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**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
JUDICIAL OVERSIGHT
ANALYSIS**

BILL #: HB 137
RELATING TO: Elderly Persons & Disabled Adults
SPONSOR(S): Representatives Hogan & Greenstein
TIED BILL(S): none

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

- (1) ELDER & LONG-TERM CARE YEAS 10 NAYS 0
 - (2) JUDICIAL OVERSIGHT
 - (3) COUNCIL FOR HEALTHY COMMUNITIES
 - (4)
 - (5)
-

I. SUMMARY:

Current law provides that a victim of civil theft may sue the perpetrator, and receive treble damages plus attorney's fees. This bill amends the civil theft statute to provide that exploitation of certain elderly persons or disabled adults may also be civilly pursued under the civil theft law. Certain actions related to patient care, residential care, or long-term care, are exempted from the civil theft statute.

The Statewide Public Guardianship Office is charged with the responsibility of monitoring and assisting in the guardianship process. This 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 increases from \$5,000 to \$15,000 the maximum amount for which a guardian may settle a claim on behalf of a ward without the necessity of an appointment of bond, the establishment of a legal guardianship, or appointment of a guardian ad litem and prior court approval of the settlement.

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".

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 type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

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

This bill creates a new civil cause of action; and requires a currently unregistered class of professionals to register with the state, and to pay a fee for that registration.

B. PRESENT SITUATION:

For specific information on the Present Situation as applicable to each of the sections of this bill, see "Section by Section Analysis" herein. In general:

Theft and Exploitation of the Elderly.

According to experts in elder law, the financial exploitation of elderly citizens is a serious growing problem. Perpetrators are most frequently persons in whom elderly citizens place trust and confidence, such as a family member, a long-term business associate or an employed caretaker, to manage his or her funds, assets, and property. A 4-year national study determined that there were more than 550,000 reported cases of elder abuse, neglect and self-neglect for 1996, many more of which go unreported.¹ The study ranked in order of frequency the types of elder maltreatment: 1) Neglect, 2) Emotional/psychological abuse, 3) Physical Abuse, 4) Financial/material exploitation and 5) Abandonment. The largest category of perpetrators of elder abuse was found to be family members (primarily adult children) at almost 85%. The study also indicated that from 1986 to 1996, there was an 150.4% increase in reported domestic elder abuse.

Chapter 825, F.S., provides criminal penalties for certain actions constituting abuse, neglect, or exploitation of an elderly person or a disabled adult. Section 825.011(4), F.S., defines "disabled adult" to mean a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the person's ability to perform the normal activities of daily living. Section 825.011(5), F.S., defines "elderly person" to mean a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunctioning, to the extent that the ability of the person to provide adequately for the person's own care or protection is impaired.

¹ National Center on Elder Abuse. September 1998. National Elder Abuse Incidence Study: Final Report. Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families and Administration on Aging.

Section 825.101(11), F.S., defines "position of trust and confidence" with respect to an elderly person or a disabled adult, to mean the position of a person who:

- (a) Is a parent, spouse, adult child, or other relative by blood or marriage of the elderly person or disabled adult;
- (b) Is a joint tenant or tenant in common with the elderly person or disabled adult;
- (c) Has a legal or fiduciary relationship with the elderly person or disabled adult, including, but not limited to, a court-appointed or voluntary guardian, trustee, attorney, or conservator; or
- (d) Is a caregiver of the elderly person or disabled adult or is any other person who has been entrusted with or has assumed responsibility for the use or management of the elderly person's or disabled adult's funds, assets, or property.

Section 825.103(1), F.S.,² provides that "exploitation of an elderly person or disabled adult" means:

- (a) Knowingly, by deception or intimidation, obtaining or using, or endeavoring to obtain or use, an elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who:
 - 1. Stands in a position of trust and confidence with the elderly person or disabled adult; or
 - 2. Has a business relationship with the elderly person or disabled adult; or
- (b) Obtaining or using, endeavoring to obtain or use, or conspiring with another to obtain or use an elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who knows or reasonably should know that the elderly person or disabled adult lacks the capacity to consent.

