

1-1 By: Harris S.B. No. 286  
1-2 (In the Senate - Filed December 21, 2010; March 31, 2011,  
1-3 read first time and referred to Committee on Jurisprudence;  
1-4 March 14, 2011, reported favorably by the following vote: Yeas 5,  
1-5 Nays 0; March 14, 2011, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to attorney's fees and other amounts taxed as costs in  
1-9 guardianship proceedings.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 665A, Texas Probate Code, is amended to  
1-12 read as follows:

1-13 Sec. 665A. PAYMENT FOR PROFESSIONAL SERVICES. The court  
1-14 shall order the payment of a fee in an amount set by the court that  
1-15 is fair and just as compensation to the attorneys, mental health  
1-16 professionals, and interpreters appointed under this chapter, as  
1-17 applicable, to be taxed as costs in the case. The court may  
1-18 allocate attorney's fees taxed as costs under this section among  
1-19 the parties as the court finds is fair and just. If after examining  
1-20 the proposed ward's assets the court determines the proposed ward  
1-21 is unable to pay for costs allocated to the proposed ward for  
1-22 services provided by an attorney, a mental health professional, or  
1-23 an interpreter appointed under this chapter, as applicable, the  
1-24 county is responsible for those costs [~~the cost of those services~~].

1-25 SECTION 2. Section 665B, Texas Probate Code, as amended by  
1-26 Chapters 314 (H.B. 587) and 930 (H.B. 3080), Acts of the 81st  
1-27 Legislature, Regular Session, 2009, is reenacted and amended to  
1-28 read as follows:

1-29 Sec. 665B. PAYMENT OF ATTORNEY'S FEES TO CERTAIN ATTORNEYS.  
1-30 (a) A court that creates a guardianship or creates a management  
1-31 trust under Section 867 of this code for a ward under this chapter,  
1-32 on request of a person who filed an application to be appointed  
1-33 guardian of the proposed ward, an application for the appointment  
1-34 of another suitable person as guardian of the proposed ward, or an  
1-35 application for the creation of the management trust, may authorize  
1-36 the payment of reasonable and necessary attorney's fees, as  
1-37 determined by the court, in amounts the court considers fair and  
1-38 just, to an attorney who represents the person who filed the  
1-39 application at the application hearing, regardless of whether the  
1-40 person is appointed the ward's guardian or whether a management  
1-41 trust is created, from:

1-42 (1) subject to Subsection (a-1) of this section, the  
1-43 parties to the guardianship proceeding, allocated as the court  
1-44 finds is fair and just; or

1-45 (2) subject to Subsection (a-1) of this section,  
1-46 available funds of the [~~ward's estate or~~] management trust, if  
1-47 created.

1-48 (a-1) The court may authorize amounts allocated to the  
1-49 ward's estate under Subsection (a)(1) of this section or amounts to  
1-50 be paid from available funds of the management trust as provided by  
1-51 Subsection (a)(2) of this section to instead be paid from the county  
1-52 treasury, [~~or~~]

1-53 [~~(2)~~] subject to Subsection (c) of this section, [the  
1-54 county treasury] if:

1-55 (1) [~~(A)~~] the ward's estate or [~~if created,~~]  
1-56 management trust [~~is~~] insufficient to pay [~~for~~] the amounts  
1-57 [services provided by the attorney]; and

1-58 (2) [~~(B)~~] funds in the county treasury are budgeted  
1-59 for that purpose.

1-60 (b) The court may not authorize attorney's fees under this  
1-61 section unless the court finds that the applicant acted in good  
1-62 faith and for just cause in the filing and prosecution of the  
1-63 application.

1-64 (c) The court may authorize the payment of attorney's fees

2-1 from the county treasury under Subsection (a-1) [~~(a)~~] of this  
2-2 section only if the court is satisfied that the attorney to whom the  
2-3 fees will be paid has not received, and is not seeking, payment for  
2-4 the services described by that subsection from any other source.

2-5 SECTION 3. Subsection (a), Section 669, Texas Probate Code,  
2-6 is amended to read as follows:

2-7 (a) Except as provided by Subsection (b) of this section or  
2-8 Section 665A or 665B(a) of this code, in a guardianship matter, the  
2-9 cost of the proceeding, including the cost of the guardian ad litem  
2-10 or court visitor, shall be set in an amount the court considers fair  
2-11 and just and shall be paid out of the guardianship estate, or, if  
2-12 the estate is insufficient to pay for the cost of the proceeding,  
2-13 the cost of the proceeding shall be paid out of the county treasury,  
2-14 and the judgment of the court shall be issued accordingly.

2-15 SECTION 4. The changes in law made by this Act apply to a  
2-16 guardianship created before, on, or after the effective date of  
2-17 this Act.

2-18 SECTION 5. This Act takes effect immediately if it receives  
2-19 a vote of two-thirds of all the members elected to each house, as  
2-20 provided by Section 39, Article III, Texas Constitution. If this  
2-21 Act does not receive the vote necessary for immediate effect, this  
2-22 Act takes effect September 1, 2011.

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