

## **BILL ANALYSIS**

Senate Research Center

S.B. 2254  
By: Miles  
State Affairs  
4/23/2019  
As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Current law requires that an arrested person be taken before a magistrate within 48 hours of that person's arrest, and the Code of Criminal Procedure, Article 2.09, defines a broad class of persons who are magistrates within the meaning of the code. Population growth in Fort Bend County has increased the workload of these persons, leading to the need for additional magistrates in the county.

S.B. 2254 amends the Government Code to add Subchapter LL, relating to magistrates in Fort Bend County. S.B. 2254 provides that the commissioners court of Fort Bend County may authorize the judges of the district and statutory county courts in Fort Bend County to appoint one or more part-time or full-time magistrates. The judges of the district and statutory county courts in Fort Bend County may, by a unanimous vote, appoint magistrates as authorized by the commissioners court.

The bill also sets forth the qualifications and the compensation for the magistrate(s), provides that they have the same immunity as a district judge, and sets forth procedures for their termination.

The bill also provides that the judges of the district and statutory county courts shall establish standing orders for the magistrates and the parties appearing before the magistrates and lists specific actions that the magistrate is authorized to take. These include setting, adjusting and revoking bond, conducting examining trials, determining whether a defendant is indigent and appointing counsel for an indigent defendant, issuing search and arrest warrants, issuing emergency protective orders, ordering emergency medical commitments and conducting initial juvenile detention hearings.

The bill also allows a magistrate to exercise concurrent criminal jurisdiction with a justice of the peace under certain circumstances, except for a trial on the merits following a plea of not guilty.

The bill also provides that the commissioners court must provide the magistrate with sufficient office space, personnel, and equipment required to perform the magistrate's essential functions.

The bill also amends Article 2.09 of the Code of Criminal Procedure to include Fort Bend County magistrates appointed under the proposed Subchapter LL, Chapter 54, Government Code, in the definition of who are magistrates under the Code of Criminal Procedure.

The bill also amends Article 4.01 of the Code of Criminal Procedure to include Fort Bend County magistrates appointed under the proposed Subchapter LL, Chapter 54, Government Code, in the definition of what courts have criminal jurisdiction under the Code of Criminal Procedure.

As proposed, S.B. 2254 amends current law relating to the creation of magistrates in Fort Bend County.

### **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 LL, as follows:

### **SUBCHAPTER LL. MAGISTRATES IN FORT BEND COUNTY**

Sec. 54.2101. **AUTHORIZATION; APPOINTMENT; ELIMINATION.** (a) Authorizes the commissioners court of Fort Bend County to authorize the judges of the district and statutory county courts in Fort Bend County to appoint one or more part-time or full-time magistrates to perform the duties authorized by this subchapter.

(b) Authorizes the judges of the district courts and statutory county courts in Fort Bend County by a unanimous vote to appoint magistrates as authorized by the commissioners court of Fort Bend County.

(c) Requires an order appointing a magistrate to be signed by the local administrative judge for the board of judges of the district courts and statutory county courts serving Fort Bend County, and requires the order to state:

(1) the magistrate's name; and

(2) the date the magistrate's employment is to begin.

(d) Authorizes an authorized magistrate's position to be eliminated on a majority vote of the commissioners court of Fort Bend County.

Sec. 54.2102. **QUALIFICATIONS; OATH OF OFFICE.** (a) Requires a person, to be eligible for appointment as a magistrate, to:

(1) be a resident of this state and the county;

(2) have been licensed to practice law in this state for at least four years;

(3) not have been removed from office by impeachment, by the supreme court, by the governor on address to the legislature, by a tribunal reviewing a recommendation of the State Commission on Judicial Conduct, or by the legislature's abolition of the judge's court; and

(4) not have resigned from office after having received notice that formal proceedings by the State Commission on Judicial Conduct had been instituted as provided in Section 33.022 (Investigations and Formal Proceedings) and before the final disposition of the proceedings.

(b) Requires a magistrate appointed under Section 54.2101 to take the constitutional oath of office required of appointed officers of this state.

Sec. 54.2103. **COMPENSATION.** (a) Provides that a magistrate is entitled to the salary determined by the commissioners court of Fort Bend County.

(b) Prohibits a full-time magistrate's salary from being less than that of a justice of the peace of Fort Bend County as established by the annual budget of Fort Bend County.

