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.)

BILL: CS/SB 1048

SPONSOR: Health, Aging and Long-Term Care Committee and Senator Forman

SUBJECT: Statewide Public Guardianship Office

DATE: February 9, 2000 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carter	Wilson	HC	Favorable/CS
2.			JU	
3.			FP	
4.				
5.				

I. Summary:

Committee Substitute for Senate Bill 1048 amends various provisions of part IX of chapter 744, *Florida Statutes* (F.S.), relating to public guardianship. The bill renames the "executive director" of the Statewide Public Guardianship Office (SPGO) the "Statewide Public Guardian," provides for office space and support services for the SPGO at the Louis de la Parte Florida Mental Health Institute at the University of South Florida, and provides for an office of public guardian for each judicial circuit of the state to be established by July 1, 2001. The bill provides for compensation of the Statewide Public Guardian at the same annual salary allocated for public defenders. The date by which the Statewide Public Guardian is required to submit a proposed statewide public guardianship plan to the Governor and the Legislature is moved up to January 1, 2001, and the Statewide Public Guardian is authorized to appoint advisory councils for development of curriculum and training programs for public guardians. In addition to expanding the administrative responsibilities of the Statewide Public Guardian and the SPGO, the bill provides:

- authority for the Statewide Public Guardian, upon appointment by a court, to investigate conduct of any court-appointed guardian and to recover fees from the investigated guardian, if impropriety is discovered through the investigation, to cover the costs of the investigation;
- that a public guardian may serve more than one judicial circuit, but more than one public guardian may not serve one judicial circuit simultaneously;
- that a non-attorney public guardian must have an attorney on staff or through contractual arrangement;
- that under certain circumstances, a public guardian may serve as a guardian advocate on behalf of certain persons with developmental disabilities and certain persons with mental illness;
- authority, subject to certain limitations, for a public guardian to recover costs of administering a guardianship from a ward's assets; and
- that recovered fees, costs, or funds must be deposited into the Department of Elderly Affairs Administrative Trust Fund and credited to the account of public guardian.

This bill amends ss. 744.702, 744.7021, 744.703, 744.704, 744.705, 744.708, and 744.709, F.S.

II. Present Situation:

Statewide Public Guardianship Office (SPGO)

Chapter 99-277, *Laws of Florida,* created s. 744.7021, F.S., which establishes the Statewide Public Guardianship Office to oversee the delivery system of guardianship services to indigent persons adjudicated incapacitated. Oversight of the various public guardianship programs already in operation when the SPGO was created was moved from the circuit courts of the Judicial Branch to the Executive Branch of state government. The Office 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.

The administrator of the SPGO is the executive director who supervises the statewide public guardianship program and is charged with the responsibility of exploring innovative approaches to improving and enhancing representation of vulnerable state residents. The program operates, at the local level, within the state circuit court structure. 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.

The Statewide Public Guardianship Office is authorized to:

- Review current public guardian programs in Florida and 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;
- 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. It is permissible that the plan include recommendations for less than the entire state, or a phase-in system, but it must include estimates of the cost of each of the alternatives. Subsequent to submission of the plan, the Office is required to report annually 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;
- Diligently 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 whether public or private; charge a fee to private guardians to defray the cost of providing the training; charge a fee, assessed against training providers, to cover the cost of evaluating and approving the materials and curricula to be used for training;
- Receive: public guardian annual reports; reports on efforts by the public guardian to locate private-sector guardians for wards assigned and reports of assessment on ward's potential for restoration to capacity [to be submitted simultaneously to the clerk of the circuit court]; audit reports from qualified certified public accountants and the Auditor General from the chief judges of the various circuit courts to the State Public Guardianship Office; and
- Increase or decrease the professional-to-ward ratio, currently 1 professional to 40 wards, in consultation with the local public guardian and the chief judge of the circuit court of the judicial circuit pursuing such a change, based on request of a public guardian or a court.

