

BILL ANALYSIS

S.B. 1701
By: Harris
Judiciary
Committee Report (Unamended)

BACKGROUND AND PURPOSE

A person is found to be incapacitated when they are unable to take care of their own physical needs and financial affairs due to a mental or physical condition. A probate court may designate a guardian to manage an incapacitated person's financial affairs. Generally, a guardian is a family member, friend, or volunteer from a guardianship program within the county. However, not all counties have such guardianship programs, and in the case that a person does not have any family or friends to serve as a guardian, the court must serve as the guardian of the person. A problem arises when the person is out of the court's reach or the court finds it otherwise impossible to fulfill its duty as guardian, which could lead to possible neglect or abuse of the person. Currently, the Department of Aging and Disability Services (DADS) may file an application to serve as guardian of a person but is not required to do so.

As proposed, the bill requires DADS to serve as guardian over a person who has been adjudicated as totally incapacitated if there is no family member or other suitable person able or willing to serve as guardian and the person is located more than 100 miles from the court.

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

SECTION 1. Amends Section 161.101, Human Resources Code, by amending Subsection (d) and adding Subsection (f), as follows:

(d) Prohibits the Department of Aging and Disability Services (DADS) from being required by a court to file an application for guardianship, and except as provided by Subsection (f) and Section 695, Texas Probate Code (Appointment of Successor Guardian), prohibits DADS from being appointed as permanent guardian for any individual unless DADS files an application to serve or otherwise agrees to serve as the individual's guardian of the person or estate, or both.

(f) Requires DADS, on appointment by a probate court under Section 695(c), Texas Probate Code, to agree to serve as the successor guardian of the person or estate, or both, of a ward described by that section.

SECTION 2. Amends Section 695, Texas Probate Code, by adding Subsection (c), as follows:

(c) Authorizes the court to appoint DADS as a successor guardian of the person or estate, or both, of a ward who has been adjudicated as totally incapacitated if there is no family member or other suitable person, including a guardianship program, willing and able to serve as the ward's successor guardian and the ward is located more than 100 miles from the court that created the guardianship.

SECTION 3. Amends Section 697A(b), Texas Probate Code, as follows:

(b) Requires DADS, if DADS is appointed to serve as guardian or successor guardian for one or more incapacitated persons residing in the county as provide by Subchapter E, Chapter 161, Human Resources Code (Guardianship Services), or Section 695(c) of this

code, to submit annually to the county clerk the information required under Subsection (a) of this section for each DADS employee who is or will be providing guardianship services in the county on behalf of DADS.

EFFECTIVE DATE

Immediately on receipt of required vote; otherwise September 1, 2007.