

HB 2630 A -A6 STAFF MEASURE SUMMARY

Senate Committee On Judiciary

Prepared By: Whitney Perez, Counsel

Meeting Dates: 5/16, 5/25

WHAT THE MEASURE DOES:

Requires petition in protective proceeding seeking appointment of fiduciary or other protective order to include less restrictive alternatives to appointment and reasons why alternatives are inadequate. Allows protected person to object to motions in proceedings orally or by other means. Specifies procedures to change abode of protected person. Requires court appoint visitor in cases where a subsequent fiduciary is appointed to replace original fiduciary. Requires facts be included in yearly guardian's report to court to support conclusion that protected person is incapable.

ISSUES DISCUSSED:

- 30 day notice requirement to change protected persons abode and exception to notice requirement
- Effect of guardianship on a protected person's rights
- Technical concerns with measure

EFFECT OF AMENDMENT:

-A6 Modifies 30 day notice requirement for placement changes to 15 days notice.

BACKGROUND:

Guardianship is a protective proceeding created by state law in which a court gives a person or entity the duty and power to make decisions for another. Conservatorship is a similar relationship, but is limited to financial oversight. The appointment of a guardian or conservator, also called a fiduciary, occurs after a petition is filed and a court finds that the person who is the subject of the proceedings lacks capacity to make decisions on his or her own behalf. Guardians are often family or friends, but may also be professionals. Appointment of a guardian may be appropriate or necessary in circumstances where an adult has significant developmental delays or illness, including dementia. Guardianship may be limited, but frequently removes significant decision making authority from the person and gives it to the guardian. The guardian may be making determinations on protected person's housing, daily activities, health care treatment and finances.

House Bill 2630-A adds additional protections for the proposed protected person. It requires petitions in a protective proceeding to include what less restrictive alternatives were considered and why those alternatives were inadequate. The petition must also include whether the petitioner is seeking plenary authority or specified limited authority for the person nominated as a fiduciary. The measure allows the protected person to object to a motion in a protective proceeding orally, as currently exists for objections to petitions. The measure also specifies what procedures must be taken to change the abode of the protected person and that a court can remove a guardian who does not comply with those procedures. HB 2630-A requires visitors in cases of appointing a subsequent fiduciary. In the yearly guardian's report to the court, the guardian must specify facts to support the conclusion that the protected person is incapable and must include notice on how interested parties may contact the court.