Additionally, upon request of the Office, any medical, financial, or mental health records held by an agency or the court and its agencies necessary to evaluate the public guardianship system, to assess the need for additional public guardianship offices or services, or to develop the mandatory annual report that the Office is charged with producing must be provided to the Office. Also, the Office is authorized to assist local governments or entities in pursuing grant opportunities and it 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 dysfunction. The Office is authorized to adopt rules, in accordance with the requirements of chapter 120, F.S., the Administrative Procedure Act, to carry out its duties and responsibilities.

The 1999 legislation also transferred authority from the chief judge of the judicial circuit to the executive director of the Statewide Public Guardianship Office (in consultation with certain specified persons), to establish offices of public guardian and to appoint public guardians. The executive director was empowered to appoint or contract with a public guardian from a list of candidates determined to be best qualified to serve as public guardians in the affected county or judicial circuit. The executive director is required to *notify* the chief judge of the judicial circuit and the Chief Justice of the State Supreme Court, in writing, of any appointment of a public guardian.

Public guardians serving on October 1, 1999, who were appointed by a chief judge of a judicial circuit of the state in accordance with then existing law, were allowed to continue to serve until the expiration of their terms pursuant to their respective agreements. Oversight of all public guardians was transferred to the Statewide Public Guardianship Office by chapter 99-277, *Laws of Florida*, and the executive director of the Office was delegated all future appointment authority.

Public guardians are appointed to 4-year terms. At the end of the 4-year term, the executive director is required to review the appointee and is authorized to reappoint the public guardian for another term of up to 4 years. The law was amended to authorize the executive director to suspend a public guardian with or without the request of the chief judge of the judicial circuit in

which the public guardian is serving. When a public guardian is suspended, the executive director is required to appoint an *acting* public guardian as soon as possible to serve until a permanent replacement is selected. The executive director may remove a public guardian from office after consulting with the chief judge of the judicial circuit that the public guardian serves. The executive director must consider a recommendation of removal made by the chief judge of the judicial circuit in which the public guardian serves.

State Guardianship Law, In General

Chapter 744, F.S., provides guidelines governing guardianship in Florida. The term "guardian" is defined in s. 744.102, F.S., to mean *a person who has been* ***appointed by the court*** *to act on behalf of a ward's person or property, or both.* A "ward" is defined as a person for whom a guardian has been appointed and may include a minor (i.e., a person under the age of 18 whose disabilities have not been removed by marriage or otherwise). There are numerous variations in guardianship, including but not limited to, plenary, nonprofit corporate, limited, professional or standby. (*See* §744.102, F.S.) The terms of a guardianship are outlined in letters of guardianship as follow:

> Letters of guardianship shall be issued to the guardian and shall specify whether the guardianship pertains to the person, or the property, or both, of the ward. The letters must state whether the guardianship is plenary or limited, and, if limited, the letters must state the powers and duties of the guardian. If the guardianship is limited, the letters shall state whether or not and to what extent the guardian is authorized to act on behalf of the ward with regard to any advance directive previously executed by the ward. *See* §744.345, F.S.

Public Guardianship

In 1986, the Legislature enacted the Public Guardianship Act (the Act) in Part IX of chapter 744, F.S. (See ch. 86-120, L.O.F.) Part IX of chapter 744, F.S., authorizes a judicial circuit to establish a public guardianship program in that circuit. The public guardianship program is a delivery system of guardianship services to certain persons. 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. More specifically, they may be persons with developmental disabilities, persons with mental illness, and the elderly who are in need of a limited or plenary guardian and who have been adjudicated incapacitated under either s. 415.1051, F.S., relating to protective services interventions when capacity to consent is lacking, or under s. 744.331, F.S., relating to procedures to determine incapacity. The term "incapacitated person" is defined as:

[*]Where the person is Medicaid eligible, exclusive of homestead and exempt property, as defined in s. 4, Art. X of the *State Constitution*, and the person's income, from all sources, is less than $4,000 per year, income from government programs is excluded from the income computation, as provided in s. 744.404(1)(b), F.S.

> . . . a person who has been judicially determined to lack the capacity to manage at least some of his or her own property (e.g., administer or dispose of personal property, benefits or other income) or to meet at least some of the essential health and safety requirements (e.g., health care, food, personal hygiene or other care without which serious and imminent physical injury or illness is more likely to occur) of such person. *See* § 744.102(10), F.S.

