

SUBJECT: District court for Culberson, Hudspeth, Brewster, Jeff Davis, Presidio counties

COMMITTEE: Judicial Affairs — favorable, with amendment

VOTE: 6 ayes — Hartnett, Alonzo, Duncan, Goodman, Nixon, Solis

0 nays

3 absent — Thompson, Willis, Zbranek

WITNESSES: None

BACKGROUND: The 386 district courts are the state's primary trial courts. They exercise original jurisdiction over felony criminal prosecutions, suits for divorce, suits over title to land, election contests, defamation suits, and civil suits with an amount in controversy of at least \$200. The district courts hear contested matters involved in probate cases and have general supervisory control over commissioners courts. In addition, district courts have general original jurisdiction over all causes of action for which a remedy or jurisdiction is not provided by law or by the Constitution, and have the power to issue all writs necessary to enforce their jurisdiction.

A single county may be served by one or more district courts, whose judges are elected countywide; in multi-county districts, judges are elected at-large. One judge serves each court, although the state Constitution allows the Legislature to establish multi-judge courts. District court judges are elected in partisan elections in even-numbered years to four-year terms.

Only one new district court was created by the 73rd Legislature. HB 171 by Craddick creating a fourth district court in Midland County, the 385th District Court, became effective on January 1, 1995.

All election changes, including the creation of new courts, must be reviewed and precleared by the U.S. Department of Justice under sec. 5 of the federal Voting Right Act.

Culberson and Hudspeth counties are now served by the 34th and 210th Judicial District Courts which also includes El Paso County. Brewster, Jeff Davis and Presidio counties are served by the 83rd district court which also includes Pecos, Reagan and Upton counties. El Paso County is served by the 41st, 65th, 120th, 168th, 171st, 205th, 243rd, 327th and 346th judicial district courts.

DIGEST: HB 1598, as amended, would create a state district court, the 394th judicial district, composed of Culberson, Hudspeth, Brewster, Jeff Davis and Presidio counties. HB 1598 would remove Culberson and Hudspeth counties from the jurisdiction of the 34th and 210th judicial district courts. HB 3235 would remove Brewster, Jeff Davis and Presidio counties from the jurisdiction of the 83rd judicial district court.

HB 1598 would make conforming changes to the jurisdiction of the district attorneys for the districts affected.

The 394th District Court judge could not be assigned to serve as a visiting judge in Bexar, Dallas, Ector, Fort Bend, Harris, Jefferson, Lubbock, Midland, Tarrant or Travis counties. The bill would be inoperative if the U.S. Justice Department filed a timely objection under sec. 5 of the federal Voting Rights Act.

The changes would become effective September 1, 1995

SUPPORTERS SAY: HB 1598 would relieve docket overcrowding in Culberson, Hudspeth, Brewster, Jeff Davis and Presidio county district courts as well as ease the burden to El Paso, Pecos, Reagan and Upton county district courts. Rapid population growth and rising crime rates have resulted in ever-increasing civil and criminal caseloads. The state average population per district court judge is 44,007 people for each judge.

The total population for Culberson, Hudspeth and El Paso counties is 597,932. The 11 judges for these counties must divide their time between these counties, creating an average population per judge of 54,357. The total population in the 83rd district is 40,900. Creating a new separate district for Culberson, Hudspeth, Brewster, Jeff Davis and Presidio counties would alleviate overcrowding in these counties as well as El Paso, Pecos,

Reagan and Upton. The new 394th district court will serve a population of 23,586. The reformulated 83rd district court would serve a population of 23,636. The number of persons per judge in El Paso would drop to 53,782.

Committee amendment 1 to HB 1598 would ensure that a judge elected to serve in this newly created district court could not serve as a visiting judge in one of the counties, in which the election process is under scrutiny by the U.S. Department of Justice. Those counties include Bexar, Dallas, Ector, Fort Bend, Harris, Jefferson, Lubbock, Midland, Tarrant and Travis.

Committee amendment 2 would guarantee that these changes are only valid if the Justice Department does not file a timely objection to their preclearance.

Because of these restrictions and because of the racial minority makeup of Culberson, Hudspeth, Brewster, Jeff Davis and Presidio counties, the state should be able to demonstrate to the Justice Department that the voting rights of minority members of the district will not be diluted nor will retrogression of minority voting power occur.

**OPPONENTS
SAY:**

Until Texas reforms its system of electing judges, no new district courts should be created. A new district court costs the state over \$100,000 per year to operate. The election procedures for judges in urban counties are currently under challenge. The state should not spend the money to create courts until it solves the crisis in judicial selection. While the new court created by this legislation for these five counties might be precleared by the Justice Department, all counties are part of this state and judicial reform is a statewide issue. It would be patently unfair to continue to create new courts in some counties and ignore the problem in the urban counties.

The history of racial discrimination and minority vote dilution in Texas has made this state subject to section 5 of the federal Voting Rights Act. Section 5 requires Texas to preclear any changes in its elections system with the U.S. Justice Department to ensure that the ability of minority voters to elect candidates of their choice is not made worse. The U.S. Justice Department has refused to preclear any new district or county courts in urban counties in Texas since 1989 because it contends the countywide at-large election system discriminates against minority voters. The most

recent court created by the 73rd Legislature, the 385th court in Midland County, has not been precleared.

One of the standards for preclearance by the Justice Department is that within the area there must not be a dilution of the minority voting strength caused by the change proposed. If the Justice Department reviews the impact of creation of new courts on a statewide basis, there is no guarantee that the department will preclear this new court.

NOTES:

The committee amendments would add that the judge of the new court could not be assigned to serve as a visiting judge in Bexar, Dallas, Ector, Fort Bend, Harris, Jefferson, Lubbock, Midland, Tarrant or Travis counties and that the bill would be inoperative if the U.S. Justice Department filed a timely objection under sec. 5 of the federal Voting Rights Act.

There are 18 other bills currently in the House Judicial Affairs and Senate Jurisprudence Committees calling for the creation of 34 new district courts in 17 counties.

SJR 26 by Ellis and its implementing legislation, SB 313 by Ellis, which would alter the way district court judges are elected, passed the Senate on April 24 and have been reported favorably, as substituted, by the House Judicial Affairs Committee.