires the ordinance establishing the courts to give each court a numerical designation, beginning with "Municipal Court of Record No. 1." Prohibits a municipal court of record from existing concurrently with municipal courts that are not courts of record in the city. Provides that a municipal court of record has no terms and authorizes the court to sit at any time for the transaction of the business of the court.

Sec. 30.01293. APPLICATION OF OTHER LAWS. Sets forth provisions regarding the application of other laws.

Sec. 30.01294. JUDGE. Provides that a municipal court of record is presided over by a municipal judge. Sets forth provisions applicable if there is more than one municipal judge in the city. Sets forth provisions regarding the term of a municipal judge. Sets forth requirements to be a judge. Sets forth provisions applicable if there is more than one municipal court of record in the city. Sets forth provisions regarding the salary of a municipal judge. Establishes the grounds for removal from office. Requires a municipal judge to take judicial notice of the city ordinances and the corporate limits of the city in a case tried before

a municipal court of record. Authorizes a municipal judge to grant writs of mandamus, injunction, and attachment and other writs necessary to the enforcement of the jurisdiction of the court and to issue writs of habeas corpus in cases in which the offense charged is within the jurisdiction of the court. Requires the governing body of the city to appoint a qualified person to fill a vacancy in the office of municipal judge. Authorizes the governing body of the city to appoint one or more qualified persons to be available to serve for a municipal judge who is temporarily absent due to illness, family death, or continuing legal or judicial education programs or for any other reason. Requires the chief judge or the municipal judge, if there is no chief judge, to select one of the persons appointed by the governing body of the city to serve during an absence. Provides that an alternative judge, while serving, has all the powers and shall discharge all the duties of a municipal judge. Requires an alternative judge to have the same qualifications as a municipal judge.

Sec. 30.01295. CLERK; OTHER PERSONNEL. Requires the city manager of the city to appoint a clerk of the municipal court of record who may hire, direct, and remove the personnel authorized in the city's annual budget for the clerk's office. Sets forth provisions regarding record keeping, issue process, and other duties.

Sec. 30.01296. COURT REPORTER. Sets forth provisions relating to the recording of trial proceedings in a municipal court.

Sec. 30.01297. PROSECUTIONS BY CITY ATTORNEY. Requires all prosecutions in a municipal court of record to be conducted by the city attorney or an assistant or deputy city attorney.

Sec. 30.01298. JURY. Sets forth provisions regarding trial by jury of a person who is brought before a municipal court of record and who is charged with an offense. Requires a juror who serves in a municipal court of record to meet the qualifications provided by Chapter 62.

Sec. 30.01299. APPEAL. Provides that a defendant has the right of appeal from a judgement or conviction in a municipal court of record. Provides that the county criminal courts of Dallas County have jurisdiction over an appeal. Provides that the state has no right to an appeal or to a new trial. Sets forth additional provisions regarding appeal.

Sec. 30.01300. APPEAL BOND. Provides that if the defendant is not in custody, the defendant may not take an appeal until the defendant files an appeal bond with the municipal court of record. Requires the bond to be approved by the court and to be filed within a certain deadline. Requires the defendant, if the defendant is in custody, to be committed to jail unless the defendant posts the appeal bond. Sets forth additional provisions regarding the appeal bond.

Sec. 30.01301. RECORD ON APPEAL. Provides that the record on appeal consists of a transcript and, if necessary to the appeal, a statement of facts. Requires the clerk of the court to prepare the record from the mechanical, audio, or videotape recording of the proceedings. Requires the defendant to pay for the cost of the transcription. Requires the court, if the court makes certain findings, to order the clerk to prepare the record without charge to the defendant. Requires the court to promptly refund the cost to the defendant if the case is reversed on appeal.

Sec. 30.01302. TRANSCRIPT. Requires the municipal court clerk, upon the written request of the defendant or the defendant's attorney, to prepare under the clerk's hand and seal a transcript of the municipal court of record proceedings. Sets forth requirements regarding the transcript.

Sec. 30.01303. BILLS OF EXCEPTION. Authorizes either party to include bills of exception in the transcript subject to the applicable provisions of the Texas Rules and Appellate Procedure. Requires the bills of exception to be filed with the municipal court clerk within a certain deadline.

Sec. 30.01304. STATEMENTS OF FACTS. Sets forth requirements regarding a statement of facts included in the record on appeal.

Sec. 30.01305. COMPLETION, APPROVAL, AND TRANSFER OF RECORD. Requires the parties, not later than the 60th day after the date on which the notice of appeal is given or filed, to file certain information with the municipal court clerk. Requires the municipal judge, on completion of the record, to approve the record in the manner provided for record completion, approval, and notification in the court of appeals. Requires the clerk, after the court approves the record, to promptly send it to the appellate court clerk for filing. Requires the appellate court clerk to notify the defendant and the prosecuting attorney that the record as been filed.

Sec. 30.01306. BRIEF ON APPEAL. Sets forth provisions regarding a defendant's brief on appeal from a municipal court of record.

Sec. 30.01307. COURT RULES. Provides that except as modified by this subchapter, the Code of Criminal Procedure governs the trial of cases before a municipal court of record. Authorizes the court to make and enforce all rules of practice and procedure necessary to expedite the trial of cases before the court that are not inconsistent with general law. Authorizes the courts to make and enforce all rules of practice and procedure that are not inconsistent with general law and that are necessary to expedite the dispatch of appeals from the municipal court of record.

Sec. 30.01308. DISPOSITION ON APPEAL. Authorizes the appellate court, according to law and the nature of the case, to take certain action regarding disposition on appeal and sets forth related provisions.

Sec. 30.01309. CERTIFICATE OF APPELLATE PROCEEDINGS. Requires the clerk of the appellate court, when the judgment of that court becomes final, to certify the proceedings and the judgment and to mail the certificate to the municipal court of record. Requires the court to file the certificate with the papers in the case and note the certificate on the case docket. Provides that if the municipal court of record judgment is affirmed, further action to enforce the judgment is not necessary except for certain purposes.

Sec. 30.01310. EFFECT OF ORDER OF NEW TRIAL. Provides that if the appellate court awards a new trial to the defendant, the case stands as if the new trial had been granted by the municipal court of record.

Sec. 30.01311. APPEAL TO COURT OF APPEALS. Provides that the defendant has the right to appeal to the court of appeals under certain conditions. Provides that the provisions of the Code of Criminal Procedure relating to direct appeals from a county or a district court to the court of appeals apply to the appeal, with certain exceptions.

SECTION 2. Emergency clause.

Effective date: upon passage.