The 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 public guardian is appointed by the chief judge of the circuit and is answerable to the chief judge in all matters, either directly or through the trial court administrator. The office provides: (1) the attorney for the guardianship estate of wards that the public guardian is appointed to serve; (2) management of all ward's 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.

Currently, the offices of public guardian operate under the judicial branch of state government. Of the twenty judicial circuits, six--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)--have established and are operating an office of public guardian. Three of the six offices receive some state funding. In 1986, the Legislature established the Offices of Public Guardian for the Second and Seventeenth Judicial Circuits 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. Total state funding of offices of public guardians for the current fiscal year approximates $700,000. In general, revenues collected for funding of the programs come from a combination of county funds, various court filing fees, and funds from nonprofit organizations.

Oversight of Professional Guardians

A professional guardian is a guardian who has received compensation for services rendered to two or more wards as their guardians, excluding relatives. 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. In 1999, this authority was expanded to include credit and criminal investigations of public guardians. The exemption from credit and criminal investigatory checks previously granted to spouses and children petitioning for guardianship of a relative was eliminated. The clerks of the circuit courts are designated as the officials authorized to obtain fingerprint cards from the Federal Bureau of Investigation and to make such cards available to all guardians. Guardians who are either requested or required to undergo a criminal background check must have their fingerprints taken and submit the appropriate processing fee to the Florida Department of Law Enforcement. However, only

professional guardians are required to pay a $5 fee to the clerk of the circuit court, in the judicial circuit in which they are applying to serve as a guardian, for the handling and processing of their files. The respective clerks of the circuit courts are designated as the recipients of fingerprint check results and are required to make the results available to their respective courts.

Guardian Advocates for Developmentally Disabled Persons and Persons with Mental Health Disorders

Developmental Disabilities

Chapter 393, F.S., provides for guardian advocates to represent the interests of persons with developmental disabilities. Guardian advocates, as provided in s. 393.12, F.S., are individuals or corporations qualified to act as guardians with the same powers, duties, and responsibilities required of a guardian under chapter 744, F.S., or those defined by court order under s. 393.12, F.S., who are appointed by a probate court, in accordance with the *Florida Rules of Civil Procedure*. A guardian advocate is appointed to represent a person with developmental disabilities in probate court proceedings when the person with developmental disabilities voluntarily petitions for the appointment of a guardian advocate or in such proceedings when the person lacks capacity to do some of the tasks necessary to care for his or her person, property, or estate. However, no person may be presumed incapacitated solely by reason of his or her acceptance in nonresidential services or admission to residential care nor may such person be denied the full exercise of all legal rights guaranteed to any U.S. citizen.

A petition to appoint a guardian advocate may be executed by an adult resident of Florida, as provided in s. 393.12(2)(b), F.S. Verbal and written notice of the filing of the petition, along with a copy of the petition, must be given to the individual and his or her parents. The notice must also state that: (1) a hearing is scheduled to inquire into the capacity of the person with developmental disabilities to exercise the rights enumerated in the petition and (2) the person with developmental disabilities has the right to be represented by counsel of his or her own choice and that, if the person cannot afford an attorney, a court-appointed attorney will be provided. The Florida Evidence Code, chapter 90, F.S., applies to such hearings and the capacity determination must meet the clear-and-convincing-evidence burden of proof. If the court finds that the person with developmental disabilities requires the appointment of a guardian advocate, the court must enter a written order that contains the findings of fact and conclusions of law on which the court based its decision, as specified in paragraph 393.12(2)(f), F.S. A person with developmental disabilities for whom a guardian advocate has been appointed retains all legal rights except those which have been specifically granted to the guardian advocate.

