

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: April 14, 1998 Revised: \_\_\_\_\_

Subject: Statewide Public Guardianship Office

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Wiehle</u>	<u>Moody</u>	<u>JU</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>WM</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

**I. Summary:**

The bill creates the Statewide Public Guardianship Office within the Department of Elderly Affairs. The responsibility for oversight of existing public guardianship offices will be removed from the courts and transferred to the Statewide office. In addition to providing oversight of the public guardian offices, the office is required to conduct a number of reviews, to set up a training program, and to seek innovative ways of meeting the state’s guardianship needs.

The office must report annually to the Governor, the Legislature, and the Chief Justice of the Supreme Court on the progress of the office in meeting the goals as stated. The report must contain a plan including alternatives for meeting the state’s guardianship needs. The bill provides that the office is permitted to conduct or contract for demonstration projects.

The bill provides that the court may require the general or special master to conduct random field audits. The bill clarifies that the clerk of court is to be the recipient of the results of federal and state fingerprint background checks and that the court must consider the results of the investigations in appointing a guardian. Guardians who undergo credit or criminal investigations must pay to the clerk of court a \$5 fee.

The bill substantially amends the following sections of the Florida Statutes: 744.369, 744.702, 744.703, 744.706, 744.707, 744.708, 744.709, 744.1085, 744.3135, and 28.241. The bill also creates section 744.7021 of the Florida Statutes.

**II. Present Situation:**

In 1986, the Legislature created the Public Guardianship Act. *See* 86-120, Laws of Fla.; Part IX of ch. 744, F.S. The Act authorizes the establishment of Offices of Public Guardian for the

purpose of providing guardianship services for individuals who have been adjudicated incapacitated, when the person meets specified income criteria, and when there is no family member, friend, or private guardian who is willing and able to act as the person's guardian.

Section 744.703, F.S., provides that the chief judge of the judicial circuit, after consultation with the circuit judges within the judicial circuit and with appropriate advocacy groups and individuals and organizations who are knowledgeable about the needs of incapacitated persons, may establish, within a county or within the circuit, an office of public guardian.

Currently, six of the twenty judicial circuits have offices of public guardians. Three of the six offices receive some state funding.

In 1995, the Office of Program Policy Analysis and Government Accountability (OPPAGA) reviewed the public guardianship program. In that report, OPPAGA concluded that the current placement of the public guardian program in the State Courts System is not the most appropriate placement. OPPAGA opined that alternatives to the current situation should be considered and recommended that the Legislature consider: (1) discontinuing state funding of existing offices and allow local governments to determine how guardianship services can best be provided to indigent persons; or (2) transferring responsibility for the office to an executive agency. *Review of Public Guardianship Within The State Courts System*, Office of Program Policy Analysis and Government Accountability, Sept. 6, 1995.

In 1997, OPPAGA issued a follow-up report on the public guardianship program. In the follow-up report, OPPAGA noted: (1) public guardianship is not a necessary function for state government; (2) the current allocation of state program funds is not based on a statewide evaluation that prioritizes and addresses statewide need; and state funds are provided in only three circuits despite requests from chief judges in other circuits for state funded offices. OPPAGA recommended that the Legislature discontinue state funding for the three public guardian offices. *Follow-Up Report on the Review of Public Guardianship Within the State Courts System*, Office of Program Policy Analysis And Government Accountability, July 1997.

Section 744.369, F.S., currently provides that the court must review initial guardianship reports within 60 days after the filing of the clerk's report and must review the annual guardianship report within 15 days after the filing of the clerk's report of findings to the court. The court is permitted to appoint general or special masters to assist the court in its review function.

Section 744.3135, F.S., was amended in 1997 to require professional guardians to submit to an investigation of the prospective guardian's credit history and an investigatory check by the National Crime Information Center and the Florida Crime Information Center systems by means of fingerprint checks by the Department of Law Enforcement and the Federal Bureau of Investigation. This provision took effect October 1, 1997, however, no criminal background checks have occurred since that time. The clerks of court argued that the provision did not specify that they were required to receive the results of these background checks.

