

BUSINESS COURTS AND COURT REORGANIZATION IN TEXAS

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¹ The views and comments made in this paper are strictly those of the author. The comments in this paper are not a representation of the views or opinions of the Office of Court Administration, any other CoA justice, Texas Supreme Court justice, Court of Criminal Appeals justice, or any other judge.

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BUSINESS COURTS AND COURT REORGANIZATION IN TEXAS

A. HISTORY OF COURT STRUCTURE

The current structure of the court system in Texas has been in place since 1891. The Texas Constitution of 1876 was amended to establish the Texas Supreme Court as the highest court in the state for civil matters, the Texas Court of Criminal Appeals to handle criminal matters and required the Texas Legislature to establish intermediate courts of appeals (CoA or CoAs). Tex. Const. art. V, § 6. This amendment allowed for the establishment of at least two but no more than three CoAs and allowed for the expansion of the number of CoAs depending on population growth and business needs for growth. The first CoAs could only have three justices and only had civil jurisdiction until 1981, when they also received criminal jurisdiction. The three-judge limit was not modified until 1978. Texas Legislative Council, *Amendments to the Texas Constitution since 1876*, July 2022, <https://tlc.texas.gov/docs/amendments/constamend1876.pdf>. As a result of the 87 year three-judge limit to the CoA, to grow capacity to handle the legal business of the state, the legislature had to add new CoAs instead of just adding more justices to existing CoAs.

Therefore in 1882 there were only three CoAs established by the legislature, with Travis County being in the 3rd CoA. Over the next 75 years, the legislature added three-judge CoAs eight more times across Texas to increase the number to 14 CoAs, which 14 we still have today. The last addition occurred in 1967. During those eight modifications to the CoA districts, Travis County always remained in the 3rd CoA. Had SB 11 passed Austin would have moved for the first time in its existence to a mega-district anchored by Dallas which would be the new 5th CoA district with 18 justices.

After the 1978 constitutional amendment that allowed the legislature to add more justices to an existing court, the number of justices in the 14 CoAs, rose to 80 justices by 1984. Since that time, there have only been 80 justices in the 14 CoAs although the Texas population has grown from approximately 16,000,000 to 29,500,000 people.

Because of the method of growth of the CoAs, there are certain counties and district courts that are in more than one CoA district. There are 10 counties that report both to the First CoA and the Fourteenth CoA in the Houston area. Hunt County is in the 5th CoA (Dallas) and the 6th CoA (Texarkana). Gregg, Rusk, Upshur, and Wood Counties are in the 6th CoA (Texarkana) and the 12th CoA (Tyler). To complicate matters further out of the 484 district courts in Texas, there are 29 of those district courts that are in more than one CoA district.

B. PRESENT COURT STRUCTURE

In our system today, there are one Texas Supreme Court to handle civil matters with nine justices, one Texas Court of Criminal Appeals to handle criminal matters with nine justices, 14 CoAs with 80 justices, 484 District Courts, 254 Constitutional County Courts, 256 Statutory County Courts, 18 Statutory Probate Courts, 800 Justice Courts, and 950 Municipal Courts. (See Attachment A) Although this sounds like a lot of courts in the state, of the state's 125-billion-dollar budget the judiciary accounts for only .42% of the state's appropriations. Office of Court Administration, *Annual Statistical Report for the Texas Judiciary*, FY 2021, www.txcourts.gov/media/1454127/fy-21-annual-statistical-report-final.pdf For the most part, this paper will focus on issues related to the 14 CoAs.

The core function of Texas CoAs is to process, review, and decide by written opinion appeals from trial courts in civil and criminal cases and to do so in a fair, just, and efficient manner. Unlike the Texas Supreme Court and the Texas Court of Criminal Appeals, the Texas CoAs are not courts that have discretion to only take certain cases. The CoAs must dispose of each case that is filed in it.

Population growth across the State and the magnitude of annual case filings, in concert with an ever-increasing number of case types requiring expedited review, make clear that the courts of appeals need sufficient resources to manage their busy dockets and provide the high quality of justice to which the citizens of Texas are entitled. Although case filings decreased in 2020 and 2021 due to the pandemic, filings have returned to pre-pandemic levels as of June 2022 and are expected to continue to increase as trial courts resume full operations.

Since 1984, the work of the CoAs has been accomplished by 80 justices statewide. In that time, the population of Texas has nearly doubled. A key component to handling the ever-increasing workload without additional justices has been the employment of a highly skilled and trained professional workforce, including appellate lawyers and clerical staff, who assist the justices in processing complex cases, researching and drafting orders and opinions, disposing of voluminous motions, and managing accelerated and emergency matters while at the same time being required to be technologically savvy using numerous different computer systems and programs which often do not communicate with each other. Of the small budget set aside by the state for the CoAs, almost 98% of the funds the state provides the CoAs is used to pay the skilled staff of the courts.

With the population growth comes more work for the CoAs however that work has been impacted by the pandemic because many cases in the trial courts across the state could not move forward safely. Regardless of the impact of the pandemic and a ransomware attack on the CoAs case management system in the early months of the pandemic, the CoAs have been hard at work disposing of the state's legal business. In the 14 CoAs, the case filings in the last six years have ranged from 10,443 in 2017 to 8,171 through July 2022. Through case transfer orders of the Texas Supreme Court, the case filings are equalized among the 14 CoAs so that each justice has approximately the same workload. Therefore, the annual caseload of an individual justice has ranged roughly from 130 cases per justice in 2017 to 102 cases per justice as of July of this year. Even with this volume of work, the courts' clearance rate has ranged from 99% in 2017 to 114% in 2021. The clearance rate means that as cases come into the courts, the same number or more cases are being disposed of by the courts. (See Attachment B)

C. 2021 PROPOSED LEGISLATION

In 2021 the Texas Legislature considered three significant pieces of proposed legislation that would have completely redistricted the 14 CoAs, required the construction/location of two new courthouses for the redistricted CoAs, and created two new appellate courts, one for large business disputes and one to handle government issues and disputes. The bills were Senate Bill 11 (SB 11 – the CoA redistricting bill), Senate Bill 1529 (SB 1529 – the statewide government issues court bill), and House Bill 1875 (HB 1875 – the statewide business court bill).

a. SB11 – CoA redistricting bill

SB 11 was authored by Senator Joan Huffman and supported by Texans for Lawsuit Reform (TLR). The TLR report supporting SB 11 can be found at https://tlrfoundation.com/foundation_papers/intermediate-appellate-courts-in-texas-a-system-needing-structural-repair/

During the Senate Jurisprudence Committee hearing on SB11, which hearing was held on April Fool's Day, 2021, only two witnesses supported the bill, TLR and one individual, while all others testified either opposing the bill or "on" the bill pointing out the lack of necessity for such a drastic court restructure of the 14 CoAs, the high cost of the proposed restructure, the lack of data to support the restructure and the poor timing of such a change in the CoAs structure while at the same time dealing with the pandemic's impact on the CoAs, court filings and data adjustments resulting from the pandemic's impact on the courts.

SB 11 was first filed on January 12, 2021 of the 87th legislative session. The low bill number indicated the Senate's high priority for this bill. The bill was first written as a shell bill to primarily address the issues related to counties impacted by overlapping CoA jurisdiction, referenced further above. The bill was referred to the Senate Jurisprudence Committee chaired by Sen. Huffman on March 3, 2021. A public hearing was scheduled for April 1, 2021 at 9:00 a.m. which hearing can be viewed online here.

https://tlcsenate.granicus.com/MediaPlayer.php?view_id=49&clip_id=15611

Other than the shell bill referenced above, no written information about the bill was provided to the CoAs about the true redistricting plan until March 29, 2021 at 9:00 p.m. – two days prior to the hearing. (See Attachment C) The actual text of the bill was not provided to the 14 CoAs until 9:00 p.m. the night before the hearing. Interestingly, even today on the legislative website, the shell bill, not the true bill that was discussed and voted on at the hearing, remains on the legislature's website related to SB 11.

<https://capitol.texas.gov/BillLookup/Text.aspx?LegSess=87R&Bill=SB11>

The proposed bill reduced the 14 CoAs to seven CoAs. SB 11 combined San Antonio, Corpus Christie, and Edinburg into one super CoA involving communities in Texas that are 220 miles apart. It combined Austin with Dallas, also more than 200 miles apart. It combined Fort Worth, Eastland, Waco and Texarkana, communities over 300 miles apart. Kerrville had the largest travel distance to its proposed new court in El Paso, almost 500 miles apart.

The bill provided for the addition of two new courthouse locations, one is Lake Jackson which is in Sen. Huffman's district, and one in Midland. Certain of the 80 justices on the 14 CoAs could be transferred to these new courthouses and some justices would be moved to entirely new districts. Presently, Dallas is the largest CoA with 13 justices. SB 11 proposed to create super CoAs of even more justices, the new 5th CoA (Dallas/Austin) would have 18 justices and at first would have two chief justices, the new 6th CoA (Houston/Lake Jackson) would have the largest bench with 21 justices and at first would have two chief justices, and then the new 4th CoA (Fort Worth/Eastland/Texarkana/Waco) would have 15 justices with multiple chief justices at the beginning. The multiple chief justice issue would be left to the next elections to be sorted out. The estimated cost of this plan to the taxpayers was approximately \$40 million in the first biennium.

At the April 1, 2021 hearing, although the 80 CoA justices only received 48 hours' notice of the issues to be discussed at the hearing, 25 justices stopped their work on the bench and travelled to Austin to participate in the hearing with over one half of the chief justices of the 14 CoAs also participating. The justices that attended were from both political parties. Only two witnesses testified in favor of SB 11, TLR and one individual, 15 testified against and 19

testified “on” the bill. Many of those that testified “on” the legislation were justices that primarily focused on the lack of need for SB 11, the lack of transparency, lack of data and lack of study done to support such a judicial overhaul. While not testifying technically against the legislation, the justices did not testify for the legislation either. Many of the testifying justices felt hampered, in part, by the perceived impact of the Code of Judicial Conduct which was thought to possibly limit their ability to testify for or against any legislation. *Tex. Code of Judicial Conduct*, Canon 4 B (2022). Seventeen justices testified live and none of the testifying justices testified for the legislation and only one justice who registered but did not testify registered in favor of the legislation.

Immediately after the testimony concluded, a committee vote was taken and passed three votes to two, down party lines. Although the bill passed the committee on April 1, 2021, it was eventually pulled down and did not go any further than the committee.

