

STORAGE NAME: h1823a.fpr.doc

DATE: April 12, 2001

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
FISCAL POLICY & RESOURCES
ANALYSIS**

BILL #: HB 1823

RELATING TO: Public Guardianship

SPONSOR(S): Committee on Judicial Oversight and Representative Crow

TIED BILL(S): none

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) JUDICIAL OVERSIGHT YEAS 9 NAYS 0
 - (2) FISCAL POLICY & RESOURCES YEAS 13 NAYS 0
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

The Statewide Public Guardianship Office is charged with the responsibility of monitoring and assisting in the guardianship process. This bill addresses the following matters:

- A professional guardian is a person appointed by a court to act as a guardian when no family member is available or willing to act as guardian for an incapacitated person. Currently, there is no list or registry of professional guardians. This proposed bill provides that professional guardians must register with the Statewide Public Guardianship Office.
- Unclaimed funds held by a guardian must be deposited with the State Treasurer. If the funds remain unclaimed after ten years, the funds escheat to the state, for the use of the Statewide Public Guardianship Office. This bill reduces the ten years to five years.
- Under current law, the Statewide Public Guardianship Office may establish "an office of public guardian" in any county or judicial circuit. This bill provides that "one or more offices" may be established in a county or judicial circuit. This bill further requires that all offices of public guardian must maintain a staff or contract with professionally qualified individuals to assist in the guardianship functions.
- This bill allows for the creation of direct-support organization to assist the Statewide Public Guardianship Office and/or to local offices of public guardian.

This bill does not appear to have any fiscal impact on local governments. This bill appears to have a minimal fiscal impact on state government, see "III. Fiscal Analysis & Economic Impact Statement".

Note. On April 12, 2001, the Committee on Fiscal Policy & Resources adopted a strike-all amendment, which will travel with the bill, and reported the bill favorably.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

This proposed committee bill creates a registration requirement for a class of professionals that currently does not have a licensing or registration program.

B. PRESENT SITUATION:

Guardianship Law in General

Guardianship law is found in the Guardianship Act ("Act") in Chapter 744, F.S. A "guardian" is "a person who has been appointed by the court to act on behalf of a ward's person or property, or both."¹ A "ward" is "a person for whom a guardian has been appointed."² A person will only become a ward if that person is an "incapacitated person", which is "a person who has been judicially determined to lack the capacity to manage at least some of the property or to meet at least some of the essential health and safety requirements of such person."³ Guardianship is the legal process of determining the necessity of appointing a guardian for a ward, and monitoring and supervising that appointment. There are many variations in guardianship, including plenary,⁴ limited, nonprofit corporate, professional, or standby. While many wards are elderly, wards are also persons with developmental disabilities, persons with mental illness, and persons with severe medical problems.

In general, any adult person may be appointed as a guardian over a ward, except that appointment of a non-resident guardian is restricted and certain persons are prohibited from acting as a guardian.⁵ In many guardianships, a close relative or friend of the ward acts as guardian, often waiving the fees that he or she is entitled to earn as guardian. Where no friend or relative is available to act as guardian, and the assets of the ward are sufficient, a professional guardian may be appointed.

¹ Section 744.102(8), F.S.

² Section 744.102(19), F.S.

³ Section 744.102(10), F.S.

⁴ "Plenary" is defined by Black's Law Dictionary as "full, entire, complete, absolute, perfect, unqualified".

⁵ Section 744.309, F.S. Persons prohibited from acting as a guardian include convicted felons, persons with a record of abuse or neglect of children or of the elderly, and medical providers to the ward.

Professional Guardians

A professional guardian is any guardian who receives or has at any time received compensation for services rendered to more than two wards as their guardian. A person serving as guardian for two or more relatives . . . is not considered a professional guardian.⁶ A professional guardian must submit to credit and criminal history background checks. No state agency has oversight authority over the conduct of professional guardians, the only oversight is by the local circuit court.

Public Guardianship

In 1986, the Legislature enacted the Public Guardianship Act (the Act) as Part IX of Chapter 744, F.S. The Act authorizes a judicial circuit to establish a public guardianship program in that circuit, for the purpose of providing guardianship services for individuals who have been adjudicated incapacitated, when the person meets specified income criteria,⁷ and when there is no family member, friend, or private guardian who is willing and able to act as the person's guardian.

