SUBJECT: Revising jurisdiction of the Texas Supreme Court

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 9 ayes — Smithee, Farrar, Gutierrez, Hernandez, Laubenberg, Murr, Neave, Rinaldi, Schofield

0 nays

WITNESSES: For — Lisa Hobbs, Texans for Lawsuit Reform; Nelson Roach, TTLA; Lee Parsley; (*Registered, but did not testify*: George Christian, Texas Civil Justice League)

Against — Bobie Townsend, San Jacinto Constitutional Study Group

On — Matthew Kita

BACKGROUND: Government Code, ch. 22 establishes the statutory jurisdiction of the Texas Supreme Court, giving it appellate jurisdiction, except in matters of criminal law. Sec. 22.001(a) gives the Supreme Court jurisdiction over the following types of cases when they have been brought to a court of appeal from an appealable judgment of a trial court:

- when justices of a court of appeals disagree on a question of law material to the decision;
- when one of the courts of appeals holds differently from a prior decision of another court of appeals or the Supreme Court on a question of law material to a decision of the case;
- those involving the construction or validity of a statute necessary to a determination of the case;
- those involving state revenue;
- when the Railroad Commission of Texas is a party; and
- others in which it appears that an error of law has been committed by the court of appeals, and that error is of such importance to the jurisprudence of the state that, in the opinion of the Supreme Court,

it requires correction, but excluding those cases in which the jurisdiction of the court of appeals is made final by statute.

Civil Practice and Remedies Code, sec. 51.014 establishes when individuals may appeal interlocutory orders from certain courts. These are orders that decide an intermediate question in a case and are not the final decision concerning a case itself. An example is a court's decision to refuse or grant a temporary injunction.

Government Code, sec. 22.225(d) lists four circumstances when petitions for reviews may be made to the Texas Supreme Court for appeals of interlocutory orders. The appeals may be made when an interlocutory order:

- certifies or refuses to certify a class in a class action suit;
- denies a motion for a summary judgment in certain cases involving the media and free speech or free press claims; or
- denies a motion to dismiss an asbestos-related or silica-related case.

Appeals also may be made when an interlocutory order that is not otherwise appealable is allowed to be appealed by trial courts if the order involves a controlling question of law with substantial ground for differences of opinion and an immediate appeal may materially advance the ultimate end of the litigation.

The Supreme Court also considers appeals of interlocutory orders based on dissent and conflict, described in Government Code, sec. 22.225(c) as when the justices in a court of appeals disagree on a question of law material to a decision or when one court of appeals holds differently from a prior decision of another court of appeals or the Supreme Court on a question of law material to the case's decision. Sec. 22.225(b) lists five types of cases in which petitions for review are not allowed to the Texas Supreme Court.

DIGEST:

HB 1761 would revise the appellate jurisdiction of the Texas Supreme

Court listed in Government Code, sec. 22.001(a). The court's statutory jurisdiction over appealable judgments of trial courts in six specific types of cases would be removed and replaced with jurisdiction over appealable *orders or judgments* of trial courts if the Supreme Court determined that an appeal presented a question that was important to the jurisprudence of the state. The Supreme Court's jurisdiction would not include cases in which the statutes made the jurisdiction of the court of appeals final.

HB 1761 would eliminate the current statutory list of four types of cases for which the Supreme Court has jurisdiction over interlocutory orders. It also would repeal the description of how to determine when one court disagrees or holds differently from another, which establishes a conflict, and the list of types of cases for which petitions for review to the Supreme Court are not allowed.

The bill would revise language describing how cases may get to the Supreme Court by eliminating references to writs of error and certification by courts of appeals and replacing them with references to petitions for review. HB 1761 also would eliminate several sections of the Government Code that describe how the Supreme Court may designate and use justices of the courts of appeals to act on applications for writs of error and detail that process. It also would repeal a provision stating that the Supreme Court shall pass on an application for writ of error in a case in which the justices of the courts of appeals have disagreed or have declared void a state statute.

The bill would take effect September 1, 2017, and would apply only to interlocutory orders rendered on or after that date.

SUPPORTERS SAY:

HB 1761 would simplify the statutory jurisdiction given to the Texas Supreme Court by authorizing court jurisdiction over both appealable orders, such as interlocutory orders, and judgments based on the same standard — whether the court determined something presented a question of sufficient importance to the state.

State law, coupled with practices and rules, has resulted in the Supreme

Court considering a broad range of appealable judgments, and HB 1761 would revise the statute to reflect this. It would place clear language in the statute, allowing the court to take up any case in which an appeals court presented a question important to the state. This would be similar to a court rule that lists among the factors that the Supreme Court considers when granting review whether the court of appeals has decided an important question of state law that the Supreme Court should resolve. The bill would make no change to current law that makes courts of appeals judgments on facts in cases final.

HB 1761 also would address confusion and other issues relating to the Supreme Court's ability to hear appeals of interlocutory orders. The statute establishes the court's jurisdiction over appealable orders by listing four specific types of cases and by referring to conflicts and dissents. These references, along with case law, have resulted in a broad interpretation of the ability of the court to consider orders based on conflicts. The court's decision on whether to take up an appeal is based on language allowing consideration if one court holds differently from another when there is inconsistency in their decisions that should be clarified to remove uncertainty in the law and unfairness to the parties. This been interpreted loosely, and has resulted in a low threshold for establishing a conflict and bringing an appealable order to the Supreme Court.

Although the conflict requirement has been interpreted loosely, when an appeal of an interlocutory order is presented to the Supreme Court based on a conflict, the issue must be researched and presented to the court. This is time consuming and costly for what ultimately is a low bar to overcome. HB 1761 would address this issue by eliminating statutory references to types of cases for which the Supreme Court has jurisdiction over interlocutory orders and eliminating references to conflict jurisdiction. The bill instead would give the Supreme Court discretion to take up any order that presented an issue important to the jurisprudence of the state. The result would be that parties requesting the court to consider orders based on conflicts no longer would have to spend resources to submit detailed briefs proving the conflict. With this change, orders still would have to meet the standard in law as being an important issue to the

state's jurisprudence, but parties and the court could focus on the merits of the appeal. While HB 1761 would make the process of asking for review of orders more efficient, it would not result in a significant departure from standards used now to decide these questions and would not disadvantage anyone before the court.

HB 1761 would not place a burden on the court's resources or significantly increase its workload. The bill's fiscal note estimates no significant cost to the state and reports that implementing the bill could be done with current resources. The Supreme Court operates efficiently and currently is disposing of cases within the same fiscal year that they are argued and could handle any additional work that resulted from the bill. The court has an established procedure and a staff person dedicated to handling emergency orders, so the court could absorb any increase in these.

The bill also would remove obsolete references to a "writ of error" as a way to bring requests before the court and would replace these references with "petition for review," which is the commonly used language now. The bill also would repeal other outdated language, including provisions describing an unused procedure for establishing panels of courts of appeals justices to consider writs of error.

OPPONENTS SAY:

The current statutory jurisdiction of the Supreme Court and the current process of identifying conflicts when asking for review of an order works well to balance the process for both sides in legal disputes. Expanding the Supreme Court's jurisdiction could work to the disadvantage of some parties by resulting in some cases being taken on appeal that currently would not be or in cases being taken up more quickly than they might be under current law.

Expanding the Supreme Court's jurisdiction could result in additional cases coming before the court, especially certain types of hotly contested business disputes and family matters, that demand quick decisions. With increased demand on the resources of the Supreme Court, and absent additional resources, litigants could wait longer for responses.