

SUBJECT: Authorizing supplemental court-initiated guardianship filing fee

COMMITTEE: Judiciary — favorable, without amendment

VOTE: 5 ayes — Hartnett, Hopson, Alonzo, R. Cook, Krusee

0 nays

4 absent — Homer, Gonzales, Goolsby, Hughes

WITNESSES: For — Bruce Bower, Texas Legal Services Center; Patrick Ferchill; Steven Fields, Texas Senior Advocacy Coalition; Oscar Garcia, Texas Silver-Haired Legislature; Guy Herman; Tracey Kelley, Friends for Life Guardianship Program; (*Registered, but did not testify*: Mike Wood)

Against — None

BACKGROUND: Under Probate Code, sec. 683, a court with probable cause to believe that a person in that court's county is incapacitated must appoint a guardian ad litem or court investigator to investigate and apply for the appointment of a guardian of the person or estate, or both, of the person believed to be incapacitated.

Probate Code, sec. 118, sets the statutory fees for probate actions. A probate original action includes actions such as probate of a will, administration of an estate, a declaration of heirship, and mental health or chemical dependency services. Adverse probate actions include actions such as a will contest. Filing fees are generally \$40. Texas has about 60,000 probate filings each year.

DIGEST: HB 1295 would create a \$20 supplemental court-initiated guardianship fee for probate original actions and adverse probate actions. The fee would supplement, rather than supplant, other available county funds to:

- pay the compensation of a guardian ad litem;
- pay the compensation of an attorney ad litem appointed by a court to represent a proposed ward in a guardianship; and

- fund local guardianship programs that provide guardians for indigent incapacitated persons who did not have family members suitable and willing to serve as guardians.

The fee would be paid by the person against whom the fee for a probate original action or adverse probate action, as applicable, was charged and would be due at the same time. The fee would be collected by the clerk of a statutory county court, a statutory probate court, or a county court where the probate original action or adverse probate action was filed.

HB 1295 would take effect on September 1, 2007.

**SUPPORTERS
SAY:**

The new fee authorized by HB 1295 would generate needed funding for guardianship programs. Court-initiated guardianship provides important protections for incapacitated people, and probate courts must appoint guardians ad litem or investigators as needed. However, not all of these courts have the funds to cover the cost.

While metropolitan counties provide their courts with investigators and can rely on guardian organizations, smaller counties do not commonly provide investigators and rarely have access to guardian organizations. These counties often rely on Adult Protective Services (APS) to conduct investigations, but due to limited funds and heavy caseloads, APS generally cannot handle investigations of self-neglect stemming from incapacitation. By supplementing county funds for investigators and guardians, HB 1295 would help smaller counties to implement desperately needed guardianship systems.

HB 1295's collection system would direct funds to where they were needed. While smaller counties would not generate the same revenue from fee collection as metropolitan counties would, smaller counties have fewer incidents of incapacity due to smaller populations.

**OPPONENTS
SAY:**

The increased fee on probate actions in HB 1295 would be a further tax on the right to access the court system. Litigants should not bear a disproportionate share of the burden for funding programs intended to serve the public good and the indigent. Also, any increase in the number of individual fees assessed to court users would risk making the system complex and confusing to the public, attorneys, and court personnel. Finally, revenue for worthwhile programs like guardianship should not

depend upon the unreliable volume of probate filings that might pass through the courts.

OTHER
OPPONENTS
SAY:

HB 1295's fund collection and distribution scheme would not adequately accomplish its goals. The metropolitan counties would be able to generate large revenues from fee collection even though their needs are met under the current system. Smaller counties that would benefit the most from increased funds would not have a probate case load large enough to generate the needed revenue from fee collection. A better system would be to redistribute funds from counties with excess to counties with genuine need. Also, counties would be unable to resist using the fee collected by HB 1295 to replace rather than supplement existing guardianship funds, and the bill would not provide a mechanism to prevent this.