

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Criminal and Civil Justice Appropriations Committee

BILL: CS/SB 1612

INTRODUCER: Children, Families, and Elder Affairs Committee and Senators Rich and Lynn

SUBJECT: Direct-Support Organization for Guardian Ad Litem Program

DATE: April 13, 2007 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ray	Jameson	CF	Fav/CS
2.	Maclure	Maclure	JU	Favorable
3.	Hendon	Sadberry	JA	Favorable
4.				
5.				
6.				

I. Summary:

This bill authorizes the Statewide Guardian Ad Litem Office to create and contract with a not-for-profit direct-support organization to conduct programs and activities, raise funds, and make expenditures for the benefit of the office. The office currently oversees and provides assistance to all guardian ad litem and attorney ad litem programs within the judicial circuits.

This bill creates section 39.8298, Florida Statutes.

II. Present Situation:

Guardian Ad Litem Program and Statewide Office

Florida law requires court appointment of a guardian ad litem “at the earliest possible time” to represent a child in a child abuse, abandonment, or neglect judicial proceeding, whether civil or criminal.¹ Specifically, the law requires appointment of a guardian ad litem in:

- Dependency cases in which a child is the victim of abuse, neglect, or abandonment;
- Criminal cases in which there are charges of abuse, neglect, or abandonment, or a child is a witness to a sexual offense committed against a minor; and
- Dissolution/custody cases involving verified allegations of abuse, neglect, or abandonment.²

¹ Section 39.822(1), F.S.

² Office of Program Policy Analysis and Government Accountability, Florida Government Accountability Report, *Justice Administrative Commission: Guardian ad Litem Program* (profile 1016), at <http://www.oppaga.state.fl.us/profiles/1016/>.

The Guardian Ad Litem Program consists of volunteers who investigate allegations affecting children, address the court, and make recommendations on behalf of the child.³ The program's website describes the program as a partnership of community advocates and professional staff providing a voice on behalf of Florida's abused and neglected children.⁴ The Guardian Ad Litem Program represented an estimated 32,787 children in 2006. Currently, the program has a volunteer base of 5,413 people statewide, which is the largest number of volunteers in its 26-year history.⁵

In 2003, the Legislature created the Statewide Guardian Ad Litem Office within the Justice Administrative Commission.⁶ The office oversees and provides assistance to local guardian ad litem and attorney ad litem programs within the judicial circuits.⁷ Prior to the creation of the office, the program was coordinated, from its inception in 1980, through the judicial branch and the Office of the State Courts Administrator.

The head of the statewide office is the executive director, who is selected to serve a three-year term by the Governor from a list of eligible applicants submitted by a Guardian Ad Litem Qualifications Committee. The committee is composed of five individuals appointed by the Governor (two), the Chief Justice of the Supreme Court (two), and the Statewide Guardian Ad Litem Association (one).⁸

Direct-Support Organizations

A direct-support organization (DSO) is typically created as a not-for-profit corporation to give a governmental entity or program the flexibility to seek an additional funding source. Numerous DSOs are provided for in statute.⁹ One example is the DSO created to support the Statewide Public Guardianship Office within the Department of Elderly Affairs. That DSO is:

operated to conduct programs and activities; to raise funds; to request and receive grants, gifts, and bequests of moneys; to acquire, receive, hold, invest, and administer, in its own name, securities, funds, objects of value, or other property, real or personal; and to make expenditures to or for the direct or indirect benefit of the Statewide Public Guardianship Office....¹⁰

The statutory sections authorizing direct-support organizations vary in terms of their content and requirements. Examples of provisions that are found in some of these statutes include:

³ *Id.*

⁴ The website of the Florida Guardian ad Litem Program, <http://www.guardianadlitem.org>.

⁵ Statewide Guardian Ad Litem Office, *Guardian Ad Litem 2006 Annual Report: A Voice for Florida's Abused & Neglected Children*, 2.

⁶ Section 1, ch. 2003-53, L.O.F., codified at s. 39.8296, F.S.

⁷ Section 39.8296(2)(b), F.S.

⁸ Section 39.8296(2)(a), F.S.

⁹ See, for example, ss. 413.0111 (for the Division of Blind Services), 1001.24 (for the Department of Education), 288.1229 (for the Office of Tourism, Trade, and Economic Development to assist with sports promotion), 1002.361 (for the Florida School for the Deaf and the Blind), and 250.115, F.S. (for the Department of Military Affairs).

¹⁰ Section 744.7082(1)(b), F.S.

