

By: Harris  
(Hartnett)

S.B. No. 286

Substitute the following for S.B. No. 286:

By: Jackson

C.S.S.B. No. 286

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to attorney's fees and other costs in guardianship  
3 proceedings.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 665B, Texas Probate Code, as amended by  
6 Chapters 314 (H.B. 587) and 930 (H.B. 3080), Acts of the 81st  
7 Legislature, Regular Session, 2009, is reenacted and amended to  
8 read as follows:

9 Sec. 665B. PAYMENT OF ATTORNEY'S FEES TO CERTAIN ATTORNEYS.

10 (a) A court that creates a guardianship or creates a management  
11 trust under Section 867 of this code for a ward under this chapter,  
12 on request of a person who filed an application to be appointed  
13 guardian of the proposed ward, an application for the appointment  
14 of another suitable person as guardian of the proposed ward, or an  
15 application for the creation of the management trust, may authorize  
16 the payment of reasonable and necessary attorney's fees, as  
17 determined by the court, in amounts the court considers fair and  
18 just, to an attorney who represents the person who filed the  
19 application at the application hearing, regardless of whether the  
20 person is appointed the ward's guardian or whether a management  
21 trust is created, from[+]

22 [~~1~~] available funds of the ward's estate or  
23 management trust, if created, subject to Subsection (a-1) of this  
24 section and Section 669 of this code, if applicable.

1        (a-1) The court may authorize amounts that otherwise would  
2 be paid from the ward's estate or the management trust as provided  
3 by Subsection (a) of this section to instead be paid from the county  
4 treasury, ~~or~~

5            ~~(2)~~ subject to Subsection (c) of this section, ~~[the~~  
6 ~~county treasury]~~ if:

7            (1) ~~(A)~~ the ward's estate or ~~[, if created,]~~  
8 management trust~~]~~ is insufficient to pay ~~[for]~~ the amounts  
9 ~~[services provided by the attorney]; and~~

10            (2) ~~(B)~~ funds in the county treasury are budgeted  
11 for that purpose.

12        (b) The court may not authorize attorney's fees under this  
13 section unless the court finds that the applicant acted in good  
14 faith and for just cause in the filing and prosecution of the  
15 application.

16        (c) The court may authorize the payment of attorney's fees  
17 from the county treasury under Subsection (a-1) ~~(a)~~ of this  
18 section only if the court is satisfied that the attorney to whom the  
19 fees will be paid has not received, and is not seeking, payment for  
20 the services described by that subsection from any other source.

21        SECTION 2. Section 665D(c), Texas Probate Code, is amended  
22 to read as follows:

23        (c) The court shall set the compensation of an attorney  
24 described by Subsection (a) of this section for the performance of  
25 guardianship services in accordance with Section 665 of this code.  
26 The court shall set attorney's fees for an attorney described by  
27 Subsection (a) of this section for legal services provided in

1 accordance with Sections [~~665A,~~] 665B, [~~and~~] 666, and 669 of this  
2 code.

3 SECTION 3. Section 669, Texas Probate Code, is amended to  
4 read as follows:

5 Sec. 669. COSTS IN [~~AGAINST~~] GUARDIANSHIP PROCEEDING  
6 GENERALLY. (a) Except as provided by Subsection (b) of this  
7 section, in a guardianship matter, the cost of the proceeding,  
8 including the cost of the guardian ad litem, attorney ad litem,  
9 court investigator, [~~or~~] court visitor, mental health  
10 professionals, interpreters, and other attorneys, shall be set in  
11 an amount the court considers fair and just and shall be paid out of  
12 the guardianship estate, or, if the estate is insufficient to pay  
13 for the cost of the proceeding, the cost of the proceeding shall be  
14 paid out of the county treasury, except as provided by Subsection  
15 (c) of this section, and the judgment of the court shall be issued  
16 accordingly.

17 (b) If a court finds that a party in a guardianship  
18 proceeding acted in bad faith or without just cause in prosecuting  
19 or objecting to an application in the proceeding, the court may  
20 require that party to pay all or part of the costs [~~denies an~~  
21 ~~application for the appointment of a guardian under this chapter~~  
22 ~~based on the recommendation of a court investigator, the applicant~~  
23 ~~shall pay the cost~~] of the proceeding.

24 (c) The court may order the applicant in a guardianship  
25 proceeding to pay the cost of the guardian ad litem or court visitor  
26 appointed in the proceeding if:

27 (1) the guardianship estate is insufficient to pay

1 that cost; and

2 (2) the applicant's gross annual family income exceeds  
3 200 percent of the federal poverty level.

4 SECTION 4. Section 875(i), Texas Probate Code, is amended  
5 to read as follows:

6 (i) If the court appoints a temporary guardian after the  
7 hearing required by Subsection (f)(1) of this section, all court  
8 costs, including attorney's fees, may be assessed as provided in  
9 Section [~~665A,~~] 665B[~~7~~] or 669 of this code.

10 SECTION 5. Section 665A, Texas Probate Code, is repealed.

11 SECTION 6. The changes in law made by this Act apply to a  
12 guardianship created before, on, or after the effective date of  
13 this Act.

14 SECTION 7. This Act takes effect immediately if it receives  
15 a vote of two-thirds of all the members elected to each house, as  
16 provided by Section 39, Article III, Texas Constitution. If this  
17 Act does not receive the vote necessary for immediate effect, this  
18 Act takes effect September 1, 2011.