An office of public guardian performs both administrative and legal duties. The office is staffed, generally, with a public guardian who is the attorney and administrative officer, and may include, among others: a court counselor supervisor responsible for case management; court counselors who serve as case managers; an administrative specialist who provides accounting for wards=funds and administers the budget; and a secretary. A public guardian is appointed by the executive director of the Statewide Public Guardianship Office. An office of public guardian provides: (1) the attorney for the guardianship estate of wards that the public guardian is appointed to serve; (2) management of all wards=funds entrusted to the public guardian; (3) compliance with all requirements of the guardianship statute; (4) maintenance of a case management system to oversee the safety of the ward and the securing of services and entitlements; and (5) assistance to other judicial circuits when requested.⁸

Of the twenty judicial circuits, six have established and are operating an office of public guardian: the 2nd (Franklin, Gadsden, Jefferson, Leon, Liberty, and Wakulla Counties), 11th (Dade County), 13th (Hillsborough County), 15th (Palm Beach County), 17th (Broward County), and 20th (Collier and Lee Counties). Three of the six offices receive some state funding. In 1986, the Legislature established an Office of Public Guardian for the Second Judicial Circuit and for the Seventeenth Judicial Circuit as pilot projects. In 1989, the Legislature provided funds for the 13th Judicial Circuit, Hillsborough County, to contract with Lutheran Ministries, a nonprofit organization, to serve as the Office of Public Guardian for that circuit. In general, revenues collected for funding the programs come from a combination of county funds, various court filing fees, and funds from nonprofit organizations.⁹

Statewide Public Guardianship Office

In 1999, the Legislature established the Statewide Public Guardianship Office (SPGO) to oversee the delivery of guardianship services to indigent persons adjudicated incapacitated.¹⁰ Oversight of

⁶ Section 744.1002(15), F.S.

⁷ A public guardian may only be appointed if "the assets of the ward do not exceed the asset level for Medicaid eligibility, exclusive of homestead and exempt property as defined in s. 4, Art. X of the State Constitution, and the ward's income, from all sources, is less than \$4,000 per year. Income from public welfare programs, supplemental security income, optional state supplement, a disability pension, or a social security pension shall be excluded in such computation. However, a ward whose total income, counting excludable income, exceeds \$30,000 a year may not be served."

⁸ Senate staff analysis of SB 1048, 2000 Session, February 9, 2000, at 5.

⁹ *Id.* at 2.

¹⁰ Chapter 99-277, L.O.F., Section 744.7021, F.S.

the various public guardianship programs already in operation when the SPGO was created was moved from the judicial branch to the executive branch.¹¹ The SPGO was placed under the Department of Elderly Affairs for administrative purposes only; it is not subject to the control, supervision, or direction of the department.¹²

The administrator of the SPGO is the executive director who supervises the statewide public guardianship program.¹³ The program operates, at the local level, within the state circuit court structure.¹⁴ The executive director is appointed by, reports to, and serves at the pleasure of the Governor. The executive director must be a licensed attorney with a background in guardianship law and knowledge of social services available to meet the needs of incapacitated persons.¹⁵

The Statewide Public Guardianship Office is authorized to:

- Review current public guardian programs in Florida and in other states;¹⁶
- Develop statewide performance measures and standards;¹⁷
- Review the various methods of funding guardianship programs; the kinds of services being provided by the programs; the demographics of the wards; and to review and make recommendations regarding the feasibility of recovering a portion or all of the costs of providing public guardianship services from the assets or income of wards;¹⁸
- Submit an interim report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the State Supreme Court by October 1, 2000, describing the progress of the Office in meeting the specific tasks assigned when it was created;¹⁹
- Submit, no later than October 1, 2001, a proposed public guardianship plan, including alternatives for meeting the state's guardianship needs to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the State Supreme Court. The plan may include recommendations for less than the entire state, or a phase-in system, and must include estimates of the cost of each of the alternatives. Annually thereafter, the SPGO must report on the status of plan implementation and provide further recommendations to address the need for public guardianship services;²⁰
- Review and make recommendations in the annual report on the availability and efficacy of seeking Medicaid matching funds; and seek ways to use existing programs and services to meet the needs of public wards;²¹
- Develop, through the use of a curriculum committee which must include at least one probate judge, a guardianship training program that may be offered to all guardians. The SPGO

¹¹ Section 744.703(6), F.S.

