

SB 502 STAFF MEASURE SUMMARY

Senate Committee On Judiciary

Action Date: 04/13/17

Action: Do pass and refer to Ways and Means by prior reference.

Vote: 5-0-0-0

Yeas: 5 - Dembrow, Linthicum, Manning Jr, Prozanski, Thatcher

Fiscal: Fiscal impact issued

Revenue: No revenue impact

Prepared By: Channa Newell, Counsel

WHAT THE MEASURE DOES:

Requires court hearing on any petition for appointment of a fiduciary by the Oregon Public Guardian and Conservator or county public guardian and conservator. Requires appointment of counsel for proposed protected person in such hearings, unless person is already represented or objects to appointment of counsel. Specifies attorney fees for counsel may be paid by person's estate, if sufficient funds exist, or by Office of Public Defense Services.

ISSUES DISCUSSED:

- Guardianships frequently last for the individual's life
- Guardianship order can be easier to get than a civil commitment order
- Addresses concerns that respondents don't receive due process

EFFECT OF AMENDMENT:

No amendment.

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 when 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 decisions on a person's housing, daily activities, health care treatment, and finances. Under current Oregon law, a court may require a hearing in a guardianship proceeding when an objection is filed.

Senate Bill 502 requires a hearing on any petition for appointment of a fiduciary by the Oregon Public Guardian and Conservator or a county public guardian and conservator. The measure also requires appointment of counsel for the proposed protected person in such hearings, unless the person is already represented or objects to appointment of counsel. SB 502 specifies attorney fees for counsel are paid by the person's estate, if sufficient funds exist, or by the Office of Public Defense Services.