

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 27, 2015

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB1438 by Thompson, Senfronia (Relating to probate matters, including guardianships and other matters related to incapacitated persons.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

The bill would amend the Estates Code, Finance Code, and Government Code related to guardianships and incapacitated persons. The bill would provide that when an existing guardianship is transferred to another county, the receiving court, rather than the transferring court, shall order the guardian to give a new bond or file a rider to an existing bond. The bill would also amend to whom a notice of application of guardianship must be sent if the proposed ward has no living spouse, parent, adult sibling, or adult child and would provide that reimbursements could be made from a management trust created to manage the estate of a ward if the assets of the guardianship estate are insufficient. The bill would provide that a court that has probable cause to believe a person is incapacitated and does not have a guardian in this state shall appoint a guardian if the circumstances are determined to be necessary, with the ward permitted to petition the court to have the appointment set aside within a specified time frame. In addition, the bill specifies that any information provided by the Department of Family and Protective Services would remain confidential.

The bill would add a definition for relatives within the third degree of consanguinity and to provide that a court may order the deposit of a ward's assets in a financial institution for safekeeping and reduce the guardian's bond proportionately. The bill would also expand the sources from which a court cost could be paid to include a management trust or by the party to which the proceedings incurred the costs unless the party is unable to afford the costs. In situations where the party is unable to afford the costs, the party must submit an affidavit of inability to pay the costs to the court and the bill provides alternative means by which the court costs would be met, identifying entities that are and are not eligible to pay the court costs.

The bill would also require initial accounting by a trustee of a ward's management trust for wards with an existing guardianship. The bill would allow a court to appoint an attorney ad litem or guardian ad litem to act on the minor's behalf if the minor did not have a willing and able parent or managing conservator.

The bill would authorize the clerk of a court to obtain an order requiring the payment of security for costs from the court and would provide that an interested person may intervene in a guardianship proceeding by filing a motion to intervene that is served on the parties. The bill would require criminal history information be obtained for a family member seeking a guardianship and authorizes the Department of Public Safety to provide such information to the

clerk with respect to a proposed ward's family members. The bill would require guardians that are required to file an annual report with the court to file an unsworn affidavit. Additionally, the bill would establish the parameters for the term of a temporary guardian when a guardianship application is contested. The bill would expand the financial records provided from a financial institution in response to a request in connection with an investigation related to a guardianship and would authorize the presiding judge of a statutory probate court and that court's clerk to assume certain duties regarding assignment of visiting judges. The bill repeals certain provisions regarding costs to conform with other amendments in the bill.

Based on the analysis of the Office of Court Administration, the Department of Family and Protective Services, and the Department of Public Safety, duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

Local Government Impact

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

Source Agencies: 530 Family and Protective Services, Department of, 212 Office of Court Administration, Texas Judicial Council, 405 Department of Public Safety

LBB Staff: UP, AG, FR, GDz, KVe