

BILL ANALYSIS

Senate Research Center
81R1474 TJS-D

H.B. 108
By: Phillips (Estes)
State Affairs
5/13/2009
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law places the county clerk in a fiduciary capacity that is outside the scope of the duties of the clerk. This bill removes the county clerk and the clerk's successors from the list of persons eligible to be appointed as a receiver for certain mineral interests.

This bill eliminates 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 difficult position of having to act in the best interest of the receivership property while still following the orders of the court. Because 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.

H.B. 108 amends current law relating to persons eligible to be appointed as a receiver for certain mineral interests.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 64.091(d), Civil Practice and Remedies Code, to provide that in an action under Subsection (b)(1) (relating to the requirement that the defendant for whom the receiver is sought be a person whose residence or identity is unknown or a nonresident) the court is authorized to appoint as receiver the county judge and his successors or any other resident of the county in which the land is located, rather than the county judge and his successors, the county clerk and his successors, or any other resident of the county in which the land is located.

SECTION 2. Amends Section 64.093(d), Civil Practice and Remedies Code, to make a conforming change.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: upon passage or September 1, 2009.