

SUBJECT: Eliminating courts of inquiry

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 13 ayes — Seidlits, S. Turner, Black, Bosse, Carter, Danburg, Hilbert, Hochberg, B. Hunter, D. Jones, McCall, Ramsay, Wolens

1 nay — Alvarado

1 absent — Craddick

WITNESSES: For — None

Against — None

On — David E. Bernsen, Texas Transportation Commission; Tom Krampitz, Texas District and County Attorneys Association

BACKGROUND: A court of inquiry, established by Chapter 52 of the Code of Criminal Procedure, is a fact-finding or investigative hearing that can be called by a judge upon information or facts indicating that a crime may have been committed. The judge may call witnesses and is not bound by the rules of evidence. If the judge determines that a crime has been committed, the judge may issue a complaint and an arrest warrant. A court of inquiry may function concurrently with a grand jury investigation.

Courts of Inquiry were originally instituted to perform the functions of a grand jury in areas where there were not enough qualified people to serve on a grand jury, In 1965, the Legislature removed the power to call courts of inquiry from justices of the peace. County court judges were similarly restricted from calling such courts by the Legislature in 1987. Currently, only district judges have the power to conduct courts of inquiry.

DIGEST: CSHB 2646 would repeal Chapter 52 of the Code of Criminal Procedure, which establishes the statutory authority for district judges to conduct courts of inquiry.

This bill would take effect September 1, 1995.

**SUPPORTERS
SAY:**

The power to call a court of inquiry has been a source of misuse, abuse and controversy for years. There is no need any for courts of inquiry today because every crime that can be prosecuted will be prosecuted by a district or county attorney or reviewed by a grand jury. CSHB 2626 would simply eliminate a procedure that has been recently used to gain political attention and harass government officials rather than for the intended purpose of investigating criminal activity.

Most recently courts of inquiry have been used by Dist. Judge Edward Marquez of El Paso, who has called three courts of inquiry to determine if state officials and employees have committed a crime by discriminating against the citizens of El Paso by funding state services at levels lower than in other areas of the state. To this end, Judge Marquez has investigated the Texas departments of Transportation, Human Services, Aging and Mental Health and Mental Retardation. Each of these agencies has been required to take employees and records to El Paso for examination at the expense of the taxpayers. The Department of Transportation has estimated that it has spent nearly \$100,000 just producing documents for this inquiry.

Additionally, Judge Marquez refused to allow the attorney general to represent these state departments, claiming that the attorney general is only allowed to represent the state in civil matters, not criminal ones. Therefore, these agencies have also had to hire attorneys to represent them. The courts of inquiry in El Paso have been stayed since June while the Court of Criminal Appeals has been reviewing arguments by the attorney general and attorneys for the state agencies concerning who should represent the state agencies and employees.

The Legislature should send a clear message that such tools for political attention that serve no other purpose should be discontinued. The Legislature should be held accountable for its actions, especially when there are allegations of discriminatory funding. However, the proper way to assert such claims are through the legislative process or through the civil justice system, not a criminal investigation. Additionally, when such a proceeding is brought directly by a judge, it tends to bypass the necessary balances of the legal system.

While having one judge in one district call such a court of inquiry is merely inconvenient and somewhat expensive, if every judge who felt that the state was not spending enough money on that judge's area decided to call such hearings, it could paralyze state government.

There is no reason why courts of inquiry should be allowed to be called. The original purpose for such courts, to be called when a grand jury cannot be formed, is no longer valid. If a local prosecutor refuses to prosecute a crime, usually when a judge or other prosecutor is charged with the crime, the attorney general may prosecute the case, so there is no need for a court of inquiry procedure in such circumstances.

**OPPONENTS
SAY:**

The court of inquiry is a part of the system of checks and balances between the different branches of government. It plays an important role in ensuring that judges can investigate corruption and crimes independently of prosecutors. The ability to call a court of inquiry should not be taken away from district court judges. In circumstances in which a local prosecutor or grand jury refuses to investigate criminal activity, district judges should retain the fallback authority to convene a court of inquiry.

The attention focused on the courts of inquiry called by Judge Marquez in El Paso highlights the effectiveness, not the problems, with courts of inquiry. Judge Marquez's inquiry has shown that the state spends less money on El Paso than it does in other similarly situated areas of the state. The most egregious example has been the Department of Transportation, which spends \$43 per capita for highways in El Paso compared to \$220 per capita in Austin, even though the two cities are of approximately the same size. Thanks to the efforts of the courts of inquiry called by Judge Marquez, the agencies that were investigated are studying readjusting their funding formulas to try to equalize funding to El Paso.

A few years ago, citizens of South Texas sued the state alleging discrimination in funding higher education. Though they lost the suit, the Legislature responded by increasing funding to area schools. Courts of inquiry are simply a different format for bringing to public attention matters of longstanding neglect.

This bill would not halt the ongoing courts of inquiry in El Paso as they were started before this law would become effective. The only thing it would serve to do is stop any future courts from forming., There is nothing to suggest that, even though some might not agree with the purposes of the El Paso court of inquiry, the next court of inquiry might serve a beneficial purpose.

NOTES: The committee substitute to HB 2646 narrowed the caption; the original version referred broadly to the Code of Criminal Procedure.

HB 2646 was considered on the Major State Calendar on Tuesday and was recommitted to committee on a point of order. The State Affairs Committee adopted the committee substitute.