

BILL ANALYSIS

Senate Research Center
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S.B. 589
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Intergovernmental Relations
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As Filed

DIGEST

Currently, there are no municipal courts of records in the City of Farmers Branch. Appeals from a municipal court are performed by a trial de novo or a new trial. If there is a local statute providing for a municipal court of record the law requires an appeal to be based on recordings made during the trial in lieu of a new trial. This bill would create a municipal court of record for the City of Farmers Branch, and would set forth the requirements for the municipal court.

PURPOSE

As proposed, S.B. 589 creates a municipal court of record for the City of Farmers Branch.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

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

SUBCHAPTER PP. FARMERS BRANCH

Sec. 30.01591. APPLICATION. Provides that this subchapter applies to the City of Farmers Branch (city).

Sec. 30.01592. CREATION. Authorizes the governing body of the city by ordinance to create a municipal court of record if it determines that the formation of the court is necessary to provide a more efficient disposition of cases arising in the city. 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 No. 1." Requires the governing body of the city on creation of the initial municipal court of record, to determine the method of selecting the judge of a municipal court of record by adopting certain ordinances and ordering an election for municipal judge. 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 may sit at any time for the transaction of business of the court.

Sec. 30.01593. JURISDICTION. Provides that a municipal court of record created under this subchapter has jurisdiction within the territorial limits of the city in all criminal cases arising under the ordinances of the city. Provides that the court has concurrent jurisdiction with a justice of the peace in any precinct in which the city is located in criminal cases within the justice court jurisdiction that arise within the territorial limits of the city and are punishable by fine only. Provides that the court has jurisdiction over cases arising outside the territorial limits of the city under ordinances authorized by Section 215.072, 217.042, 341.903, or 401.002, Local Government Code.

Sec. 30.01594. WRIT POWER. Authorizes the judge of a municipal court of record created under this subchapter to grant writs of mandamus, injunction, 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.

Sec. 30.01596. JUDGE. Provides that a municipal court of record is presided over by a municipal judge. Requires the municipal judge to be a licensed attorney in good standing in this state. Requires the judge to be a citizen of the United States and a resident of this state but need not be a resident of the city. Requires the municipal judge to devote full-time to the duties of the office as necessary. Provides that if more than one municipal court of record is created, judges of each municipal court of record may at any time exchange benches and sit and act for each other in any pending case, matter, or proceeding. Provides that a municipal judge is entitled to receive a salary and other benefits set by the governing body of the city. Prohibits the judge's salary from being diminished during the term of office. Prohibits the salary from being based directly or indirectly on fines, fees, or other costs that the municipal judge is required by law to collect during a term of office.

Sec. 30.01597. VACANCIES; TEMPORARY REPLACEMENT; REMOVAL. Requires the governing body of the city to appoint a qualified person to fill the office for the remainder of the unexpired term, if a vacancy occurs in the office of municipal judge. Authorizes the governing body of the city to appoint persons as relief municipal judges, who shall be known as assistant municipal judges. Requires an assistant judge to meet the qualifications prescribed for the municipal judge. Requires the governing body to set the compensation of the assistant judges. Authorizes the municipal judge to assign an assistant judge to act for a municipal judge who is temporarily unable to act for any reason. Provides that an assistant judge has all the powers and duties of the office while acting for the municipal judge. Authorizes a municipal judge or assistant municipal judge to be removed from office in the manner prescribed for removal of a county court at law judge.

Sec. 30.01598. CLERK; OTHER PERSONNEL. Requires the city manager to appoint a clerk of the municipal court of record, who shall be known as the municipal court clerk. Requires the clerk or the clerk's deputies to keep the records of the municipal courts of record, issue process, and generally perform the duties for the court that a clerk of the county court exercising criminal jurisdiction is required by law to perform for that court. Requires the clerk to perform the duties in accordance with statutes, the city charter, and city ordinances. Authorizes the clerk to hire, direct, and remove the personnel authorized in the city's annual budget for the clerk's office.

Sec. 30.01599. COURT REPORTER. Requires the city to provide a court reporter for the purpose of preserving a record in cases tried before the municipal court of record. Requires the clerk of the court to appoint the court reporter, who must meet the qualifications provided by law for official court reporters. Authorizes the clerk to provide that, instead of providing a court reporter at trial, proceedings in a municipal court of record may be recorded by a good quality electronic recording device. Provides that if the recording device is used, the court reporter need not be present at trial to record the proceedings. Requires the proceedings that are appealed to be transcribed from the recording by an official court reporter. Authorizes the clerk to provide for the use of written notes, transcribing equipment, or a combination of those methods to record the proceedings of the court. Requires the court reporter to keep the record for a 20-day period beginning the day after the last day of the court proceeding, trial, or denial of motion for new trial, whichever occurs last. Provides that no one is required to record testimony in a case unless the judge or one of the parties requests a record. Requires a party's request for a record to be in writing and to be filed with the court before trial. Requires the court reporter to certify the official record.

