

## **BILL ANALYSIS**

C.S.H.B. 1091  
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Judiciary & Civil Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties point out that major litigation that affects the state as a whole is tried before a single district judge who is elected by and accountable only to the voters of a single county, which effectively gives the voters and judges of one county more power over statewide policy than the voters and judges of all other counties in the state. The parties believe there is no adequate justification for such a system and that a panel of judges would be a fairer way to address matters of statewide significance. C.S.H.B. 1091 seeks to provide for this method of addressing important state matters.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Supreme Court in SECTION 1 of this bill.

### **ANALYSIS**

C.S.H.B. 1091 amends the Government Code to authorize the attorney general to petition the chief justice of the supreme court to convene a special three-judge district court in any suit filed in a district court in Texas in which the state or a state officer or agency is a defendant in a claim that challenges the finances or operations of the public school system or involves the apportionment of districts for the house of representatives, the senate, the State Board of Education, the United States Congress, or state judicial districts. The bill establishes that the petition stays all proceedings in the district court in which the original case was filed until the chief justice acts on the petition. The bill requires the chief justice, within a reasonable time after receipt of the petition, to grant the petition and to issue an order transferring the case to a special three-judge district court convened as provided for in the bill.

C.S.H.B. 1091 authorizes the attorney general to petition the chief justice to convene a special three-judge district court in any suit filed in a district court in Texas in which the state or a state officer or agency is a defendant in a claim that has the potential to significantly impact the state's finances, has the potential to significantly alter the operations of important statewide policies or programs, or is otherwise of such exceptional statewide importance that the claim should not be decided by one district judge. The bill requires the attorney general to submit with the petition a written certification that the claim on which the petition is based satisfies such jurisdictional requirements. The bill establishes that the petition stays all proceedings in the district court to which the original case was assigned until the chief justice acts on the petition. The bill authorizes the chief justice to request any party to a claim for which the petition is filed to file a statement objecting to or supporting the attorney general's petition but prohibits a party from

filing such a statement unless it is requested by the chief justice. The bill limits a party's statement to addressing only whether the claim satisfies the jurisdictional requirements set out by the bill. The bill authorizes the chief justice, on receipt of the petition from the attorney general, to deny the petition or grant the petition and to issue an order transferring the case to a special three-judge district court convened as provided for in the bill. The bill establishes that the chief justice's decision to deny or grant a petition is final and may not be appealed or challenged. The bill authorizes the chief justice, in ruling on the petition, to consider whether the petition satisfies the specified jurisdictional requirements and whether the resources available in this state's court system are sufficient for the claim to be heard by a special three-judge district court and prohibits the chief justice from expressing an opinion on any question of law or fact arising from the claims in the petition.

C.S.H.B. 1091 requires the chief justice, on receipt of a petition from the attorney general that requires the chief justice to order a special three-judge district court to convene or on granting a petition at the chief justice's discretion, to order the convening of such a special three-judge district court and requires the chief justice to appoint to that court the district judge of the judicial district to which the original case was assigned, one elected district judge of a judicial district other than a judicial district in the same county as the judicial district to which the original case was assigned, and one elected justice of a court of appeals other than the court of appeals in the court of appeals district in which the other judges on the panel sit. The bill requires the special three-judge district court to conduct all hearings in the district court to which the original case was assigned and authorizes the special three-judge district court to use the courtroom, other facilities, and administrative support of the district court. The bill requires the Office of Court Administration of the Texas Judicial System to pay the travel expenses and other incidental costs related to convening the special three-judge district court.

C.S.H.B. 1091 requires the special three-judge district court to consolidate by order the cause of action before the court with any related case pending in any district court or other court in the state on the motion of any party to a case assigned to the special three-judge district court. The bill requires such a consolidated case to be transferred to the special three-judge district court if the court finds that transfer is necessary. The bill authorizes the transfer to occur without the consent of the parties to the related case or of the court in which the related case is pending. The bill defines "related case" to mean any case in which this state or a state officer or agency is a defendant that arises from the same nucleus of operative facts as the claim before the special three-judge district court, regardless of the legal claims or causes of action asserted in the related case.

