

SUBJECT: Limiting the Supreme Court’s constitutional rulemaking authority.

COMMITTEE: Judicial Affairs — favorable, without amendment

VOTE: 7 ayes — Thompson, Capelo, Deshotel, Garcia, Hinojosa, Solis, Uresti
1 nay — Hartnett
1 absent — Talton

WITNESSES: For — None
Against — None
On — Justice Nathan Hecht, Supreme Court of Texas

BACKGROUND: Art. 5, sec. 31(b) of the Texas Constitution authorizes the Supreme Court to make rules necessary for the efficient and uniform administration of the judiciary, including rules of civil procedure for all courts. Art. 5, sec. 31(c) permits the Legislature to delegate the authority to make other rules required either by law or the Constitution to the Texas Supreme Court or the Court of Criminal Appeals.

DIGEST: HJR 60 would repeal Art. 5, sec. 31(c) authorizing the Texas Supreme Court to make rules of civil procedure for all courts. The Legislature could delegate rulemaking power to the Supreme Court and Court of Criminal Appeals.

The proposal would be presented to the voters at an election on November 6, 2001. The ballot proposal would read: “The constitutional amendment authorizing the legislative branch to exercise more direct supervision of the rulemaking power of the Supreme Court of Texas.”

SUPPORTERS SAY: HJR 60 would introduce needed limits on the Supreme Court’s authority to make rules of civil procedure by requiring that the Legislature specifically to authorize the court to make those rules.

In the past, the court has adopted rules without the input and cooperation of the Legislature when such consultation would have been useful, as well as appreciated. The court also has overstepped its rulemaking authority in certain areas such as judicial campaign finance reform. It is questionable whether such rules really can be categorized as either necessary for the “efficient and uniform administration of justice” in the courts or as rules of procedure for the courts. Moreover, in promulgating those campaign finance rules, the Supreme Court appeared to be trying to side-step legislative input by announcing their rule after the deadline for filing bills.

The proposed constitutional change would help ensure that the court acts only within its specifically delegated authority and that the Legislature is consulted appropriately and apprised of the court’s rulemaking plans.

OPPONENTS
SAY:

HJR 60 would not respect the proper separation of powers between the Legislature and the judiciary. All states and the federal government give their high courts the power to make rules governing court’s procedures and administration. By taking this constitutional authority away and making it dependent on a legislative delegation, the resolution would have a negative impact on the independence of the judiciary.

Further, the constitutional change is unnecessary. The Supreme Court’s rulemaking authority historically has been exercised in a very deliberative, open process that allows for input from judges, attorneys, legal scholars, and the Legislature. In fact, members of the Legislature serve on the court’s Rules Advisory Committee, which drafts the rules for the court. The result of this process has been rules that have broad support from the bench, bar, and public, and have been quite stable. Thus, HJR 60 would interfere with a process that has worked well in the past and could result in a hodgepodge of (possibly conflicting) judicial and legislatively created rules.

NOTES:

A related bill, HB 1451 by Dunnam, which would, among other things, give the Legislature the opportunity to amend proposed rule changes by the Texas and the Court of Criminal Appeals, passed the House on May 8.