

LEGISLATIVE BUDGET BOARD  
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

March 29, 2011

**TO:** Honorable Chris Harris, Chair, Senate Committee on Jurisprudence

**FROM:** John S O'Brien, Director, Legislative Budget Board

**IN RE: SB1026** by Harris (Relating to the powers and duties of an attorney ad litem appointed for a parent in certain suits affecting the parent-child relationship.), **As Introduced**

**Estimated Two-year Net Impact to General Revenue Related Funds** for SB1026, As Introduced: a negative impact of (\$651,205) through the biennium ending August 31, 2013.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2012	(\$335,426)
2013	(\$315,779)
2014	(\$315,779)
2015	(\$315,779)
2016	(\$315,779)

All Funds, Five-Year Impact:

Fiscal Year	Probable (Cost) from General Revenue Fund 1	Probable (Cost) from Federal Funds 555	Change in Number of State Employees from FY 2011
2012	(\$335,426)	(\$53,699)	4.0
2013	(\$315,779)	(\$50,554)	4.0
2014	(\$315,779)	(\$50,554)	4.0
2015	(\$315,779)	(\$50,554)	4.0
2016	(\$315,779)	(\$50,554)	4.0

Fiscal Analysis

The bill would add two new sections to the Family Code specifying the powers, duties, and discipline of attorneys ad litem appointed for parents in certain cases under the Family Code. New §107.0131(a)(1) specifies required duties of appointed parent attorneys ad litem, including interviewing parents, each person with a significant knowledge of the case, and the parties to the suit; factual investigation; obtaining relevant records; and other requirements reflective of good faith competent legal representation. New §107.0131(a)(3) specifies the legal rights of appointed parent attorneys ad litem, including the right to participate in any case staffing concerning the parent or child conducted by an authorized agency.

**Methodology**

New §107.0131(a)(1) specifying the required duties of appointed parent attorneys ad litem will not result in additional costs. Existing Family Code §107.001(2) specifies that attorneys ad litem owe to their clients the duties of undivided loyalty, confidentiality, and competent representation. Further, the Texas Supreme Court has held that “the statutory right to counsel in parental-rights termination cases embodies the right to effective counsel.” *In re M.S.*, 115 S.W.3d 534, 544 (Texas 2003). The duties listed in the bill, such as interviewing parents and others with significant case knowledge and obtaining relevant records, are within the existing scope of expected behaviors for competent representation by an appointed attorney ad litem. Therefore, because the requirements listed in §107.0131(a)(1) are a clarification of the existing duties owed to clients by attorneys ad litem rather than a new requirement or substantive change, they are not expected to result in any costs.

New §107.0131(a)(3) will result in a cost to the Department of Family and Protective Services (DFPS) to the extent that they will have to modify case staffing procedure to allow participation by appointed parent attorneys ad litem. Although “case staffing,” as mentioned in new §107.0131(a)(3)(F), is not defined in the Family Code, this analysis assumes that it is a proceeding distinct from either a hearing (specified in new §107.0131(a)(3)(E)) or a legal proceeding (specified in new §107.0131(a)(3)(G)), and therefore represents a new requirement for DFPS. Existing provisions of the Family Code provide the right for guardians ad litem for children (§107.002(c)(3)) and attorneys ad litem for children and amicus attorneys (§107.003(3)(F)) to attend DFPS case staffings. However, because of the frequently adversarial nature between DFPS and appointed parent attorneys ad litem, it is anticipated that adding the right of parent attorneys ad litem to participate in case staffings will result in additional need for legal representation by DFPS. The agency estimates that four additional Attorney IVs, assigned to the four largest regions for coverage, will be needed to accommodate the increased workload relating to modified case staffing procedures. The total cost for the new staff is estimated to be \$0.4 million All Funds (including \$0.4 million in General Revenue Funds) in fiscal year 2012, and \$0.4 million All Funds (including \$0.3 million in General Revenue Funds) each following year.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 530 Family and Protective Services, Department of

**LBB Staff:** JOB, JT, ZS, TB, NM, AM