

SUBJECT: Creating a second district court for Ellis County

COMMITTEE: Judicial Affairs — favorable, with amendment

VOTE: 6 ayes — Thompson, Hartnett, Alonzo, Solis, Willis, Zbranek

0 nays

3 absent — Duncan, Goodman, Nixon

WITNESSES: For — Judge Roy A. Scoggins, Jr.

Against — 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.

Ellis County is now served by the 40th District court.

DIGEST: HB 273 would create a new state district court, the 378 Judicial District, composed entirely of Ellis County, effective September 1, 1995

SUPPORTERS SAY: HB 273 would relieve docket overcrowding in the Ellis County district court. 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. In Ellis County, there are currently 85,167 people for each judge. After the creation of the district court authorized by this legislation, the average will be 42,584 persons per district judge.

The committee amendment to HB 273 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 judicial election process is currently under scrutiny by the U.S. Department of Justice. Those counties include Bexar, Dallas, Ector, Fort Bend, Harris, Jefferson, Lubbock, Midland, Tarrant and Travis.

Because of this restriction and because of the racial minority makeup of Ellis County, 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 by creating this new district court.

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 new courts until it solves the current crisis in judicial selection. While the new court created by this legislation for Ellis County might be precleared by the Justice Department, all counties are part of this state and judicial reform is a statewide issue. It would be 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:

SB 1091 by Cain, an identical bill to HB 273 is currently pending in the Senate Jurisprudence Committee.

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 19 counties.

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