Mental Health

Chapter 394, F.S., also provides for appointment of guardian advocates, but the appointment is by the administrator of a receiving facility or treatment facility[**] for mental illness. A guardian advocate appointed, as provided in s. 394.4598, F.S., is authorized to represent the interests of mental health patients determined by a psychiatrist to be incompetent to consent to treatment when a guardian with authority to consent to mental health treatment has not been appointed. Unless limited by the court, a guardian advocate with authority to consent to medical treatment has the same authority to make health care decisions and is subject to the same restrictions as a proxy appointed under the state's advance directive law, chapter 765, F.S. The patient has the right to have an attorney to represent him or her at the hearing for appointment of a guardian advocate, and has the right to testify, cross-examine witnesses, and present witnesses. A proceeding for appointment of a guardian advocate must be either electronically or stenographically recorded, and testimony must be provided under oath. At least one professional, who is authorized by law to given an opinion in support of a petition for involuntary placement, must testify. The guardian advocate must be discharged, and, along with the patient, given a copy of the order restoring competence or the certificate of discharge containing the restoration of competence, when the patient is discharged from a receiving or treatment facility to the community or when the patient is transferred from involuntary to voluntary status.

A guardian advocate appointed under chapter 394, F.S., must meet the qualifications of a court-appointed guardian under chapter 744, F.S., and must agree to the appointment. In selecting a guardian advocate, the court must give preference to a health care surrogate or a guardian with authority to consent to medical treatment, if one has already been designated. If a health care surrogate has not been designated, the court must choose a guardian advocate from a priority listing of relatives or a trained guardian advocate, as specified in subsection 394.4598(5), F.S. Certain information and training must be provided to a person appointed as a guardian advocated prior to exercising his or her authority. The training course must be developed under the oversight of the chief judge of the circuit court, taught by a court-approved organization, and include information about: patient rights, psychotropic medications, diagnosis of mental illness, the ethics of medical decision-making, and duties of guardian advocates, and last at least 4 hours.

III. Effect of Proposed Changes:

Section 1. Amends s. 744.702, F.S., providing legislative findings and intent relating to the need for public guardianship services for indigent, incapacitated individuals for whom no family member, friend, other person, bank, or corporation is available to serve as a private guardian, to:

[**]A receiving facility is a public or private facility, excluding county jails, designated by the Department of Children and Family Services to receive and hold involuntary patients under emergency conditions or for psychiatric evaluation and to provide short-term treatment. A treatment facility is a state-owned, state-operated, or state-supported hospital, center, or clinic designated by the Department of Children and Family Services for extended treatment and hospitalization, beyond that provided by a receiving facility, of persons who have a mental illness, including federal facilities for purposes of treating persons whose care is the responsibility of the federal Department of Veterans Affairs, and any private facility designated by the department when rendering treatment under the provisions of chapter 394, F.S.

- make a legislative finding that it is against state policy to allow a person to be adjudicated incapacitated and fail to provide that person with a guardian to exercise those rights that the court finds should be delegated to a guardian;
- make a legislative finding that it is against state policy to allow a person to be without the protection of guardianship because the person does not have adequate income or wealth for the compensation of a private guardian when such a person is functionally incapable of exercising the rights retained by persons determined to be incapacitated, as enumerated under state law in s. 744.3215(1)(a)-(o), F.S., such as the right to have a qualified guardian, proper education, or to receive visitors and communicate with others, or such person is functionally incapable of exercising the rights that may be removed from a person by an order determining incapacity and which may be delegated to a guardian, as enumerated under state law in s. 744.3215(3)(a)-(g), F.S., such as the right to contract, to sue and defend lawsuits, or to apply for government benefits;
- make a legislative finding that the number of persons in the state in need of guardianship who are financially unable to afford the cost of a private guardian constitutes a crisis that must be addressed by the Executive and Legislative branches at the earliest possible date;
- affirm legislative intent that no later than July 1, 2001, an office of public guardian be established in each judicial circuit, staffed to appropriately manage the demand for public guardianship services in each judicial circuit;
- affirm legislative intent to ensure that each person who needs a guardian and who meets the income and asset limitations, established in state law, has access to the court to have his or her need for a guardian addressed;
- make a legislative finding that those persons requiring public guardianship are the responsibility of the state and that the state should properly fund public guardianship services;
- make a legislative finding that the practice of courts requiring or appointing professional guardians to provide public guardianship services without remuneration discourages the establishment of private guardianship services by those who cannot afford to operate a professional guardianship business that is burdened with non-fee-producing public guardianship services which creates a crisis in the availability of guardianship services for all economic levels of wards in the state;
- make a legislative finding that there is an increasing need for guardianship services not only among the elderly, but among people of all ages, including those who are developmentally disabled;
- affirm legislative intent that the Statewide Public Guardianship Office be the provider of support for all public guardianship services through whatever agency or under whatever program these services are needed and that the services of the Statewide Public Guardianship Office are not to be construed as limited to providing guardian services to only elderly persons;
- make a legislative finding that the guardianship profession is largely unregulated and that in the interest of protecting the public, and in the interest of raising the standards and accountability of professional guardians, the law should provide for regulation of professional guardians by the Statewide Public Guardianship Office;
- make a legislative finding that there is no agency available in the state for courts to turn to as a guardianship ombudsman;
- make a legislative finding that there are cases in which guardians are appointed, often friends or family members, when the issue is raised either upon suggestion of the court or by petition of a third party as to the adequacy of the services provided by the guardian, and in which

