

- SUBJECT:** Court of appeals direct review of state agency rules and decisions
- COMMITTEE:** Judicial Affairs — committee substitute recommended
- VOTE:** 6 ayes — Thompson, Capelo, Deshotel, Hinojosa, Shields, Uresti
0 nays
3 absent — Hartnett, Garcia, Jim Solis
- WITNESSES:** For —Tom Utter, City Of Corpus Christi
Against —None
- BACKGROUND:** Under Chapter 2001 of the Government Code, the Administrative Procedure Act, a person affected by an agency rule may file a declaratory judgment action in a Travis County district court, which may rule on the validity or applicability of the rule in question.
- For a contested case proceeding, an affected party may seek judicial review by a Travis County district court of an agency’s decision. The court reviews the decision either by trial de novo, in which all issues are considered anew without regard to the agency’s decision, or by substantial evidence review, in which the court determines whether the agency had justification for its decision. Whether a court reviews a contested case decision by trial de novo or by substantial evidence review depends on the statute involved.
- A party may appeal the decision to the Third Court of Appeals, whose decision may be appealed to the Texas Supreme Court.
- DIGEST:** CSHB 2105 would amend Government Code, secs. 2001.038 and 2001.176, to allow a Travis County district court, for issues involving both declaratory judgment actions and review of contested cases, to transfer the action directly to the Third Court of Appeals. The district court would have to transfer the action if it determined that the public interest required a prompt authoritative determination of the validity or applicability of the rule in question and the case ordinarily would be appealed. The court of appeals would direct the

district court to conduct any necessary evidentiary hearings in connection with the action.

CSHB 2105 would apply both to actions pending in district court on the September 1, 1999, effective date and to actions filed on or after that date.

**SUPPORTERS
SAY:**

The Administrative Procedure Act provides that agency rules and contested case decisions be reviewed in sequence, first by a Travis County district court, next by the Third Court of Appeals in Austin, and finally by the Texas Supreme Court. Completion of this process can require months or even years, delaying decisions and increasing the costs and attorney's fees incurred by the parties involved. By allowing a district judge to transfer jurisdiction of a judicial review directly to the Third Court of Appeals when the judge determined that such action would be in the public interest and would aid in the efficient and speedy disposition of the issues in the case, CSHB 2105 would remove unnecessary burdens on the district court, decrease the cost to litigants, and shorten the time needed to arrive at a final decision.

The district court would retain the authority to hear a contested case or a challenge to the validity to a rule. The decision to transfer would rest solely with the district court judge. If the case was transferred to the court of appeals, the appellate court could send the case back to the district court for an evidentiary hearing, which would allow the appellate court more appropriately to decide the legal issues involved rather than evaluate evidence and find facts.

The bill would impose no structural changes on the judicial system, nor would it add to the caseload burden of the appellate court or require adding new judges. The Texas Supreme Court still would retain its discretion whether to review cases appealed from the court of appeals.

**OPPONENTS
SAY:**

The bill could create unforeseen problems that could undermine any added efficiency of a shortened process of judicial review. For example, the bill would authorize a district court to determine whether transfer of a contested case or rule validity challenge to the Third Court of Appeals based on the public interest. The bill leaves unclear the procedure that the court would have to follow in making such a determination. If evidence was required to make that determination, then that determination itself could be appealed to the court of appeals, slowing the process even more. Also, the constitutional

requirement of a separation of powers between branches of government may be violated by requiring a district court to make a determination based on “the public interest,” which is a political decision normally left to the Legislature.

No objective basis exists for concluding that too many administrative appeals are appealed to the Third Court of Appeals without data showing how many district court opinions are appealed.

NOTES:

The substitute changed the original bill by restricting the application of the bill to Travis County district courts and allowing the court to determine if the case ordinarily, rather than likely, be appealed.