C.S.H.B. 1091 authorizes the supreme court to adopt rules for the operation and procedures of a special three-judge district court and establishes that otherwise the Texas Rules of Civil Procedure and all other statutes and rules applicable to civil litigation in a district court in the state apply to proceedings before a special three-judge district court.

C.S.H.B. 1091 authorizes a judge or justice of the court, with the unanimous consent of the three judges sitting on a special three-judge district court, to independently conduct pretrial proceedings and enter interlocutory orders before trial. The bill prohibits a judge or justice of a special three-judge district court from independently entering a temporary restraining order, temporary injunction, or any order that finally disposes of a claim before the court. The bill authorizes any independent action taken by one judge or justice of a special three-judge district court related to a claim before the court to be reviewed by the entire court at any time before final judgment. The bill establishes that an appeal from an appealable interlocutory order or final judgment of a special three-judge district court is to the supreme court. The bill authorizes the supreme court to adopt rules for such appeals.

#### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2015.

## COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1091 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

### INTRODUCED

SECTION 1. Subtitle A, Title 2, Government Code is amended by adding Chapter 22A to read as follows:

#### CHAPTER 22A. SPECIAL THREE-JUDGE DISTRICT COURT.

Sec. 22A.001. MANDATORY PROCEEDINGS. (a) In any lawsuit in district court in which the State or an officer or agency of the State is a defendant and in which a claim described by subsection 22A.001(a)(1) or 22A.001(a)(2) is filed by any party, the Attorney General may petition the Chief Justice of the Supreme Court for the formation of a special three-judge district court. This section applies to:

(1) any claim challenging the finances or operations of the State's public school system; and

(2) any claim involving the apportionment of districts for the Texas House, Texas Senate, U.S. Congress, State Board of Education, or the apportionment of state judicial districts.

(b) Such a petition by the Attorney General stays all proceedings in the district court until the Chief Justice acts on the petition.

(c) Within a reasonable time after receipt of a petition under section 22A.001, the Chief Justice shall order that the case be heard by a special three-judge district court as provided by section 22A.003.

Sec. 22A.002 DISCRETIONARY PROCEEDINGS. (a) In any lawsuit in district court in which the State or an officer or agency of the State is a defendant, the Attorney General may petition the Chief Justice of the Supreme Court for the formation of a special three-judge district court as provided by section 22A.003. The Attorney General's petition must certify that

### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subtitle A, Title 2, Government Code, is amended by adding Chapter 22A to read as follows:

#### CHAPTER 22A. SPECIAL THREE-JUDGE DISTRICT COURT

Sec. 22A.001. MANDATORY PROCEEDINGS. (a) The attorney general may petition the chief justice of the supreme court to convene a special three-judge district court in any suit filed in a district court in this state in which this state or a state officer or agency is a defendant in a claim that:

(1) challenges the finances or operations of this state's public school system; or

(2) involves the apportionment of districts for the house of representatives, the senate, the State Board of Education, or the United States Congress, or state judicial districts.

(b) A petition filed by the attorney general under this section stays all proceedings in the district court in which the original case was filed until the chief justice of the supreme court acts on the petition.

(c) Within a reasonable time after receipt of a petition from the attorney general under Subsection (a), the chief justice of the supreme court shall grant the petition and issue an order transferring the case to a special three-judge district court convened as provided by Section 22A.003.

Sec. 22A.002. DISCRETIONARY PROCEEDINGS. (a) The attorney general may petition the chief justice of the supreme court to convene a special three-judge district court in any suit filed in a district court in this state in which this state or a state officer or agency is a defendant in a claim that:

the outcome of the case:

- (1) could significantly impact the finances of the State;
- (2) could significantly alter the operations of important statewide policies or programs;  
or
- (3) is otherwise of exceptional statewide importance such that the case should not be decided by a single district judge.