there is reason to believe that a disinterested agency should evaluate and report to the court concerning the propriety and appropriateness of the guardian's services; and

- make a legislative finding that it is in the best interest of wards that the Statewide Public Guardianship Office, as guardian ombudsman, have the authority, when appointed, to investigate the conduct of guardians and report its findings to the court that has jurisdiction over the investigated guardian.

Section 2. Amends s. 744.7021, F.S., providing for the Statewide Public Guardianship Office, to: (1) change references from *executive director* to *Statewide Public Guardian*; provide for compensation of the Statewide Public Guardian at the same annual salary set by law for public defenders; (2) move up the date from October 1, 2001, to January 1, 2001, that a required report from the SPGO of a proposed guardianship plan for the entire state must be submitted to the Governor, President of the Senate, and the Speaker of the House of Representatives; (3) provide that the SPGO be housed at the Louis de la Parte Florida Mental Health Institute at the University of South Florida and require the Institute to adequately accommodate the SPGO with office space and support services in order to facilitate the SPGO's development of guardianship training programs and the establishment of curriculum and ensure proximity to academicians specializing in mental health; (4) clarify that SPGO office accommodations at the Institute do not preclude a second office in the Department of Elderly Affairs in Tallahassee; (5) authorize the Statewide Public Guardian to appoint advisory councils, whose members are to serve without compensation, but who may receive reimbursement of reasonably incurred expenses, to facilitate the collection of expertise relating to curriculum and training program development, and to assist with developing the proposed public guardianship plan; and (6) authorize any court in the state to appoint the Statewide Public Guardian to investigate and report to the appointing court about the conduct of any guardian such court has appointed, clarify that the Statewide Public Guardian, or his or her designee, when acting in such appointive capacity is acting as guardian ombudsman, authorize the Statewide Public Guardian to petition the investigated guardian for fees if impropriety is uncovered through the investigation, provide for deposit of any collected fee in the Department of Elderly Affairs Administrative Trust Fund to be credited to the account of the Statewide Public Guardianship Office, and specify that such funds may be used by the Statewide Public Guardian to supplement the budgets of the public guardians throughout the state and to reimburse the Statewide Public Guardian's investigative costs; (7) authorize the Statewide Public Guardianship Office to exercise oversight of access to the civil justice system by the elderly and require that office to periodically submit reports and recommendations for changes in rules, budget, and funding to the Governor, the Chief Justice of the Supreme Court, the President of the Senate, and the Speaker of the House of Representatives; and (8) direct the Statewide Public Guardianship Office to monitor state guardianship law and the guardianship process and to periodically report and recommend needed legislation, rules, and funding needs for adequate access, efficiency, and availability of the courts and services for indigent and non-indigent residents to the Governor, Chief Justice of the Supreme Court, President of the Senate, and Speaker of the House of Representatives.