### III. Effect of Proposed Changes:

The bill creates the Statewide Public Guardianship Office, and places it for administrative purposes within the Department of Elderly Affairs. The existing public guardianship program which is currently located in the judiciary will be moved to this new office. The Statewide Public Guardianship Office will be required to review specified issues relating to public guardianship and vulnerable citizens and to report to the Governor, the Legislature, and the Chief Justice of the Supreme Court. The office will recommend ways to provide public guardianship services statewide if possible. The office will develop a training program for public guardians and will assist counties and circuits in finding ways to provide this service.

The bill permits the courts to require the general or special master to conduct random field audits, and clarifies the process for criminal investigations. The bill permits the \$200 cap on civil filing fees to be increased by \$10 in order to provide for the establishment, maintenance, or supplementation of a public guardian.

The bill creates s. 744.7021, F.S., to establish the Statewide Public Guardianship Office within the Department of Elderly Affairs. The office is placed in the Department for administrative purposes, but will not be subject to control, supervision, or direction by the Department. The executive director is required to be a licensed attorney with a background in guardianship law and knowledge of social services available to meet the needs of incapacitated persons. The executive director is to be appointed by the Governor, is to report to the Governor, and serves at the pleasure of the Governor.

The Statewide Public Guardianship Office has the following duties:

- Oversee the public guardians, within available resources.
- Review the current public guardian programs in Florida, and review public guardian programs in other states.
- In consultation with local guardianship offices, develop statewide performance measures and standards.
- Review the various methods of funding guardianship programs, the kinds of services being provided by the programs, and the demographics of the wards.
- 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 the wards.
- Prepare an interim report by October 1, 1999 describing the progress of the office in meeting the goals as described in the bill, and no later than October 1, 2000, submit a proposed public guardianship plan, including alternatives for meeting the state's guardianship needs. The office must report each year thereafter and provide further recommendations to address the need for public guardianship services and related issues. The interim and annual plans must be submitted to the Governor, President of the Senate, Speaker of the House of Representatives, and the Chief Justice of the Supreme Court. The proposed public guardianship plan may include recommendations for less than the entire state, may include a phase-in system, and must include estimates of the cost of each of the alternatives.
- May provide assistance to local governments or entities in pursuing grant opportunities.

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- Review and make recommendations in the annual report on the availability and efficacy of seeking Medicaid matching funds.
  - Diligently seek ways to use existing programs and services to meet the needs of public wards.
  - Develop a guardianship training program. This program may be offered to all guardians whether public or private. A fee may be charged to private guardians in order to defray the cost of providing the training.
  - May conduct or contract for demonstration projects, within funds appropriated, or through gifts, grants, or contributions for such purposes, to determine the feasibility or desirability of new concepts of organization, administration, financing, or service delivery designed to preserve the civil and constitutional rights of indigent persons of marginal or diminished capacity due to the infirmities of aging or other physical, mental, or emotional disfunction.

The bill gives the Statewide Office rulemaking authority to carry out these duties.

The bill amends s. 744.706, F.S., to require that budgets be submitted to the Statewide Public Guardianship Office for inclusion in the Department of Elderly Affairs' legislative budget request. The Department is directed to make a separate and distinct request for an appropriation for the Statewide Public Guardianship Office. All public guardians will be required to submit a budget to the Statewide Public Guardianship Office annually.

The bill amends s. 744.703, F.S., to provide that the executive director of the Statewide Public Guardianship Office, after consultation with the chief judge and other circuit judges within the circuit and with appropriate advocacy groups and individuals and organizations who are knowledgeable about the needs of incapacitated persons, may establish an office of the public guardian. This same group can also create a list of persons best qualified to serve as the public guardian. The executive director must appoint the public guardian from this list of candidates. Currently, the selection is made by the chief judge of the circuit.

Currently, public guardians are appointed for a term of 4 years. The bill provides that after this term expires, the public guardian's appointment must be reviewed by the executive director and the public guardian may be reappointed for a term of up to 4 years. This section provides that a public guardian may be suspended upon the request of the chief judge. If a public guardian is suspended, the executive director must appoint an acting public guardian as soon as possible to serve until such time as the suspended public guardian is reinstated or a permanent replacement is selected. A public guardian can be removed from her or his position by the executive director either after consultation with or upon the recommendation of the chief judge.