- Requiring the DSO to be a not-for-profit corporation incorporated under ch. 617, F.S.;
- Providing for appointment of a board of directors for the DSO;
- Specifying that the DSO must operate under a contract with the agency benefiting from the DSO;
- Providing for reversion of funds to the agency or the state if the DSO ceases to exist;
- Authorizing the agency to permit the DSO to use property and facilities of the agency;
- Protecting the identity of donors to the DSO who desire to remain anonymous; and
- Requiring the DSO to provide for an annual financial audit.¹¹

III. Effect of Proposed Changes:

This bill authorizes the Statewide Guardian Ad Litem Office to create and contract with a direct-support organization (DSO) for purposes such as conducting programs and activities; raising funds; and requesting and receiving grants, gifts, and bequests of money for the benefit of the office.

Currently the office does not have statutory authority to create a DSO. The office reports that it plans to use the DSO as a fundraising arm to obtain grants not available to state government agencies. In addition, the office plans to use the DSO to establish corporate partnerships. By creating a private sector board of directors, the office will use the expertise of the corporate community to address special projects such as volunteer recruitment and retention.¹²

Organization and Operation of Direct-Support Organization

The DSO must be organized and operated as a not-for-profit corporation under the provisions of ch. 617, F.S. The bill specifies, however, that the DSO is exempt from the payment of fees on documents delivered to the Department of State for filing.¹³ The bill authorizes the executive director of the Statewide Guardian Ad Litem Office to appoint the board of directors of the DSO without outside input and provides that board members serve at the pleasure of the executive director. The executive director may designate employees of the office to serve on the board of directors. The bill prohibits the DSO from exercising powers under s. 617.0302(12) or (16), F.S., dealing with purchasing shares of another corporation and merging with another corporation. The bill also prohibits a state employee from receiving compensation from the DSO for service on the board of directors or for services provided to the DSO.

In addition, the bill specifies that any moneys acquired by the DSO may be held in a separate depository account in the name of the organization and subject to the contract with the office. The DSO must also provide for an annual financial audit.

¹¹ See, for example, ss. 413.0111(1), 1001.24(3), 288.1229(3), 1002.361(2)(d), 250.115(3), and 744.7082(6) and (7), F.S.

¹² Conversation with Deborah Lacombe, Deputy General Counsel, Statewide Guardian Ad Litem Office, March 12, 2007.

¹³ The bill exempts the DSO from the filing fees prescribed in s. 617.0122, F.S., which include, for example, \$35 for filing articles of incorporation, \$87.50 for an application for a registered name, and \$175 for an application for reinstatement following administrative dissolution.

Contract with Statewide Guardian Ad Litem Office

The bill provides that the DSO must operate under a written contract with the Statewide Guardian Ad Litem Office and that the executive director of the office may terminate the contract if the DSO is found to be acting in a manner inconsistent with the goals of the office or the best interest of the state. The contract must, at a minimum, provide for:

- Approval of the articles of incorporation, bylaws, and an annual budget by the executive director;
- Reversion of moneys and property held in trust to the office or the state if the DSO ceases to exist or the executive director terminates the contract;
- The fiscal year for the DSO to begin July 1 of one year and end June 30 of the next year; and
- Disclosure of material provisions of the contract and the distinction between the DSO and the office to the donors of gifts, contributions, or bequests, as well as in promotional and fundraising publications.

Use of Statewide Office Property/Personnel Services

With regard to property and services of the Statewide Guardian Ad Litem Office, the executive director:

- May permit the use of property (excluding money), facilities, and personal services of the office;
- May determine how the DSO must comply in order to use the properties, facilities, and personal services; and
- May not allow the DSO to use of the properties, facilities, and personal services unless the DSO complies with equal employment opportunities regarding race, color, religion, gender, age, or national origin.

The bill defines the term “personal services” as including full-time and part-time personnel as well as payroll processing.

Effective Date

The bill provides an effective date of July 1, 2007.

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:

See discussion of “Government Sector Impact” section, below, for discussion of an exemption for the authorized direct-support organization from the payment of certain corporate filing fees.

B. Private Sector Impact:

None.

C. Government Sector Impact:

By authorizing the Statewide Guardian Ad Litem Office to create a direct-support organization (DSO), this bill may help facilitate fundraising efforts of the office in support of its activities and programs. Under the bill, all moneys and property held in trust by the DSO revert back to the office or the state if the DSO ceases to exist or its contract is terminated.

Under the terms of the bill, the authorized DSO is exempt from paying fees under s. 617.0122, F.S., that are generally required to be paid to the Department of State by a not-for-profit corporation when filing documents with the department.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