¹² Section 744.7021, F.S.

¹³ Section 744.7021, F.S.

¹⁴ Section 744.703(1), F.S.

¹⁵ Section 744.7021(1), F.S.

¹⁶ Section 744.7021(2)(a), F.S.

¹⁷ Section 744.7021(2)(b), F.S.

¹⁸ Section 744.7021(2)(c), F.S.

¹⁹ Section 744.7021(2)(d), F.S.

²⁰ *Id.*

²¹ Section 744.7021(2)(e), F.S.

may charge fees for attending training programs and for evaluating and approving the training materials;²²

- Receive public guardian annual reports; receive reports on efforts by public guardians to locate private-sector guardians for wards assigned; receive reports on assessments of potential for restoration to capacity; and audit offices of the public guardian;²³
- Select the public guardian in any judicial circuit where an office of the public guardian exists.²⁴

C. EFFECT OF PROPOSED CHANGES:

See "Section-by-Section Analysis".

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 744.1085, F.S., regarding the regulation of professional guardians.

Present Situation: There are no formal licensure or registration requirements for professional guardians.

Effect of Proposed Changes: This proposed bill provides that professional guardians must register with the Statewide Public Guardianship Office. The Statewide Public Guardianship Office may, but is not required to, contract with the Florida State Guardianship Association to perform the administrative functions associated with registering professional guardians. The Statewide Public Guardianship Office may promulgate a registration form and may set a registration fee, which fee may not exceed the administrative costs of registering a professional guardian. A copy of a certificate of registration must be furnished to a Florida court upon request and without charge. Registration must include the following information:

- If the professional guardian is a natural person, the name, address, date of birth and employer identification number of the professional guardian.
- If the professional guardian is a partnership or association, the name, address, and date of birth of every member, and the employer identification number of the partnership or association.
- If the professional guardian is a corporation or other business entity, the name, address and employer identification number of the corporation; the name, address, and date of birth of each of its directors and officers; the name of its resident agent; the name, address and date of birth of each person having at least a 10 percent interest in the corporation.
- The name, address, date of birth, and employer identification number, if applicable, of each person employed or under contract with the professional guardian who is involved in providing financial and/or personal guardianship services for wards.

²² Section 744.7021(2)(f), F.S.

²³ Section 744.708, F.S.

²⁴ Section 744.703(1), F.S. Duly appointed public guardians serving on October 1, 1999, may continue to serve until the expiration of their terms pursuant to their respective agreements.

- Documentation that the bonding and educational requirements of this section have been met, and that background screening has been conducted pursuant to s.744.3135, F.S.

The Statewide Public Guardianship Office may adopt administrative rules to carry out the registration provisions.

Section 2. Amends s. 744.534, F.S., regarding the disposition of unclaimed funds held by guardians.

Present Situation: Section 744.534, F.S., provides that, where a guardianship terminates, and property in the hands of the guardian cannot be distributed to the ward or the ward's estate, the guardianship court must order the guardian of the property to sell the property of the ward and deposit the proceeds and cash already on hand with the clerk of the court. The clerk must deposit the funds in the registry of the court, advertise notice of the unclaimed funds, and, if the funds remain unclaimed, pay over the funds to the State Treasurer to the credit of public guardianship. A person that was entitled to the unclaimed funds may, within ten years from the date of deposit with the State Treasurer, petition the guardianship court for the funds. All funds deposited with the State Treasurer and not claimed within ten years from the date of deposit shall escheat to the state for the benefit of public guardianship.

Effect of Proposed Changes: Amends s. 744.534(2)(c), F.S., to shorten the time within which a person may apply for unclaimed funds owed to that person from ten years to five. Additionally, further specifies that escheat funds are to be paid to the Elderly Affairs Trust Fund to be used solely for the benefit of public guardianship as determined by the Statewide Public Guardianship Office.

Section 3. Amends s. 744.703, F.S., regarding the office of public guardian.

Present Situation: Section 744.703(1), F.S., provides that the executive director of the Statewide Public Guardianship Office may establish an office of the public guardian in any judicial circuit. The executive director of the Statewide Public Guardianship Office appoints a public guardian after consultation with the chief judge and other circuit judges of the circuit. A nonprofit corporation may be appointed public guardian only if it has been granted tax-exempt status from the United States Internal Revenue Service; and it maintains a staff of professionally qualified individuals to carry out the guardianship functions, including a staff attorney who has experience in probate areas and another person who has a master's degree in social work, or a gerontologist, psychologist, registered nurse, or nurse practitioner.

