

SENATE BILL REPORT

SHB 1876

As Reported By Senate Committee On:
Government Operations & Elections, March 30, 2005

Title: An act relating to the voting rights of persons under guardianship.

Brief Description: Expanding voting rights of persons under guardianship.

Sponsors: House Committee on State Government Operations & Accountability (originally sponsored by Representatives Green, Haler, Moeller, Darneille, Haigh, Miloscia and Upthegrove).

Brief History: Passed House: 3/09/05, 96-0.

Committee Activity: Government Operations & Elections: 3/17/05, 3/30/05 [DP, DNP, w/oRec].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: Do pass.

Signed by Senators Kastama, Chair; Berkey, Vice Chair; Fairley, Haugen, Kline and Pridemore.

Minority Report: Do not pass.

Signed by Senator Benton.

Minority Report: That it be referred without recommendation.

Signed by Senators Roach, Ranking Minority Member; McCaslin and Mulliken.

Staff: Mac Nicholson (786-7445)

Background: The superior court of each county has the authority to appoint full or limited guardians for incapacitated persons or for the estates of such persons. A person may be deemed incapacitated when the court determines the individual poses a significant risk of personal or financial harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, physical safety, or inability to adequately manage financial affairs. Incapacity is a legal, not medical, determination.

An incapacitated person subject to a full guardianship loses the right to vote unless the court specifically finds that the person is rationally capable of exercising the franchise. An incapacitated person subject to a limited guardianship does not lose the right-to-vote unless the court determines that the person cannot rationally exercise the franchise.

Summary of Bill: The bill makes a number of legislative findings as follows: the right-to-vote is a fundamental liberty which should not be confiscated without due process; the state has a compelling interest in ensuring that those who cast a ballot understand the nature and effect of voting is an individual decision; and any restriction of voting rights through guardianship proceedings should be narrowly tailored to meet the compelling interest.

An incapacitated person under a limited or full guardianship does not lose the right to vote unless a court specifically determines the person to be incapable of rationally exercising the franchise in that the individual lacks the capacity to understand the nature and effect of voting such that he or she cannot make an individual choice. The court order establishing the guardianship must specify whether or not the individual retains voting rights.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The state of Maine had a similar statute that automatically revoked the right to vote in guardianship proceedings, and this statute was struck down as unconstitutional and as a violation of the Americans with Disabilities Act. In Washington, the right to vote is lost in full guardianship proceedings even if the issue is never raised, which results in people losing the right to vote without even knowing it. The right to vote is the most fundamental right in a democracy, and there needs to be more due process when that right is taken away. Individuals with disabilities cherish the right to vote, and that right should not be taken away lightly.

Testimony Against: None.

Who Testified: PRO: Representative Green, prime sponsor; Toby Olson, Governors Committee on Disability; David Lord, Washington Protection and Advocacy System; Lisa Remlinger, The Arc of Washington State.