Prior to the hearing, Sen. Huffman sent the following stated reasons for the proposed court overhaul:

“CSSB 11 increases efficiency and fairness in Texas’s intermediate courts of appeal (COAs) by restructuring those courts from 14 into 7 districts. The bill also addresses the following issues:

- o Workload is highly unbalanced across Texas COAs resulting in excessive docket-equalization case transfers which are costly and inconvenient for litigants, courts, and counsel.
- o Because Texas has COAs of overlapping jurisdiction, some district courts answer to more than one COA. Additionally, many district courts are split between multiple COAs. This can cause confusion about what appellate court will preside on appeal, and what precedent applies in district court.
- o Texas has 14 COAs—more than any other system in the United States. The federal system has 13 and more-populous California has 5. This invites conflicts of authority and inconsistency in state case law.” (See Attachment D)

In response to some of these alleged reasons for such a change, those who testified pointed out:

As for efficiency, the 14 CoAs are efficient. (See Attachment B) The 14 CoAs had a clearance rate of 144% in 2021.

As for the complaint regarding transfer of cases between the 14 CoAs, more than 100 years ago, the legislature authorized the Supreme Court to transfer cases between the courts of appeals to equalize the dockets of the courts.² Since that time, cases have been transferred among some of the courts of appeals every year. More recently, equalization has been accomplished using a very effective formula developed by the supreme court and the Office of Court Administration. As such, since that time and as needed the Texas Supreme Court issues transfer orders to balance the dockets. For example, sometime the CoAs in Houston are *transfer out* courts and sometimes they are *transfer in* courts. As population and litigation ebbs and flows in the state, this system allows for each CoA to handle a similar caseload. In the last 10 years, out of all the cases filed in the state only 4 to 6 percent of the cases in the state are transferred and the court to which the case is transferred must use the legal precedent of the sending court. Further, the justices in the receiving court do not typically make the litigants and counsels travel to them for oral argument if oral argument is allowed. The justices typically travel to the sending court to hear the case or hold the matter via Zoom.

As for overlapping jurisdictions, as stated above, out of the 484 district courts in Texas only 29 (around 5 percent) respond to more than one CoA. Also, out of 254 counties in Texas only 15 counties (only 5 percent) are in overlapping CoA districts. Therefore, such a drastic change in the entire CoA system for these alleged reasons and at the high cost seems to be an unbalanced approach to systemic improvement impacting such a small percentage of cases and jurisdictions.

Finally, the witnesses pointed out that there is already a statewide court system that exists to handle conflicts in the precedence of the 14 CoAs and that would be the Texas Supreme Court and the Court of Criminal Appeals. *Tex. Gov’t Code* §§ 22.001(a), (b); *Tex. R. App. P.* 56.1(a).

b. HB 1875 (Statewide Business Courts)

Since the 2015 legislative session there have been efforts by TLR and others to establish special trial and appellate business courts/chancery courts. HB 1875 was a similar effort. <https://capitol.texas.gov/Search/DocViewer.aspx?ID=87RHB018752B&QueryText=%221875%22&DocType=B>

The original authors and amendment author in the 87th Legislative session were Reps. Brooks Landgraf, Jeff Leach, Greg Bonnen, Reggie Smith, and Mayes Middleton .

² Act of Apr. 19, 1895, 24th Leg., R.S. ch. 53 §1, 1895 Tex. Gen. Laws 79 now codified in Texas Government Code 73.001.

HB 1875 would not only establish a statewide appellate court to handle “business disputes” but would also establish statewide trial courts to handle such disputes.

The disputes that would be handled by each of these proposed courts would be derivative action disputes and contract disputes over \$10 million dollars. The bill would not allow jurisdiction over government issues disputes except by consent of the parties and the judge. Certain legal claims would have to be severed into a separate lawsuit, such as personal injury claims that are also a part of the larger dispute, unless all parties agree, and the judge agrees that certain legal claims can remain with the court. The bill requires certain specific qualifications for the judges that will sit on both the special trial and appellate courts. The judges and justices would be appointed by the governor in consultation with the senate. The trial courts would have seven appointed judges (one judge to each court) and the appellate court would have seven appointed justices who sit in a 3-justice panel. The terms of the judges/justices would be two years but could be recurring terms. The bill did provide a right to trial by jury which is different than the Delaware Chancery courts. Travis County would be the seat for the clerk of the trial and appellate courts, but the judges/justices would sit in convenient “locations” around the state to hear the cases. (See Attachment G)

There were numerous entities that opposed the legislation, including the State Bar Litigation Section and TexAbota, the Texas Association of Defense Counsel and the Texas Trial Lawyers Association. (See Attachments E and F) The bill was filed on March 11, 2021 and was referred to the House Judiciary and Civil Jurisprudence Committee. It was voted out of the committee favorably with a five to four vote. The bill did not progress any further in this last session. The fiscal note related to the development of this new business court system is estimated at \$12,381,000 initially.

<https://capitol.texas.gov/BillLookup/BillStages.aspx?LegSess=87R&Bill=HB1875>

c. S.B. 1529 - State Government Issues Court

Alleged purpose: The alleged purpose of this proposed legislation is to establish a new CoA with exclusive jurisdiction over civil cases to which the state, a state agency, or a state official is a party. The bill stated that this new statewide appellate court would handle “all cases or any matter arising out of or related to a civil case brought by or against the state or a state agency, board, or commission or by or against an officer of the state or a state agency, board, or commission... or in which a party to the proceeding files a petition, motion, or other pleading challenging the constitutionality of a statute of this state.” The language of the statute excludes certain categories of state party litigant cases such as child protective services cases and juvenile justice cases. The bill was authored by Sen. Huffman and supported by TLR. (See Attachment H)

Alleged justification: The alleged justification for this new court is uncertainty related to which intermediate appellate court will hear the case, lack of consistency in decisions under our present system and cost to the taxpayers resulting from the volatility of the present system. These alleged justifications arise because the cases relevant to this new court’s exclusive jurisdiction are presently being filed in the CoA that serves the area where the case originated. In addition, these cases of statewide importance may be transferred to another CoA due to the docket equalization system. Finally, these cases have such legally complex issues at stake that effect all Texans and the present system is not equipped to handle such legal complexity.

The bill was filed on March 11, 2021 and had a public hearing along with SB 11 on April 1, 2021 in the Senate Jurisprudence Committee chaired by Sen. Huffman. https://tlcsenate.granicus.com/MediaPlayer.php?view_id=49&clip_id=15611 The bill was voted out of committee on April 6, 2021 by a three to two vote and passed the Senate on April 14, 2021. The bill did not move forward after that. <https://capitol.texas.gov/BillLookup/BillStages.aspx?LegSess=87R&Bill=SB1529>

Where case originates: Presumably cases being heard in the area from which they arise, in present Texas jurisprudence, is a good thing. This new Court of Appeals does not just have the state, state official or agency as a party, it likely has a Texas citizen or business also as a party to the case. Also, if the cases sent to this new court will involve constitutional challenges then the case could originally involve private citizens only and no state party such as in a divorce suit, personal injury suit, malpractice suit and inmate lawsuits. The new court being in Austin would likely benefit one side over the other in terms of geographic convenience, taking the case away from the area in which the case arose.

Electing justices from your appellate region versus statewide: Running a statewide campaign is costly. To effectively run a statewide campaign costs a lot of money. To understand the cost, one can look at the cost of running statewide for the Texas Supreme Court. Some of the candidates raise in the million-dollar range therefore infusing big money donors into the process of selecting the justices for this proposed new statewide appellate court, resulting in a challenge for a candidate who may hail from a rural jurisdiction versus an urban one. TLR’s General Counsel, Lee Parsley, acknowledged that although the incumbent presiding judge of the Court of Criminal Appeals, in 2018, raised only \$6,000 for her campaign, she could not possibly communicate with 16 million registered voters with that level of funding. So, the important decisions she makes, and presumably the important decisions the justices of this new

statewide court of appeals would make, would be done by them while they exist in near anonymity to the voters. Parsley, Lee, *What's at Stake in Texas' Courts?*, Advocate, Summer 2022, p. 2.

Transfer of cases: See the above discussion regarding the limited number of transfers occurring statewide and the requirement to apply the precedence of the transferring court's area.

Lack of consistency in the present system: Allegedly the issue of lack of consistency in case decisions relates to the issue that arises when one court of appeals under the present system takes a different position on a legal issue from that of another court of appeals. This issue already has an appellate remedy. There is a statewide court of appeals called the Texas Supreme Court, whose justices run for statewide office, and have the authority to review any appealable order or judgment, whether interlocutory or final, that presents an issue that is important to the jurisprudence of the state and in situations in which the court of appeals' decision conflicted with a decision of another court of appeals or the Texas Supreme Court. Tex. Gov't Code §§ 22.001(a), (b); Tex. R. App. P. 56.1(a).

Cost of impact due to volatility in the present system: Since no financial impact has been specifically raised or supported by data, it is unclear what the basis of this concern is. Nevertheless, it is important to point out that the entire judicial system (trial courts, courts of appeals, district attorneys, juror pay, indigent defense and more) in Texas costs the taxpayers less than .42% of the total State appropriations. Of that total, the 14 courts of appeals are appropriated \$43.4 million, the Court of Criminal Appeals is appropriated \$7.0 million, and the Texas Supreme Court is appropriated \$6.7 million or \$744,444 per justice. If the new statewide CoA is created with five justices presumably it would cost the taxpayers at least \$3.7 million (five justices times \$744,444). In the last legislative session, S.B.1529 proposed five justices elected statewide, housed in Austin somewhere (cost of housing or a new courthouse is not included in this figure), with salaries equivalent to the Texas Supreme Court justices and the Court of Criminal Appeals Court justices. LaVoie, Megan. *Annual Statistical Report for the Texas Judiciary*, FY 2021, pp. vi-vii. <https://txcourts.gov/media/1454127/fy-21-annual-statistical-report-final.pdf> The Legislative Budget Board stated in their report that the cost in the first two years is estimated to be \$2,732,194. <https://capitol.texas.gov/tlodocs/87R/fiscalnotes/pdf/SB01529E.pdf>

Imbalance of judicial dockets: If the work of a statewide appellate court consists of administrative law appeals, all open records requests, all litigation involving Attorney General, Ken Paxton, or litigation in which General Paxton chooses to intervene, over the last five years in Austin that equates to approximately 95 cases on average annually and from other appellate districts around the state approximately an additional 30 cases. Since the Office of Court Administration does not have the capability at this time to maintain case specific data, these numbers are merely estimates. These numbers also do not include the many cases that may exist wherein a party to a lawsuit may challenge the constitutionality of a statute in which the Attorney General may choose to intervene. Excluding the constitutionality cases, which may include inmate litigation and divorce cases among others, the entire docket would be comprised of approximately 125 cases annually. This will result in a tremendous imbalance between this new court and the other CoAs which handle approximately 80 to 130 cases per justice per year.

