

- SUBJECT:** Payment of certain costs by applicant in a guardianship proceeding
- COMMITTEE:** Judiciary and Civil Jurisprudence — committee substitute recommended
- VOTE:** 11 ayes — Jackson, Lewis, Bohac, Castro, S. Davis, Hartnett, Madden, Raymond, Scott, Thompson, Woolley
- 0 nays
- WITNESSES:** For — Craig Pardue, Dallas County; (*Registered, but did not testify:* Cindy Bloodsworth, Texas Conference of Urban Counties)
- Against — (*Registered, but did not testify:* Patrick Herndon, Guardianship Reform Advocates for the Disabled and Elderly; Debby Valdez; Linda Levine; Irma Canfield)
- BACKGROUND:** In a guardianship proceeding, an attorney ad litem represents and advocates on behalf of the ward or proposed ward. A guardian ad litem represents the best interests of the ward or proposed ward. A court visitor performs a pre-court assessment of the conditions of the ward or proposed ward.
- The Texas Probate Code, sec. 665A, provides for the proposed ward in a guardianship case to pay for the services of attorneys, mental health professionals, and interpreters. If the proposed ward does not have sufficient assets to pay for the services, the county is responsible for these costs.
- Sec. 669 provides for the guardianship estate to pay the cost of a guardianship proceeding, including the cost of the guardian ad litem or court visitor. If the estate is insufficient to pay for the cost of the proceeding, the cost is paid by the county.
- DIGEST:** CSHB 1325 would allow a court to order the applicant in a guardianship proceeding to pay the cost of an attorney ad litem if the proposed ward's assets were insufficient to pay the cost and the applicant's gross annual family income exceeded 200 percent of the federal poverty level.

CSHB 1325 also would allow a court to order the applicant in a guardianship proceeding to pay the cost of the guardian ad litem or court visitor if the guardianship estate was insufficient to pay the cost and the applicant's gross annual family income exceeded 200 percent of the federal poverty level.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011, and would apply to a guardianship created before, on, or after the effective date.

**SUPPORTERS
SAY:**

CSHB 1325 would allow counties to conserve resources to serve the entire county when applicants for guardianship were financially able to pay for an attorney ad litem, guardian ad litem, or court visitor. Wards are typically insolvent, meaning that the responsibility for paying guardianship costs typically falls to the county.

Texas law requires parents to financially support their adult disabled children. It would be appropriate for an applicant for guardianship to similarly pay for certain guardianship costs when the applicant is financially able to do so. Taxpayers should not have to pay these costs when applicants have the means to do so.

County governments have limited sources of revenue, namely court fines and fees and property taxes. CSHB 1325 would free some of this revenue for other purposes. Dallas County estimates that CSHB 1325 would save the county \$81,000 a year, which would cover the annual salaries of two deputy sheriffs.

The judge would have discretion on whether to order applicants to pay these costs and also would determine fee amounts.

**OPPONENTS
SAY:**

The bill could reduce the number of people who applied to serve as a guardian, in part because applicants would not know in advance the amount of fees they would be ordered to pay. Counties typically establish separate ad litem fee schedules for indigent estates and for solvent estates. It is unclear under the bill whether applicants would be ordered to pay the "county-pay" rate assessed for indigent estates or the fee assessed for solvent estates. Under the bill, the applicant could be required to pay these fees, as well as court visitor costs, regardless of whether the applicant ultimately was appointed as guardian or not.

It also would be unfair to require applicants in a guardianship proceeding to pay for attorneys or guardians ad litem because these individuals are not necessarily advocating the same positions that the applicant would advocate.

NOTES:

The committee substitute differs from the original version of the bill by adding that the applicant could not be ordered to pay certain guardianship costs unless the applicant's gross annual family income exceeded 200 percent of the federal poverty level. The committee substitute also added payment by the applicant for the cost of the court visitor.