

SENATE BILL REPORT

SB 5320

As Reported By Senate Committee On:
Judiciary, February 6, 2007
Ways & Means, March 5, 2007

Title: An act relating to creating an office of public guardianship as an independent agency of the judiciary.

Brief Description: Creating an office of public guardianship as an independent agency of the judiciary.

Sponsors: Senators Franklin, McCaslin, Kline, Stevens, Prentice, Parlette, Regala, Hargrove, Rasmussen, Murray, Jacobsen, Hewitt, Keiser and Roach.

Brief History:

Committee Activity: Judiciary: 1/26/07, 2/06/07 [DPS].
Ways & Means: 3/05/07 [DPS (JUD), w/oRec].

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 5320 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Tom, Vice Chair; McCaslin, Ranking Minority Member; Carrell, Hargrove, Murray, Roach and Weinstein.

Staff: Lidia Mori (786-7755)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5320 as recommended by Committee on Judiciary be substituted therefor, and the substitute bill do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Pridemore, Vice Chair, Operating Budget; Carrell, Fairley, Hatfield, Hobbs, Honeyford, Keiser, Kohl-Welles, Oemig, Rasmussen, Regala, Roach, Rockefeller and Tom.

Minority Report: That it be referred without recommendation.

Signed by Senators Zarelli, Ranking Minority Member; Brandland, Parlette and Schoesler.

Staff: Paula Moore (786-7449)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background: Guardianship is a legal process through which a guardian is given the power to make decisions for a person who is determined to be "incapacitated" and therefore unable to exercise his or her rights or provide for his or her basic needs without the help of a guardian. A person may be incapacitated if the individual is at a significant risk of financial harm because of an inability to manage his or her property or financial affairs or has a significant risk of personal harm because of an inability to provide for nutrition, health, housing, or physical safety. The court may establish a guardianship over the person, the person's estate, or both. A guardian of an incapacitated person's estate is responsible for managing the person's property and finances. A guardian of the person is responsible for assessing and meeting the person's physical, mental, and emotional needs. The court may also establish a limited guardianship for persons who need protection or assistance because of an incapacity, but who are capable of managing some of their affairs.

Any adult person residing in Washington may serve as a guardian unless the person is of unsound mind, has been convicted of a crime of moral turpitude, or is found unsuitable by the court. Often the court will appoint a family member or close family friend to serve as a guardian. If there are no suitable family members or friends who are able or want to serve as the guardian, the court may appoint a professional guardian. Professional guardians must be certified by the Certified Professional Guardian Board (Board) and must meet certain education, experience, and training requirements established by the Board.

The Elder Law Section of the Washington State Bar Association formed a Public Guardianship Task Force to develop recommendations on the issue of residents who need the help of a guardian but are unable to pay for the guardian's services. The Task Force estimated that there are approximately 4,500 people in Washington who are in need of, but lack, guardianship services because they have neither volunteers able to provide those services nor the resources to pay for them. The Task Force recommended that the Legislature establish an Office of Public Guardianship to address this need.

Summary of Bill: The bill as referred to committee not considered.

SUMMARY OF RECOMMENDED SUBSTITUTE AS PASSED COMMITTEE (Judiciary): An office of public guardianship (Office) is created as an independent agency of the judicial branch. The Supreme Court is directed to appoint a public guardianship administrator to establish and administer a public guardianship program within the Office.

The Office will contract with public or private entities or individuals to provide public guardianship services to people age 18 or older whose income does not exceed 200 percent of the federal poverty level or who are receiving long-term care through the Department of Social and Health Services. The administrator and Office are prohibited from acting as public guardian or limited guardian for any individual.

The initial implementation of the public guardianship services are on a pilot basis in at least two geographical areas, one that is urban and one that is rural. Eligibility criteria must be adopted by the Office to enable it to serve people with the greatest need when it is unable to provide public guardianship services to all persons determined by a court to need a public guardian. The courts are directed to waive court costs and filing fees in any proceeding in which an incapacitated person is receiving public guardianship services under this act.

Minimum standards of practice for public guardians must be adopted by the Office and any public guardian providing services must be certified by the Certified Professional Guardian Board. The Office must develop a monitoring system for the performance of public guardians, including making in-home visits to randomly-selected public guardianship clients, and must adopt a process for receiving, considering, investigating, and responding to complaints.

A public guardian is required to visit each incapacitated person the guardian is serving at least once a month in order to be eligible for compensation from the Office. In addition, an entity providing professional guardianship services may not be compensated for services if the entity is serving more than 20 incapacitated persons per certified professional guardian. The Office may not petition for appointment of a public guardian for any person. Public guardianship providers must annually certify that, for each person they serve, they have reviewed the need for continued public guardianship services and evaluated whether it is appropriate to limit, modify, or terminate the guardian's authority. In any cases where termination or modification appears warranted, they are required to certify that the court has been asked for such a modification or termination.

The Office is required to issue an annual report of its activities, track and report cost savings to the Legislature and Governor every two years, and contract with the Institute for Public Policy for a study to analyze costs and savings to the state from the public guardianship program.

A Public Guardianship Advisory Committee is created to review the activities of the Office and the performance of the Public Guardianship Administrator. The Advisory Committee will make recommendations on issues relating to the provision of public guardianship services.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: Yes.

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

Staff Summary of Public Testimony (Judiciary): PRO: This bill is geared towards incapacitated persons who have no one to speak on their behalf. The state bar association formed a task force to look at the issue addressed by this bill and they contributed greatly to the content of this bill. Under the bill, each guardian cannot serve more than 20 incapacitated persons. The implementation of the public guardianship services will initially be on a pilot basis in two areas. In addition, a study will be undertaken by the Institute for Public Policy to analyze costs and savings to the state. This bill will provide something which is very much needed in Washington. If there is no resource as provided in this bill, people sometimes end up in situations of extreme restraint and deprivation of liberty. This bill benefits from the experiences in other states and it has profited from the input of many interested Washington organizations and people.

Persons Testifying (Judiciary): PRO: Senator Franklin, prime sponsor; Peter Greenfield, Columbia Legal Services; Bruce Reeves, Senior Citizens Lobby; Louise Ryan, Long Term Care Ombudsman Program; Don Moreland, Aging and Disability Advisory Council of Seattle and King County; David Lord, Washington State Protection and Advocacy System.

Staff Summary of Public Testimony (Ways & Means): PRO: This bill has wide support and is the result of two years of work. There are 4,500 people in this state with incomes under 200 percent of the federal poverty level in need a guardian services. Often, poor people in need of a guardian must usually wait for a crisis before they can access one. These people do not have family members that can be the guardian. This bill will provide earlier service delivery and save the state money. This bill also contains quality standards the guardians must adhere to.

Persons Testifying (Ways & Means): PRO: Gail Stone, Washington State Bar Association; David Lord, Washington Protection and Advocacy System.