

## **BILL ANALYSIS**

Senate Research Center  
76R5165 JMC-D

C.S.S.B. 173  
By: Cain  
Intergovernmental Relations  
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Committee Report (Substituted)

### **DIGEST**

Currently, the City of Tyler Municipal Court handles a high volume of cases, due in part by the fact that any case tried in this court can nevertheless be appealed to the county level “without any allegation of error.” C.S.S.B. 173 would create municipal courts of record in the City of Tyler.

### **PURPOSE**

As proposed, C.S.S.B. 173 establishes the creation of municipal courts of record in Tyler.

### **RULEMAKING AUTHORITY**

Rulemaking authority is granted to the municipal court of record in SECTION 1 (Section 30.01526(a), Government Code) and to the appellate courts in SECTION 1 (Section 30.01526(b), Government Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

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

#### **SUBCHAPTER NN. TYLER**

Sec. 30.01511. APPLICATION. Establishes that this subchapter applies to the City of Tyler.

Sec. 30.01512. CREATION. Authorizes the governing body of the city by ordinance to create a municipal court of record, if necessary, to provide a more efficient disposition of appeals arising from the municipal court. Requires the court to be called the “City of Tyler Municipal Court.” Authorizes the governing body to determine and establish the number of municipal courts required to dispose of the cases arising in the city.

Sec. 30.01513. APPLICATION OF OTHER LAWS. Provides that certain types of laws, provisions, and ordinances apply to the municipal court of record, unless the law is in conflict with or inconsistent with this subchapter.

Sec. 30.01514. JUDGE. Establishes that a municipal judge appointed to office by the city manager will preside over the court. Requires the judge to be a licensed attorney in good standing with the state, and be a resident of both the United States and the state. Provides that the judge is not required to live in the city. Sets forth requirements for duties of the judge. Establishes that if the city manager appoints more than one judge, one of the judges shall be appointed as the presiding municipal judge by the city manager. Authorizes a municipal judge to exchange benches and to sit and act for another municipal judge. Provides that an act performed by a municipal judge sitting for another municipal judge is binding. Provides that municipal judges receive a salary from the city determined by the city manager, which may not be based on fines, fees, or costs collected by the court. Requires a municipal judge to take judicial notice of state law, 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 certain 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.

Sec. 30.01515. CLERK; OTHER PERSONNEL. Requires the city manager to provide the municipal court of record with a clerk, who shall keep records, issue process, and generally

perform the duties that a clerk of a county court at law performs for the court. Requires the city manager to provide deputy clerks, warrant officers, and other personnel required for the proper operation of the municipal court of record. Requires the clerk and other court personnel to perform their duties under the direction and control of the city manager.

Sec. 30.01516. RECORDING AND TRANSCRIPTION. Requires the city to provide recording and transcription services in order to preserve the record in a case tried before the municipal court of record. Authorizes the record to be preserved through any one or a combination of specified methods. Provides that testimony is not required to be preserved if a record is not demanded in writing by the defendant or prosecutor before the trial. Requires a record to be preserved if the record is demanded by the judge. Sets forth the amount of time the clerk of a municipal court is required to keep the record of a case.

Sec. 30.01517. WAIVER OF RIGHT TO APPEAL; WARNING. Provides that the defendant waives the right to appeal a judgment or conviction in a municipal court of record if a record is not preserved in the case. Requires the municipal judge to inform the defendant of the waiver of the right to appeal.

Sec. 30.01518. PROSECUTIONS BY CITY ATTORNEY OR SPECIAL PROSECUTOR. Requires all prosecutions in municipal courts of record to be conducted by certain city attorneys.

Sec. 30.01519. JURY. Entitles a person who is brought before a municipal court and who is charged with an offense to be tried by a jury of six persons unless that right is waived. Requires a juror for the municipal court to have the required qualifications and be a resident of the municipality. Requires the clerk of the municipal court to establish a fair, impartial, and objective juror process subject to approval by the presiding judge.

Sec. 30.01520. APPEAL. Provides that a defendant has the right to appeal a judgment or conviction in a municipal court of record, except as provided by Section 30.01517. Specifies that the County Court of Smith County has jurisdiction over an appeal. Requires the city attorney or the city attorney's designee to prosecute an appeal. Requires the appellate court to determine each appeal from a judgment or conviction according to the errors set forth in the defendant's motion for new trial and presented in the transcript and statement of facts. Prohibits an appeal from a municipal court of record from being by trial de novo. Requires a defendant to file with the clerk of the municipal court a written motion for a new trial no later than the 10th day after the judgment is rendered, to perfect an appeal. Requires the motion to set forth the points of error on which the defendant complains, and a point of error not set forth in the motion is waived. Authorizes the motion or amended motion to be amended by leave of court, except that an amendment may not be made after a certain date. Authorizes the court, for good cause to extend the time for filing a motion to a date not later than 40 days after the judgement is rendered. Establishes that the original or amended motion is overruled by operation of law, if the court does not act by a certain date. Requires the defendant to give notice of an appeal to perfect the appeal. Sets forth requirements for the defendant.

Sec. 30.01521. APPEAL BOND; RECORD ON APPEAL. Authorizes a defendant who is not in custody to appeal a municipal court of record conviction only if the person files an appeal with the municipal court of record. Requires the bond to be approved and filed no later than the 10th day after the date the motion for new trial is overruled. Requires a defendant in custody to be committed to jail unless the defendant posts an appeal bond. Requires the amount of the appeal bond to be \$100 or twice the amount of fines and costs adjudged against the defendant, whichever is greater. Sets forth requirements for the appeal bond. Provides that the record on appeal consists of a transcript and, if necessary, a statement of facts.