D. 2023 INTERIM CHARGES

a. House Charges

The House Committee on Judiciary & Civil Jurisprudence held a hearing on August 23, 2022 (August 23rd House Hearing) related to two interim charges that may impact the CoAs in this next legislative session. https://tlchouse.granicus.com/MediaPlayer.php?view_id=46&clip_id=23430

The members of the committee are, Chair and Rep. Jeff Leach (one of the authors of HB 1875 last session), Vice Chair and Rep. Yvonne Davis, Rep. Harold V. Dutton, Jr., Rep. Julie Johnson, Rep. Matt Krause, Rep. Mayes Middleton (one of the amendment authors of HB 1875 last session), Rep. Joe Moody, Rep. Mike Schofield, and Rep. Reggie Smith. <https://capitol.texas.gov/Committees/MembershipCmte.aspx?LegSess=87R&CmteCode=C330>

The two interim charges for the House Committee on Judiciary & Civil Jurisprudence that were discussed at the hearing were:

“3. Study potential solutions to improve the judicial efficiency of the state courts of appeals by analyzing caseloads and making appropriate recommendations.

5. Study the operations of specialty courts. Determine whether additional specialty courts should be considered to address needs within specific populations. Review specialty court methods and best practices that have been implemented for specialty courts in other states, including their impact on judicial efficiency.”

<https://house.texas.gov/media/pdf/interim-charges-87th.pdf>

At the March 23rd House Hearing, only invited testimony was allowed. Megan LaVoie, the Administrative Director of the Office of Court Administration testified along with Supreme Court Justice Brett Busby, Chief Justice Dori Contreras, the Chief of the Council of Chiefs for the CoAs, Lee Parsley with TLR, Jennifer Doan, President of

TexAbota, Laura Tamez, President-Elect of the Texas Trial Lawyers Association, and Michael Tankersley, the founder of Texas Business Law Foundation.

The hearing made clear that TLR will be presenting to this next legislature recommended bills and support for both a statewide appellate court for government issues, statewide trial courts and an appellate court for business issues and possibly a redistricting plan. The possibility of presenting a redistricting plan by TLR was unclear in that Mr. Parsley in his opening remarks mentioned SB 11 as a possible issue to address in this upcoming session and then later retracted that comment as a misstatement. Mr. Tankersley spoke in favor of business courts. The remaining witnesses testified that the present system meets the needs of the court system users at the present time and that there is nothing broken that needs fixing. The hearing made clear that there is still limited data, if any, or study to support any of these courts but that will be an issue to watch for in the upcoming session. As for the statewide business courts it was clear that TLR expects that the proposal will be that the judges and justices are selected by the governor in consultation with the senate.

b. Senate Charges

Although there are no present interim charges in the Senate related to redistricting, business courts or a statewide appellate government issues court, the committee that will likely take these matters up if they arise is the Committee on State Affairs. The Senate Judiciary Committee is expected not to exist this session, although that was the committee that held hearings on SB 11 and SB 1529 and whose chair was Sen. Joan Huffman, the author of both bills. The members of the State Affairs committee thus far are Chair and Sen. Bryan Hughes, Vice Chair and Sen. Brian Birdwell, Sen. Paul Bettencourt, Sen. Donna Campbell, Sen. Bob Hall, Sen. Lois W. Kolkhorst, Sen. Eddie Lucio, Jr., Sen. Charles Schwertner, and Sen. Judith Zaffirini.

E. WHY DOES THIS MATTER TO YOUR PRACTICE AND WHAT TO LOOK FOR IN THE UPCOMING SESSION?

a. Lack of Data Related to Proposed Changes

In the March 23rd House Hearing, the proponents for business courts and for the statewide government issues courts, provided the house committee with very limited, if any, data to support the establishment of such courts. There was limited data to show how many cases even exist for these courts to oversee especially since at this time there is limited case specific data captured by the Office of Court Administration.

There was no data to prove that the development of business courts would truly increase business activity in the state, especially since Texas presently is one of the best states in the country for attracting and keeping businesses. <https://www.cnbc.com/2022/07/13/americas-top-states-for-business-2022-the-full-rankings.html> The lack of data to support the development of business courts was interesting since there have been bills presented to the legislature for multiple legislative sessions in the past and still no or limited data has been developed to justify the courts. Further, these types of courts have not been studied by the existing body that was developed to do such studies.

Moreover, there are questions about the number of business cases that would be handled by these courts on an annual basis. Many complex business cases are filed or removed to federal court for jurisdictional reasons. Just as many, if not more cases, are subject to contractual mandatory arbitration. And then there are contractual forum selection provisions that control where a case can be filed.

Typically, the Supreme Court and the Texas Legislature receive recommendations on long-range planning and improvements in the administration of justice from the Texas Judicial Council, a 22-member policy-making body composed of two appointees from each level of court, as well as appointees from the Governor and legislative branches of government. The Chief Justice of the Supreme Court, Presiding Judge of the Court of Criminal Appeals, chief justices of each of the courts of appeals, and judges of each of the trial courts are generally responsible for the administration of their respective courts. <https://txcourts.gov/media/1454127/fy-21-annual-statistical-report-final.pdf>

When the Texas Legislature wished to study the method of judicial selection in this state in 2019 the legislature developed an entire commission to study such an important issue. That commission is known as the Texas Commission on Judicial Selection and was established in the 86th Legislature through House Bill 3040. Their final report can be found at www.txcourts.gov/media/1450219/201230_tcjs-final-report_compressed.pdf

From that study it was proposed that judges elected after the study needed to have greater qualifications and those study recommendations recently became law. [https://ballotpedia.org/Texas_Proposition_4,_Changes_to_Eligibility_for_Certain_Judicial_Offices_Amendment_\(2021\)](https://ballotpedia.org/Texas_Proposition_4,_Changes_to_Eligibility_for_Certain_Judicial_Offices_Amendment_(2021))

b. What is broken that needs fixing

Presently the cost of the court system is minimal by any measure, but particularly in comparison to the state's budget. <https://txcourts.gov/media/1454127/fy-21-annual-statistical-report-final.pdf>

Further, the data shows that the present CoAs are working hard and outperforming the established performance measures. (See Attachment B)

c. Cost of new courts

The estimated cost of the redistricting the CoAs was \$40,000,000 initially. The cost of the proposed statewide court of appeals for government issues was somewhere between \$2,700,000 to \$3,700,000. The cost of the proposed statewide trial and appellate business courts was \$12,381,000. One question to consider is what are the filing fees that businesses big and small must pay to get into the business courts? Is the court really a “Goliath” versus “Goliath” court as Mr. Parsley testified to at the March 23rd House Hearing or are some businesses “Davids” with limited resources to pay whatever the filing fee may be for access to the proposed new business courts. Who gets to decide whether a dispute is a \$10,000,000 dispute, the plaintiff or the defendant via a counterclaim? Who gets to decide whether to raise a constitutional challenge to a statute that lands a case in the new statewide government issues court, the plaintiff, defendant or an intervenor? How many cases will these courts handle to justify the new system and new cost to the taxpayers? Forum shopping appears likely to occur with these new courts.

d. Unintended consequences of adding two new statewide appellate courts

How will these new statewide appellate courts impact diversity on the bench, if any? Will there be judges from rural areas that will be appointed or elected to these benches and at what cost? Will litigants have to travel to Austin for all their hearings or will things happen on Zoom or some other format? How will travelling justices impact local jurisdictions, their other dockets and courtroom space? How will the state issues court impact eminent domain litigation when a project involves both state and local government parties? Will the local government parties go to an existing CoA for eminent domain review while the state parties go to the new statewide appellate court? Is a statewide intermediate appellate court constitutional? How will en banc hearings occur in mega districts if redistricting is proposed again? Will these new courts actually slow down the administration of justice due to districts being so large or due to forum shopping? Will there be forum shopping with this new system of courts? Are there any voting or equal protection concerns related to these proposed new courts? Are there any political pressures on these courts, especially if judges are appointed by whoever happens to reside in the governor’s mansion and who is in the senate at the time? Does a two-year term for a judge in “complex” business disputes allow for the resolution of one case by the same judges/justices?

