

CERTIFICATION OF ENROLLMENT
SUBSTITUTE SENATE BILL 5320

Chapter 364, Laws of 2007
(partial veto)

60th Legislature
2007 Regular Session

OFFICE OF PUBLIC GUARDIANSHIP

EFFECTIVE DATE: 07/22/07

Passed by the Senate April 17, 2007
YEAS 49 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House April 9, 2007
YEAS 98 NAYS 0

FRANK CHOPP

Speaker of the House of Representatives

Approved May 8, 2007, 3:50 p.m., with
the exception of section 5 which is
vetoed.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of
the Senate of the State of
Washington, do hereby certify that
the attached is **SUBSTITUTE SENATE
BILL 5320** as passed by the Senate
and the House of Representatives
on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

May 10, 2007

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5320

AS AMENDED BY THE HOUSE

Passed Legislature - 2007 Regular Session

State of Washington 60th Legislature 2007 Regular Session

By Senate Committee on Judiciary (originally sponsored by Senators Franklin, McCaslin, Kline, Stevens, Prentice, Parlette, Regala, Hargrove, Rasmussen, Murray, Jacobsen, Hewitt, Keiser and Roach)

READ FIRST TIME 02/08/07.

1 AN ACT Relating to creating an office of public guardianship as an
2 independent agency of the judiciary; and adding a new chapter to Title
3 2 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** In establishing an office of public
6 guardianship, the legislature intends to promote the availability of
7 guardianship services for individuals who need them and for whom
8 adequate services may otherwise be unavailable. The legislature
9 reaffirms its commitment to treat liberty and autonomy as paramount
10 values for all Washington residents and to authorize public
11 guardianship only to the minimum extent necessary to provide for health
12 or safety, or to manage financial affairs, when the legal conditions
13 for appointment of a guardian are met. It does not intend to alter
14 those legal conditions or to expand judicial authority to determine
15 that any individual is incapacitated.

16 NEW SECTION. **Sec. 2.** The definitions in this section apply
17 throughout this chapter unless the context clearly requires otherwise.

18 (1) "Office" means the office of public guardianship.

1 (2) "Public guardian" means an individual or entity providing
2 public guardianship services.

3 (3) "Public guardianship services" means the services provided by
4 a guardian or limited guardian appointed under chapters 11.88 and 11.92
5 RCW, who is compensated under a contract with the office of public
6 guardianship.

7 (4) "Long-term care services" means services provided through the
8 department of social and health services either in a hospital or
9 skilled nursing facility, or in another setting under a home and
10 community-based waiver authorized under 42 U.S.C. Sec. 1396n.

11 NEW SECTION. **Sec. 3.** (1) There is created an office of public
12 guardianship within the administrative office of the courts.

13 (2) The supreme court shall appoint a public guardianship
14 administrator to establish and administer a public guardianship program
15 in the office of public guardianship. The public guardianship
16 administrator serves at the pleasure of the supreme court.

17 NEW SECTION. **Sec. 4.** The public guardianship administrator is
18 authorized to establish and administer a public guardianship program as
19 follows:

20 (1)(a) The office shall contract with public or private entities or
21 individuals to provide public guardianship services to persons age
22 eighteen or older whose income does not exceed two hundred percent of
23 the federal poverty level determined annually by the United States
24 department of health and human services or who are receiving long-term
25 care services through the Washington state department of social and
26 health services. Neither the public guardianship administrator nor the
27 office may act as public guardian or limited guardian or act in any
28 other representative capacity for any individual.

29 (b) The office is exempt from RCW 39.29.008 because the primary
30 function of the office is to contract for public guardianship services
31 that are provided in a manner consistent with the requirements of this
32 chapter. The office shall otherwise comply with chapter 39.29 RCW and
33 is subject to audit by the state auditor.

34 (c) Public guardianship service contracts are dependent upon
35 legislative appropriation. This chapter does not create an
36 entitlement.

1 (d) The initial implementation of public guardianship services
2 shall be on a pilot basis in a minimum of two geographical areas that
3 include one urban area and one rural area. There may be one or several
4 contracts in each area.

5 (2) The office shall, within one year of the commencement of its
6 operation, adopt eligibility criteria to enable it to serve individuals
7 with the greatest need when the number of cases in which courts propose
8 to appoint a public guardian exceeds the number of cases in which
9 public guardianship services can be provided. In adopting such
10 criteria, the office may consider factors including, but not limited
11 to, the following: Whether an incapacitated individual is at
12 significant risk of harm from abuse, exploitation, abandonment,
13 neglect, or self-neglect; and whether an incapacitated person is in
14 imminent danger of loss or significant reduction in public services
15 that are necessary for the individual to live successfully in the most
16 integrated and least restrictive environment that is appropriate in
17 light of the individual's needs and values.

