

SUBJECT: Oversight of and public access to Texas' highest courts

COMMITTEE: Judicial Affairs — favorable, without amendment

VOTE: 7 ayes — Thompson, Capelo, Deshotel, Garcia, Hinojosa, Solis, Uresti
0 nays
1 present, not voting — Hartnett
1 absent — Talton

WITNESSES: For — *Registered but did not testify:* Dennis Baggett, Texas Daily Newspaper Association and Texas Press Association; Michael Schneider, Texas Association of Broadcasters; Suzanne Woodford, Common Cause of Texas
Against — None
On — Justice Nathan Hecht, Supreme Court of Texas; *Registered but did not testify:* Chris Griesel, Texas Supreme Court

BACKGROUND: Under current law, the Texas Supreme Court and the Court of Criminal Appeals have full authority to promulgate at any time suitable rules, forms, and regulations for court administration and necessary rules of procedure and evidence.

DIGEST: HB 1451 would amend rulemaking procedures for the Texas Supreme Court and the Court of Criminal Appeals by requiring that rule changes be reported to the Legislature, that they be accompanied by a fiscal note, that meetings of any group named by the courts to consider changes in rules be subject to open meetings and public information laws, and that input on rule revisions be sought from lower courts.

The two courts would have to submit to the Legislature a copy of a proposed rule or amendment to an existing rule within 30 days of the opening of a legislative session. A rule could not take effect earlier than 90 days after the

legislative session ended. The courts could adopt interim rules when the Legislature was not in session if needed for the proper administration of justice, as long as the courts published opinions stating the specific reasons why they could not comply with HB 1451.

A court would have to prepare a fiscal note for a proposed rule or amendment to an existing rule, outlining potential costs and containing a detailed report on the potential five-year economic impact on people who used the civil and criminal justice system. The comptroller could assist in the preparation of this note on request.

The Office of Court Administration (OCA) would have to prepare an opinion poll on the rule to be sent to appeals court judges, district judges, county judges, statutory county court judges, and statutory probate court judges within 15 days after the proposed rule was sent to the Legislature. The OCA would have to report the results of the poll within 75 days after the legislative session began.

The bill would take effect September 1, 2001.

**SUPPORTERS
SAY:**

HB 1451 would improve cooperation between the judiciary and the Legislature in drafting procedural rules. In the past, the Texas Supreme Court has adopted several rules that should have been considered in cooperation with the Legislature. This bill would ensure that the Legislature is notified of potential rule changes in a timely way.

The legislative reporting requirements would not inconvenience the courts, since most rules drafted by the courts are the product of years of deliberation. For the few rules prompted by circumstances that require faster action, the bill would provide interim rulemaking powers to both courts.

The bill would not make substantive change to the current system. The courts would retain the authority to draft rules of procedure and evidence, subject only to legislative notification. The procedures outlined in HB 1451 merely would codify the importance of keeping the Legislature “in the loop.”

Many feel that the courts have overstepped their rulemaking authority in several areas. For example, the Texas Supreme Court has promulgated rules on campaign finance reform for judicial elections that clearly are outside the generally accepted parameters for court-established rules of procedure and evidence. Such issues involving the election system are best left to the Legislature. The Supreme Court waited to announce its campaign finance rules until after the deadline for bills to be filed, which suggests that the court may not be fully cooperating with the legislative branch or following the Texas Constitution's separation of powers.

The court's own adoption of certain tort reform rules in 1997, when it became apparent that the legislation implementing these tort reform rules would be stalled indefinitely, underscores the need for clearer guidelines like those proposed in HB 1451.

The public should be allowed access to any meetings held by court committees or groups. The decisions made in these meetings can affect the lives of the public, so the public should be allowed to offer input. When the judiciary forms committees, it is acting in a quasi-legislative way. The public should be allowed to observe these meetings in much the same way as the public can observe the Legislature.

OPPONENTS
SAY:

HB 1451 is not necessary. The Texas Supreme Court and the Court of Criminal Appeals already observe the open records requirement under the Rules of Judicial Administration, rule 12. The Legislature has the power to change any rules it does not agree with. Requiring the Legislature to approve every proposed rule would add more issues to a legislative session, using up valuable time in which more important legislation could be considered.

The courts could adopt rules only every two years when the Legislature meets. Most rules that the courts adopt are local rules. Under Rule 3a of the Rules of Civil Procedure, courts can make and amend local rules governing practice before their courts. Requiring the Legislature's approval of local rules and requiring opinion polls of proposed rules, local and statewide, would cause unnecessary delay.

HB 1451 would allow interim rulemaking power for rules the court finds are necessary for the proper administration of justice. The effect of this

provision is not clear. The court always adopts rules for the proper administration of justice. It is not clear whether the provision would allow interim rulemaking power only in case of emergency.

The bill could present a separation-of-powers issue. The Legislature should not have the power of review or oversight of the judiciary. All states give the courts the power to write their own rules on procedure and evidence. This bill would undercut the court's current authority and intrude on its role.

Requiring the courts to develop and compile an opinion poll for each proposed rule or amendment would incur an unnecessary cost, estimated at about \$55,500 per biennium. This estimate assumes that the courts and the OCA have the staff necessary to implement the bill's provisions. Otherwise, more costs would be incurred if additional staff had to be hired. Also, it is not clear how the court would prepare a fiscal note for a rule or amendment or would measure the economic impact of a rule or amendment, such as one affecting summary judgement.

NOTES:

HJR 60 by Dunnam, which would propose a constitutional amendment relating to the rulemaking power of the Texas Supreme Court, was reported favorably, without amendments. by the House Judicial Affairs Committee on April 2 and sent to the House Calendars Committee.

A similar bill in the 76th Legislature, HB 1461 by Dunnam, passed the House but died in the Senate Jurisprudence Committee.