Section 772.11, F.S., provides a civil remedy for theft. Any person who proves by clear and convincing evidence that he or she has been injured in any fashion by reason of any violation of the provisions of ss. 812.012-812.037, F.S., (criminal theft statutes) has a cause of action for threefold the actual damages sustained and, in any such action, is entitled to minimum damages in the amount of \$200, and reasonable attorney's fees and court costs in the trial and appellate courts. Before filing an action for damages under this section, the person claiming injury must make a written demand for \$200 or the treble damage amount of the person liable for damages. If the person to whom a written demand is made complies with such demand within 30 days after receipt of the demand, that the person making the written demand must give person a written release from further civil liability for the specific act of theft. Any person who has a cause of action for civil theft may recover damages from the parents or legal guardian of any unemancipated minor who lives with his or her parents or legal guardian and who is liable for damages. Punitive damages are prohibited. The defendant is entitled to recover reasonable attorney's fees and court costs in the trial and appellate courts upon a finding that the claimant raised a claim which was without substantial fact or legal support. In awarding attorney's fees and costs in an action for civil theft, the court may not consider the ability of the opposing party to pay such fees and costs.

² Available figures for FY 1998-99, show 511 persons were arrested for violation of s. 825.103, F.S. Of the 511 persons arrested, 95 persons (18.6%) were convicted.

Section 415.1111, F.S., also provides a civil cause of action based on abuse, neglect or exploitation³ of a vulnerable adult⁴ against any perpetrator. An alleged perpetrator is defined as one who has been named in a reported call as the person responsible for abusing, neglecting, or exploiting a vulnerable adult. The suit may be brought by the vulnerable adult, the vulnerable adult's guardian, by a person or organization acting on behalf of the vulnerable adult with the consent of the vulnerable adult or that person's guardian, or by the personal representative of the estate of a deceased vulnerable adult (without regard to whether the cause of death resulted from the abuse, neglect, or exploitation). In contrast to s. 772.11, F.S., punitive damages may be recovered under this section in addition to actual damages. The prevailing party is also entitled to recover reasonable attorney's fees and costs of the action. The burden of proof under this section as established by case law is the greater weight of the evidence. The remedies available in s. 415.1111, F.S., are in addition to and cumulative with other legal and administrative remedies available to a disabled adult or an elderly person.

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."⁵ A "ward" is "a person for whom a guardian has been appointed."⁶ 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."⁷ 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,⁸ 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.⁹ 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.

³ Exploitation is defined as an act taken by a person in a position of trust and confidence or a person who knows or should know that the vulnerable adult lacks the capacity to consent, and obtains or uses, or endeavors to obtain or use the vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of the funds, assets, or property. s. 415.102(7), F.S.

⁴ In 2000, the terms "elderly persons and disabled adult" were uniformly replaced by the term "vulnerable adult" in chapter 415, F.S., relating to adult protective service. See ch. 2000-349, L.O.F. Vulnerable adult is now defined as a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, physical, or developmental disability or dysfunctioning, or brain damage, or the infirmities of aging. See s. 415.102(26), F.S.

⁵ Section 744.102(8), F.S.

⁶ Section 744.102(19), F.S.

⁷ Section 744.102(10), F.S.

⁸ "Plenary" is defined by Black's Law Dictionary as "full, entire, complete, absolute, perfect, unqualified".

⁹ 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.”¹⁰ 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,¹¹ 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. The executive director of the Statewide Public Guardianship Office appoints a public guardian. 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.¹²

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.¹³

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.¹⁴ Oversight of

¹⁰ Section 744.1002(15), F.S.

¹¹ 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.”

¹² Senate staff analysis of SB 1048, 2000 Session, February 9, 2000, at 5.

¹³ *Id.* at 2.

¹⁴ 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.¹⁵ 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.¹⁶

The administrator of the SPGO is the executive director who supervises the statewide public guardianship program.¹⁷ The program operates, at the local level, within the state circuit court structure.¹⁸ 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.¹⁹

The Statewide Public Guardianship Office is authorized and required to:²⁰

- Review current public guardian programs in Florida and in other states;
- Develop statewide performance measures and standards;
- 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;
- 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;
- 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;
- 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;
- 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 may charge fees for attending training programs and for evaluating and approving the training materials;

¹⁵ Section 744.703(6), F.S.

¹⁶ Section 744.7021, F.S.

¹⁷ *Id.*

¹⁸ Section 744.703(1), F.S.

¹⁹ Section 744.7021(1), F.S.

²⁰ See s. 744.7021, F.S.

- 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;
- Select the public guardian in any judicial circuit where an office of the public guardian exists.

Settlement Authority of Natural Guardians.

A natural guardian of a ward may settle on behalf of a ward a claim before bringing a legal action to recover on any claim. See s. 744.387(2), F.S. Parents are considered natural guardians of their own children. A natural guardian of a minor may settle a claim by or on behalf of a minor ward for an amount not to exceed \$5,000 without having to secure a bond and without having prior court approval or involvement. If the net settlement exceeds \$5,000, a natural guardian can not settle the claim until a legal guardianship is established to represent the minor ward. The natural parent may be appointed as a legal guardian.