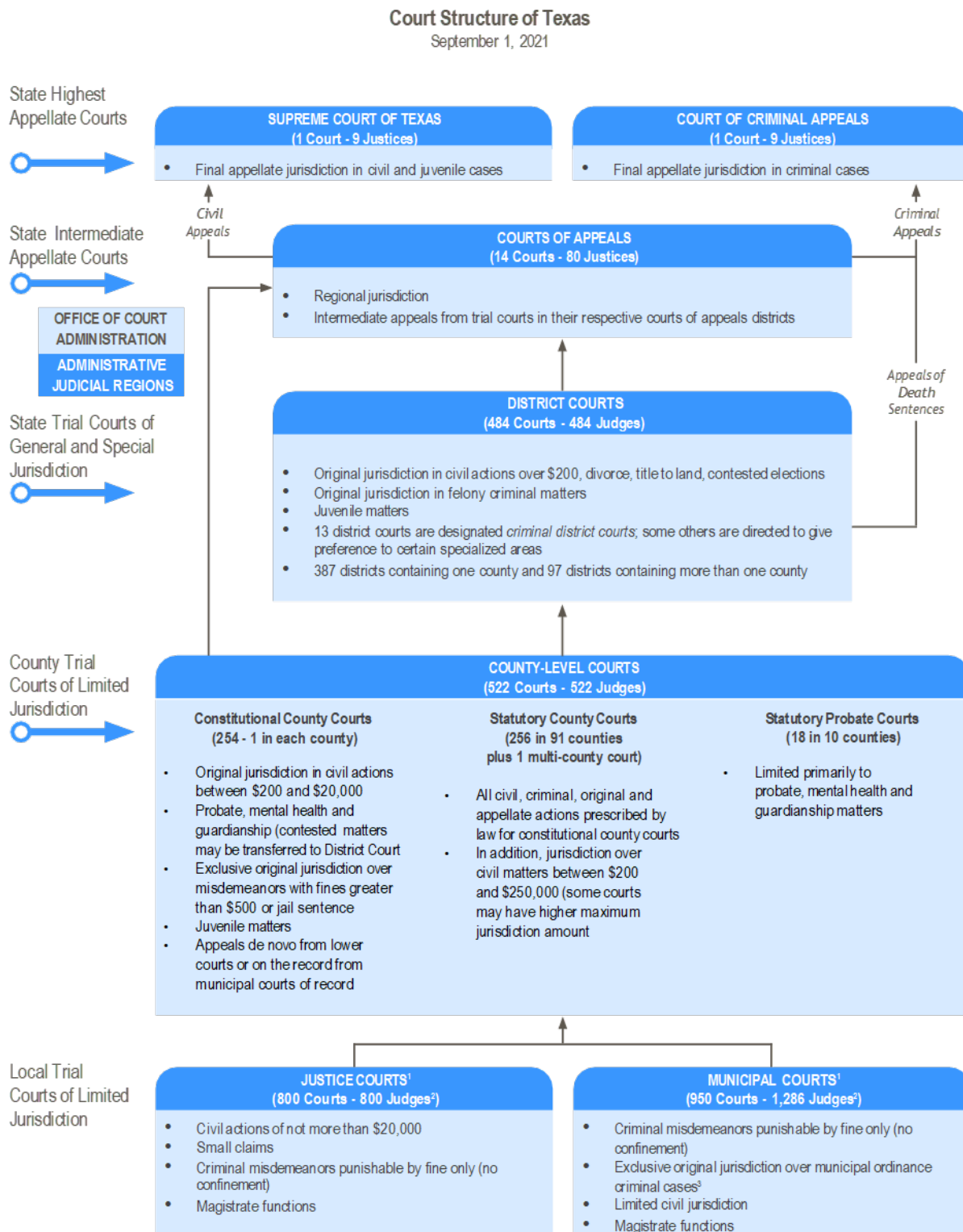
F. CONCLUSION³

On May 4, 2022, Chief Justice Nathan Hecht testified before the House Committee on Judiciary & Civil Jurisprudence. In discussing court backlogs resulting from the pandemic, he stated: “Courts of Appeal were a little behind in the early part of the pandemic but are “fully caught up” and doing an “extraordinary job.” The courts did a “marvelous job in catching up.” As appellate filings increase, the courts are “fully prepared.” Likewise, in his State of the Judiciary speech in 2021, Chief Justice Hecht remarked, “My fellow Texans: the state of the Judiciary is strong, resilient, moving ahead, and committed to the innovations a fair, efficient system of justice for all demands. ... I will tell you this: the people of Texas can take deep pride in their judges—municipal judges, justices of the peace, county judges, district judges, *the courts of appeals*, and my colleagues on the high courts. They have stood to the historic challenges of the COVID-19 pandemic. The courts are open and dispensing justice.” (Emphasis added). With such a glowing report from the Chief Justice of the Texas Supreme Court, one wonders why such drastic changes in the third branch of government are being discussed at the legislature without a thorough study by a special commission or by the Texas Judicial Council and without case specific data to support such a drastic change, especially after the pandemic.

G. ATTACHMENTS

- a. Texas Court Structure
- b. Office of Court Administration Data Related to CoAs
- c. March 29, 2021 letter from Sen. Huffman and SB 11 Map
- d. SB 11 Bill Summary
- e. 2021 Litigation Section of the State Bar letter in opposition to business courts
- f. 2021 TexAbota, TTLA and TADC letter in opposition to business courts
- g. HB 1875
- h. SB 1529

³ Many thanks go out to Dylan O. Drummond for allowing me to utilize information contained in a presentation he made at an Appellate Section update after the last legislative session.



Attachment A

Attachment B



OFFICE OF COURT ADMINISTRATION

MEGAN LAVOIE
Administrative Director

Courts of Appeals Activity Data

Activity by State Fiscal Year

	17	18	19	20	21	22 through July
Cases Filed	10,443	10,277	10,396	8,695	7,254	8,171
Cases Disposed	10,378	10,422	10,294	8,695	8,271	7,504
Cases Pending	6,506	6,380	6,509	6,237	5,243	5,942
Clearance Rate	99%	101%	99%	100%	114%	

Activity by State Fiscal Year

	17	18	19	20	21	22 through July
Cases Filed	10,443	-2%	1%	-16%	-17%	13%
Cases Disposed	10,378	0%	-1%	-16%	-5%	-9%
Cases Pending	6,506	-2%	2%	-4%	-16%	13%

Total Cases Filed by Court (Including Transfers)

Court	Number of Justices	17	18	19	20	21	22 through July
1st/Houston	9	1,129	1,234	1,139	1,026	765	901
2nd/Fort Worth	7	878	915	918	707	618	764
3rd/Austin	6	802	758	836	646	597	618
4th/San Antonio	7	859	928	861	698	543	691
5th/Dallas	13	1,807	1,678	1,801	1,491	1,282	1,352
6th/Texarkana	3	376	349	412	315	270	274
7th/Amarillo	4	527	515	505	415	353	396
8th/El Paso	3	335	144	299	283	217	244
9th/Beaumont	4	492	475	435	390	347	397
10th/Waco	3	373	408	411	333	289	347
11th/Eastland	3	368	381	397	322	312	298
12th/Tyler	3	393	368	404	299	229	319
13th/Corpus Christi	6	846	864	769	692	588	628
14th/Houston	9	1,259	1,260	1,208	1,088	843	942
TOTAL	80	9,216	9,206	9,398	7,860	6,420	7,439

Clearance Rates

Court	Number of Justices	17	18	19	20	21
1st/Houston	9	101%	97%	104%	98%	115%
2nd/Fort Worth	7	101%	101%	102%	102%	121%
3rd/Austin	6	104%	104%	78%	117%	108%
4th/San Antonio	7	95%	100%	109%	107%	111%
5th/Dallas	13	98%	100%	96%	103%	101%
6th/Texarkana	3	107%	100%	96%	108%	102%
7th/Amarillo	4	88%	105%	112%	111%	120%
8th/El Paso	3	104%	201%	103%	87%	141%
9th/Beaumont	4	101%	100%	102%	100%	109%
10th/Waco	3	90%	96%	91%	116%	118%
11th/Eastland	3	107%	99%	99%	104%	120%
12th/Tyler	3	100%	100%	100%	102%	124%
13th/Corpus Christi	6	100%	102%	101%	101%	121%
14th/Houston	9	100%	97%	98%	100%	120%
TOTAL	80	99%	101%	99%	100%	114%

Transfers

Court	Number of Justices	17	18	19	20	21	22 through July
1st/Houston	9	51	128	51	43	-33	22
2nd/Fort Worth	7	-120	-114	-87	-75	-10	-45
3rd/Austin	6	-193	-158	-115	-212	-99	-143
4th/San Antonio	7	0	-15	-106	-52	-23	0
5th/Dallas	13	8	31	21	-37	7	-1
6th/Texarkana	3	60	71	78	56	57	20
7th/Amarillo	4	115	95	93	131	87	99
8th/El Paso	3	74	-85	56	88	56	76
9th/Beaumont	4	-41	-33	9	23	34	-10
10th/Waco	3	-103	-79	-43	-111	-70	-96
11th/Eastland	3	-9	-14	-35	-29	-14	-29
12th/Tyler	3	25	-19	-40	-21	0	10
13th/Corpus Christi	6	97	72	84	144	59	81
14th/Houston	9	37	120	33	58	-52	16
TOTAL	80	-466	-517	-426	-537	-301	-324

205 WEST 14TH STREET, SUITE 600 • TOM C. CLARK BUILDING • (512) 463-1625
P. O. BOX 12066, CAPITOL STATION • AUSTIN, TEXAS 78711-2066
www.txcourts.gov

Attachment C

SENATOR JOAN HUFFMAN, CHAIR
SENATOR JUAN "CHUY" HINOJOSA, VICE CHAIR



SENATOR BRANDON CREIGHTON
SENATOR BRYAN HUGHES
SENATOR NATHAN JOHNSON

SENATE COMMITTEE ON JURISPRUDENCE

March 29, 2021

Justice:

I write regarding SB 11, a bill I filed to restructure Texas's intermediate courts of appeal from the current 14 districts into 7 new districts. This legislation is designed to distribute workload more evenly across appellate justices (thereby reducing docket-equalization case transfers), to further all Texans' access to justice, and to improve efficiency and consistency in our appellate court system. Furthermore, the bill eliminates overlapping districts and split district courts, which can cause confusion for litigants, counsel, and judges. Please note that all 80 justices on Texas's intermediate courts of appeal retain their places on the bench and all historic courthouses remain operational under this plan.

The committee substitute to SB 11 is set for hearing in the Jurisprudence Committee on April 1, 2021. In advance of that hearing, I am pleased to provide you with the enclosed map showing the appellate districts and courthouses that this legislation proposes. I am sharing this proposed map and other pertinent details with all sitting justices in advance of the hearing in the interest of full transparency, to ensure that there is time for you to provide any input you may have. You are welcome to attend the April 1 hearing if you wish to testify on this bill. I also invite you to submit any written comments you may have on the proposed plan to the committee office prior to the scheduled hearing, and I would be glad to enter those comments into the committee's record as a courtesy to you.

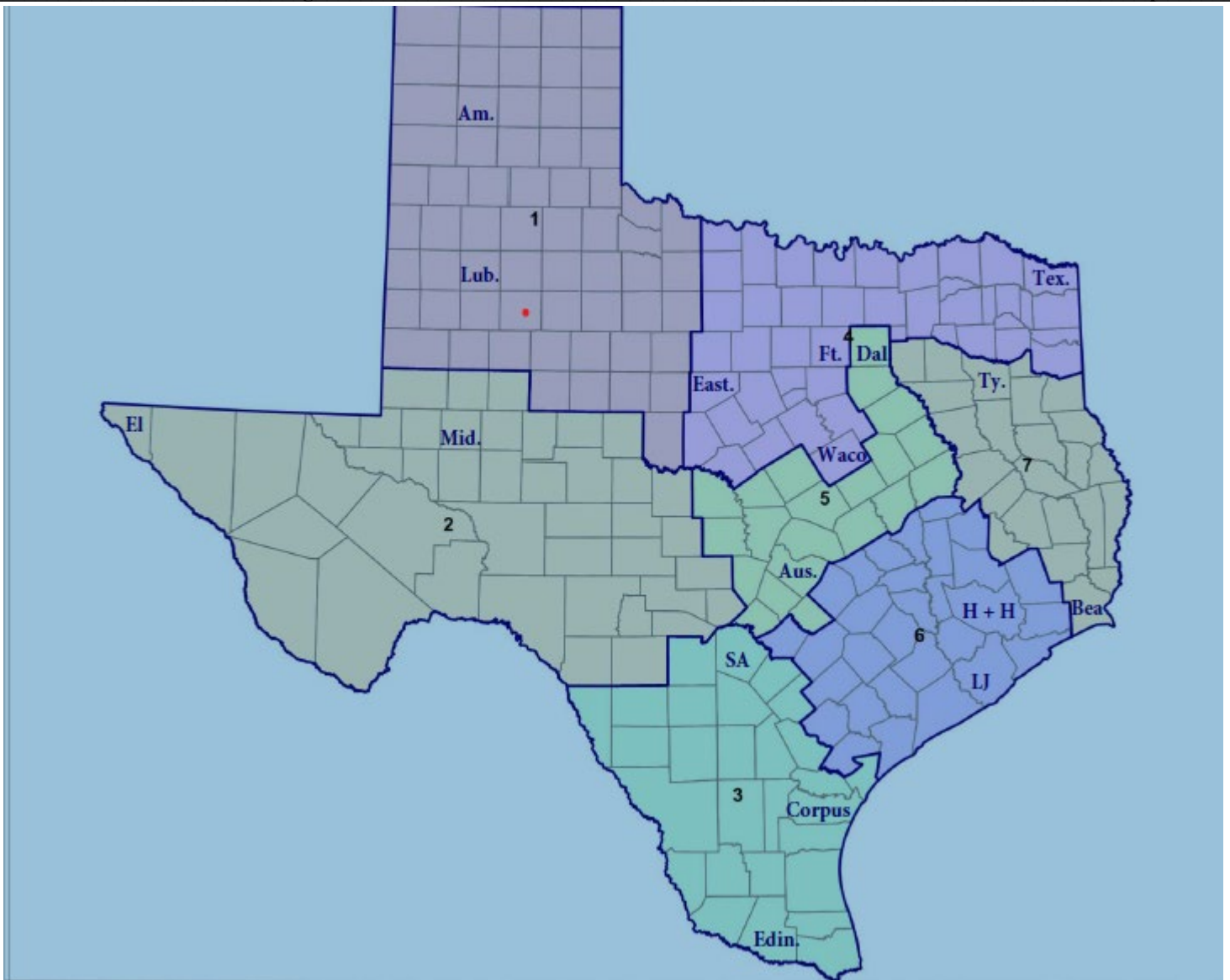
I appreciate your attention to this important matter, as well as your service to the State and the people of Texas. If you have any questions, please contact my committee office at (512) 463-0395.

