

BILL ANALYSIS

H.B. 1755
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Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties observe that in the past, judges would appoint a local probate attorney to perform probate duties involving certain modest estates when there was no other appropriate person willing or available to do the work. Those parties further observe that there was a pool of attorneys who would do this work for the courts, knowing that their compensation would be lower than the private market, but that they would be compensated in the end.

However, concerns have been raised that due to the increase in what are considered reasonable attorney fees, the liability exposure of acting in that role, the labor intensive tasks in settling estates, and the tedious pace of court supervision, competent attorneys are declining to be appointed when there is a modest or limited estate because they may not get paid. Interested parties note that the shortage of attorneys willing to perform this important function has resulted in local governmental entities being forced to spend significant amounts of money on pauper burials, even though in many cases there was a distinct possibility that some decedents had assets that were not disclosed by family.

H.B. 1755 aims to remedy this problem and potentially save counties hundreds of thousands of dollars by authorizing the appointment of a public probate administrator who is tasked with performing certain probate duties for unrepresented decedents in the county and by providing means for financially supporting the administrator.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 1755 amends the Government Code to authorize a statutory probate court judge, with the concurrence of the commissioners court, to appoint a public probate administrator for the county in which the statutory probate court is located. The bill requires one person to serve as the public probate administrator for all statutory probate courts in the county unless the commissioners court has authorized additional public probate administrators. The bill provides for the designation of a specific statutory probate court judge to appoint and administer the office of the public probate administrator in a county that has more than one statutory probate court. The bill authorizes the public probate administrator to be a person, a charitable organization, or any other suitable entity and requires the commissioners court to set the compensation of the public probate administrator. The bill authorizes the public probate administrator, with the consent of and at salaries set by the commissioners court, to employ assistants, deputies, clerks, and any other employees as necessary to carry out the administrator's duties.

H.B. 1755 amends the Estates Code, as effective January 1, 2014, to set out provisions relating to the bond requirements for a public probate administrator. The bill entitles the public probate administrator to the commissions to which a personal representative of a decedent's estate is

entitled and specifies that such commissions are to be paid into the county treasury. The bill provides that the public probate administrator's office, including salaries, is funded, in part, by the commissions.

H.B. 1755 requires the public probate administrator, on receipt of notice of a decedent for whose estate a personal representative has not been appointed and who has no known or suitable next of kin, to take prompt possession or control of the decedent's property located in the county that is considered by the public probate administrator to be subject to loss, injury, waste, or misappropriation or that the court orders into the possession and control of the public probate administrator after notice to the public probate administrator. The bill makes the public probate administrator responsible for determining if the decedent has any heirs or a will. The bill requires the public probate administrator, if necessary, to make burial arrangements with the appropriate county facility in charge of indigent burial if there are no known personal representatives and requires the public probate administrator, if the administrator determines the decedent executed a will, to file the will with the county clerk. The bill grants the public probate administrator all of the powers and duties of an administrator with regard to a decedent's estate. The bill authorizes the public probate administrator to dispose of any unclaimed property by public auction, private sale, or donation to a charity, if appropriate. The bill authorizes the statutory probate court judge or commissioners court to request accountings in addition to accountings otherwise required with regard to a decedent's estate.

H.B. 1755 authorizes certain individuals to inform the public probate administrator of specified circumstances involving a decedent or a decedent's property. The bill requires the public probate administrator to investigate the estate and circumstances of a decedent found in the county or believed to be domiciled in the county in which the administrator is appointed to determine whether the opening of an administration is necessary if the public probate administrator has reasonable cause to believe that the decedent does not have a personal representative appointed for the decedent's estate. The bill requires the public probate administrator to secure a decedent's estate or resolve any other circumstances related to a decedent if, after the investigation, the public probate administrator determines that the decedent has an estate that may be subject to loss, injury, waste, or misappropriation or that there are other circumstances relating to the decedent that require action by the public probate administrator. The bill authorizes the public probate administrator, in order to establish reasonable cause to investigate a decedent's estate and circumstances, to require an information letter about the decedent containing certain identifying information regarding the decedent, a description of the relationship between the interested person and the decedent, a statement of the decedent's suspected cause of death, certain information regarding the decedent's property, and certain information regarding any known friends or relatives of the decedent.