Upon reaching a proposed settlement exceeding \$5,000, the guardian must petition the court, stating the facts of the claim, the question or dispute and the proposed settlement terms. The court must review the petition and any evidence introduced to determine if the settlement is in the best interest of the ward. If the court determines that the settlement agreement is in the best interest of ward, the court must issue an order authorizing the settlement, which relieves the guardian from any further responsibility in connection with the claim. The order may also determine the amount of any additional bond that may be required. A settlement reached after an action has been filed on behalf of a ward is not effective, unless approved by the court. See s. 744.387(3), F.S.

Section 744.301, F.S., provides a similar statutory scheme for settlement of claims or a cause of action for personal injury, property damage, or wrongful death by a natural guardian on behalf of a minor under specified circumstances. This section is distinguishable in that it pertains to the appointment of a guardian ad litem in lieu of the appointment of a legal guardian. It establishes a three-tiered scheme based on threshold settlement amounts which determine if and when a guardian ad litem may or needs to be appointed by the court. As in s. 744.387, F.S., a natural guardian can settle a minor's claim without court authority or bond if the settlement amount is for \$5,000 or less. If the gross settlement amount equals or exceeds \$10,000, the court may appoint a guardian ad litem to represent the minor's interests. If the gross settlement amount equals or exceeds \$25,000, the court must appoint a guardian ad litem. However, if a legal guardian has been previously appointed and no potential adverse interest exists, a guardian ad litem may not be appointed unless the court determines that it is necessary.

C. EFFECT OF PROPOSED CHANGES:

See "Section-by-Section Analysis".

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 825.101, F.S., regarding definitions applicable to ch. 825, F.S.

Present Situation: Section 825.101(11), F.S., defines "position of trust and confidence" with respect to an elderly person or a disabled adult, to mean the position of a person who:

- (a) Is a parent, spouse, adult child, or other relative by blood or marriage of the elderly person or disabled adult;
- (b) Is a joint tenant or tenant in common with the elderly person or disabled adult;

(c) Has a legal or fiduciary relationship with the elderly person or disabled adult, including, but not limited to, a court-appointed or voluntary guardian, trustee, attorney, or conservator; or

(d) Is a caregiver of the elderly person or disabled adult or is any other person who has been entrusted with or has assumed responsibility for the use or management of the elderly person's or disabled adult's funds, assets, or property.

Effect of Proposed Changes: This bill amends the definition of "position of trust and confidence" in s. 825.101, F.S., by splitting paragraph (d) into two paragraphs, to clarify that a person in a position of trust and confidence includes a caregiver or is a person who has been entrusted with or has assumed responsibility for the use or management of the elderly person's or disabled adult's funds, assets, or property.

Section 2. Amends s. 772.11, F.S., regarding civil remedy for theft.

Present Situation: Section 772.11, F.S., provides that any person who proves by clear and convincing evidence that he or she has been injured in any fashion by reason of any violation of the provisions of ss. 812.012-812.037, F.S., (criminal theft statutes) has a cause of action for threefold the actual damages sustained and, in any such action, is entitled to minimum damages in the amount of \$200, and reasonable attorney's fees and court costs in the trial and appellate courts.

Effect of Proposed Changes: This bill amends the civil theft law to extend the civil theft statute to apply to exploitation pursuant to s. 825.103(1), F.S. Therefore, a disabled person or an elderly person who proves by clear and convincing evidence that he or she has been injured in any way because of exploitation may damages under s. 772.11, F.S., plus reasonable attorney's fees and court costs in the trial and appellate courts.

This bill further provides that, in an action under s. 772.11, F.S., the term "property" does not include the rights of a patient or a resident or a claim for a violation of such rights; nor does s. 772.11, F.S., impose civil liability regarding the provision of health care, residential care, long-term care, or custodial care at a licensed facility or care provided by appropriately licensed personnel in any setting in which such personnel are authorized to practice. Additionally, the death of an elderly person or disabled adult does not cause the court to lose jurisdiction of any claim for relief for theft or exploitation when the victim of the theft or exploitation is an elderly person or disabled adult.²¹ In a civil action under this section in which an elderly person or disabled adult is a party, the elderly person or disabled adult may move the court to advance the trial on the docket. The presiding judge, after consideration of the age and health of the party, may advance the trial on the docket. The motion may be filed and served with the civil complaint or at any time thereafter.²²

Section 3. Creates s. 744.1083, F.S., regarding professional guardian registration.