Sincerely,

A handwritten signature in cursive script that reads "Joan Huffman".

Joan Huffman

Enclosures



Attachment D

CSSB 11 –Intermediate Appellate Court Restructuring

Author: Sen. Huffman

Contact: Senate Committee on Jurisprudence – (512) 463-0395

BACKGROUND

• CSSB 11 increases efficiency and fairness in Texas’s intermediate courts of appeal (COAs) by restructuring those courts from 14 into 7 districts. The bill also addresses the following issues:

- Workload is highly unbalanced across Texas COAsⁱ resulting in excessive docket-equalization case transfersⁱⁱ which are costly and inconvenient for litigants, courts, and counsel.
- Because Texas has COAs of overlapping jurisdiction, some district courts answer to more than one COA. Additionally, many district courts are split between multiple COAs. This can cause confusion about what appellate court will preside on appeal, and what precedent applies in district court.
- Texas has 14 COAs—more than any other system in the United States. The federal system has 13 and more-populous California has 5. This invites conflicts of authority and inconsistency in state case law.

BILL SUMMARY

- **Restructures Texas’s COAs from 14 into 7 districts.** New districts were drawn by:
 - combining existing district courts based on contiguity;
 - eliminating overlapping jurisdiction (where 2 COAs have jurisdiction over appeals from 1 county);
 - removing split district courts (where counties in a single district court answer to different COAs).
- **Ensures all Texans have access to justice by keeping all existing courthouses and creating 2 new ones.**
 - All 80 appellate justices maintain their chambers at a particular courthouse location.
 - All existing courthouses remain open.
 - Additional courthouses are established in Midland and Lake Jackson.
- **Keeps all 80 justices.**
 - Each of Texas’s 80 intermediate appellate justices keeps their place for the duration of their term, and continues to have jurisdiction over all cases assigned.
 - Each justice place is re-designated to one of the 7 new appellate districts, effective Jan. 1, 2023.
 - To facilitate a smooth transition:
 - Only 5 justice places are designated to a different courthouse from where they currently sit; and,
 - all places that are designated to a new courthouse expire in 2022, and will be filled by districtwide election in the new district at the 2022 election.

Transitional language:

- The bill takes effect Sept. 1, 2021. New COAs are created and justice places are re-designated Jan. 1, 2023.
- Sitting chief justices remain chiefs through the end of their terms. If a new COA has two chiefs, they must coordinate to carry out their responsibilities. The Chief Justice of the Supreme Court will resolve any dispute.
- The Texas Supreme Court shall establish rules to the extent necessary to implement the bill.

ⁱ For FY ‘15-19, the average appeals filed per justice annually was 79 in the 8th COA (El Paso) and 158 in the 3rd COA (Austin).

ⁱⁱ For FY ‘15-19, the average case transfers per year was 145 *out of* the 3rd COA (Austin) and 104 *in to* the 7th COA (Amarillo).

Attachment E

State Bar of Texas Litigation Section

P.O. Box 12487

Austin, TX 78711-2487



DATE: April 29, 2021

FROM: Cade Browning, Chair-Elect of the State Bar of Texas Litigation

Section TO: Hon. Dade Phelan, Speaker of the House
Members of the Texas House of Representatives

RE: Opposition to HB 1875 – ‘The Chancery Courts Bill’

The Litigation Section ([“The Litigation Section”](#)) formally opposes the passage of HB 1875. As you may know, The Litigation Section is a voluntary section of The State Bar of Texas and represents 8,650 lawyers from all parts of the State and all sides of the Bar. We are a neutral organization comprised of plaintiff attorneys, defense attorneys, judges, mediators / arbitrators, pro bono attorneys, and law students who are dedicated to improving our justice system and the quality of legal services delivered to Texans. Very rarely does The Litigation Section ask The State Bar Board for permission to take a position on pending legislation in Texas. However, as The Litigation Section did in 2015 and 2017 regarding previous versions of the Chancery Court Bill, we once again have asked and received permission to oppose the passing of HB 1875.

Why? Because HB 1875 is simply not in the best interest of the citizens of the State of Texas, the judiciary, nor the public’s access to justice, which we are duty-bound to shepherd. Attached, you will find a memo setting out in more details the particulars about how this bill is not well reasoned to achieve its stated goals.

We respectfully ask that you, who represent all 254 counties in this Great State, consider our position and ask yourselves whether you are willing to usurp those 254 counties of the right to resolve local disputes in exchange for a new additional court system, which the Office of Court Administration [estimates](#) will cost over \$12 million in the first two years, with judges appointed by whichever political party may happen to hold the Governor’s Mansion at any particular time.

Thank you for your attention to this matter and consideration.

Very truly yours,

STATE BAR OF TEXAS LITIGATION SECTION

By:

Cade W. Browning, Chair-Elect
cade@browningfirm.com



Page | 1

DISCLAIMER:

THIS POSITION IS BEING PRESENTED ONLY ON BEHALF OF THE LITIGATION SECTION OF THE STATE BAR OF TEXAS. THIS POSITION SHOULD NOT BE CONSTRUED AS REPRESENTING THE POSITION OF THE BOARD OF DIRECTORS, THE EXECUTIVE COMMITTEE, OR THE GENERAL MEMBERSHIP OF THE STATE BAR.

THE LITIGATION SECTION, WHICH TAKES THIS POSITION, IS A VOLUNTARY SECTION OF 8,650 MEMBERS COMPOSED OF LAWYERS PRACTICING IN A SPECIFIED AREA OF LAW. THIS POSITION IS TAKEN AS A RESULT OF A VOTE OF 19 TO ZERO OF THE COUNCIL OF THE LITIGATION SECTION, WHICH IS THE GOVERNING BODY OF THAT SECTION. NO APPROVAL OR DISAPPROVAL OF THE GENERAL MEMBERSHIP OF THIS SECTION HAS BEEN OBTAINED.

Page | 2

**Litigation Section of the State Bar of Texas
Request to Oppose HB 1875
Relating to the Creation of a Business Court and a Court of Business Appeals**

Description of HB 1875: This bill is the latest in a series of bills filed, but never passed, in past legislative sessions dating back to at least 2015 that would create a statewide specialized civil trial court and an appellate court to hear derivative actions on behalf of organizations (defined) and actions against, between or among organizations, governing authorities (undefined) and certain classes of individuals (defined) relating to a contract transaction for business or similar purposes. The Business Court would be composed of 7 trial judges appointed by the governor for 2-year terms. The Court of Business Appeals would hear appeals from the Business Court and be composed of 7 justices also appointed by the governor for 2-year terms. Appeals from the Business Court of Appeals would go to the Texas Supreme Court.

The Litigation Section requests it be allowed to oppose this bill for the following reasons:

- **Negative Impact on Access to Justice:** The State Bar Board has always taken the position that a section can and should request and be granted permission to oppose bills that impact access to justice. This bill challenges access to the justice system in many ways: (1) the constitutionality of the bill's underlying framework and appellate track is questionable. The bill itself contains several contingent provisions in the event the Act or the appointment of judges or justices under the Act is found to be unconstitutional; (2) it will increase costs that will be passed on to litigants; (3) it will have an adverse financial impact on the existing judicial system resulting in a resource drain, displacement and competition for courthouse space; (4) it will create an unlevel playing field for litigants of limited means; (5) delays in resolving the Business Court docket likely will cause delays in resolving the regular court docket; (6) the bill's provision

- that personal injury claims must be severed from business claims is not only inefficient but could lead to conflicting and inconsistent outcomes in otherwise related claims.
- **2008 State Bar of Texas Court Administration Task Force:** In 2007, the State Bar Board granted permission for the Litigation Section to oppose a specialty court bill, SB 1204. The bill did not pass. Post session, members of the Litigation Section Council, along with other stakeholders, were asked to serve on the 2008 State Bar of Texas Court Administration Task Force to consider matters concerning the courts, including specialty courts. This led to the recommendation and enactment in 2009 of a specific court resources provision, Section 74.254 of the Government Code, with the Task Force and the Legislature recognizing there was no need for a separate court system. Unfortunately, these resources have not been provided. However, the Task Force's recommendations remain valid and under Section 74.254, the Legislature should provide such funding in lieu of the creation of an entirely new and additional court system in Texas.
 - **Lack of Data and Input from Stakeholders:** This is a major revision of the judicial system in Texas without gathering and analyzing data to determine the need for the change or the reasonable probability that the desired result can or will be obtained. There has been no analysis of the potential for unintended consequences. Whether the proposed change will improve the judicial system of Texas or make it more prone to

manipulative legal tactics is a legitimate concern. Major revisions of the judicial system in the past have relied upon objective data, careful reflection, meaningful review and input from relevant stakeholders, and a showing that the revision will justify the cost and have a reasonable probability of success. There is a lack of any empirical evidence that supports the case for creating specialized business courts. It also bears noting how little we know about the consequences of actually enacting this legislation, including the impact on our judicial system, our county governments, our funding of the courts and our citizens. As always, those who urge major civil justice reforms should have the dual burdens of showing—with credible evidence—the existing system deficiencies and that the proposed reforms will not create other significant problems that will worsen access to justice.

- **Judicial Resources:** The proposed Business Court system, with its own segregated trial and appellate system, would be a resource and financial drain on a judicial system that is already underfunded. Without the necessary empirical data and analysis, it is not possible to determine the full extent of the drain and the current judicial services that will be affected. Moreover, no necessity has been established to justify such a redundant judicial system. Like criminal, probate or juvenile courts, specialty courts for complex litigation could be created within the current court system as facilities and demand exist. Also, the bill's suggestion that lower appellate courts are incapable of handling complex business cases, while providing for appeals from a single business court of appeals to the supreme court, is both unfounded and inconsistent.
- **Litigation Costs:** The proposed scenario for a Business Court and Business Court of Appeals is likely to increase litigation costs, promote forum shopping, and cause delay.
- **Displacement:** HB 1875 would interfere with the justice system by displacing local dockets, courtroom space, judges and court staff. These are roving judges without courtrooms. This is a unique concept and it is not possible, given the time constraints, to calculate the impact on local courtroom usage and dockets, especially in a state which requires diverse approaches to managing dockets in high density urban areas as

well as in rural counties and districts. The proposed Business Court system will disrupt the judicial system in both urban and rural districts.

