

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

April 27, 2011

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

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

IN RE: SB1196 by Rodriguez (relating to guardianships and alternatives to guardianship for persons who have physical disabilities or who are incapacitated.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill amends several provisions of the guardianship chapter, Chapter XIII, of the Texas Probate Code. The bill makes conforming changes, defines various guardianship matters as the all-encompassing term "guardianship proceeding," requires all guardianship proceedings to be filed and heard in a court exercising original probate jurisdiction, and explicitly defines matters related to a guardianship proceeding for counties without a statutory probate court.

The bill also describes guardianship jurisdiction for the various courts, replaces the term "personal representative" with "guardian, ward, or proposed ward," clarifies certain attorney ad litem appointment issues, and replaces the five percent limit on compensation with "reasonable compensation" for guardianship duties.

The bill amends Probate Code Section 687(c) regarding the examination requirement of a guardianship application for a person whose alleged incapacity is an intellectual disability (currently referred to as MR). Under the new law, a certificate of medical examination (CME), with no reference to a DMR, will be sufficient to support a guardianship application for these persons. A determination of mental retardation (DMR) may still be used to support a guardianship application instead of a CME for these persons.

The bill eliminates the requirement to name co-owners of property with the ward in an inventory, raises the age limit from 16 to 18 for a guardian to voluntarily commit a minor ward to a psychiatric facility, adds the ability of a guardian of the estate to transfer assets so the ward will qualify for government benefits, and makes several changes to management trusts.

Notwithstanding the first half of the Estates Code revision last session, the bill repeals Probate Code sections consistent with the changes in the previous bill sections.

The bill would take effect September 1, 2011.

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

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