BILL ANALYSIS

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In counties such as Fort Bend County, justice of the peace courts and municipal courts throughout the county hear truancy issues. Concerned parties argue that there is no consistency among the courts in case management techniques in dealing with the truants and that the large number of truancy cases prevents these courts from adequately dealing with other cases. Those parties assert that it is crucial for such a county to be able to create a truancy court to help effectively manage truancy cases. Currently, in counties with a population of two million or more, magistrates are authorized to hear truancy cases, but other counties that could benefit from having this authority, such as rapidly growing Fort Bend County, do not meet that population requirement.

H.B. 2132 seeks to provide consistency in dealing with truancy issues in certain counties by authorizing the judge of a constitutional county court in a county that has as a population of more than 585,000 and is contiguous to a county with a population of at least four million to appoint magistrates to hear truancy cases.

H.B. 2132 amends current law relating to the creation of magistrates in certain counties.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 54, Government Code, by adding Subchapter JJ, as follows:

SUBCHAPTER JJ. MAGISTRATES IN CERTAIN COUNTIES

Sec. 54.1951. APPLICATION OF SUBCHAPTER. Provides that this subchapter applies to a constitutional county court in a county that has a population of more than 585,000, and is contiguous to a county with a population of at least four million.

Sec. 54.1952. APPOINTMENT. (a) Authorizes the county judge to appoint one or more part-time or full-time magistrates to hear a matter alleging a violation of Section 25.093 (Parent Contributing to Nonattendance) or 25.094 (Failure to Attend School), Education Code, referred to the magistrate by a court having jurisdiction over the matter.

(b) Provides that an appointment under Subsection (a) is subject to the approval of the commissioners court.

(c) Provides that a magistrate serves at the pleasure of the county judge.

Sec. 54.1953. QUALIFICATIONS. Requires a magistrate to be a citizen of this state, have resided in the county for at least six months before the date of the appointment, and have served as a justice of the peace for at least four years before the date of appointment, or been licensed to practice law in this state for at least four years before the date of appointment.

Sec. 54.1954. COMPENSATION. Entitles a magistrate to the compensation set by the commissioners court. Requires that the compensation be paid from the general fund of the county.

Sec. 54.1955. POWERS. (a) Authorizes a magistrate appointed under this subchapter, except as limited by an order of the county judge, to:

(1) conduct hearings;

(2) hear evidence;

(3) issue summons for the appearance of witnesses;

(4) examine witnesses;

(5) swear witnesses for hearings;

(6) recommend rulings or orders or a judgment in a case;

(7) regulate proceedings in a hearing;

(8) accept a plea of guilty or nolo contendere in a case alleging a violation of Section 25.093 or 25.094, Education Code, and assess a fine or court costs or order community service in satisfaction of a fine or costs in accordance with Article 45.049 (Community Service in Satisfaction of Fine or Costs), Code of Criminal Procedure;

(9) enter an order suspending a sentence or deferring a final disposition that includes at least one of the requirements listed in Article 45.051 (Suspension of Sentence and Deferral of Final Disposition), Code of Criminal Procedure;

(10) perform any act and take any measure necessary and proper for the efficient performance of the duties required by the referral order, including the entry of an order that includes at least one of the requirements in Article 45.054 (Failure to Attend School Proceedings), Code of Criminal Procedure; and

(11) if the magistrate finds that a child as defined by Article 45.058 (Children Take Into Custody), Code of Criminal Procedure, has violated an order under Article 45.054, Code of Criminal Procedure, proceed as authorized by Article 45.050 (Failure to Pay Fine; Contempt: Juveniles), Code of Criminal Procedure.

(b) Prohibits a magistrate from ruling on the issue, with respect to an issue of law or fact the ruling on which could result in the dismissal of a prosecution under Section 25.093 or 25.094, Education Code, but authorizes a magistrate to make findings, conclusions, and recommendations on the issue.

Sec. 54.1956. NOT GUILTY PLEA ENTERED. Requires a magistrate, on entry of a not guilty plea, to refer the case back to the referring court for all further pretrial proceedings and a full trial on the merits before the court or a jury.

Sec. 54.1957. PAPERS TRANSMITTED TO JUDGE. (a) Requires a magistrate, at the conclusion of a hearing, to transmit to the judge any papers relating to the case, including:

(1) the magistrate's findings and recommendations;

(2) a statement that notice of the findings and recommendations and of the right to a hearing before the judge has been given to all parties; and

(3) all other documents requested by the referring judge.

(b) Provides that unless the judge adopts, modifies, or rejects the magistrate's findings or recommendations not later than the fifth working day after the date the judge receives the findings or recommendations, a magistrate's finding or recommendation is final for appeal purposes.

(c) Requires the judge to send written notice of any modification or rejection of the magistrate's findings or recommendations to each party to the case and the attorney representing the state not later than the fifth day after the date of the modification or rejection.

SECTION 2. Amends Article 2.09, Code of Criminal Procedure, as follows:

Art. 2.09. WHO ARE MAGISTRATES. Provides that certain officers are magistrates within the meaning of this Code, including the magistrates appointed under Subchapter JJ, Chapter 54, Government Code.

SECTION 3. Effective date: upon passage or September 1, 2011.