- **Judicial Selection Process:** The judges under this bill will be appointed rather than elected, which is a significant change that would result in a different selection process for courts having concurrent jurisdiction. This may lead to a perception of a lack of neutrality, compromised access to justice and an unlevel playing field for certain litigants. The creation of a court system where judges have concurrent jurisdiction and are selected under different criteria will, in all probability, undermine the public's perception in the remnants of the existing system, as well as any new system. The proposed system also has no provision to ensure that appointments are geographically diverse, which could give rise to a lack of ethnic diversity among the appointed judges or justices.

- **Constitutionality:** There have been questions raised concerning whether the bill comports with the Texas Constitution and the requirements of due process. We believe these questions need to be carefully considered in advance to minimize years of costly litigation.¹
- **Section 8.01.03 of the State Bar of Texas Board Policy Manual** permits any section to take a position either in support or in opposition to any legislation that relates to the “selection, tenure, compensation, staffing, equipping and housing of the State Judiciary.

Respectfully, the Section maintains that HB 1875, at every level, impacts selection, staffing, equipping, and housing of the judiciary and would be a barrier to access to the civil justice system, if enacted.

Andrew L. Kerr
Chair, Legislative Committee of the Litigation Section,
State Bar of Texas 2301 Broadway St.
San Antonio, Texas 78215
(210) 250-6015 (business)
(210) 413-3455 (cell)

¹ The section does not and will not take a position on whether the bill violates the Texas Constitution or due process requirements.

Attachment F



TEX-ABOTA
The Texas Chapters of ABOTA



March 26, 2021

The Honorable Jeff Leach
Judiciary and Civil Jurisprudence Committee
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Via Hand Delivery

RE: House Bill 1875

Dear Chairman Leach and Committee Members:

The Texas Chapters of the American Board of Trial Advocates, Texas Association of Defense Counsel, and Texas Trial Lawyers Association collectively represent over 4,000 civil trial lawyers representing individuals, small and large businesses, and commercial interests of all types in state and federal courts of Texas and other jurisdictions. Our members have sustained experience with, and our organizations have a long history of working to support reform that strengthens the Texas civil justice system. In this instance, however, we jointly come forward to respectfully oppose HB 1875. There has been no assessment and there is no crisis or urgent need for such a serious, costly, and problematic overhaul of our civil justice system.

Texas v. Delaware

Past bills similar to HB 1875 have had the apparent intent to create a chancery court fashioned after the Delaware Court of Chancery for the purpose of replacing Delaware as the preferred state for incorporation of businesses. HB 1875 appears to carry forward this expressed, but never studied purpose. There are vast differences between the State of Delaware and the State of Texas, which makes it somewhat unlikely that we could replicate what has been done in Delaware. Delaware is the second smallest state in the Union with only 1,954 square miles of land area. Further, it is the sixth least populated state, with only 994,735 citizens (less than one-half the population of Austin). There are only three counties in Delaware, and it does not have a single city with a population over 100,000. On the other hand, Texas is the second most populous state with over 27.5 million residents. It has a land area of 268,820 square miles and is comprised of 254 counties. Delaware's size and population means there are little or no concerns arising from the

The Honorable Jeff Leach
March 21, 2021
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location of the Chancery Court within the state as it is easily accessible to any resident. Delaware is less than 100 miles long and 39 miles wide. Again, in contrast, Texas is 790 miles long and over 800 miles across at its widest point. Similarly, Delaware has a simple judicial system for civil commercial disputes, which is comprised of a Supreme Court, the Court of Chancery, and three Superior Courts (one per county). The latter is Delaware's general jurisdiction trial court (similar to Texas District Courts) and it is comprised of just nine justices. There are more than 119 district courts in just Houston, Dallas, and Bexar counties alone. And Texas, of course, has 14 intermediate appellate courts. The two judicial systems bear no resemblance.

The Delaware Court of Chancery has jurisdiction over equity cases; currently the vast majority of those cases concern corporate disputes, many relating to mergers and acquisitions. The Delaware General Corporation Law governing Delaware's Chancery Court is based on a hybrid of constitutional provisions, statutes, and case law. "Equity" and "law" jurisdiction in Delaware is split and the Chancery Court only has equity jurisdiction. As a result, there are no jury trials in the Chancery Court. If there are any facts that must be tried, they are referred to the Superior Court. Many of the issues that come before the Chancery Court are based solely in equity, therefore the court may address them quickly because they do not involve a jury. That is not the case in Texas where equity and law are combined, and issues arising in either are subject to the constitutionally-protected right of trial by jury.

Under HB 1875, the Texas business trial courts would still be law and equity courts, and the business disputes brought there would still be subject to trial in all 254 counties of the State. When a similar bill was considered during the 2015 legislative session, supporters claimed that businesses don't trust the Texas court system to fairly and expeditiously resolve business disputes. This lack of trust was termed a "crisis of confidence." Then and now, there is no evidence such a crisis exists. Second, the purported crisis was said to be based on two aspects of the current Texas judicial system: (1) election of judges, and (2) the right to trial by jury. While HB 1875 sets up a system of appointed judges to resolve business disputes (which is likely unconstitutional and ignores the extended hearings and results of the specially formed 2020 Texas Judicial Selection Commission organized to study attitudes toward various methods of judicial selection), the right to trial by jury is acknowledged in the bill and it remains constitutionally guaranteed. As a result, business lawyers could not advise their business clients that being in Texas courts would be just like being in the Delaware Chancery Court.

Chancery Courts v. Business Courts

When this concept was considered during the 2015 legislative session, it was also argued that the proposed chancery court would mimic "business courts" in other states, including Delaware. However, this argument glosses over the differences between the Delaware Chancery Court and the business courts. Some states have specialized courts for business disputes, but they are part of the regular civil court system. They simply have their own dockets. This would be like family law or drug courts in Texas. HB 1875 would create an entirely separate, redundant court system that would be completely distinct from courts in the state's regular court system, with

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March 21, 2021
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different procedures, personnel, and judges selected through a different method. As a result, the proposed court system raises, and does not answer significant questions about the practical mechanics of operating that are likely to make trying cases within the system *less* rather than more efficient.

Would a Texas Chancery Court Improve the Texas Business Climate and Economy?

It has been suggested that if this new court system were to be created, it would improve the Texas business climate and economy. Indeed, COVID-19 aside, Texas already has an outstanding business climate and economy. On January 26, 2021, Governor Greg Abbott remarked: "Despite the challenges our state has faced over the past year, Texas remains the economic engine of America." For over a decade, that has been the finding of Chief Executive Magazine's annual survey of the nation's top CEO's, with the CFO for AT&T recently explaining, "Its friendly business climate, high quality of life and robust economy are just some of the many reasons AT&T, along with more than 50 other Fortune 500 companies, is proud to call Texas home." That remark was made despite the lack of any Chancery or, indeed, business courts in Texas.

No Budget Forecast and not Self-Funding

There is no fiscal note shown for this bill. In the past, proponents of similar bills have asserted it would be revenue neutral by generating enough income through filing fees to cover the expenses of an entirely new court system. Such a forecast is either naive or misleading.

Looking at the Delaware Chancery Court is instructive. Only a portion of that court's funding comes from filing fees. The rest comes from Delaware's general revenue. The conclusion is clear: If the Delaware Chancery Court is not self-funding and requires support from the state's general revenue, it is unlikely that the proposed Texas system, which is both larger and more complex, could fund itself solely with filing fees. In addition, Texas is already facing severe funding challenges for the existing civil justice system as well as other agencies and services due to the adverse impact of COVID-19 on the economy. Now would seem like the worst of all times to further burden State revenues with an entirely new redundant (the new courts have concurrent jurisdiction with existing courts) judicial system.

Special Courts for Special People

The philosophy behind a bill that, in essence, creates special courts for special people should also be a reason to question its virtue. We live in a society that values the rule of law and allows that all citizens should be treated equally under the law. This concept of creating a special court outside our historic justice system runs contrary to the precepts and principles of equal justice for all. No Texas citizen, whether corporate or human being, should be set apart from others and be treated "preferentially" over any other citizen. A separate, markedly different judicial system for just high-dollar business disputes would send a message to Texas citizens that their disputes are less worthy. That, quite simply, runs contrary to the principles of our republic.

The Honorable Jeff Leach
March 21, 2021
Page 4

Conclusion

The reasons are clear why HB 1875 should not be supported by the Judiciary and Jurisprudence Committee. First, it will not accomplish the perceived goal of placing Texas on equal footing with Delaware. Second, its provisions would make the efficient resolution of certain business disputes less, rather than more efficient. Third, there is simply no proof whatsoever that it would improve the Texas economy or business development. Fourth, it will not pay for itself and very well could necessitate a tax increase to cover its operating expenses at a time when the legislature must already make difficult funding decisions. Finally, the concept of creating a special court system for big business is contrary to our basic philosophy of equal justice under the law for all citizens. For these reasons, we urge the Committee to reject HB 1875.

Texas Chapters of the American Board of Trial
Advocates



By: Eileen O'Neill, President

Texas Association of Defense Counsel



By: Slater Elza, President

Texas Trial Lawyers Association



By: Jim M. Perdue, Jr.

cc: Representative Brooks Landgraf
Room E1.324
P. O. Box 2910
Austin, Texas 78768-2910

Attachment G

By: Landgraf

H.B. No. 1875

A BILL TO BE ENTITLED

AN ACT

relating to the creation of the business court and the court of business appeals to hear certain cases;
authorizing fees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle A, Title 2, Government Code, is amended by adding Chapter 24A to read as follows:

CHAPTER 24A. BUSINESS COURT AND COURT OF BUSINESS APPEALS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 24A.001. DEFINITIONS. In this chapter:

(1) "Controlling person" means a person who directly or indirectly controls a governing person, officer, or organization.

(2) "Governing documents" means the instruments, documents, or agreements adopted under an organization's governing law to govern the organization's formation and internal affairs. The term includes:

(A) a certificate of formation, articles of incorporation, and articles of organization;

(B) bylaws;

(C) a partnership agreement;

(D) a company agreement or operating agreement;

(E) a shareholder agreement;

(F) a voting agreement or voting trust agreement; and

(G) an agreement among owners restricting the transfer of ownership interests.

(3) "Governing law" means the law governing the formation and internal affairs of an organization.