18 (3) The office shall adopt minimum standards of practice for public
19 guardians providing public guardianship services. Any public guardian
20 providing such services must be certified by the certified professional
21 guardian board established by the supreme court.

22 (4) The office shall require a public guardian to visit each
23 incapacitated person for which public guardianship services are
24 provided no less than monthly to be eligible for compensation.

25 (5) The office shall not petition for appointment of a public
26 guardian for any individual. It may develop, and shall consult with
27 the advisory committee regarding the need to develop, a proposal for
28 the legislature to make affordable legal assistance available to
29 petition for guardianships.

30 (6) The office shall not authorize payment for services for any
31 entity that is serving more than twenty incapacitated persons per
32 certified professional guardian.

33 (7) The office shall monitor and oversee the use of state funding
34 to ensure compliance with this chapter.

35 (8) The office shall collect uniform and consistent basic data
36 elements regarding service delivery. This data shall be made available
37 to the legislature and supreme court in a format that is not

1 identifiable by individual incapacitated person to protect
2 confidentiality.

3 (9) The office shall report to the legislature on how services
4 other than guardianship services, and in particular services that might
5 reduce the need for guardianship services, might be provided under
6 contract with the office by December 1, 2009. The services to be
7 considered should include, but not be limited to, services provided
8 under powers of attorney given by the individuals in need of the
9 services.

10 (10) The office shall require public guardianship providers to seek
11 reimbursement of fees from program clients who are receiving long-term
12 care services through the department of social and health services to
13 the extent, and only to the extent, that such reimbursement may be
14 paid, consistent with an order of the superior court, from income that
15 would otherwise be required by the department to be paid toward the
16 cost of the client's care. Fees reimbursed shall be remitted by the
17 provider to the office unless a different disposition is directed by
18 the public guardianship administrator.

19 (11) The office shall require public guardianship providers to
20 certify annually that for each individual served they have reviewed the
21 need for continued public guardianship services and the appropriateness
22 of limiting, or further limiting, the authority of the public guardian
23 under the applicable guardianship order, and that where termination or
24 modification of a guardianship order appears warranted, the superior
25 court has been asked to take the corresponding action.

26 (12) The office shall adopt a process for receipt and consideration
27 of and response to complaints against the office and contracted
28 providers of public guardianship services. The process shall include
29 investigation in cases in which investigation appears warranted in the
30 judgment of the administrator. The office shall provide the advisory
31 committee with a summary and analysis of the results of these
32 complaints. When requested by the complaining party, his or her
33 identity shall not be disclosed to the advisory committee created under
34 section 5 of this act.

35 (13) The office shall contract with the Washington state institute
36 for public policy for a study. An initial report is due two years
37 following the effective date of this section and a second report by

1 December 1, 2011. The study shall analyze costs and off-setting
2 savings to the state from the delivery of public guardianship services.

3 (14) The office shall develop standardized forms and reporting
4 instruments that may include, but are not limited to, intake, initial
5 assessment, guardianship care plan, decisional accounting, staff time
6 logs, changes in condition or abilities of an incapacitated person, and
7 values history. The office shall collect and analyze the data gathered
8 from these reports and submit it to the advisory committee
9 periodically.

10 (15) The office shall identify training needs for guardians it
11 contracts with, and shall make recommendations, after consultation with
12 the advisory committee, to the supreme court, the certified
13 professional guardian board, and the legislature for improvements in
14 guardianship training. The office may offer training to individuals
15 providing services pursuant to this chapter.

16 (16) The office shall establish a system for monitoring the
17 performance of public guardians, and office staff shall make in-home
18 visits to a randomly selected sample of public guardianship clients.
19 The office may conduct further monitoring, including in-home visits, as
20 the administrator deems appropriate. For monitoring purposes, office
21 staff shall have access to any information relating to a public
22 guardianship client that is available to the guardian. The office
23 shall confer with the advisory committee in developing its monitoring
24 process.

25 (17) During the first five years of its operations, the office
26 shall issue annual reports of its activities, after review of and
27 comment by the advisory committee.

