

SUBJECT: Liability of and legal fees for a court-appointed trustee of certain facilities

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 10 ayes — Hunter, Hughes, Alonzo, Hartnett, Jackson, Leibowitz, Lewis, Madden, Martinez, Woolley

0 nays

1 absent — Branch

SENATE VOTE: On final passage, April 9 — 31-0, on Local and Uncontested Calendar

WITNESSES: (*On House companion bill, HB 1962:*)  
For — (*Registered, but did not testify:* David Bragg)

Against — None

On — (*Registered, but did not testify:* Susan Davis, Department of Aging and Disability Services)

BACKGROUND: Under the Health and Safety Code, subch. D, the Department of Aging and Disability Services (DADS) may request that a court appoint a trustee to assume the operations of a nursing facility, assisted-living facility, or an intermediate care facility for the mentally retarded (ICF-MRs).

Sec. 242.096, establishes the Emergency Assistance Trust Fund and makes it available to DADS for expenditures without legislative appropriation to make emergency assistance funds available to a home. The fund receives fees and assessments on nursing homes, assisted living facilities, and ICF-MRs. A trustee of a home is allowed to use emergency-assistance funds only to alleviate an immediate threat to the health or safety of the residents. A court may order DADS to disburse emergency assistance funds to a home under certain circumstances.

DIGEST: SB 1111 would amend Health and Safety Code, ch. 242, subch. D, to provide immunity from civil lawsuits for DADS court-appointed trustees for nursing facilities, assisted-living facilities, and intermediate care

facilities for the mentally retarded (ICF-MRs). SB 1111 also would provide statutory authority for the payment of certain legal fees incurred by court-appointed trustees.

**Involuntary appointment of a trustee over a facility.** When a trustee was appointed over a facility by DADS, the trustee would not be liable for civil damages for an action made in good faith in the official scope of duties. A trustee would be entitled to payment for reasonable legal fees incurred in fulfilling the trustee's responsibilities. A trustee also would be allowed to use emergency-assistance funds for legal fees. A court would be allowed to order DADS to disburse emergency-assistance funds to the trustee to pay for reasonable legal fees.

**Appointment by agreement of a trustee over a facility.** When a trustee was appointed at the request of a facility operator, the trustee would not be liable for civil damages for an action made in good faith in the official scope of the trustee's duties. A trustee would be allowed to use emergency-assistance funds to pay for reasonable legal fees incurred in fulfilling the trustee's responsibilities. A court would be allowed to order DADS to disburse emergency assistance funds to the trustee to pay for reasonable legal fees.

**SUPPORTERS  
SAY:**

DADS has experienced difficulty when recruiting court-appointed trustees to oversee the operations of a nursing facility, assisted-living facility, or ICF-MRs. DADS requests the appointment of these trustees to help turn failing facilities into functional ones that deliver quality care to some of the state's most vulnerable residents. Many possible trustees are hesitant to accept an appointment because, while they are acting at the behest of the state, they are not state employees and therefore do not have immunity from civil lawsuits. SB 1111 would provide immunity from civil lawsuits for court-appointed trustees overseeing these facilities on behalf of DADS. This statutory grant of immunity would make it easier for DADS and courts to find qualified trustees to oversee facilities.

SB 1111 would not grant total immunity from civil lawsuits. The immunity only would apply to actions made in good faith in the official scope of the trustee's duties. The bill would not provide protection for criminal acts or those made in bad faith or outside the trustee's official duties.

SB 1111 also would provide clear statutory authority to allow funds to be disbursed from the Emergency Assistance Trust Fund to reimburse trustees for reasonable legal fees incurred while fulfilling their responsibilities. Since the number of incidents where trustees have been appointed is low, the amount of legal fees paid out of the fund should not have a substantial impact on the fund. While courts historically have approved requests by court-appointed trustees for payment of legal fees from the fund, such authority is not explicit in statute. SB 1111 would ensure that courts would have the authority to order appropriate disbursements.

DADS has requested the appointment of a trustee under these circumstances only three times in the past three years, so the grant of immunity would apply to a small set of professionals who provide a valuable service.

**OPPONENTS  
SAY:**

Trustees should be held responsible for making bad decisions even when acting in their official capacity. SB 1111 would remove liability for making poor choices that affect vulnerable populations, at-risk institutions, and the finances of both.

This bill would allow trustees to have their attorneys' fees paid for out of the Emergency Assistance Trust Fund. This fund was established to pay for the critical needs of residents of nursing facilities, assisted-living facilities, and ICF-MRs. These funds should exclusively be used for these purposes.

**NOTES:**

The companion bill, HB 1962 by Legler, was considered in a public hearing by the Judiciary and Civil Jurisprudence Committee on April 15 and left pending.