(4) "Governing person" means a person who is entitled, alone or as part of a group, to manage and direct an organization's affairs under the organization's governing documents and governing law. The term includes:

(A) a member of the board of directors of a corporation or other organization;

(B) a general partner of a general or limited partnership;

(C) a manager of a limited liability company that is managed by its managers;

(D) a member of a limited liability company that is managed by its members;

(E) a trust manager of a real estate investment trust; and

(F) a trustee of a business trust.

(5) "Governmental entity" means:

(A) the state; or

(B) a political subdivision of the state, including a municipality, a county, or any kind of district.

(6) "Internal affairs" means:

(A) the rights, powers, and duties of an organization's governing persons, officers, owners, and members; and

(B) matters relating to the organization's membership or ownership interests.

(7) "Managerial official" means a governing person or officer.

(8) "Officer" means a person elected, appointed, or designated as an officer of an organization by the organization's governing persons or by the organization's governing documents.

(9) "Organization" means a foreign or domestic entity or association that is for profit or nonprofit. The term includes:

(A) a corporation;

(B) a limited partnership;

(C) a general partnership;

(D) a limited liability partnership;

(E) a limited liability company;

(F) a business trust;

(G) a real estate investment trust;

(H) a joint venture;

(I) a joint stock company;

(J) a cooperative;

(K) a bank;

(L) a credit union;

(M) a savings and loan association;

(N) an insurance company; and

(O) a series of a limited liability company or of another entity.

(10) "Owner" means an owner of an organization. The term includes:

(A) a shareholder or stockholder of a corporation or other organization;

(B) a general or limited partner of a partnership or an assignee of a partnership interest in a partnership;

(C) a member of, or an assignee of a membership interest in, a limited liability company; and

(D) a member of a nonprofit organization.

(11) "Ownership interest" means an owner's interest in an organization, including an owner's economic, voting, and management rights.

(12) "Qualified transaction" means a qualified transaction as that term is defined in Section 271.001, Business & Commerce Code.

SUBCHAPTER B. BUSINESS COURT

Sec. 24A.051. JURISDICTION. (a) The business court has civil jurisdiction concurrent with district courts in:

(1) a derivative action on behalf of an organization; and

(2) an action in which the amount in controversy exceeds \$10 million, excluding interest, statutory damages, exemplary damages, penalties, attorney's fees, and costs, that arises against, between, or among organizations, governing authorities, governing persons, members, or owners, relating to a contract transaction for business, commercial, investment, agricultural, or similar purposes.

(b) The business court has statewide jurisdiction of an action described in Subsection (a) and all matters arising out of or related to an action described in Subsection (a).

(c) The business court may grant any relief available in a district court.

(d) Notwithstanding Subsections (a) and (b), the business court:

(1) does not have jurisdiction of a civil action brought by or against a governmental entity, unless the governmental entity invokes or consents to the jurisdiction of the business court; and

(2) must sever any claim in which a party seeks recovery of monetary damages for personal injury or death or any claim arising under Chapter 17, Business & Commerce Code, the Estates Code, the Family Code, or Title 9, Property Code, unless all parties and the business court judge agree that the claim may proceed in the business court.

(e) If a claim is severed as provided by Subsection (d)(2), the business court has discretion to stay or abate its own proceedings pending resolution of the severed claim.

Sec. 24A.052. INITIAL FILING; REMOVAL AND REMAND; TRANSFER. (a) An action in the jurisdiction of the business court may be filed in the business court. If the business court does not have

subject matter jurisdiction of the action, or part of the action, the court shall dismiss without prejudice to refile the whole or part of the action. A claim that is dismissed under this subsection may be refiled in a court with jurisdiction by the party who filed the claim in the business court not later than the 30th day after the date the claim was dismissed by the business court, notwithstanding the expiration of a period of limitation provided by statute.

(b) A party to an action filed in a district court or county court at law that is in the subject matter jurisdiction of the business court may remove the action to the business court by filing a notice of removal with the business court and the court in which the action was originally filed. If the business court does not have jurisdiction of the action or part of the action, the business court shall remand the action, or the part in which the business court does not have jurisdiction, to the court from which the action was removed. A party may appeal an interlocutory order of the business court that grants or refuses a remand under this subsection to the court of business appeals.

(c) Removal of a case to the business court is not subject to the statutes or rules governing the due order of pleading.

(d) Removal of a case does not waive a defect in venue or constitute an appearance to determine personal jurisdiction.

(e) Any claim in which the business court does not have jurisdiction as provided by Section 24A.051(d) must be transferred to a district court in a county in which the claim could have been originally filed. If the claim could have been filed in more than one county, the party bringing the claim may elect the county to which the claim is transferred.

(f) A cause of action filed in the business court shall be assigned to the docket of a judge on a rotating basis.

(g) The supreme court shall promulgate rules of civil procedure providing for the timely and efficient removal and remand of cases to and from the business court.

Sec. 24A.053. POWERS AND DUTIES. (a) The business court may issue any writ necessary for the enforcement of the court's jurisdiction, including a:

- (1) writ of injunction;
- (2) writ of mandamus;
- (3) writ of sequestration;
- (4) writ of attachment;
- (5) writ of garnishment; and
- (6) writ of supersedeas.

(b) The business court may answer a question regarding a matter in the court's jurisdiction that is certified to the business court by another court.

Sec. 24A.054. QUALIFICATIONS OF JUDGE. A judge of the business court must:

- (1) be at least 35 years of age;
- (2) be a United States citizen;
- (3) be a resident of this state for at least two years before appointment; and
- (4) be a licensed attorney in this state and have 10 or more years of experience in:
 - (A) practicing complex civil business litigation;
 - (B) practicing business transaction law;

(C) teaching courses in complex civil business litigation or complex business transaction law at an accredited law school in this state;

(D) serving as a judge of a court in this state with civil jurisdiction; or

(E) any combination of experience described by Paragraphs (A)-(D).

Sec. 24A.055. COMPOSITION OF COURT. (a) The business court is composed of seven judges appointed by the governor with the advice and consent of the senate.

(b) A business court judge may be reappointed.

(c) The governor may not appoint:

(1) more than three judges who reside in the same county; or

(2) more than a majority of judges associated with the same political party.

Sec. 24A.056. TERMS OF OFFICE. The judges of the business court shall serve two-year terms of office.

Sec. 24A.057. VACANCY. If a vacancy occurs on the business court, the governor, with the advice and consent of the senate, shall appoint, in the same manner as the original appointment, another person to serve for the remainder of the unexpired term.

Sec. 24A.058. JUDICIAL AUTHORITY. A business court judge has all powers, duties, immunities, and privileges of a district judge.

Sec. 24A.059. JUDGE'S SALARY. (a) A business court judge shall be paid a total annual salary from the state that is the sum of:

(1) the salary paid to a district judge by the state under Section 659.012; and

(2) the maximum amount of county contributions and supplements allowed by law to be paid to a district judge under Section 659.012.

(b) The salary shall be paid in equal monthly installments.

Sec. 24A.060. REMOVAL; DISQUALIFICATION AND RECUSAL. (a) A business court judge may be removed from office in the same manner and for the same reasons as a district judge.

(b) A business court judge is disqualified or shall recuse himself or herself in a particular case for the same reasons as a district judge. Disqualification or recusal of a business court judge shall be governed by the same procedure as disqualification or recusal of a district judge.

Sec. 24A.061. PRIVATE PRACTICE OF LAW. A business court judge shall diligently discharge the duties of the office on a full-time basis and may not engage in the private practice of law.

Sec. 24A.062. VISITING JUDGE. (a) A retired or former judge or justice may be assigned as a visiting judge of the business court by the chief justice of the supreme court. A visiting judge of the business court is subject to objection, disqualification, or recusal in the same manner as a retired or former judge or justice is subject to objection, disqualification, or recusal if appointed as a visiting district judge.

(b) A visiting judge must meet the qualifications of a business court judge as provided by Section 24A.054.

(c) Before accepting an assignment as a visiting judge of the business court, a retired or former judge or justice shall take the constitutional oath of office required of appointed officers of this state and file the oath with the supreme court.

Sec. 24A.063. JURY PRACTICE AND PROCEDURE. (a) A party in an action pending in the business court has the right to a trial by jury when required by the constitution.

(b) A jury trial shall be held in a county in which venue would be found under Section 15.002, Civil Practice and Remedies Code.

(c) Subject to Subsection (b), a jury trial in a case removed to the business court shall be held in the county in which the action was originally filed.

(d) Subject to Subsection (b), a jury trial in a case filed initially in the business court shall be held in any county in which it could have been filed under Section 15.002, Civil Practice and Remedies Code, as chosen by the plaintiff.

(e) The parties and the business court judge may agree to hold the jury trial in any other county. A party may not be required to agree to hold the jury trial in a different county.

(f) The drawing of jury panels, selection of jurors, and other jury-related practice and procedure in the business court shall be the same as for the district court in the county in which the trial is held.

(g) Practice, procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials, hearings, and other business in the business court not otherwise provided for in this chapter are governed by the laws and rules prescribed for district courts.

(h) The business court may adopt rules of practice, which must be approved by the supreme court.

Sec. 24A.064. COURT LOCATION; STAFFING. (a) The business court shall have a clerk, whose office shall be located in Travis County in facilities provided by the state. The clerk shall:

(1) receive all filings in the business court; and

(2) fulfill the legal and administrative functions of a district clerk and an appellate court clerk.

(b) The judges of the business court shall maintain chambers in the county seat of their county of residence in facilities provided by the state.

(c) Subject to Section 24A.063, the business court, or any judge of the business court, may hold court at any location in the state, as the court determines is necessary or convenient for a particular civil action.

(d) The business court shall use the most advanced technology feasible when necessary and appropriate to facilitate expeditious proceedings in matters brought before the court. As determined by the business court, counsel and parties may appear before the business court by means of Internet-based or other technological devices rather than in person.

(e) In a county in which the business court sits, the sheriff shall in person or by deputy attend the business court as required by the court. The sheriff or deputy is entitled to be reimbursed by the state for the cost of attending court.

(f) Subject to any limitations provided by the General Appropriations Act, the business court may appoint personnel necessary for the operation of the court, including:

(1) the clerk of the court;

(2) staff attorneys for the court;

(3) staff attorneys for each business court judge;

(4) court coordinators; and

(5) administrative assistants.

(g) The court officials shall perform the duties and responsibilities of their offices and are entitled to the compensation, fees, and allowances prescribed by law for the offices.

Sec. 24A.065. FEES. The business court shall provide rates for fees associated with filings and actions in the business court. The fees shall be set at a sufficient amount to cover the costs of administering the provisions of this chapter, taking into account fee waivers in the interest of justice.

Sec. 24A.066. SEAL. The seal of the business court is the same as that provided by law for a district court except that the seal must contain the name "The Business Court of Texas."

SUBCHAPTER C. COURT OF BUSINESS APPEALS

Sec. 24A.101. APPEAL; COURT OF BUSINESS APPEALS. An appeal from an order or judgment of the business court is available in the same manner as an appeal from an order or judgment of a district court. The procedure governing an appeal from an order or judgment of a business court is the same as an appeal from an order or judgment of a district court. An appeal from an order or judgment of the business court must be filed in the court of business appeals.