Sec. 30.01600. PROSECUTION BY CITY ATTORNEY. Requires all prosecutions in the municipal court of record to be conducted by the city attorney or an assistant or deputy city attorney.

Sec. 30.01601. COMPLAINT; PLEADING. Provides that a proceeding in a municipal court of record begins with the filing of a complaint. Requires a complaint to begin "In the name and by authority of the State of Texas" and to conclude "Against the peace and dignity of the State." Requires complaints to comply with Article 45.17, Code of Criminal Procedure. Requires pleadings to be in writing and to be filed with the municipal court clerk.

Sec. 30.01602. JURY. Provides that a person brought before the municipal court of record and charged with an offense is entitled to be tried by a jury of six persons, unless that right is waived according to law. Requires a juror for the municipal court of record to have the qualifications

required of jurors by law and to be a resident of the city. Entitles a juror to receive the compensation for each day and each fraction of a day in attendance on a municipal court of record jury as provided by Chapter 61. Requires the municipal court clerk to establish a fair, impartial, and objective juror selection process.

Sec. 30.01603. COURT RULES. Provides that except as modified by this subchapter, the Code of Criminal Procedure as applied to county courts at law governs the trial of cases before municipal courts of record. Requires bonds to be payable to the state for the use and benefit of the city. Prohibits the court from assessing court costs other than warrant fees, capias fees, and other fees authorized for municipal courts. Authorizes a peace officer to serve a process issued by a municipal court of record. Provides that on conviction, judgment and sentence are in the name of the state, and the state recovers from the defendant the fines and fees for the use and benefit of the city. Authorizes the court to require that the defendant remain in the custody of the chief of police until the fines and costs are paid and shall order that execution issue to collect the fines and penalties. Requires fines, fees, costs, and bonds to be paid to the municipal court clerk, who shall deposit them in the city general fund.

Sec. 30.01604. APPEAL. Provides that a defendant has the right of appeal from a judgment of conviction in a municipal court of record as provided by this subchapter. Provides that the state has the right to an appeal as provided by Article 44.01, Code of Criminal Procedure. Provides that the county criminal courts of appeal of Dallas County have jurisdiction of appeals from the municipal courts of record. Requires the appellate court to determine each appeal from a municipal court of record conviction on the basis of the errors that are set forth in the defendant's motion for new trial and that are presented in the transcript and statement of facts prepared from the proceedings leading to the conviction. Prohibits an appeal from the municipal court of record from being by trial de novo. Requires the defendant to file a motion for new trial no later than the 10th day after the date on which the judgment and sentence are rendered, to perfect an appeal. Requires the motion to be in writing and to be filed with the clerk of the municipal court of record. Provides that the motion constitutes the assignment of error on appeal. Provides that a ground or an error not set forth in the motion is waived. Provides that if the court does not act on the motion before the expiration of 30 days after it is filed with the clerk, the motion is overruled by operation of law. Requires the defendant to give written notice of appeal and pay the transcript preparation fee no later than the 10th day after the date on which the motion is overruled after an order overruling a motion for new trial. Requires the governing body to set a reasonable transcript preparation fee on the docket of the court. Requires the fee to be refunded to the defendant, if the case is reversed on appeal. Requires the city attorney or the assistant or deputy city attorney to prosecute all appeals from the municipal courts of record.

Sec. 30.01605. APPEAL BOND; RECORD ON APPEAL. Prohibits a defendant from taking an appeal until the defendant files an appeal bond with the municipal court of record, if the defendant is not in custody. Requires the bond to be approved by the court and to be filed no later than the 10th day after the date on which the motion for new trial is overruled. Requires the defendant to be committed to jail unless the defendant posts the appeal bond, if the defendant is in custody. Requires the appeal bond to be in the amount of \$50 or double the amount of fines and costs adjudged against the defendant, whichever is greater. Requires the bond to be payable to the state for the use and benefit of the city and to be conditioned on the defendant's immediate and daily personal appearance in the court to which the appeal is taken. Provides that the record on appeal consists of a transcript and, if necessary to appeal, a statement of facts. Requires the court reporter to prepare the record from the reporter's record or mechanical recordings of the proceedings. Requires the defendant to pay for the cost of transcription. Requires the court to order the reporter to prepare the record without charge to the defendant, if the court finds that the defendant is unable to pay or give security for the record on appeal after a hearing in response to an affidavit by the defendant. Requires the court to promptly refund the cost to the defendant, if the case is reversed on appeal.

