

- SUBJECT:** Establishing the business court and Court of Business Appeals
- COMMITTEE:** Judiciary and Civil Jurisprudence — committee substitute recommended
- VOTE:** 5 ayes — Leach, Krause, Middleton, Schofield, Smith  
4 nays — Davis, Dutton, Julie Johnson, Moody
- WITNESSES:** For —David Harrell, F. John Podvin Jr., Michael Tankersley, and Evan Young, Texas Business Law Foundation; John Ale; Brent Benoit;  
(*Registered, but did not testify:* Jason Damen, Energy Transfer; Samantha Omey, ExxonMobil; Stephen Scurlock, Independent Bankers Association of Texas; Lee Parsley, Texans for Lawsuit Reform; Megan Herring, Texas Association of Business; Celeste Embrey, Texas Bankers Association; John Kuhl and Chuck Mains, Texas Business Law Foundation; Chris Noonan, Texas Chemical Council; George Christian, Texas Civil Justice League; John Fleming, Texas Mortgage Bankers Association; Thomas Phillips)  
  
Against — Dan Richards and Grace Weatherly, ABOTA; Ed Heimlich, Informed Citizens; Jim Perdue, Texas Trial Lawyers Association;  
(*Registered, but did not testify:* Ware Wendell, Texas Watch)
- BACKGROUND:** Some have called for the creation of a specialized court for cases involving complex questions of business law in order to foster a business-friendly climate in Texas and expedite the resolution of certain disputes.
- DIGEST:** CSHB 1875 would establish the business court and the Court of Business Appeals. The bill would specify the jurisdiction, composition, and powers and duties of the business court and Court of Business Appeals, among other provisions.
- Business court.** The business court would have civil jurisdiction concurrent with district courts in a derivative action on behalf of certain organizations and an action in which the amount in controversy exceeded \$10 million, excluding certain costs, that arose against, between, or among

organizations, governing authorities, governing persons, members, or owners, relating to a contract transaction for business, commercial, investment, agricultural, or similar purposes.

The business court would have statewide jurisdiction of such actions and all matters arising out of or related to an action and could grant any relief available in a district court.

The business court would not have jurisdiction of a civil action brought by or against a governmental entity, unless the entity invoked or consented to the jurisdiction. The business court would have to sever any claim in which a party sought recovery of monetary damages for personal injury or death under certain statutes unless all parties and a judge of the court agreed that a claim could proceed. If a claim was severed, the court would have discretion to stay or abate its own proceedings pending resolution of the severed claim.

*Composition.* The business court would be composed of seven judges with all powers, duties, immunities, and privileges of a district judge. The governor, with the advice and consent of the Senate, would have to appoint the judges to serve two-year terms, and a judge could be reappointed. The governor could not appoint more than three judges who resided in the same county or more than majority of judges associated with the same political party.

The governor would have to appoint judges to the business court as soon as practicable after the bill's effective date.

*Filing.* A cause of action filed in the business court would be assigned to the docket of a judge on a rotating basis. If the business court did not have subject matter jurisdiction of an action or part of an action filed in the court, the court would have to dismiss without prejudice to refile the whole or part of the action. Such a dismissed claim could be refiled in a court with jurisdiction by the party who originally filed the claim within 30 days of the dismissal.

*Removal and remand.* A party to an action filed in a district court or county court at law that was in the subject matter jurisdiction of the business court could remove the action to the business court by filing a notice of removal with each court. If the business court did not have jurisdiction of the action or part of the action, the court would have to remand the action or part of the action to the court from which the action was removed.

Removal of a case to the business court would not be subject to the statutes or rules governing the due order of pleading, waive a defect in venue, or constitute an appearance to determine personal jurisdiction.

The Supreme Court of Texas would have to promulgate rules of civil procedure providing for the timely and efficient removal and remand of cases to and from the business court.

*Transfer.* Any claim in which the business court did not have jurisdiction would have to be transferred to a district court in a county in which the claim could have been originally filed. If the claim could have been filed in more than one county, the party bringing the claim could elect the county to which the claim was transferred.

*Powers and duties.* The business court could issue any writ necessary for the enforcement of the court's jurisdiction, including a writ of injunction, writ of mandamus, writ of sequestration, writ of attachment, writ of garnishment, and writ of supersedeas. The court could answer a question regarding a matter in the court's jurisdiction that was certified to the business court by another court.

*Jury practice and procedure.* A party in an action pending in the business court would have the right to a trial by jury when constitutionally required. A jury trial would be held in a county in which venue would be found under the Civil Practices and Remedies Code. Subject to this location requirement, a jury trial in a case removed to the business court could be held in the county in which the action was originally filed. A jury trial in a case filed initially in the business court would be held in any

county in which it could have been filed, as chosen by the plaintiff.

The parties and judge of the business court could agree to hold the jury trial in any other county, but a party could not be required to agree to hold the jury trial in a different county. The drawing of jury panels, selection of jurors, and other jury-related practice and procedure in the business court would be the same as for the district court in the county in which the trial was held.

Practice, procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials, hearings, and other business in the business court would be governed by the laws and rules prescribed for district courts unless otherwise specified. The business court could adopt rules of practice, which would have to be approved by the Supreme Court of Texas.

*Miscellaneous provisions.* The bill contains various provisions relating to judge qualifications, court vacancies, judge salaries, visiting judges, judge removal, judge disqualification and recusal, a prohibition on the private practice of law, the location of the court, court personnel, court fees, and the court seal.

**Court of Business Appeals.** The Court of Business Appeals would have exclusive jurisdiction over an appeal from an order or judgment of the business court. An appeal from the business court would be available in the same manner as an appeal from a district court, and the procedure governing an appeal would be the same as that for a district court.

The governor, with the advice and consent of the Senate, would have to appoint seven justices to serve as the Court of Business Appeals and designate one of the seven appointed justices as the chief justice. A justice of the court would have to meet the qualifications of a judge of the business court and could be appointed to two or more consecutive terms. The term of a justice would be two years, and justices would have all powers, duties, immunities, and privileges as courts of appeals justices.

The governor would have to appoint judges to the Court of Business Appeals as soon as practicable after the bill's effective date.

The bill also contains various provisions relating to Court of Business Appeals vacancies, justice salaries, panels of justices, the location of the court, judgments, en banc review, court personnel, and the court seal.

**Constitutional challenges.** The bill would specify that the Supreme Court of Texas would have exclusive and original jurisdiction over a challenge to the constitutionality of the bill or any part of the bill and could issue injunctive or declaratory relief in connection with the challenge.

If the appointment of judges or justices to the business court or Court of Business Appeals was held unconstitutional by the Supreme Court, the courts would be staffed by sitting or retired judges or justices, as applicable, who were appointed by the Supreme Court.

The bill would take effect September 1, 2021, and would apply to civil actions commenced on or after January 1, 2022.

**NOTES:**

According to the Legislative Budget Board, the bill would have a negative impact of about \$12.4 million to general revenue related funds through fiscal 2022-23.