Sec. 24A.102. COMPOSITION OF COURT. (a) The court of business appeals is composed of seven justices appointed by the governor with the advice and consent of the senate.

(b) A justice of the court of business appeals must meet the qualifications of a judge of the business court as provided by Section 24A.054.

(c) The governor shall designate one of the seven justices as the chief justice of the court of business appeals.

(d) A justice of the court of business appeals may be reappointed by the governor.

Sec. 24A.103. TERMS OF OFFICE. The justices of the court of business appeals shall serve two-year terms of office.

Sec. 24A.104. VACANCY. If a vacancy occurs on the court of business appeals, the governor, with the advice and consent of the senate, shall appoint, in the same manner as the original appointment, another person to serve for the remainder of the unexpired term.

Sec. 24A.105. JUDICIAL AUTHORITY. A justice of the court of business appeals has all powers, duties, immunities, and privileges of a court of appeals justice.

Sec. 24A.106. PANEL. The justices appointed to the court of business appeals shall sit in randomly selected panels of three to hear and determine appeals from the business court.

Sec. 24A.107. LOCATION. The justices hearing appeals from the business court may sit in any convenient place to hear the appeal.

Sec. 24A.108. JUDGMENT. The court of business appeals shall render judgments and hand down opinions in the same manner as any other court of appeals under Chapter 22.

Sec. 24A.109. REVIEW. (a) A party may seek an en banc review of a decision of a panel of the court of business appeals.

(b) A party to an order or judgment of the business court or the court of business appeals may file a petition for review in the supreme court in the same manner and circumstances as a party to an order or judgment of a district court or court of appeals.

Sec. 24A.110. CLERK. The clerk of the business court shall serve as the clerk of the court of business appeals.

Sec. 24A.111. COMPENSATION. A justice of the court of business appeals shall receive compensation equal to that of the chief justice of a court of appeals, including the maximum amount of local contributions.

Sec. 24A.112. SEAL. The seal of the court of business appeals is the same as that provided by law for a court of appeals except that the seal must contain the name "The Court of Business Appeals of Texas."

SECTION 2. (a) As soon as practicable after the effective date of this Act, the governor shall appoint judges to the business court, as required by Section 24A.055, Government Code, as added by this Act.

(b) As soon as practicable after the effective date of this Act, the governor shall appoint justices to the court of business appeals, as required by Section 24A.102, Government Code, as added by this Act.

SECTION 3. The changes in law made by this Act apply to civil actions commenced on or after January 1, 2022.

SECTION 4. (a) The Supreme Court of Texas has exclusive and original jurisdiction over a challenge to the constitutionality of this Act or any part of this Act and may issue injunctive or declaratory relief in connection with the challenge.

(b) If the appointment of judges by the governor to the business court under Section 24A.055, Government Code, as added by this Act, is held by the Supreme Court of Texas as unconstitutional, the business court shall be staffed by sitting or retired judges who are appointed by the supreme court.

(c) If the appointment of justices by the governor to the court of business appeals under Section 24A.102, Government Code, as added by this Act, is held by the Supreme Court of Texas as unconstitutional, the court of business appeals shall be staffed by sitting or retired justices who are appointed by the supreme court.

SECTION 5. This Act takes effect September 1, 2021.

Attachment H

By: Huffman

S.B. No. 1529

A BILL TO BE ENTITLED

AN ACT

relating to the creation of the Texas Court of Appeals to hear certain cases; authorizing fees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. TEXAS COURT OF APPEALS

SECTION 1.01. Section 22.201(a), Government Code, is amended to read as follows:

(a) The state is divided into 14 courts of appeals districts with a court of appeals of general jurisdiction in each district. The state has one statewide court of appeals district for the Texas Court of Appeals.

SECTION 1.02. Subchapter C, Chapter 22, Government Code, is amended by adding Section 22.2155 to read as follows:

Sec. 22.2155. TEXAS COURT OF APPEALS. (a) The Texas Court of Appeals has exclusive intermediate appellate jurisdiction over all cases or any matters arising out of or related to a civil case:

(1) brought by or against the state or a state agency, board, or commission, or by or against an officer of the state or a state agency, board, or commission, other than:

(A) a proceeding brought under Title 5, Family Code;

(B) a proceeding brought against an elected official of a political subdivision or the judge of a trial court arising from an act or omission made in the official's or judge's official capacity;

(C) a proceeding relating to a mental health commitment or a civil asset forfeiture;

(D) a juvenile case;

(E) a proceeding brought under Chapter 125, Civil Practice and Remedies Code, to enjoin a common nuisance;

(F) a quo warranto proceeding;

(G) a proceeding relating to an order of expunction under Chapter 55, Code of Criminal Procedure, or an order of nondisclosure of criminal history record information under Subchapter E-1, Chapter 411; or

(H) a proceeding relating to the conditions, modification, revocation, or surrendering of a bond, including a surety bond; or

(2) in which a party to the proceeding files a petition, motion, or other pleading challenging the constitutionality of a statute of this state.

(b) The court is composed of five justices elected by the qualified voters of the state.

(c) Notwithstanding Section 659.012(a)(2), a justice of the Texas Court of Appeals shall be paid the annual base salary paid by the state under Section 659.012 to a justice of the supreme court other than the chief justice or a judge of the court of criminal appeals other than the presiding judge.

(d) The court shall sit in the City of Austin, but may transact its business in any county in the state as the court determines is necessary and convenient.

(e) Except as otherwise provided by this section or a rule adopted by the supreme court under Subsection (f), the following apply to the court in the same manner as to other courts of appeals:

- (1) provisions of this code, including Sections 22.217 through 22.228, or other law;
- (2) rules of procedure and appeal; and
- (3) standards of practice relating to precedent and authority from the supreme court and other courts of appeals.

(f) The supreme court shall adopt rules to:

- (1) provide for the administration of the Texas Court of Appeals as a subject matter jurisdiction court of appeals and assist the court in processing appeals filed from the district courts, statutory county courts, and county courts of the state; and
- (2) set court costs and fees for the court.

SECTION 1.03. Section 22.216, Government Code, is amended by adding Subsection (n-1) to read as follows:

(n-1) The Texas Court of Appeals consists of a chief justice and of four justices holding places numbered consecutively beginning with Place 2.

SECTION 1.04. Section 22.220(a), Government Code, is amended to read as follows:

(a) Each court of appeals of general jurisdiction has appellate jurisdiction of all civil cases within its district of which the district courts or county courts have jurisdiction when the amount in controversy or the judgment rendered exceeds \$250, exclusive of interest and costs, other than cases over which the Texas Court of Appeals has exclusive intermediate appellate jurisdiction under Section 22.2155.

SECTION 1.05. (a) Except as otherwise provided by this Act, the Texas Court of Appeals is created January 1, 2023.

(b) If the Texas Court of Appeals is created, the initial vacancies in the offices of chief justice and justice of the court shall be filled by election, and the offices exist for purposes of the primary and general elections in 2022.

SECTION 1.06. (a) On the date the Texas Court of Appeals is created, all cases pending in courts of appeals of general jurisdiction filed on or after January 1, 2021, and of which the Texas Court of Appeals has exclusive intermediate appellate jurisdiction are transferred to the Texas Court of Appeals.

(b) When a case is transferred as provided by Subsection (a) of this section:

(1) all processes, writs, bonds, recognizances, or other obligations issued from the court of appeals of general jurisdiction are returnable to the Texas Court of Appeals as if originally issued by that court; and

(2) the obligees on all bonds and recognizances taken in and for a court of appeals of general jurisdiction and all witnesses summoned to appear in a court of appeals of general jurisdiction are required to appear before the Texas Court of Appeals as if originally required to appear before that court.

ARTICLE 2. CONFORMING AMENDMENTS

SECTION 2.01. Article 4.01, Code of Criminal Procedure, is amended to read as follows:

Art. 4.01. WHAT COURTS HAVE CRIMINAL JURISDICTION. The following courts have jurisdiction in criminal actions:

1. The Court of Criminal Appeals;
2. Courts of appeals of general jurisdiction;

3. The district courts;
4. The criminal district courts;
5. The magistrates appointed by the judges of the district courts of Bexar County, Dallas County, Tarrant County, or Travis County that give preference to criminal cases and the magistrates appointed by the judges of the criminal district courts of Dallas County or Tarrant County;
6. The county courts;
7. All county courts at law with criminal jurisdiction;
8. County criminal courts;
9. Justice courts;
10. Municipal courts;
11. The magistrates appointed by the judges of the district courts of Lubbock County; and
12. The magistrates appointed by the El Paso Council of Judges.

SECTION 2.02. Article 4.03, Code of Criminal Procedure, is amended to read as follows:

Art. 4.03. COURTS OF APPEALS. The Courts of Appeals of general jurisdiction shall have appellate jurisdiction coextensive with the limits of their respective districts in all criminal cases except those in which the death penalty has been assessed. This Article shall not be so construed as to embrace any case which has been appealed from any inferior court to the county court, the county criminal court, or county court at law, in which the fine imposed or affirmed by the county court, the county criminal court or county court at law does not exceed one hundred dollars, unless the sole issue is the constitutionality of the statute or ordinance on which the conviction is based.

SECTION 2.03. Article 44.25, Code of Criminal Procedure, is amended to read as follows:

Art. 44.25. CASES REMANDED. The courts of appeals of general jurisdiction or the Court of Criminal Appeals may reverse the judgment in a criminal action, as well upon the law as upon the facts.

SECTION 2.04. Section 612.004(f)(2), Government Code, is amended to read as follows:

(2) "State agency" means:

(A) a department, board, commission, committee, council, agency, office, or other entity in the executive, legislative, or judicial branch of state government, the jurisdiction of which is not limited to a geographical portion of the state;

(B) an institution of higher education as defined by Section 61.003, Education Code; and

(C) a court of appeals as described by Subchapter C, Chapter 22 ~~[Section 22.201]~~.

ARTICLE 3. SPECIFIC APPROPRIATION REQUIRED; EFFECTIVE DATE

SECTION 3.01. (a) Notwithstanding Section 22.201(a), Government Code, as amended by this Act, and Section 22.2155, Government Code, as added by this Act, the Texas Court of Appeals is not created unless the legislature makes a specific appropriation of money for that purpose. For purposes of this subsection, a specific appropriation is an appropriation identifying the Texas Court of Appeals or an Act of the 87th Legislature, Regular Session, 2021, relating to the creation of the Texas Court of Appeals.

(b) Notwithstanding Section 22.220(a), Government Code, as amended by this Act, a court of appeals of general jurisdiction has the same jurisdiction the court had on December 31, 2021, if the Texas Court of Appeals is not created as a result of Subsection (a) of this section.

SECTION 3.02. This Act takes effect January 1, 2022.