

- SUBJECT:** Operation and administration of the judicial branch
- COMMITTEE:** Judiciary and Civil Jurisprudence — favorable, without amendment
- VOTE:** 8 ayes — Jackson, Lewis, Bohac, S. Davis, Madden, Raymond, Scott, Thompson
- 1 nay — Castro
- 2 absent — Hartnett, Woolley
- WITNESSES:** No public hearing
- BACKGROUND:** According to the Office of Court Administration (OCA), Texas has 3,311 trial courts and 16 appellate courts.
- Small claims courts, presided over by justices of the peace, have jurisdiction over civil actions where the amount in controversy is \$10,000 or less. Justice courts also have criminal case jurisdiction over misdemeanors punishable by a fine only and no confinement. There are 819 justice courts.
- Statutory county courts (SCCs) have jurisdiction over all civil, criminal, original, and appellate actions prescribed by the individual statute that creates the court. In general, SCCs, also known as county courts at law, have jurisdiction over civil matters where the amount in controversy is \$100,000 or less. Several statutory county courts are authorized to hear cases in which the amount in controversy is greater than \$100,000. SCCs also have exclusive original jurisdiction over criminal misdemeanors involving a fine greater than \$500 or a jail sentence. There are 233 statutory county courts.
- District courts have original jurisdiction over civil actions involving more than \$200, divorce, title to land, and contested elections. They have original jurisdiction in felony criminal matters and in juvenile matters. Thirteen district courts are designated as criminal district courts. Some others are directed to give preference to certain specialized areas of civil law. There are 456 district courts.

DIGEST: HB 79 would make several changes to the Texas court system.

District courts. HB 79 would direct that judges recusing themselves be replaced by appointment of the local presiding administrative judge and would remove the governor's power to appoint replacements for these judges.

The bill would allow counties with two or more district courts to transfer cases from one district court to another and exchange benches between district courts without formal transfers of cases from one docket into another. This would be a decrease from the current limit of five or more courts. The bill would grant district courts original jurisdiction in civil matters in which the amount in controversy was more than \$500.

The bill would create two terms of court for each district court, beginning on January 1 and July 1 of each year.

The bill would require that all district judges within a county be paid equal amounts of supplemental compensation from the county. A district judge would be entitled to juvenile board supplements that were equal to what other judges serving on the juvenile board received.

The bill would direct that the initial vacancy in a newly created district court be filled by an appointment by the governor.

Statutory county courts. HB 79 would repeal 101 specific provisions relating to individual SCCs. It would increase the jurisdictional limit in civil matters to \$200,000 for all SCCs. The 59 SCCs that already have jurisdiction limits above \$200,000 would retain those existing limits. County commissioners courts would be required to set at least two terms per year for each statutory county court.

HB 79 would bar SCC judges from the private practice of law. The bill would allow those judges currently operating under a statute that allows them to engage in the private practice of law on a part-time basis to continue to do so during the remainder of their current term in office.

The bill would reduce from eight to six the number of years a retired probate court judge would have to have served as an active judge before qualifying as an assigned statutory probate court judge.

HB 79 would add the presiding judge of a statutory probate court to the list of judicial officers defended by the attorney general in suits brought against the presiding judges in their official capacity.

The bill would require that SCC judges and statutory probate judges be U.S. citizens.

The bill would create a new Webb County Court at Law No. 3.

Justice and small claims courts. Under HB 79, on May 1, 2013, all small claims courts would be abolished. Their dockets would be transferred by the presiding justice of the peace to a justice court in the county.

Small claims cases would have to be conducted according to rules set by the Supreme Court of Texas to ensure fair, expeditious and inexpensive resolution of small claims.

The bill would allow JP courts in counties above 3.3 million people (Harris) to share misdemeanor cases if the alleged offense was committed in an adjacent JP precinct.

HB 79 would require justices of the peace to take at least 10 hours of training in substantive, procedural, and evidentiary law in civil matters.

