

SUBJECT: Changing when a pro se inmate could conduct a pre-lawsuit deposition

COMMITTEE: Corrections — committee substitute recommended

VOTE: 7 ayes — Parker, White, Allen, Riddle, Rose, J.D. Sheffield, Toth
0 nays

WITNESSES: For — None

Against — Michelle Smith, Texas Civil Rights Project

On — Sharon Howell, Texas Department of Criminal Justice;
Christopher Lindsey, Attorney General

BACKGROUND: Civil Practice and Remedies Code, sec. 14.005(a) requires an inmate filing a court claim to provide proof that the inmate has exhausted the administrative remedies within the Texas Department of Criminal Justice (TDCJ) grievance system.

DIGEST: CSHB 2442 would change when an inmate without an attorney (pro se inmate) could conduct a pre-suit deposition. Before a court could grant a petition for pre-suit deposition, a pro se inmate would have to submit:

- an affidavit certifying that the inmate is not indigent;
- a certified copy of the inmate's trust fund account statement;
- proof that the inmate has exhausted all administrative remedies for anticipated claims; and
- a refundable bond for the filing fees.

If the inmate failed to provide these items, the court would deny the petition for a pre-suit deposition after giving reasonable notice to the parties. The inmate also would have to serve a copy of petition on the attorney general on or before the court filing date. If the pro se inmate had declared an inability to pay costs, a court could not grant the petition for a pre-suit deposition.

These provisions would prevail over the Texas Rules of Civil Procedure

if there were conflicting rules.

The bill would take effect September 1, 2013, and would apply only to petitions filed on or after that date.

**SUPPORTERS
SAY:**

CSHB 2442 would help prevent frivolous and malicious pre-suit depositions. Currently, courts tend to grant an inmate's petition for a pre-suit deposition even if the inmate is not represented by an attorney (pro se). Courts receive very few of these petitions, but there is concern that pro se inmates use these depositions to harass Texas Department of Criminal Justice employees, among others. By requiring inmates to meet certain conditions, this bill would help ensure that pre-suit depositions were conducted only for legitimate claims.

This bill would not limit a pro se inmate's access to the court system. Pre-suit depositions are used to determine whether a potential claim has merit, and a pro se inmate with a legitimate grievance would not need these preliminary investigations. A pro se inmate still could proceed directly to litigation and a court, if necessary, could order depositions at that time. The increase to court caseloads would be negligible because courts receive so few of these petitions.

**OPPONENTS
SAY:**

CSHB 2442 would be unnecessary because courts receive very few petitions for pre-suit depositions from pro se inmates. Moreover, by limiting a preliminary step, this bill could make more work for courts by increasing the number of cases that moved directly to litigation.

NOTES:

The committee substitute differs from the bill s filed in that it would require a court to deny a petition for a pre-suit deposition if a pro se inmate had declared an inability to pay costs or did not meet certain requirements, instead of requiring the court to determine if the potential claim was frivolous or malicious.