(c) Provides that a part-time magistrate's salary is equal to the per-hour salary of a justice of the peace. Provides that the per-hour salary is determined by dividing the annual salary by a 2000 work-hour year. Requires the local administrative judge of the district courts serving Fort Bend County to approve the number of hours to be paid a part-time magistrate.

(d) Provides that the magistrate's salary is paid from the county fund available for payment of officers' salaries.

Sec. 54.2104. JUDICIAL IMMUNITY. Provides that a magistrate has the same judicial immunity as a district judge.

Sec. 54.2105. TERMINATION OF EMPLOYMENT. (a) Authorizes a magistrate to be terminated by a majority vote of all the judges of the district and statutory county courts of Fort Bend County.

(b) Requires the local administrative judges of the district courts and statutory county courts serving Fort Bend County, to terminate a magistrate's employment, to sign a written order of termination. Requires the order to state:

(1) the magistrate's name; and

(2) the final date of the magistrate's employment.

Sec. 54.2106. DUTIES AND POWERS. (a) Requires a magistrate to inform the person arrested, in clear language, of the accusation against the person and of any affidavit filed with the accusation. Requires a magistrate to inform the person arrested of the person's right to retain counsel, to remain silent, to have an attorney present during any interview with a peace officer or an attorney representing the state, to terminate the interview at any time, and to request the appointment of counsel if the person is indigent and cannot afford counsel. Requires the magistrate to also inform the person arrested that the person is not required to make a statement and that any statement made by the person is authorized to be used against the person. Requires the magistrate to allow the person arrested reasonable time and opportunity to consult counsel and to admit the person arrested to bail if allowed by law. Provides that, in addition to the powers and duties specified by this section, a magistrate has all other powers and duties of a magistrate specified by the Code of Criminal Procedure and other laws of this state.

(b) Provides that a magistrate may determine the amount of bail and grant bail pursuant to Chapter 17 (Bail), Code of Criminal Procedure, and as otherwise provided by law.

(c) Requires the magistrate to be available, within 24 hours of a defendant's arrest, to determine probable cause for further detention, administer warnings, inform the accused of the pending charges, and determine all matters pertaining to bail. Requires magistrates to be available to review and issue search warrants and arrest warrants as provided by law.

(d) Authorizes a magistrate to dispose of criminal cases filed in the justice court as provided by law and collect fines and enforce the judgments and orders of the justice courts in criminal cases.

(e) Authorizes a magistrate to enforce judgments and orders of the statutory county courts in criminal cases.

Sec. 54.2107. MENTAL HEALTH JURISDICTION. Authorizes the judges of the statutory county courts of Fort Bend County to authorize a magistrate to serve the probate courts of Fort Bend County as necessary to hear emergency mental health matters under Chapter 573 (Emergency Detention), Health and Safety Code. Provides that a magistrate has concurrent limited jurisdiction with the probate courts of the county to hear emergency mental health matters under Chapter 573, Health and Safety Code. Provides that this section does not impair the jurisdiction of the probate courts to review or alter the decision of the magistrate.

Sec. 54.2108. PERSONNEL, EQUIPMENT, AND OFFICE SPACE. Requires the commissioners court of Fort Bend County to provide:

(1) personnel for the legal or clerical functions necessary to perform the magistrate's duties authorized by this chapter; and

(2) sufficient equipment and office space for the magistrate and personnel to perform the magistrate's essential functions.

Sec. 54.2109. SHERIFF. Requires the sheriff, in person or by deputy, on request of a magistrate appointed under this subchapter, to assist the magistrate.

Sec. 54.2110. CLERK. Requires the district clerk or county clerk to perform the statutory duties necessary for the magistrate appointed under this subchapter in cases filed in a district court and a statutory county court.

SECTION 2. Amends Article 2.09, Code of Criminal Procedure, to include the magistrates appointed under Subchapter LL, Chapter 54, Government Code, among a list of officers who are magistrates within the meaning of this code.

SECTION 3. Amends Article 4.01, Code of Criminal Procedure, to include the magistrates appointed by the judges of the statutory county courts and district courts of Fort Bend County that give preference to criminal cases among the courts that have jurisdiction in criminal actions.

SECTION 4. Effective date: upon passage or September 1, 2019.