Sec. 30.01606. TRANSCRIPT. Requires the clerk of the municipal court of record to prepare under the clerk's hand and the seal of the court a transcript of the proceedings in the municipal court of record after payment of the transcript preparation fee under Section 30.01604. Requires the clerk to prepare the transcript under written instructions from the defendant or the defendant's attorney. Sets forth transcript requirements. Requires the defendant or the defendant's attorney to file a copy of the written instructions with the clerk and to deliver a copy to the city attorney.

Requires the city attorney to file a written direction to the clerk if additional portions of the trial proceedings in the transcript are to be included.

Sec. 30.01607. STATEMENT OF FACTS. Requires a statement of facts included in the record on appeal to contain certain provisions. Requires the court reporter to transcribe in duplicate any portion of the recorded proceedings or the notes of the court proceedings in the case at the request of either party or the municipal judge. Requires the defendant to pay for the transcription unless the court finds, after hearing in response to an affidavit by the defendant, that the defendant is unable to pay or give security for the transcription. Requires the court reporter to be paid for the services by the city, on certification by the court that the court reporter has rendered the service without charge to the defendant.

Sec. 30.01608. TRANSFER OF RECORD. Requires the parties to file the transcript and the statement of facts with the clerk of the municipal court of record no later than the 60th day after the date on which the transcript preparation fee was paid. Requires the clerk to promptly forward them to the appellate court clerk.

Sec. 30.01609. BRIEF ON APPEAL. Requires the defendant to file a brief on appeal with the appellate court clerk no later than the 15th day after the date on which the transcript and statement of facts are filed with that clerk. Requires the city attorney to file appellee's brief with the appellate court clerk no later than the 15th day after the date on which the defendant's brief is filed. Requires the record and briefs on appeal to be limited as far as possible to the questions relied on for reversal, to avoid unnecessary delay. Requires each party to deliver a copy of the brief to the opposing counsel, on filing.

Sec. 30.01610. PROCEDURE; DISPOSITION ON APPEAL. Requires the appellate court to hear appeals from the municipal court of record at the earliest possible time with due regard to the rights of the parties and the proper administration of justice. Authorizes the court to determine the rules for oral argument. Authorizes the case to be submitted on the record and briefs without oral argument. Authorizes the appellate court, according to the law and the nature of the case, to affirm the judgment of the municipal court of record; reverse and remand for a new trial; reverse and dismiss the case; or reform and correct the judgment. Requires the appellate court to certain presumptions, unless the matter was made an issue in the trial court or it affirmatively appears to the contrary from the transcript or the statement of facts. Requires the court to deliver a written opinion or order either sustaining or overruling each assignment or error presented, in each case decided by the appellate court. Provides that the court need not give a reason for overruling an assignment of error, but it may cite the cases on which it relied. Requires the court to set forth the reasons for the decision, if an assignment of error is sustained. Requires the appellate court clerk to mail copies of the decision to the parties and to the municipal judge as soon as the decision is rendered.

Sec. 30.01611. CERTIFICATE OF APPELLATE PROCEEDINGS. Requires the clerk of that court to certify the proceedings and the judgment and to mail the certificate to the clerk of the municipal court of record, when the judgment of the appellate court becomes final. Requires the clerk to file the record with the papers in the case and note the filing on the docket of the municipal court of record, when the clerk of the municipal court of record receives the record. Provides that further action to enforce the judgment is not necessary, if the municipal court of record judgment is affirmed, except if certain conditions exist.

Sec. 30.01612. EFFECT OF ORDER OF NEW TRIAL. Provides that if the appellate court awards a new trial to the defendant, the case stands as if a new trial had been granted by the municipal court of record.

Sec. 30.01613. APPEAL TO COURT OF APPEALS. Provides that an appeal of the appellate court decision to the court of appeals is governed by the Code of Criminal Procedure, except that the transcript, briefs, and statement of facts filed in the appellate court constitute the transcript, briefs, and statement of facts on appeal to the court of appeals unless the rules of the court of criminal appeals provide otherwise.

SECTION 2. Emergency clause.

Effective date: upon passage.