H.B. 1755 authorizes a public probate administrator who has made an investigation to present to the statutory probate court judge a statement of the known facts relating to a decedent with a request for permission to take possession or control of the decedent's property and further investigate the matter. The bill authorizes a statutory probate judge, on presentation of such a statement, to issue an order authorizing the public probate administrator to take possession or control of a decedent's property and authorizes a public probate administrator to record the order in any county in which property subject to the order is located. The bill requires certain persons and entities, on presentation of such an order, to provide the public probate administrator complete information concerning property held in the name of the decedent referenced in the order, without charge, including the names and addresses of any beneficiaries and any evidence of a beneficiary designation and to grant the public probate administrator access to a safe deposit box rented in the name of the decedent referenced in the order, without charge, for the purpose of inspection and removal of its contents. The bill requires such entities to perform those actions without requiring a death certificate or letters of administration and without inquiring into the truth of the order. The bill requires costs and expenses incurred in drilling or forcing a safe deposit box open to be paid by the decedent's estate.

H.B. 1755 authorizes the public probate administrator, if gross assets of an estate do not exceed 10 percent of the maximum amount authorized for a small estate affidavit, to act without issuance of letters testamentary or of administration if the court approves a statement of administration stating the name and domicile of the decedent, the date and place of death of the decedent, and the name, address, and relationship of each known heir or devisee of the decedent. The bill authorizes the public probate administrator, on approval of the statement of administration, to take certain actions regarding the distribution of property, to make necessary funeral arrangements for the decedent, and to pay reasonable funeral charges with estate assets. The bill requires the public probate administrator, on the distribution of property and internment of the decedent, to file with the clerk an affidavit, to be approved by the court, detailing the property collected, the property's distribution, and the cost and place of internment.

H.B. 1755 authorizes the public probate administrator to file a small estate affidavit for approval by the statutory probate court judge if gross assets of an estate do not exceed the maximum amount authorized for such an affidavit. The bill requires the affidavit, if approved by the statutory probate court judge, to be maintained and recorded in the manner specified for small estate affidavits and specifies that the approved affidavit has the effect described under provisions governing a person's liability with respect to the payment, delivery, transfer, or issuance of a small estate affidavit.

H.B. 1755 requires a public probate administrator to file an application for letters of administration or administration with will annexed if gross assets of an estate exceed the maximum amount authorized for a small estate affidavit, if the property of the decedent cannot be disposed of using other methods detailed in the bill's provisions, or at the discretion of the public probate administrator or on order of the statutory probate court judge. The bill establishes that after issuance of letters of administration, the public probate administrator is considered a personal representative for the decedent's estate and has all of the powers and duties of a personal representative.

H.B. 1755 authorizes the public probate administrator, if a qualified person more entitled to serve as a personal representative comes forward or a will of a decedent is found naming an executor, to surrender the administration of the estate and the assets of the estate to the person once the person has qualified. The bill requires the public probate administrator to file a verified affidavit before surrendering the administration of the estate and sets out the required contents of the affidavit. The bill authorizes the court to require any other filing from the public probate administrator that the court considers appropriate to fully show the condition of the estate before surrendering the estate.

H.B. 1755 requires the public probate administrator to deposit all funds coming into the custody of the administrator in the county treasury and requires such funds to be dispersed at the direction of the public probate administrator and according to the guidelines of the county treasurer or auditor.

H.B. 1755 adds a public probate administrator as the last person in the list establishing the order in which a court is required to grant letters testamentary or of administration to persons qualified to serve as a personal representative.

H.B. 1755 amends the Local Government Code and the Government Code to create a supplemental public probate administrator fee set in the amount of \$10. The bill requires the fee to be collected by each clerk of a county court, statutory county court, or statutory probate court in a county that has appointed a public probate administrator. The bill establishes that such a fee is for the support of the office of public probate administrator and requires the fee to be deposited in the county treasury to fund the expenses of the office. The bill provides that the fee is charged for a probate original action or adverse probate action for which a specified fee is charged. The bill requires the supplemental public probate administrator fee to be paid by the person against whom the fee for a probate original action or adverse probate action, as

applicable, is charged and is due at the time that fee is due. The bill establishes that the supplemental public probate administrator fee is in addition to all other fees charged in probate original actions and adverse probate actions.

EFFECTIVE DATE

January 1, 2014.