

- SUBJECT:** Requiring trial by special judge in civil and family law cases
- COMMITTEE:** Judiciary — favorable, without amendment
- VOTE:** 8 ayes — Hartnett, Homer, Alonzo, R. Cook, Gonzales, Goolsby, Hughes, Krusee
0 nays
1 absent — Hopson
- WITNESSES:** For — Hal Davis; (*Registered, but did not testify:* Doug Woodburn, Texas Family Law Foundation)
Against — None
- BACKGROUND:** Civil Practice and Remedies Code, ch. 151 allows district court, statutory probate court, or statutory county court judges in whose court a civil or family law matter is pending to refer the case to a special judge if the parties to the case agree. Any or all issues of fact or law may be referred.
- A special judge must be a retired or former district, statutory county court, or appellate judge who has served as a judge for at least four years in a district, statutory county court, or appellate court. The special judge must have developed substantial experience in the judge’s specialty and in the past year have completed at least five days of approved continuing legal education courses. A special judge must not have been removed from office or resigned while under investigation for discipline or removal.
- A special judge has the powers of the referring judge except that the special judge may not hold a person in contempt of court unless the person is a witness before the special judge. Trials are conducted without a jury, and the special judge’s verdict stands as a verdict of the referring judge’s court. Parties may appeal the judge’s verdict as they would a ruling from the referring judge’s court. Parties share the special judge’s fee and administrative costs.
- DIGEST:** HB 2068 would require, rather than allow, a district court judge, a statutory probate court judge, or statutory county court judge in whose court a civil or family law matter was pending to refer a case to a special

judge, if agreed upon by the parties. Any or all issues of fact or law could be referred, if the parties agreed.

The bill would take effect September 1, 2007, and would apply only to a motion for referral made on or after that date.

**SUPPORTERS
SAY:**

HB 2068 would help relieve clogged courts and overburdened dockets by streamlining the process for assigning civil and family law cases to a special judge. It would improve the process in several ways. Although the referral-by-agreement provision has been law for some time, many judges are unfamiliar with it. Further, because the law is permissive, even those who are familiar with it may not be utilizing it as much as they could.

Some judges are reluctant to assign cases to a special judge because they do not want to appear irresponsible for not handling their cases. In fact, referral of agreed-upon cases can lessen the courts' workload and free the judge to deal with contentious matters that truly demand his or her attention. Making the referral to a qualified, experienced special judge mandatory would incorporate the referral as a matter of course and better equip the judiciary to dispense justice in a timely fashion.

The bill would provide an efficient and cost-effective means of relief while assuring litigants and their attorneys that they had the right to pursue the special judge option if they wished. Using a special judge affords a level of privacy for the parties that can be desirable, especially in divorces, and also provides a less stressful, more convenient process for all involved. Using special judges also saves money for the parties, because it cuts down the time spent in litigation, and for taxpayers, because the parties are responsible for paying the fees and administrative costs for special judge cases.

**OPPONENTS
SAY:**

The decision to refer a case to a special judge should remain with the presiding judge and should not be mandatory, unless the judge is certain that there is no dispute among the parties.

NOTES:

The author intends to offer a floor amendment that would require a judge to order referral of a case only when the motion for referral stated that there was no dispute among the parties as to any issue or fact or law in the case. In other cases, the judge would be permitted, rather than required, to refer cases on agreement of the parties.

HB 2068 was withdrawn from the March 28 Local, Consent, and Resolutions Calendar and transferred to the Calendars Committee.