No equivalent provision.

(b) Such a petition by the AG stays all proceedings in the district court until the Chief Justice acts on the petition.

(c) The Chief Justice may request that any party file a statement objecting to or supporting the Attorney General's petition. No such statement may be filed unless requested by the Chief Justice. Any such statement shall address only whether the claims at issue satisfy the criteria listed in section 22A.003(a)(1)-(a)(3) and shall not address other matters.

(d) The chief justice may either deny the petition or order that the case be heard by a special three-judge district court.

(e) The Chief Justice's decision to grant or deny the petition is final and may not be appealed or challenged.

(f) In ruling on a petition filed under section 22A.002, the Chief Justice may consider:

- (1) whether the petition meets the standards of subsections 22A.002(a)(1)-22A.002(a)(3); and
- (2) the available resources of the court system of the State.

(g) In ruling on the petition, the Chief Justice shall express no opinion on any question of law or fact arising from the

- (1) has the potential to significantly impact this state's finances;
- (2) has the potential to significantly alter the operations of important statewide policies or programs; or
- (3) is otherwise of such exceptional statewide importance that the claim should not be decided by one district judge.

(b) The attorney general shall submit with a petition filed under this section a written certification that the claim on which the petition is based satisfies the jurisdictional requirements under Subsection (a).

(c) A petition filed by the attorney general under this section stays all proceedings in the district court to which the original case was assigned until the chief justice of the supreme court acts on the petition.

(d) The chief justice may request any party to a claim for which a petition is filed under this section to file a statement objecting to or supporting the attorney general's petition. A party may not file the statement unless it is requested by the chief justice. The statement may only address whether the claim satisfies the jurisdictional requirements under Subsection (a).

(e) On receipt of a petition from the attorney general under Subsection (a), the chief justice may deny the petition or grant the petition and issue an order transferring the case to a special three-judge district court convened as provided by Section 22A.003.

(f) The chief justice's decision to deny or grant a petition under this section is final and may not be appealed or challenged.

(g) In ruling on a petition under this section, the chief justice:

- (1) may consider whether:
  - (A) the petition satisfies the jurisdictional requirements under Subsection (a); and

(B) the resources available in this state's court system are sufficient to allow the claim to be heard by a special three-judge district court; and

(2) may not express an opinion on any question of law or fact arising from the claims in the petition.

claims giving rise to the petition.

Sec. 22A.003 SPECIAL THREE-JUDGE DISTRICT COURTS. (a) After receipt of a petition under Section 22A.001 or after granting a petition under Section 22A.002, the Chief Justice shall order the formation of a three-judge district court. The court shall consist of:

(1) The district judge to whom the case was assigned at the time the petition to the Chief Justice was submitted.

(2) A district judge chosen by the Chief Justice who has been elected by the voters of a county other than the county in which the case was filed; and

(3) A justice of a court of appeals chosen by the Chief Justice who has been elected by the voters of a judicial district other than the judicial district in which the case was filed or in which the district judge chosen under section sits.

(b) The three-judge court shall sit in the county in which the case was filed and may use the facilities, courtroom, and administrative support of the district court in which the case was filed.

(c) The travel expenses and other incidental costs related to convening the three-judge court shall be paid by the Office of Court Administration.

(d) On the motion of any party, a special three-judge court shall consolidate with the cause of action before it any related case pending in any district court or inferior court in the State.

Any case so consolidated shall be transferred, if necessary, to the district court

Sec. 22A.003. SPECIAL THREE-JUDGE DISTRICT COURT. (a) On receipt of a petition under Section 22A.001 or on granting a petition under Section 22A.002, the chief justice shall order a special three-judge district court to convene and shall appoint three persons to serve on the court as follows:

(1) the district judge of the judicial district to which the original case was assigned;

(2) one district judge of a judicial district other than a judicial district in the same county as the judicial district to which the original case was assigned; and

(3) one justice of a court of appeals other than:

(A) the court of appeals in the court of appeals district in which the original case was assigned; or

(B) a court of appeals district in which the district judge appointed under Subdivision (2) sits.

