

Soon to be Disabilities Rights California

June 24, 2008

Honorable Tom Torlakson
Chair, Senate Appropriations Committee
Capitol Building, Room 5050
Sacramento, CA 95814

RE: AB 2343 (Caballero) - SUPPORT

Dear Senator Torlakson:

Protection & Advocacy, Inc. (PAI), a non-profit advocacy organization mandated to advance the human and legal rights of people with disabilities, supports AB 2343. This bill is set to be heard in the Senate Appropriations Committee on June 30, 2008.

Existing law requires the public guardian of a county to comply with the continuing education requirements that are established by the California State Association of Public Administrators, Public Guardians, and Public Conservators. This bill would also require the public conservator and administrator of a county to comply with the continuing education requirements.

Existing law provides a method for filling a vacancy if a trust has no trustee or the trust requires a vacancy in the office of co-trustee to be filled. If other specified methods of appointing a trustee to fill a vacancy fail, a court may appoint a trustee on the petition of any interested person. The public guardian is prohibited from being appointed as a trustee unless the court finds that no other qualified person is willing to act as trustee. Existing law creates in each county the office of public administrator.

This bill prohibits a public administrator from being appointed as a successor trustee unless certain conditions are met. It requires that the public administrator receive notice prior to the hearing to appoint him or her as trustee and allows the

public administrator to refuse the appointment. It requires that the public administrator be the sole trustee, and be appointed only for the duty of terminating the trust and distributing the trust assets. The public administrator would be prohibited from acting as trustee of any new trusts created by the initial trust. The bill imposes on the public administrator the same liability and limitations on liability as imposed on trustees generally. The bill specifies the expenses and compensation that a public administrator can receive for acting as a successor trustee. It requires that the public administrator receive a bond fee to be deposited in the country treasury. If a public guardian is appointed as a trustee, as specified, the court is required to establish a reasonable rate of compensation.

In addition to requiring continuing education for public conservators and administrators, this bill places important limits on the authority of public administrators who serve as successor trustees. Under this bill, public administrators would receive notice of a hearing where they might be appointed as a successor trustee, and an opportunity to refuse the appointment. A public administrator would not serve with a co-trustee (thereby avoiding potential conflicts of interest), would have the authority only to terminate the trust and distribute its assets, and would have the same liability as other trustees. PAI supports this bill because these limitations will reduce the risk that a county, through its public administrator, will make financial decisions about a conservatee's assets (such as selling the individual's home) that are not in the individual's interest.

Although PAI supports this bill as written, we suggest an amendment that would require court approval before a public administrator can terminate a special needs trust. Our suggested amendment added to the end of proposed Probate Code section 15660.6 (d) is as follows: *The public administrator shall not terminate a Special Needs Trust without prior court approval.*

Please feel free to contact me if you have any questions about our position on this bill.

Very truly yours,

A handwritten signature in black ink, appearing to read "Margaret Jakobson-Johnson". The signature is fluid and cursive, with a large initial "M" and a long, sweeping tail.

Margaret Jakobson-Johnson
Protection & Advocacy, Inc.
PAI, Director of Advocacy

CC: Honorable Members, Senate Appropriations Committee

CC: Honorable Anna Marie Caballero, Author, California State Assembly

CC: Katie Johnson, Consultant, Senate Appropriations Committee

CC: Willie Armstrong, Legislative Director, Assembly Member Caballero's Office