

## **BILL ANALYSIS**

S.B. 1325  
By: Zaffirini  
Judiciary & Civil Jurisprudence  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Interested parties contend that the state should do more to ensure that all Texans in need of guardianship services are able to obtain those services, even if they lack the resources to pay for those services. S.B. 1325 seeks to provide a framework for counties to establish an office of public guardian or contract with a nonprofit guardianship program to be the guardian for certain incapacitated persons who have no suitable person or entity willing or able to serve as their guardian or lack sufficient resources to pay for a private professional guardian.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Supreme Court in SECTION 3 of this bill.

### **ANALYSIS**

S.B. 1325 amends the Estates Code to authorize a county commissioners court by order to create an office of public guardian to provide guardianship services to certain incapacitated persons described by the bill or enter into an agreement with a person operating a nonprofit guardianship program or private professional guardianship program located in the county or in an adjacent county to act as a public guardian by providing guardianship services to those incapacitated persons. The bill requires the commissioners court to appoint an individual as public guardian to a five-year term to administer the office of public guardian and authorizes the commissioners court to employ or authorize the public guardian to employ personnel necessary to perform the office's duties, including personnel who will represent the interests of a ward as a guardian on behalf of the office if approved by the commissioners court. The bill sets out the circumstances under which the commissioners court may appoint an individual as public guardian on a part-time basis with appropriate compensation and authorizes the commissioners courts of two or more counties to collectively enter into an agreement to create and fund an office of public guardian and to appoint the same individual as public guardian to that office or an agreement with a person operating a nonprofit guardianship program or private professional guardianship program located in the county or in an adjacent county to serve as a public guardian.

S.B. 1325 sets out the qualifications for appointment as a public guardian and conflict of interest provisions and provides for the compensation of a person appointed or acting as a public guardian, a bond requirement for a public guardian, and the filling of a vacancy in the position of public guardian. The bill requires an office of public guardian or a public guardian to evaluate, if applicable, the financial status of a proposed ward to determine whether the proposed ward is eligible to have the office or public guardian appointed guardian of the ward under the bill's

provisions and to serve as guardian of the person or of the estate of a ward, or both, on appointment by a court in accordance with the requirements of state law regarding guardianship and related procedures. The bill provides for the release of public and private records to the office or public guardian in connection with such a financial evaluation at no charge for copies of the requested information.

S.B. 1325 authorizes a court, in accordance with applicable state law, to appoint an office of public guardian or a public guardian to serve as guardian of the person or of the estate of a ward, or both, if, on the date the guardianship application is filed, the ward resides in or is located in the county serviced by the office or the public guardian and the court finds that the appointment of an office or public guardian is in the ward's best interest or that the ward does not have sufficient assets or other resources to pay a private professional guardian to serve as the ward's guardian or does not have a suitable person or entity willing and able to serve as such. The bill sets out the factors on which a determination regarding the ward's ability to pay a private professional guardian is dependent. The bill limits the number of appointments of an office by the court to 35 wards for each guardian representing the interests of wards on behalf of the office and requires an office to immediately give notice to the courts if each guardian representing the interest of wards on behalf of the office reaches that limit.

S.B. 1325 makes all files, reports, records, communications, or working papers used or developed by an office of public guardian or a public guardian in the performance of duties relating to a financial evaluation of a proposed ward or the provision of guardianship services confidential and exempt from disclosure under state public information law and provides for limited circumstances under which such information may be disclosed or released. The bill requires the Office of Court Administration of the Texas Judicial System (OCA) to establish policies and procedures for the exchange of information between offices, public guardians, and other appropriate governmental entities, as necessary for offices, public guardians, and governmental entities to properly execute their respective duties and responsibilities relating to guardianship services or other needed services for a ward and establishes that such an exchange does not constitute a release for purposes of waiving the confidentiality of the information exchanged.

S.B. 1325 prohibits the administrative costs of the guardianship services provided to a ward to whom or to whose estate, or both, an office of public guardian or a public guardian is appointed from being charged to the ward's estate unless the court determines that the ward is financially able to pay all or part of the costs. The bill requires a court to measure a ward's ability to pay for those costs by whether the ward has sufficient assets or other resources to pay a private professional guardian to serve as the ward's guardian in accordance with the applicable bill provision.

S.B. 1325 requires OCA, not later than December 1 of each even-numbered year, to submit a report to the governor and the legislature that contains an evaluation of public guardians established under the bill's provisions, including the establishment and operation of offices of public guardians and the provision of guardianship services by the offices and sets out the required contents of the report. The bill authorizes OCA, if it is cost-effective and feasible, to contract with an appropriate research or public policy entity with expertise in gerontology, disabilities, and public administration to conduct the cost-benefit analysis required to be included in the report. The bill requires the Texas Supreme Court, in consultation with OCA and the elected presiding judge of the statutory probate courts, to adopt not later than January 1, 2018, rules necessary to implement the bill's provisions relating to public guardians including rules governing the transfer of a guardianship of a person or of the estate of a ward, or both, if appropriate, to an office of public guardian or a contracted public guardian.

S.B. 1325 includes the following persons among those about whom the clerk of the county having venue of the proceeding for the appointment of a guardian is required to obtain criminal history record information that is maintained by the Department of Public Safety (DPS) or by the

Federal Bureau of Investigation identification division: a public guardian appointed under the bill's provisions; each person who represents or plans to represent the interests of a ward as a guardian on behalf of an office of public guardian; and each person employed by an office of public guardian who will have personal contact with a ward or proposed ward, exercise control over and manage a ward's estate, or perform any duties with respect to the management of a ward's estate. The bill includes the appointment, removal, or continuation of the appointment of an office of public guardian among the limited purposes for which a court may use that criminal history record information. The bill specifies that the governmental entities exempt from having to pay court costs on the filing of or during a guardianship proceeding include an office of public guardian. The bill makes certain requirements for the affidavit required to be attached to the guardian's account of an estate and the affidavit filed in connection with the guardian's annual report applicable to a guardian who is an office of public guardian in the same manner as those requirements apply to a guardian who is a private professional guardian, a guardianship program, or the Health and Human Services Commission (HHSC).

S.B. 1325 amends the Government Code to require the Judicial Branch Certification Commission to adopt minimum standards for the provisions of guardianship services by offices of public guardians and to require an individual who is a public guardian or an individual who will provide guardianship services to a ward of an office of public guardian to hold a certificate issued by the commission to provide those services in Texas. The bill requires each office of public guardian, not later than January 31 of each year, to provide to the commission a report containing for the preceding year the number of wards served by the office; the total amount of any money received from the state for the provision of guardianship services; and the amount of money received from any other public source for the provision of guardianship services, reported by source, and the total amount of money received from those public sources.

S.B. 1325 amends the Human Resources Code to authorize a contract between HHSC and a political subdivision of the state, a guardianship program, a private agency, or another state agency for the provision of guardianship services to allow for the provision of such services by an office of public guardian.

S.B. 1325 applies only to the appointment of a guardian of the person or of the estate of a ward, or both, made on or after July 1, 2018, and authorizes a person who, immediately before July 1, 2018, is serving as guardian of the person or of the estate of a ward, or both, and who would be eligible under the bill's provisions for appointment of an office of public guardian as the ward's guardian to continue to serve as guardian of the person or of the estate of the ward, or both, unless otherwise removed as provided by law.

#### **EFFECTIVE DATE**

September 1, 2017.