

- SUBJECT:** Creating the Judicial Branch Certification Commission
- COMMITTEE:** Judiciary and Civil Jurisprudence — committee substitute recommended
- VOTE:** 9 ayes — Lewis, Farrar, Farney, Gooden, Hernandez Luna, Hunter, K. King, Raymond, S. Thompson
- 0 nays
- WITNESSES:** For — (*Registered, but did not testify:* Berta Allen, Kathy Burrow, Dennis Cromwell, Keith Oakley, Scott L Thomas, and Andrew Watson, Texas Process Servers Association; Amy Beard, Professional Civil Process of Texas; Guy Herman, Texas College of Probate Judges; Eric Johnson and Carl Weeks, Texas Process Server Review Board)
- Against — Dana McMichael, Civil Process Servers Association of Texas; Tod Pendergrass
- On — Jimmy Evans, Texas Court Reporters Association; Wallace B. Jefferson, Supreme Court of Texas; David Slayton, Office of Court Administration; (*Registered, but did not testify:* Katie Bond, Office of Court Administration)
- BACKGROUND:** Government Code, ch. 72, established the Office of Court Administration (OCA). The OCA supports the courts of Texas under the direction of the Supreme Court. It collects data, runs programs, awards grants, and otherwise assists the Supreme Court to administer the judicial branch of the Texas state government.
- Government Code, ch. 52 created the Court Reporters Certification Board, registers and certifies court reporters in Texas. Court reporters must pass a proficiency test. The board is administratively attached to the OCA.
- Government Code, ch. 111 established the Guardianship Certification Board, registers and certifies non-attorney applicants for the provision of guardianship services. These applicants must pass a certification exam. The board is administratively attached to the OCA.
- The Supreme Court established rules 103 and 536(a) under the Rules of

Civil Procedure, and made it possible for "any person certified under order by the Supreme Court to serve civil process." The Process Servers Review Board certifies process servers and approves training courses.

Government Code, ch. 57 established the Licensed Court Interpreters Advisory Board, which licenses, tests, and regulates language interpreters who provide services to Texas courts. The board is administratively attached to the Texas Department of Licensing and Regulation.

DIGEST:

HB 3790 would add Government Code, ch. 154 to create the Judicial Branch Certification Commission. It would abolish the Court Reporters Certification Board, the Guardianship Certification Board, Process Server Review Board, and the Licensed Court Interpreter Advisory Board. The bill would fold their regulatory functions, powers, and cases into the new commission. The commission would be attached to the Office of Court Administration (OCA) and would operate under the OCA's executive director.

Judicial Branch Certification Commission. HB 3790 would establish the Judicial Branch Certification Commission. The commission would consist of a nine-member board appointed by the Supreme Court of Texas. Five of the members would be judges and four would be public members. The Supreme Court would appoint the presiding officer. The members would serve staggered six-year terms. The bill would establish conflict-of-interest rules – preventing, for instance, lobbyists who represent a profession regulated by the commission from serving on its board. The commission's board would meet at least quarterly. The commission would be attached to OCA and the OCA director would administer and enforce the commission's programs and perform any duty assigned by the commission and law.

The commission would undergo Sunset review, but would not be subject to abolishment.

Regulatory powers of the commission. HB 3790 would allow the Supreme Court to adopt rules regulating court reporters, guardians, court interpreters, and process servers. The bill would provide that a rule or a form adopted by the Supreme Court or the Texas Commission of Licensing and Regulation related to one of the professions regulated by the bill would remain in effect until altered by the Supreme Court. HB 3790 would allow the commission to waive certain application prerequisites for

certain applicants licensed in other states.

The commission would develop and recommend to the Supreme Court rules and professional codes of conduct for the regulated professions, set fees to cover the costs of administering the programs, and, with consultation from appropriate advisory boards, establish qualifications for certification, registration, or licensure. The commission would be empowered to conduct criminal background investigations of applicants.

The bill would permit the commission to require applicants for certification, registration, or licensure to pass an examination developed and administered by the commission or a contractor, require continuing education, and appoint necessary committees. A person who took an examination would have to be notified of the results within 30 days.

The bill would require the commission to maintain a record of complaints, including:

- the name of the complainant;
- date;
- subject matter;
- names of person contacted in relation to the complaint, a summary of results; and
- an explanation of the reason the file was closed if closed without action other than investigation.

The bill would require the commission to encourage alternative dispute resolution procedures to assist in the resolution of disputes under its jurisdiction.

Enforcement powers. HB 3790 would authorize the commission to issue subpoenas for the production of evidence or the attendance of witnesses. The OCA would be allowed to issue cease-and-desist orders for violations. The commission would be allowed to deny, revoke, suspend, or refuse to renew a certification, registration, or license for a violation of an applicable rule or law. It would be allowed to reprimand a regulated person for rule or law violations. The commission would be allowed to issue administrative penalties of up to \$500 per violation, with each day a violation continues being a separate violation.

The commission would be required to give regulated persons notice and a hearing before imposing a penalty. The Supreme Court would adopt rules

concerning appeals.