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

Effect of Proposed Changes: This bill provides that professional guardians must register with the Statewide Public Guardianship Office, effective January 1, 2003. The Statewide

²¹ Section 46.021, F.S., provides that "[n]o cause of action dies with the person. All causes of action survive and may be commenced, prosecuted, and defended in the name of the person prescribed by law." The Florida Rules of Civil Procedure also provide for continuation of a case after the death of a party. This provision appears unnecessary.

²² Trial judges have nearly total control over the timing and scheduling of cases before them, and currently have the power to advance a cause on the docket, or to hold it back, at their discretion. To that extent, this provision appears unnecessary.

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 \$25.00. 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.
- 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

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

Section 4. Amends s. 744.534, F.S., regarding the disposition of unclaimed funds held by guardians.

Present Situation: Section 744.534, F.S., provides that, when 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 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 Administrative Trust Fund" to be used solely for the benefit of public guardianship as determined by the Statewide Public Guardianship Office.

Section 5. 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 6. 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 provided for by statute. A direct support organization is subject to audit by the Auditor General.²³ 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 7. Amends s. 744.387, F.S., regarding settlement of claims by or against a legal guardian.

²³ Section 11.45(11), F.S.

Present Situation: Section 744.387(2), F.S., provides that the natural guardians (the parents of a minor child), or other guardian of a minor child (such as those appointed by will, trust, or court order), may settle any claim by or against the minor child on the guardian's own authority. If the settlement exceeds \$5,000, a legal guardianship is required. The \$5,000 sum was enacted in 1974. At that time, the sum was twice the jurisdictional amount for circuit court filings; the jurisdictional amount for circuit court cases is currently \$15,000. The inflationary adjustment of that \$5,000 sum is \$16,421.93.²⁴

Effect of Proposed Changes: This bill increases from \$5,000 to \$15,000 the settlement authority of a guardian of a minor.

Section 8. Amends s. 744.301, F.S., regarding settlement of claims by a natural guardian, to also increase, from \$5,000 to \$15,000, the settlement authority of a guardian of a minor at s. 744.301(2), F.S. Also increases from \$10,000 to \$15,000 the level at which a court may require the appointment of a guardian ad litem.²⁵

Section 9. Provides an effective date of "upon becoming a law."

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 2002-2003.²⁶

HB 1823 in the 2001 session contained the same provisions shortening the time for claiming abandoned property related to guardianships from 10 years to 5 years. The Statewide Public Guardianship Office (SPGO) expected to receive a one-time payment of approximately \$270,000 as a result of that change. Because the value of unclaimed guardianship funds varies considerably from year to year, it is unlikely that this is a correct estimate for this bill. The SPGO was unable to provide current year information.

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 2002-2003.²⁷

²⁴ Calculated from 1975 (effective date from ch 74-106, L.O.F.), through 2001, from <http://www.aier.org/cgi-bin/colcalculator.cgi>.

²⁵ The \$10,000 sum in s. 744.301(4)(a), F.S., was enacted in 1989. At the time, the sum was twice the jurisdictional amount for circuit court filings; the jurisdictional amount for circuit court cases is currently \$15,000. The inflationary adjustment of that \$10,000 sum is \$14,250, calculated from 1989 (effective date from ch 89-96, L.O.F.), through 2001, from <http://www.aier.org/cgi-bin/colcalculator.cgi>.

²⁶ Telephone conference with Jerry Woelfel, Deputy Director of Administrative Services and Government Relations, of the Statewide Public Guardianship Office, on September 17, 2001.

²⁷ Telephone conference with Jerry Woelfel, Deputy Director of Administrative Services and Government Relations, of the Statewide Public Guardianship Office, on September 17, 2001.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The Statewide Public Guardianship Office expects that the initial annual registration fee for a professional guardian will be \$25.00.²⁸

D. FISCAL COMMENTS:

The "Department of Elderly Affairs Administrative Trust Fund" named in section 4 of this bill does not exist. It would be appropriate to change the name of the designated trust fund to the "Operations and Maintenance Trust Fund".

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 municipalities or counties 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 establish 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.

²⁸ Telephone conference with Jerry Woelfel, Deputy Director of Administrative Services and Government Relations, of the Statewide Public Guardianship Office, on September 17, 2001.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On January 8, 2002, the Committee on Elder & Long-Term Care adopted one title amendment to this bill. The amendment changes the word "public" to "professional", referring to professional guardians. The bill was then reported favorably as amended.

VII. SIGNATURES:

COMMITTEE ON ELDER & LONG TERM CARE:

Prepared by:

Melanie Meyer

Staff Director:

Tom Batchelor, Ph.D.

AS REVISED BY THE COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

Nathan L. Bond, J.D.

Staff Director:

Nathan L. Bond, J.D.