28 ****NEW SECTION. Sec. 5. (1) There is created a public guardianship***
29 ***advisory committee consisting of the following members:***

- 30 ***(a) Two persons appointed by the supreme court;***
31 ***(b) Two persons appointed by the board for judicial administration;***
32 ***(c) Two senators, one from each of the two largest caucuses,***
33 ***appointed by the president of the senate; and two members of the house***
34 ***of representatives, one from each of the two largest caucuses,***
35 ***appointed by the speaker of the house of representatives;***
36 ***(d) One person appointed by the governor;***

1 (e) One person appointed by the secretary of the department of
2 social and health services;

3 (f) Two persons appointed by the director of the Washington
4 protection and advocacy system;

5 (g) One person appointed by the chairperson of the governor's
6 committee on disability issues and employment;

7 (h) Two persons appointed by the chairperson of the developmental
8 disabilities council;

9 (i) One person appointed by the long-term care ombudsman;

10 (j) One person appointed by the Washington state bar association;
11 and

12 (k) One person appointed by the dean of the University of
13 Washington school of social work.

14 (2) During the term of his or her appointment, an appointee may not
15 be employed by a provider of public guardianship services.

16 (3) Except as provided in subsection (4) of this section, members
17 shall each serve a three-year term, subject to renewal for no more than
18 one additional three-year term.

19 (4) The first appointments to the advisory committee shall be for
20 terms of varying durations as follows: By the supreme court for two
21 and four years; by the board for judicial administration for three and
22 four years; by the president of the senate for two and three years; by
23 the speaker of the house of representatives for two and three years; by
24 the governor for four years; by the secretary of the department of
25 social and health services for two years; by the director of the
26 Washington protection and advocacy system for one and three years; by
27 the chairperson of the governor's committee on disability issues and
28 employment for four years; by the chairperson of the developmental
29 disabilities council for two and four years; by the long-term care
30 ombudsman for three years; by the Washington state bar association for
31 three years; and by the dean of the University of Washington school of
32 social work for four years.

33 (5) Members of the advisory committee receive no compensation for
34 their services as members of the advisory committee, but may be
35 reimbursed for travel and other expenses in accordance with rules
36 adopted by the office of financial management.

37 (6) The advisory committee: Shall review the activities of the
38 office; shall review the performance of the public guardianship

1 *administrator; and may make recommendations to the supreme court, the*
2 *certified professional guardian board, and the legislature on issues*
3 *relating to the provision of public guardianship services.*

4 (7) *The meetings of the advisory committee shall be open to the*
5 *public, with agendas published in advance and minutes kept and made*
6 *available to the public. The public notice of all meetings shall*
7 *indicate that accommodations for disability will be available upon*
8 *request.*

**Sec. 5 was vetoed. See message at end of chapter.*

9 NEW SECTION. **Sec. 6.** The courts shall waive court costs and
10 filing fees in any proceeding in which an incapacitated person is
11 receiving public guardianship services funded under this chapter.

12 NEW SECTION. **Sec. 7.** The public guardianship administrator may
13 develop rules to implement this chapter. The administrator shall
14 request and consider recommendations from the advisory committee in the
15 development of rules.

16 NEW SECTION. **Sec. 8.** If any provision of this act or its
17 application to any person or circumstance is held invalid, the
18 remainder of the act or the application of the provision to other
19 persons or circumstances is not affected.

20 NEW SECTION. **Sec. 9.** Sections 1 through 8 of this act constitute
21 a new chapter in Title 2 RCW.

Passed by the Senate April 17, 2007.

Passed by the House April 9, 2007.

Approved by the Governor May 8, 2007, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State May 10, 2007.

Note: Governor's explanation of partial veto is as follows:

"I am returning, without my approval as to Section 5, Substitute
Senate Bill 5320 entitled:

"AN ACT Relating to creating an office of public guardianship as
an independent agency of the judiciary."

I am a strong proponent of government management accountability and
performance. To this extent, I believe we must be judicious in the
creation of new boards and commissions. This bill calls for the
creation of a 17 member advisory committee to the new Office of
Public Guardianship.

The creation of the Office of Public Guardianship does not
necessitate creating a 17 member Advisory Committee. The Office is
created within the Administrative Offices of the Courts and the
director is selected by, and serves at the pleasure of, the Supreme

Court. These entities are capable of providing adequate oversight of the Office and performing the duties outlined in the bill for the advisory committee.

For these reasons, I have vetoed Section 5 of Substitute Senate Bill 5320.

With the exception of Section 5, Substitute Senate Bill 5320 is approved."