

SUBJECT: Removing county clerk eligibility as receiver for certain mineral interests

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 9 ayes — Hunter, Hughes, Alonzo, Hartnett, Jackson, Lewis, Madden, Martinez, Woolley

0 nays

2 absent — Branch, Leibowitz

WITNESSES: For — Wilma Bush, County and District Clerk's Association

Against — None

BACKGROUND: A receivership is a court order under which all property subject to a legal dispute is placed under the control of an independent person known as a receiver, regardless of the wishes of the property owner. Courts use receiverships only under exceptional circumstances in order to preserve property during the time needed to conclude a lawsuit. Under Civil Practice and Remedies Code, sec. 64.031, a receiver may take possession of the property and receive rents, collect demands, make transfers, and generally perform any other act as authorized by the court needed to preserve the property.

Civil Practice and Remedies Code, sec. 64.091 authorizes a district court to appoint a receiver for certain mineral interests in legal actions in which a person claiming an undivided mineral interest in land located in Texas disputes a nonresident or absent defendant's ownership of the mineral interest. The district court may appoint a receiver for a mineral interest, a leasehold interest under a mineral lease, or a mineral royalty interest. The district court may appoint as receiver the county judge, the county clerk, or any other resident of the county in which the land related to the interest is located. The district court may also appoint the successors to a county judge or county clerk as receiver to a mineral interest or a leasehold interest, but not to a royalty interest.

A receiver has a fiduciary duty concerning the property placed in receivership. A fiduciary duty requires the fiduciary to act at all times for

the sole benefit and interests of the property or person for which the fiduciary is charged.

DIGEST:

HB 108 would remove the county clerk and the clerk's successors from the list of persons eligible to serve as a receiver for a mineral interest or a leasehold interest under a mineral lease in legal actions in which a party disputed a nonresident or absent defendant's ownership of the interest. The bill also would remove the county clerk from the list of persons eligible to serve as a receiver for a royalty interest in legal actions in which a party disputed a nonresident or absent defendant's ownership of the royalty interest.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2009.

**SUPPORTERS
SAY:**

HB 108 would eliminate a potential conflict of interest between a county clerk's duties to the county and the fiduciary duties a clerk would owe to mineral property if appointed as receiver. A county clerk is an officer of the court, and having a clerk share that role with the fiduciary role of a receiver could place the clerk in the awkward position of having to act in the best interest of the receivership property while still following the orders of the court. Since it is conceivable that the clerk's role as receiver could conflict with the court's wishes, the proper scope of a county clerk's duties should not include fiduciary duties to property within the jurisdiction of the clerk's own court.

**OPPONENTS
SAY:**

No apparent opposition.