

- SUBJECT:** Allowing three-judge panels for certain important statewide suits
- COMMITTEE:** Judiciary and Civil Jurisprudence — committee substitute recommended
- VOTE:** 5 ayes — Smithee, Clardy, Laubenberg, Schofield, Sheets
4 nays — Farrar, Hernandez, Raymond, S. Thompson
- WITNESSES:** For — Jonathan Mitchell; (*Registered, but did not testify*: Mike Hull, Texans for Lawsuit Reform)

Against — Bryan Blevins and Nelson Roach, Texas Trial Lawyers Association; Dan Foster; (*Registered, but did not testify*: Celina Moreno, MALDEF; Jason Byrd, Texas Association of Consumer Lawyers; David Chamberlain, Texas Chapters of the American Board of Trial Advocates; Steve Bresnen, Texas Family Law Foundation)

On — Jim Davis, Office of the Attorney General; Michele Smith, Texas Association of Defense Counsel
- BACKGROUND:** Under 28 U.S.C., sec. 2284, a three-judge court hears any action challenging the apportionment of congressional districts and state legislative bodies.
- DIGEST:** CSHB 1091 would allow the attorney general to petition the chief justice of the Texas Supreme Court to convene a special three-judge district court in certain suits filed in state district courts in which the state was a defendant.
- Mandatory proceedings.** If the claim affected school finance or involved redistricting for the House of Representatives, Senate, State Board of Education, U.S. Congress, or state judicial districts, the chief justice would be required to grant the petition within a reasonable time and issue an order transferring the court to a special three-judge district court.
- Discretionary Proceedings.** Under the bill, the attorney general also

could petition for a three-judge district court in a district court suit in which the state was a defendant if the attorney general certified that the claim:

- could significantly impact the state's finances;
- could significantly alter the operations of important statewide policies or programs; or
- was of such exceptional statewide importance that the claim should not be decided by one district judge.

The chief justice could request a party to file a statement objecting to or supporting the attorney general's petition. A party could not file a statement unless the chief justice requested one. The chief justice also could deny petition or grant it and issue an order transferring the court to a special three-judge district court. The chief justice could consider whether the petition satisfied the jurisdictional requirements and whether the resources available in the state's court system allowed the claim to be heard by a three-judge district court, but could not express opinions on any questions of law in the underlying case.

Stay of proceedings. A petition under both the mandatory and discretionary provisions of this bill would stay all proceedings in district court until the chief justice acted on the petition.

Special three-judge district court. If the chief justice granted either a discretionary or mandatory petition, the chief justice would appoint three judges to serve on the special three-judge district court. The court would consist of:

- the district judge in the original case;
- a district judge of another judicial district in a county other than where the original case was filed; and
- a justice of a court of appeals from an appeals district that did not cover the districts of the other two judges.

Judges or justices appointed to the court could only be elected to office

and could not be serving an appointed term.

The three-judge district court would conduct all hearings in the original district court and could use all its facilities and administrative support. Travel expenses and incidental costs of the judges and justices would be paid by the Office of Court Administration of the Texas Judicial System.

Consolidation of related actions. Under the bill, a three-judge district court would be required, on motion of any party, to consolidate any related case pending in any district court or other court in the state. A consolidated case would be transferred to the three-judge district court if the court found that transfer was necessary. The transfer could occur without consent of the parties to the related case.

Rules applicable to proceedings. The Supreme Court could adopt rules for the operation and procedures of a special three-judge district court. Otherwise, the Texas Rules of Civil Procedure and all other statutes and rules applicable to civil litigation in a district court would apply.

Actions by a judge or justice. The judges of a three-judge district court could unanimously decide to allow one judge or justice to independently conduct pretrial proceedings and enter interlocutory orders before trial. A judge or justice could not independently enter a temporary restraining order, temporary injunction, or any order that finally disposed a claim before the court. Any independent action by a judge or justice could be reviewed by the entire court at any time before final judgment.

Appeal. Under the bill, appeals from interlocutory orders or final judgments of special three-judge district courts would go to the Supreme Court. The Supreme Court could adopt rules for these appeals.

This 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, 2015.

SUPPORTERS CSHB 1091 would help ensure that voters across the state had a say in the

SAY: judges who heard major civil cases in which the state was a defendant. Major litigation about important state programs or state finances affects all Texans equally. However, under current law all of these cases are heard in a single district court, and only the residents of that county get to vote on the judges who decide these cases. Current law disenfranchises voters of the other 253 counties in this state, and this bill would ensure that those voters had a voice.

This bill is patterned after the three-judge federal courts that are currently used to decide redistricting cases on a federal level. Those courts have been able to deal with evidentiary rulings and jury cases without any problems. The special three-judge courts established by the bill would work similarly and would be more responsive to the people because state district court judges and appellate court justices are directly elected.

The criteria for discretionary proceedings would ensure that only major state cases were decided by a three-judge district court.

OPPONENTS
SAY: CSHB 1091 would give too much authority to the attorney general and would allow the attorney general to use a petition for a three-judge district court as a tactic to adversely impact opposing parties. Under the federal statute, district judges have ministerial duties to notify circuit courts when a redistricting case comes before them. Here, however, the attorney general would have broad authority to petition the chief justice.

There also would be no limit on when the attorney general could file the petition, so the attorney general could file a petition at any time during trial to stay the proceedings for no other reason than as a delaying tactic.

The proposed discretionary proceedings provision is too broad and could lead to use of three-judge district courts in any number of cases where the state was a defendant including tort claims, eminent domain cases, contract actions and administrative appeals of decisions by licensing agencies.

NOTES: According to the Legislative Budget Board's fiscal note, the bill would

cost \$59,000 in general revenue in fiscal 2016-17 due to judges' travel costs and incidental expenses.