Effect of Proposed Changes: Amends s. 744.703(1), F.S., to provide that one or more offices of the public guardian may be established in a judicial circuit. Additionally, provides that any appointed public guardian, whether nonprofit or not, must maintain a staff or contract with professionally qualified individuals to carry out the guardianship functions, including an attorney who has experience in probate areas and another person who has a master's degree in social work, or a gerontologist, psychologist, registered nurse, or nurse practitioner. A public guardian that is a nonprofit corporate guardian must receive tax-exempt status from the United States Internal Revenue Service.

Section 4. Creates s. 744.7082, regarding direct support organization.

Present Situation: There is no specific statutory authority for the Statewide Public Guardianship Office to create a direct support organization. Numerous direct support organizations are currently

allowed by statute. A direct support organization is subject to audit by the Auditor General. Section 11.45(11), F.S. A direct support organization is an extension of a state agency, and thus is generally subject to the open records requirement of ch. 119, F.S. *Palm Beach Community College Foundation, Inc., v. WFTV, Inc.*, 611 So.2d 588 (Fla. 4th DCA 1993).

Effect of Proposed Changes: Creates s. 744.7082, to provide that the Statewide Public Guardianship Office may permit, without charge, the appropriate use of property and facilities of the state by a direct-support organization. Such use must be directly in keeping with the approved purpose of the direct-support organization. The purpose and objectives of the direct-support organization must be consistent with the priority issues and objectives of the Statewide Public Guardianship Office and must be in the best interest of the state. The direct-support organization must provide for an annual post audit of its financial accounts to be conducted by an independent certified public accountant. The annual audit report must include a management letter and must be submitted to the Auditor General and the Statewide Public Guardianship Office for review. The Statewide Public Guardianship Office and the Auditor General have the authority to require and receive from the organization or from its independent auditor any detail or supplemental data relative to the operation of the organization. The term "direct-support organization" is defined to mean a Florida not for profit corporation organized and operated to conduct programs and activities; initiate developmental projects; raise funds; request and receive grants, gifts, and bequests of moneys; acquire, receive, hold, invest, and administer, in its own name, securities, funds, objects of value, or other property, real or personal; and make expenditures to or for the direct or indirect benefit of the Statewide Public Guardianship Office or individual offices of public guardians.

Section 5. Provides an effective date of July 1, 2001.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Statewide Public Guardianship Office expects professional guardian registration fees to generate approximately \$13,800 annually, commencing in FY 2001-2002.

The Statewide Public Guardianship Office expects to receive a one-time payment of approximately \$270,000 in this fiscal year from shortening the time for claiming abandoned property related to guardianships from 10 years to 5 years.

2. Expenditures:

The Statewide Public Guardianship Office expects registration of professional guardians to incur a non-recurring expense to initiate the program of \$1,800, and recurring expenses of approximately \$11,200 annually, commencing in FY 2001-2002.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

It is expected that the initial annual registration fee for a professional guardian will be \$15.00.²⁵

D. FISCAL COMMENTS:

The trust fund named in the bill does not exist. An amendment to change the Operations and Maintenance Trust Fund is necessary.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

This bill creates rule-making authority to create an administrative rule setting the registration fee. The fee is limited to actual cost to the agency of maintaining the registry.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 12, 2001, the Committee on Fiscal Policy & Resources adopted a strike-all amendment, which will travel with the bill, and reported the bill favorably. The amendment incorporates a provision requiring the parent of an incapacitated person must consent to the decision of a proxy to withhold life-prolonging procedures, a provision raising the amount of a claim that may be settled by a natural guardian of a

²⁵ Meeting with Jerry Woelfel, Deputy Director of Administrative Services and Government Relations, of the Statewide Public Guardianship Office, on March 9, 2001.

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minor without the appointment of a legal guardian or guardian ad litem, and a provision correcting the name of the trust fund to be used for the benefit of the public guardian program into the body of the bill.

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

Staff Director:

Nathan L. Bond, J.D.

Lynne Overton, J.D.

AS REVISED BY THE COMMITTEE ON FISCAL POLICY & RESOURCES:

Prepared by:

Staff Director:

Douglas Pile

Greg Turbeville