Section 3. Amends s. 744.703, F.S., relating to establishing offices of public guardian in the judicial circuits of the state, appointment of a public guardian, and notification of the chief judge of the circuit and the Chief Justice of the Supreme Court of Florida of the appointment, to change references from *executive director of the Statewide Public Guardianship Office* or *executive director* to *Statewide Public Guardian*. This section is further amended to permit a public

guardian to serve more than one judicial circuit, provided that there is a functioning and adequately staffed public guardianship office in each circuit. A circuit, however, may not be simultaneously served by more than one public guardian. Additionally, this section is amended to require that a public guardian who is not an attorney must have a staff attorney or contract with an attorney to perform the legal functions of the wards of the public guardian.

Section 4. Amends s. 744.704, F.S., providing powers and duties of public guardians, to: (1) add authority for public guardians to serve as a guardian advocate for a person adjudicated under state law as indigent and who suffers from a developmental disability or mental illness; (2) modify financial criteria for eligibility of potential non-Medicaid wards to allow for a ward whose assets exceed the asset level for Medicaid eligibility by $2,000 and increase the income cap from $4,000 to $6,000; and (3) prohibit compelling a public guardian to serve as a guardian advocate for an indigent person receiving state-funded services for developmental disability or mental illness, if the public guardian is insufficiently staffed to provide such services.

Section 5. Amends s. 744.705, F.S., relating to costs of public guardian, to authorize payment of certain costs of a public guardian from the assets or income of a ward. Such use of a ward's assets or income is made permissible when the ward's assets exceed the Medicaid asset limitation when the public guardian involved in the administration of the guardianship files an itemized, verified petition to recover all or some of the costs attributable to the administration of the guardianship. The petition must show the method of charges for direct case management and charges for purely administrative functions. It must affirmatively show that all competing needs of the ward have been met and can reasonably be expected to be met in the coming reporting year. An award of recovery of costs is limited to the average annual cost per award of providing guardianship services to all persons served by the public guardian. Any award of cost recovery must be deposited in the Department of Elderly Affairs Administrative Trust Fund and credited to the account of the Statewide Public Guardianship Office. Such recovered funds deposited in the Department of Elderly Affairs Administrative Trust Fund must be made available to the Statewide Public Guardian to supplement the budgets of the public guardians serving the judicial circuits of the state.

Section 6. Amends s. 744.708, F.S., relating to reports and standards required of public guardians, to change the designation of the head of the SPGO from the *executive director of the Statewide Public Guardianship Office* to the *Statewide Public Guardian*.

Section 7. Amends s. 744.709, F.S., providing a surety bond requirement for public guardians, to provide for waiver of the bond requirement by the chief judge of the judicial circuit that the public guardian serves.

Section 8. Provides a July 1, 2000, effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities or the counties under the requirements of Article VII, Section 18 of the *Florida Constitution*.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Subsections (24(a) and (b) of the *Florida Constitution*.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the *Florida Constitution*.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Certain non-Medicaid eligible wards may be assessed for the costs of administering their guardianship by a public guardian as provided under section 5 of the bill. It is impossible to project what aggregate annual fiscal impact may result at this time.

C. Government Sector Impact:

The bill provides for a number of major regulatory oversight functions relating to the regulation of public guardians, professional guardians, reimbursement of advisory council members, and guardian advocates. Staff does not have the information necessary, such as number of affected persons or cost of office space in which public guardianship offices around the state may be set up, to calculate the fiscal impact of such regulatory responsibilities at this time.

VI. Technical Deficiencies:

Section 1 of the bill, providing legislative findings and intent, contains language on page 4, lines 9-11, that states that [*t]he Legislature finds that those persons requiring public guardianship are the responsibility of the state*. . . . Though this language comprises a legislative finding and, therefore, it does not constitute substantive law, such findings are often used by a court of law as legislative guidance. The language makes an absolute and unequivocal statement that the state is responsible for all aspects of such persons' lives. This language should be revised to more clearly and accurately describe the limit of the state's responsibility to wards of public guardians.

VII. Related Issues:

None.

VIII. Amendments:

None.