(b) A judge or justice appointed under Subsection (a)(2) or (3) must have been elected to that office and may not be serving an appointed term of office.

(c) A special three-judge district court convened under this section shall conduct all hearings in the district court to which the original case was assigned and may use the courtroom, other facilities, and administrative support of the district court.

(d) The Office of Court Administration of the Texas Judicial System shall pay the travel expenses and other incidental costs related to convening a special three-judge district court under this chapter.

Sec. 22A.004. CONSOLIDATION OF RELATED ACTIONS.

(b) On the motion of any party to a case assigned to a special three-judge district court under Section 22A.003, the court by order shall consolidate with the cause of action before the court any related case pending in any district court or other court in this state.

(c) A case consolidated under Subsection (b) must be transferred to the special three-

in which the three-judge court sits. Such transfer may occur without the consent of the parties to the related case or the court in which the related case is pending.

For purposes of this subsection, "related case" means any case in which the State or an agency or officer of the State is a defendant that arises from the same nucleus of operative facts, regardless of the legal claims or causes of action asserted.

Section 22A.004 RULES OF CIVIL PROCEDURE. (a)

Except as provided by this section, the Texas Rules of Civil Procedure and all other statutes and rules normally applicable to litigation in civil district courts in this State shall apply to proceedings in front of a three-judge district court; provided, however, that the Supreme Court may promulgate rules for the operation of three-judge district courts convened under this chapter.

Section 22A.005 ACTIONS BY JUSTICES. (a)

With the unanimous consent of the three-judge panel, a single judge on the three-judge court may conduct pre-trial proceedings and enter interlocutory orders prior to trial.

(b) No single judge may enter a temporary restraining order, a temporary injunction, or any order that finally disposes of any claim.

(c) Any action by a single judge may be reviewed by the full three-judge court at any time prior to final judgment.

Section 22A.006 APPEAL. (a) Appeal from an appealable interlocutory order of final judgment of a three-judge court shall be directly to the Supreme Court.

(b) The Supreme Court may promulgate

judge district court if the court finds that transfer is necessary. The transfer may occur without the consent of the parties to the related case or of the court in which the related case is pending.

(a) In this section, "related case" means any case in which this state or a state officer or agency is a defendant that arises from the same nucleus of operative facts as the claim before a special three-judge district court under this chapter, regardless of the legal claims or causes of action asserted in the related case.

Sec. 22A.005. APPLICATION OF TEXAS RULES OF CIVIL PROCEDURE. (a)

Except as provided by this section, the Texas Rules of Civil Procedure and all other statutes and rules applicable to civil litigation in a district court in this state apply to proceedings before a special three-judge district court.

(b) The supreme court may adopt rules for the operation of a special three-judge district court convened under this chapter and for the procedures of the court.

Sec. 22A.006. ACTIONS BY JUDGE OR JUSTICE. (a)

With the unanimous consent of the three judges sitting on a special three-judge district court, a judge or justice of the court may:

(1) independently conduct pretrial proceedings; and

(2) enter interlocutory orders before trial.

(b) A judge or justice of a special three-judge district court may not independently enter a temporary restraining order, temporary injunction, or any order that finally disposes of a claim before the court.

(c) Any independent action taken by one judge or justice of a special three-judge district court related to a claim before the court may be reviewed by the entire court at any time before final judgment.

Section 22A.007. APPEAL. (a) An appeal from an appealable interlocutory order or final judgment of a special three-judge district court is to the supreme court.

(b) The supreme court may adopt rules for

rules for appeals from three-judge district courts.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015. This Act applies only to lawsuits filed after the Act is sent to the Governor for signature.

appeals from a special three-judge district court.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.