

SUBJECT: Creating new district court for Polk, San Jacinto and Trinity counties

COMMITTEE: Judicial Affairs — favorable, with amendment

VOTE: 6 ayes — Thompson, Hartnett, Alonzo, Solis, Willis, Zbranek

0 nays

3 absent — Duncan, Goodman, Nixon

WITNESSES: None

BACKGROUND: The 386 district courts are the state's primary trial courts. They exercise original jurisdiction over felony criminal prosecutions, suits for divorce, suits over title to land, election contests, defamation suits, and civil suits with an amount in controversy of at least \$200. The district courts hear contested matters involved in probate cases and have general supervisory control over commissioners courts. In addition, district courts have general original jurisdiction over all causes of action for which a remedy or jurisdiction is not provided by law or by the Constitution, and have the power to issue all writs necessary to enforce their jurisdiction.

A single county may be served by one or more district courts, whose judges are elected countywide; in multi-county districts, judges are elected at-large. One judge serves each court, although the state Constitution allows the Legislature to establish multi-judge courts. District court judges are elected in partisan elections in even-numbered years to four-year terms.

Only one new district court was created by the 73rd Legislature. HB 171 by Craddick creating a fourth district court in Midland County, the 385th district court, became effective on January 1, 1995.

All election changes, including the creation of new courts, must be reviewed and precleared by the U.S. Department of Justice under sec. 5 of the federal Voting Right Act.

Polk and San Jacinto counties are now served by the 9th Judicial district court, which also includes Montgomery and Waller counties. Polk, San

Jacinto, and Trinity counties are served by the Second 9th Judicial district court, which also includes Montgomery County. Montgomery County is served by the 221st, 284th, and 359th judicial district courts. Waller County is also served by the 155th judicial district court, which also includes Austin and Fayette counties.

DIGEST: HB 3235 would create a new state district court, the 408th Judicial District, composed of Polk, San Jacinto and Trinity counties. HB 3235 would remove these counties from the jurisdiction of the 9th and Second 9th judicial district courts. The changes would become effective September 1, 1995

SUPPORTERS SAY: HB 3235 would relieve docket overcrowding in Polk, San Jacinto, Trinity and Montgomery County district courts. Rapid population growth and rising crime rates have resulted in ever-increasing civil and criminal caseloads. The state average population per district court judge is 44,007 people for each judge. The total population for Polk, San Jacinto and Trinity counties is 58,505, but the judges for these counties must divide their time between these counties and Montgomery County (pop. 182,201) and Waller County (pop. 23,390). Creating a new separate district for Polk, San Jacinto, and Trinity counties would alleviate docket overcrowding in these counties as well as Montgomery and Waller.

The committee amendment to HB 3235 would ensure that a judge elected to serve in this newly created district court could not serve as a visiting judge in one of the counties in which the judicial election process is currently under scrutiny by the U.S. Department of Justice. Those counties include Bexar, Dallas, Ector, Fort Bend, Harris, Jefferson, Lubbock, Midland, Tarrant and Travis.

Because of this restriction and because of the racial minority makeup of Polk, San Jacinto Trinity counties, the state should be able to demonstrate to the Justice Department that the voting rights of minority members of the district will not be diluted nor will retrogression of minority voting power occur by creating this new district court.

OPPONENTS SAY: Until Texas reforms its system of electing judges, no new district courts should be created. A new district court costs the state over \$100,000 per

year to operate. The election procedures for judges in urban counties are currently under challenge. The state should not spend the money to create new courts until it solves the current crisis in judicial selection. While the new court created by this legislation for Polk, San Jacinto and Trinity counties might be precleared by the Justice Department, all counties are part of this state and judicial reform is a statewide issue. It would be patently unfair to continue to create new courts in some counties and ignore the problem in the urban counties.

The history of racial discrimination and minority vote dilution in Texas has made this state subject to section 5 of the federal Voting Rights Act. Section 5 requires Texas to preclear any changes in its elections system with the U.S. Justice Department to ensure that the ability of minority voters to elect candidates of their choice is not made worse. The U.S. Justice Department has refused to preclear any new district or county courts in urban counties in Texas since 1989 because it contends the countywide at-large election system discriminates against minority voters. The most recent court created by the 73rd Legislature, the 385th court in Midland County, has not been precleared.

One of the standards for preclearance by the Justice Department is that within the area there must not be a dilution of the minority voting strength caused by the change proposed. If the Justice Department reviews the impact of creation of new courts on a statewide basis, there is no guarantee that the department will preclear this new court.

NOTES:

There are 18 other bills currently in the House Judicial Affairs and Senate Jurisprudence Committees calling for the creation of 34 new district courts in 17 counties.

SJR 26 by Ellis and its enabling legislation, SB 313 by Ellis, would alter the way that district court judges are elected. These two measures passed the Senate on April 24 and have been favorably reported, as substituted, by the House Judicial Affairs Committee.