

## **BILL ANALYSIS**

S.B. 271  
By: Harris  
Judiciary & Civil Jurisprudence  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

When a person is found to be incapable of taking care of his or her physical and economic needs, the person can be taken to a probate court to be designated as totally incapacitated. That person is then paired with someone who serves as a guardian to appropriately manage the person's affairs. In many circumstances the guardian is a family member, friend, or volunteer from a guardianship program that operates within the county. Not all counties in Texas have guardianship programs and in these instances the court remains the guardian of the ward. When a ward is living in another county or is living a far distance from the court it can be impossible for the court to fulfill its judiciary duty as guardian and could lead to the neglect or abuse of the ward.

As proposed, S.B. 271 authorizes the Department of Aging and Disability Services to be appointed by a court as the successor guardian for certain wards who have been adjudicated as totally incapacitated. The bill limits to 55 the number of such appointments that are authorized annually, and requires that the appointments be distributed equally throughout the state or as nearly equally as possible.

### **RULEMAKING AUTHORITY**

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

### **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(c), Texas Probate Code, DADS is prohibited 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 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 Subsections (c), (d), and (e), 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 less restrictive alternative to continuation of the guardianship; there is no family member or other suitable person, including a guardianship program, willing and able to serve as the ward's successor guardian; the ward is located more than 100 miles from the court that created the guardianship; the ward has private assets or access to government benefits to pay for the needs of the ward; DADS is served with citation and a hearing is held

regarding DADS's appointment as proposed successor guardian; and the appointment of DADS does not violate a limitation imposed by Subsection (d) of this section.

(d) Provides that the number of appointments under Subsection (c) of this section is subject to an annual limit of 55. Requires that the appointments be distributed equally or as near as equally as possible among the health and human services regions of this state. Authorizes DADS at its discretion to establish a different distribution scheme to promote the efficient use and administration of resources.

(e) Requires that if DADS is named as a proposed successor guardian in an application in which DADS is not the applicant, citation be issued and served on DADS as provided by Section 633(c)(5) (relating to the person named in the application to be appointed guardian if that person is not the applicant) of this code.

SECTION 3. Effective date: upon passage or September 1, 2009.

**EFFECTIVE DATE**

Upon passage or September 1, 2009.