Sec. 30.01522. TRANSCRIPT; BILLS OF EXCEPTION. Requires the court clerk, on the written request of the defendant, to prepare under his hand and the seal of the court a transcript of the proceedings in the municipal court of record. Requires the transcript to include copies of certain documents. Authorizes the clerk to include other material related to the proceedings if requested. Authorizes either party to include bills of exception in the transcript subject to the provisions of the Code of Criminal Procedure, except that the bills of exception must be filed no later than the 60th day after the notice of appeal is given or filed.

Sec. 30.01523. STATEMENT OF FACTS. Requires a statement of facts to contain certain documents. Requires the city, at the request of the defendant and on receipt of an estimate of the cost of transcription, to provide a court reporter to transcribe any portion of the record of the court proceedings. Requires the defendant to pay for the transcription, unless the court finds the defendant is unable to pay or give security for the transcription. Requires the court to order the court reporter to prepare the transcription without charge for the defendant. Prohibits the transcription cost from exceeding the charge imposed by court reporters for similar transcriptions.

Sec. 30.01524. COMPLETION, APPROVAL, AND TRANSFER OF RECORD. Sets forth the requirements for information that must be filed by the parties with the municipal court clerk, not later than the 60th day after the date the notice of appeal was given or filed. Requires the municipal judge, upon completion of the record, to approve the record. Requires the clerk, upon approval, to promptly send the record to the appellate court clerk for filing. Requires the appellate court clerk to notify the defendant and prosecuting attorney that the record has been filed.

Sec. 30.01525. BRIEF ON APPEAL. Requires a defendant's brief on appeal from a municipal court of record to present points of error, except that the points are confined to those set forth in the motion for a new trial. Requires the defendant to file the brief with the appellate clerk not later than the 15th day after the date the transcript and statement of facts are filed with that clerk. Requires the clerk to notify the prosecuting attorney of the filing. Requires the prosecuting attorney to file the appellee's brief not later than the 15th day after the date the defendant's brief was filed. Requires each party, upon filing their brief, to provide a copy to the opposing party.

Sec. 30.01526. COURT RULES. Provides that the Code of Criminal Procedure governs the trial of cases before the municipal courts, except as provided by this subchapter. Authorizes both the municipal courts and the appellate courts to make and enforce all rules of practice and procedure necessary to expedite trials pending before the court that are not inconsistent with general law.

Sec. 30.01527. PROCEDURE; DISPOSITION. Requires the appellate court to hear appeals from the municipal courts of record at the earliest possible time. Prohibits the court from affirming or reversing a case based on a technical error, including an error in preparation and filing of the record on appeal. Authorizes the court to determine rules for oral argument. Authorizes the parties to submit the case on the record and briefs without oral argument. Sets forth options for judgment by the appellate court. Requires the appellate court to presume certain facts, unless the issue was raised in the trial court or it affirmatively appears to the contrary from the transcript or statement of facts. Requires the appellate court to deliver a written opinion or order sustaining or overruling each assignment or error presented. Provides that the court is not required to give reasons for overruling an assignment of error, but may cite cases on which it relied. Requires the court to provide reasons for the decision, if an assignment of error is sustained. Requires the appellate court clerk to mail the parties and municipal judge copies of the appellate court's decision immediately following the decision.

Sec. 30.01528. CERTIFICATE OF APPELLATE PROCEEDINGS. Sets forth required duties of the appellate court clerk upon final judgment in the appellate court. Requires the municipal clerk to file the certificate with the papers in the case and note the certificate on the case docket. Sets forth actions to be taken, if the municipal court judgment is affirmed.

Sec. 30.01529. EFFECT OF ORDER OF NEW TRIAL. Establishes that the case stands as if a new trial has been granted by the municipal court of record, if the appellate court awards a new trial to the defendant.

Sec. 30.01530. APPEAL TO COURT OF APPEALS. Establishes the defendant has the right to appeal to the court of appeals if the fine assessed exceeds \$100 and the judgment is affirmed by the appellate court. Provides that the Code of Criminal Procedure provisions relating to direct appeals from a county or district court to the court of appeals apply to the appeal. Sets forth certain exceptions to provisions relating to appeals.

SECTION 2. Effective date: September 1, 1999.

SECTION 3. Emergency clause.

### **SUMMARY OF COMMITTEE CHANGES**

## SECTION 1.

Amends Section 30.01514, Government Code, by adding Subsection (g), to require judges to take judicial notice of certain legal aspects regarding municipal court cases. Authorizes judges to grant and issue certain writs in cases in which the offense is within the jurisdiction of the court.

Amends Section 30.01516, Government Code, to revise the heading and to provide the means and the methods by which recording and transcription may be requested, required, and used regarding municipal court cases.

Amends Section 30.01517, Government Code, to revise the heading and to provide that a defendant waives the right to an appeal, if the court record is not preserved.

Amends Section 30.01518, Government Code, to revise the heading and to establish that all prosecutions before a municipal court must be conducted by certain city attorneys. Renumbers subsequent sections.

Amends Section 30.01519, Government Code, to provide the entitlement to, selection of, and qualifications for a jury regarding municipal court cases.

Amends Section 30.01520, Government Code, to provide that a defendant has a right to an appeal, except as provided by Section 30.01517. Sets forth provisions regarding certain deadlines for filing or amending an original motion in an appeal that is filed with the clerk of the municipal court of record.

Amends Section 30.01523, Government Code, to provide requirements regarding the obtaining of and payment for a transcription of a statement of facts in the record on appeal.

Amends Section 30.01526, Government Code, to revise the heading and authorize both the municipal court and appellate court to make and enforce rules regarding the procedures necessary to expedite cases before the court that are not inconsistent with general law. Renumbers subsequent sections.