Advisory boards. The bill would allow the commission to establish advisory boards to advise the commission on policy and regulation, including certification, registration, and licensing. These boards would meet at least yearly. The bill would establish four boards to advise the commission: the Court Reporters Certification Advisory Board, the Guardianship Certification Advisory Board, the Process Server Certification Advisory Board, and the Licensed Court Interpreter Advisory Board. The Supreme Court would appoint at least five members to each board, except it would appoint at least seven to the court reporters board. The court would appoint the presiding officer and the board's members would serve staggered six-year terms.

Court reporters. HB 3790 would abolish the Court Reporters Certification Board and transfer its regulatory duties and powers to the commission. Court reporters would be certified by the the Judicial Branch Certification Commission. Reporters who were certified before September 1, 1983 would be allowed to retain certification and keep it in continuous effect. The bill would continue the requirement that court reporting firms be registered. The bill also would continue the offense of practicing short hand reporting in violation of the law. The offense would continue to be a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000).

Guardians. HB 3790 would abolish the Guardianship Certification Board and transfer its regulatory duties and powers to the commission. The commission would be authorized to issue certificates for the provision of guardianship services.

Process servers. HB 3790 would establish the Process Server Certification Advisory Board as an advisory board of the commission. It would require the OCA to collect fees for process server certification and would direct those fees to the support of regulatory programs for process servers, guardians, and court reporters. Existing rules adopted by the Supreme Court to certify process servers would remain in place until the court altered them.

Court interpreters. HB 3790 would transfer to the commission the Licensed Court Interpreter Advisory Board from the Texas Department of Licensing and Regulation. The bill would preserve the requirement for a

license to be a court interpreter. The bill would require the OCA to conduct qualifying examinations. The bill also would preserve the offense of interpreting in violation of either a rule or a law. Such an offense is a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000).

Conforming changes. HB 3790 would make conforming changes to the Code of Criminal Procedure, Estates Code, Government Code, Human Resources Code, and Tax Code, largely striking references to existing regulatory agencies and replacing them with references to the Judicial Branch Certification Commission.

Effective date. The bill would take effect September 1, 2014, except as otherwise provided. The Supreme Court would start adopting rules, procedures, and forms for the commission and its advisory committees on September 1, 2013.

**SUPPORTERS
SAY:**

HB 3790 is a good government bill. It would streamline some state regulatory functions by abolishing four state agencies and fold their functions and powers into a single commission. This streamlined process would allow the Supreme Court to better regulate these professions. Properly overseeing certifications is important because these professions affect substantive rights and access to justice.

This would provide administrative efficiency because it would mean four fewer state agency heads, fewer necessary personnel to register, certify, and track industry participants, and savings on office and information technology support. According to the fiscal note, the OCA would be able to absorb these functions at no additional cost to the state.

It is appropriate to regulate process servers. The Supreme Court created the Process Server Review Board in 2005 after private process servers complained that Texas counties differed in how they regulated process servers. Some required training and other criteria, while others required only registration with a court. This patchwork of regulations made it difficult for process servers to practice over a multi-county area, let alone statewide. The creation of the board met the call from industry for standardization. Its certification procedures reduce discrepancies and improve standards.

Regulating process servers also is a public safety issue. They look for

people in their homes and places of business to serve documents. People whose profession requires searching and entering these places should have to meet certain minimum standards to ensure public safety.

The Supreme Court has the ability to regulate judicial branch entities and actors. Tex. Const. art. V., sec. 31 (a) and (b) grant the Supreme Court the power to regulate process servers as an extension of its constitutional duty to oversee the efficient and uniform administration of justice in various courts. Government Code, sec. 74.007 grants the court the power to appoint members to committees necessary or desirable for the efficient administration of justice. Finally, service of process has been regulated by the Texas Rules of Civil Procedure, rules 103 and 536(a). Changes to those rules created the Process Servers Review Board and they have withstood court challenge.

OPPONENTS
SAY:

Process servers do not need to be regulated. The government should regulate an industry only for public health and safety reasons. No one in Texas is physically harmed by a process server delivering documents. There are few consumer complaints against process servers. Attorneys, the group that hire process servers, are not asking for them to be regulated. Finally, if public safety or consumer protection were the driving force behind regulation, then the court's current rules would accomplish this purpose by not allowing non-certified process servers to deliver documents.

Texas should follow the model many states and the federal system uses for regulating process servers. They allow any "disinterested adult" to serve process. Texas should follow this same established and common standard rather than requiring certification, expensive training, and other criteria.

The bill would be an unconstitutional method of regulating process servers. According to the critical constitutional doctrine of separation of powers, it is up to the Legislature to make general laws, such as regulations of an industry or a profession. Currently, process servers are certified by an agency created by a rule of the Supreme Court not by a legislatively enacted statute. All HB 3790 would do is transfer the functions of this agency to another body. It would not provide a statutory basis for regulation. If the Legislature sought fit to regulate process servers it either would have already do so, or would pass a substantive law this session.

NOTES:

The companion bill, SB 966 by West, was passed by the Senate on April 9 by a vote of 29-2 (Nelson, Nichols).

The committee substitute differs from the bill as filed by:

- creating the Process Server Certification Advisory Board;
- permitting the Supreme Court to allow the commission to adopt rules deemed appropriate by the court;
- requiring the commission to adopt rules in consultation with its advisory boards; and
- requiring certain rules of evidence and procedure for commission hearings regarding possible sanctions against a regulated person or entity.