Associate judges. HB 79 would make several changes concerning:

- criminal law associate judges, known as magistrates;
- civil law associate judges;
- probate associate judges; and
- juvenile law associate judges.

The bill would repeal several statutes specific to associate judges in individual courts and would provide rules applicable to all associate judges regarding authority and powers, including the ability to conduct hearings, hear evidence, make findings of fact, formulate conclusions of law, and recommend rulings, orders, or judgment in a case.

Concealed handgun licenses for associate family court judges. HB 79 would add associate judges in child protection and child support family courts to the existing list of judges who are allowed to carry handguns if they have concealed handgun permits. Penal Code, secs. 46.02 and 46.03,

which prohibit the carrying of a weapon and prohibit weapons in certain places, respectively, would not apply to these family court judges.

Court administration. The bill would create the Judicial Committee for Additional Resources, which would provide assistance, on the request of a trial court, for particularly massive, complex, or burdensome cases.

Assistance could include:

- assignment of an active or retired judge;
- additional legal, administrative, or clerical personnel;
- information technology or software;
- specialized continuing legal education;
- an associate judge;
- special accommodations or furnishings for parties; and
- other services or items deemed necessary by the committee.

The state would pay the cost of this assistance. Counties or parties would not be required to pay for them. The Supreme Court of Texas would implement rules to determine whether a case required additional resources to ensure efficient judicial management of a case.

Trial independence period for foster children. HB 79 would allow children aging out of the foster care system to remain under a court's jurisdiction. A court could authorize a "trial independence period" of between six and 12 months during which a young adult exited foster care but had the option of returning to the system. The bill also would expand reporting requirements on the young adults to monitor their progress.

Appellate courts. HB 79 would permit appeals of any eviction judgment, including evictions from commercial property.

Vexatious litigants. HB 79 would make changes to the list of vexatious litigants maintained by the Office of Court Administration (OCA) and would grant vexatious litigants the right to appeal a decision by a local administrative judge preventing the litigant from filing additional lawsuits. The bill would direct OCA to post on its website a list of vexatious litigants. On request of a person designated a vexatious litigant, the list would have to indicate whether the person had appealed that designation.

Inmate litigation. HB 79 would make the Civil Practice and Remedies Code, ch. 14, dealing with certain inmate litigation, apply to appellate

courts, including the Texas Supreme Court and the Court of Criminal Appeals. Civil Practice and Remedies Code, ch. 14 deals with litigation brought by inmates in district, county, justice of the peace, and small claims courts in which an affidavit stating inability to pay costs is filed by an inmate. The chapter includes provisions on the dismissal of claims, affidavits relating to previous filings, the grievance system and the exhaustion of administrative remedies, and court fees and costs.

Alternative dispute resolution for criminal matters. HB 79 would allow an entity that provided alternative dispute resolution in criminal matters as part of a pre-trial diversion program to collect from the person receiving the services a reasonable fee set by the local commissioners court. A judge could refer a criminal case to alternative dispute resolution on the request of the prosecutor. Before requesting a referral, a prosecutor would have to obtain the victim's consent.

Grant programs. HB 79 would direct the Office of Court Administration to develop and administer a program to provide grants from available funds to counties for initiatives that would enhance local court systems. The Judicial Committee for Additional Resources would decide which counties received a grant.

The bill would direct the Permanent Judicial Commission for Children, Youth, and Families to develop and administer a program to provide grants from funds raised through gifts, grants, or donations for initiatives that would improve safety and permanency outcomes, enhance due process, or increase the timeliness of resolution in child protection cases. The commission would award the grants.

Study by OCA of the Texas Judicial System. HB 79 would direct the Office of Court Administration to study the district courts and the county courts at law with overlapping jurisdiction in civil cases where the amount in controversy was more than \$200,000. The study would examine the feasibility and potential cost savings of converting those statutory county courts into district courts. The report would be due by January 1, 2013, and would be paid for through gifts, grants, or donations.