This section provides that existing public guardians will continue in their current positions until the expiration of their term. Upon expiration of their term, the executive director will be responsible for future appointments.

The bill amends s. 744.702, F.S., to provide that the Statewide Public Guardianship Office may have the assistance of the Inspector General of the Department of Elderly Affairs in providing auditing services. Public guardian offices are also subject to audit by the Auditor General. Also,

the Office of the General Counsel must provide assistance in rulemaking and other matters as needed.

The executive director of the Statewide Public Guardianship Office must establish a curriculum committee to develop their training program which shall include, but not be limited to, probate judges. In an effort to be fiscally conservative and reduce the travel costs, the Office of the State Court Administrator suggested that the executive director should be able to schedule the curriculum committee meetings to correspond with the Conference of Circuit Judges.

The bill amends s. 744.708, F.S., to provide that annual reports, the report indicating the public guardian's efforts to locate a family member or friend or other person or entity to act as guardian of the ward, and the biennial audit reports are to be submitted to the Statewide Public Guardianship Office rather than to the chief judge of the circuit court.

This section is also amended to provide that the Statewide Public Guardianship Office can change the ratio of professional staff to wards after consultation with the local public guardian and the chief judge of the circuit court. Currently, the law requires good cause for changing the ratio. This provision was removed based upon testimony that it had no practical meaning. The basis of the decision to change the ratio must be reported in the annual report of the Statewide Public Guardianship Office.

The bill specifies that the executive director of the Statewide Public Guardianship Office is not a "professional" for purposes of the ratio determination.

The bill amends s. 744.1085, F.S., to provide that the continuing education required of professional guardians by law will be approved by or offered by the Statewide Public Guardianship Office. Currently, education programs are approved by the chief judge.

The bill amends s. 744.707, F.S., to include a recognition of the Statewide Public Guardianship Office oversight responsibilities over public guardians.

The bill amends s. 744.709, F.S., to delete a provision that the surety bond of a public guardian is to be purchased with funds appropriated to the judicial circuit for the office of public guardian. The original bill amended this statute to provide for purchase of the bond with funds appropriated to the Statewide Public Guardianship Office for the office of public guardian.

The bill amends s. 744.369, F.S., to extend the time the court has to review the annual guardianship report from 15 days to 30 days. The bill also provides that the court may require a general or special master to conduct random field audits.

The bill amends s. 744.3135, F.S., to clarify the intent of the changes to this section made by the Legislature in 1997. The bill specifies that the clerks of court will obtain fingerprint cards from the Federal Bureau of Investigation, that the guardians will obtain a card from the clerk and have the fingerprinting done, that the guardians will forward the cards and their check in the appropriate

amount to the Florida Department of Law Enforcement for processing, and that the clerks will receive the results of the investigations and will make them available for the court's consideration in determining whether to appoint a particular guardian. Guardians who undergo credit and criminal investigations are required to pay to the clerk of court a \$5 fee.

The 1997 Legislature passed a provision requiring criminal history checks and credit checks be performed on "professional" guardians. This requirement took effect October 1, 1997. However, no federal criminal background checks have occurred as a result of the change in law. This bill clarifies the process by which these criminal checks will be obtained.

The bill amends s. 28.241, F.S., to provide that the \$200 cap on civil filing fees may be increased by \$10 in order to provide for a filing fee of up to \$10 for the establishment, maintenance, or supplementation of a public guardian.

The bill has an effective date of October 1, 1998.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

The elderly, developmentally disabled, and individuals with mental illness who are incapacitated and who also are indigent will benefit from the availability of public guardians.

Guardians who undergo credit or criminal investigations are required to pay to the clerk of court a \$5 fee.

**C. Government Sector Impact:**

The bill should have a positive impact on the circuit courts' workload. The oversight responsibilities, contracting and hiring responsibilities, training program approval, and program administration responsibilities will be removed from the various chief judges of the circuit courts and transferred to the Statewide Public Guardianship Office. With no further management, supervisory, or auditing responsibilities, chief judges and trial court administrators will be able to utilize this time to perform essential court functions.

Clerks of court would receive a \$5 fee for handling and processing from guardians who undergo credit and criminal investigations.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.