

SUBJECT: Use of video-conferencing equipment in court proceedings and depositions

COMMITTEE: Civil Practices — committee substitute recommended

VOTE: 7 ayes — Bosse, Janek, Clark, Martinez Fischer, Nixon, Smithee, Zbrank
1 nay — Hope
1 absent — Dutton

WITNESSES: For — James Klagen
Against — None
On — Richard Hile, Texas Trial Lawyers Association

BACKGROUND: Government Code, sec. 22.302 allows the Supreme Court, the Court of Criminal Appeals, or a court of appeals, subject to the discretion of the chief justice or presiding judge, to conduct hearings and oral argument via video conferencing. The rules of criminal procedure allow hearings in criminal cases to be through video conferencing equipment. No provision exists, however, in the rules of civil procedure or in statute for using similar technology for trial court hearings, depositions, or in-trial witness testimony.

DIGEST: CSHB 176 would permit, subject to the order of a trial judge, hearings, depositions, and witness testimony at trial to be conducted via any electronic means that offered two-way visual and audio communication, provided that the means were available to the parties, approved by the trial court, and could be recorded. Copies of the recording would be made available by the court clerk at a price that covered the cost of producing the copy.

Under CSHB 176, trial testimony only could be by electronic means if the witness had been deposed prior to trial. If a deposition were taken by electronic means, the party seeking the deposition would be required to indicate both where and by what electronic means the deposition would be taken. Another party who wished to attend the deposition electronically

would have to use the same electronic means as the party who took the deposition.

When a party attended court via electronic means, the party would be required to use equipment that was compatible with the court's equipment, and would be permitted to record the proceedings. Any expenses the court would incur by conducting a proceeding through electronic means would be assessed as a court cost.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2001.

**SUPPORTERS
SAY:**

CSHB 176 would promote judicial efficiency and reduce the cost of litigation. By permitting attorneys to attend hearings via video conferencing equipment, the bill would limit the amount of time and money that parties and their attorneys spend traveling to hearings.

The bill also would save time for the courts because video conferenced hearings are more easily adapted to the parties' schedules. Thus, the bill would help courts move cases through their docket more quickly.

Criminal trial courts and appellate courts already use video conferencing to allow parties to attend proceedings, so this is not an untested technology. If it works for these courts, there is no reason why it cannot work for civil trial courts.

**OPPONENTS
SAY:**

The deposition provisions of CSHB 176 would give the party taking the deposition the power to determine not only the place of the deposition, but the technology that must be used. It then would require the other parties either to attend at the specified location or use the same technology, not just compatible technology, as the deposing party. This could impose an undue hardship on parties to buy equipment similar to what their opponents were using.

Allowing witnesses to testify at trial by electronic means has the potential to reduce the reliability of the testimony by making cross examination less effective.

A rule such as this bill would enact would be better addressed by the Supreme Court through its rulemaking process. That process allows for broader input from judges, attorneys, and legal scholars, which can help avoid creating a rule that would have unintended consequences.

NOTES:

The committee substitute eliminated the original version's reference to appellate courts, broadened the types of electronic means that could be used, and added the section related to how depositions by electronic means were to be handled.