Other provisions. HB 79 would conform certain language in court cost provisions. For example, references to an "application for a writ of error" would be replaced with "application for petition for review" to bring all references to the same application under one name.

No appropriation. HB 79 would not make an appropriation. To the extent local governments, the courts, or the courts' support agencies were directed to create new programs, it would not be mandatory unless the Legislature specifically appropriated funding for it.

Effective date. Except where otherwise provided, the bill would take effect on January 1, 2012.

SUPPORTERS
SAY:

HB 79 would bring simplicity and rationality to the legal process by reforming the organization and administration of the court system. Ever since the current court system was established in 1891, it has been amended and restructured on a piecemeal and ad hoc basis, resulting in an outdated system of irregularities, inconsistencies, and overlapping jurisdictions. Litigants seeking to file suit must look up the specific jurisdiction of each statutory county court and district court in the state to see which cases the court may hear.

HB 79 would help to streamline the jurisdictional levels of these courts. The bill would make it easier for local courts to exchange cases, dockets, and benches. This would make it much easier for courts to address problems in judicial workloads, such as illness, vacation, increases in the volume and complexity of cases, and recusal. The bill also would streamline the kinds of cases that SCCs could take by expanding the limit on the amount in controversy from \$100,000 to \$200,000. This would ease some of the caseload burden of local district courts.

The bill would allow children aging out of the foster care system to stay under the extended jurisdiction of a court, either for a "trial independence period" or for providing services to the young adult. These changes would allow the foster care system to qualify for additional federal funding.

HB 79 would abolish small claims courts and replace them with a rule-based system. The rules would be drafted by the Supreme Court of Texas after extensive hearings to gather evidence and examine best practices. These rules would help to streamline substantive, procedural, and evidentiary practices for all of the state's JP courts.

The changes HB 79 would make reflect changes suggested by the Judicial Council and the State Bar of Texas. Changes to the court often are made at the suggestion of the Texas Judicial Council after it has studied an issue and fully vetted suggested improvements.

HB 79 would represent an investment in the court system of Texas. As the population and economy of Texas grow, so will the need for an efficient and rational system of courts. The bill's reforms and investments are geared toward creating more efficient and uniform justice across the state.

OPPONENTS
SAY:

HB 79 would attempt to fix what is not broken. The court system in each county is a reflection of carefully worked out compromises between the local judiciary, the commissioners court, and the Legislature to address local needs for civil and criminal courts. Overall complexity in the state should not be surprising, as there are 254 counties of widely varying size and local circumstances. The number and kinds of courts and the jurisdiction of each reflect the individual needs of each locality.

Streamlining these courts just for the sake of streamlining would disrupt this local balance. Texas is too diverse a state to demand rigid uniformity of its court system, especially when there never can be uniformity of local needs for types and kinds of courts. Any problems should be addressed locally, as Texas historically has done.

HB 79 should not abolish small claims courts. Litigants with claims of less than \$10,000 rely on these courts because their relaxed rules of evidence mean litigants successfully may represent themselves and because court dates are readily available. Justices of the Peace (JPs), who preside over small claims courts, have not heard complaints from litigants suggesting that small claims courts should be abolished. JPs run these courts successfully under current law.

OTHER
OPPONENTS
SAY:

HB 79 would not go far enough. It should grant the Supreme Court of Texas discretionary jurisdiction for interlocutory appeals in civil cases. It has had this jurisdiction for interlocutory appeals in class action cases since 2003, and this has worked very well. The bill should build on this success and expand the Supreme Court's discretionary jurisdiction over all interlocutory appeals.

NOTES:

According to the LBB's fiscal note, the new SCC in Webb County would not be a significant cost to the state, as the court would generate sufficient fine and fee revenue to pay for itself.

HB 79 is identical to the conference committee report on SB 1717 by Duncan, regular session, which was adopted by the Senate by 31-0 on May 29, but died in the House when no vote was taken.