

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The PCB requires the SPGO to develop rules relating to acceptable methods for completing electronic fingerprint criminal history record checks.

B. EFFECT OF PROPOSED CHANGES:

Background

Guardianship and Public Guardianship

Guardianship is the process designed to protect and exercise the legal rights of individuals with functional limitations that prevent them from being able to make their own decisions when they have not otherwise planned in advance for such a loss of capacity. Those individuals in need of guardianship may have dementia, Alzheimer's disease, a developmental disability, chronic mental illness or other such conditions that may limit function. In such instances, a guardian may be appointed by the court to manage some or all the affairs of another.

Prior to a guardianship being established, it must first be determined that a person lacks the capacity required to make decisions concerning his or her personal and/or financial matters and that no other less restrictive alternatives exist. In the vast majority of cases that result in guardianship, the court will appoint a family member or close friend of the ward to act as guardian; these are non-professional guardians. However, when a family member or close friend is unavailable or unwilling to act as guardian, there are generally two options a court may use to provide assistance to the incapacitated person:

- Appoint a professional guardian to act on the ward's behalf when the ward has assets that may be used to pay for guardianship services provided;¹ or
- Appoint a public guardian² in instances where the incapacitated ward does not have enough assets to afford a professional guardian.³

Department of Elderly Affairs, the Statewide Public Guardianship Office, and the Guardianship Task Force

In order to ensure that Florida's incapacitated residents who are indigent receive appropriate public guardianship services, the 1999 Florida Legislature created the Statewide Public Guardianship Office (SPGO). The SPGO is responsible for establishing local offices of public guardian and ensuring the registration and education of public and professional guardians.⁴ Currently, public guardianship services are provided to persons in 22 counties through 15 local offices of public guardian. During 2003, those 15 offices served a total of 1,716 wards. In May 2003, the SPGO was transferred to the direct supervision of the Secretary of Elderly Affairs.⁵

The 2003 Legislature also created the Guardianship Task Force within the Department of Elderly Affairs (DOEA), for the purpose of recommending specific statutory and other changes for achieving

¹ See ss. 744.102(16) and 744.334, F.S.

² Pursuant to s. 744.102(17), F. S., a public guardian is a professional guardian for purposes of regulation, education, and registration.

³ See s. 744.703, F.S.

⁴ See s. 744.7021, F.S. and Chapter 99-227, Laws of Florida.

⁵ See Chapter 2003-57, Laws of Florida.

best practices in guardianship and for achieving citizen access to quality guardianship services. The final report was submitted to the Secretary of Elderly Affairs on January 1, 2005.

Present Situation

House Bill 457 (2006)⁶ incorporated the recommendations of the 2003 Guardianship Task Force, the Florida State Guardianship Association, the Statewide Public Guardianship Office (SPGO) and the State Long-Term Care Ombudsman Program (LTCOP) within the Department of Elderly Affairs (DOEA) relating to the practice of guardianship in Florida. Since the bill's passage, several issues have proven problematic in implementation.

- HB 457 (2006) specified that the SPGO would maintain the criminal and credit background check information for professional guardians, while the Clerks of Court would maintain the criminal and credit background check information for non-professional guardians. However, the statute was imprecisely worded and has been interpreted by some to require that the SPGO receive criminal and credit information for all guardians.
- HB 457 (2006) provided two methods by which "a guardian" can comply with the criminal history records check: by FBI fingerprint card (hard card) or by electronic fingerprinting (Livescan).
 - FBI fingerprint cards are available from the Clerk of the Court. The guardian presents himself at his local police or sheriff's department for fingerprinting, and he forwards the completed card and \$47 fee to the Florida Department of Law Enforcement (FDLE) for processing.
 - Electronic fingerprinting equipment used for criminal history record checks of public employees is available in each school district. The electronic process costs \$47 for the FDLE processing fee plus an additional fee which varies by operator but was capped by HB 457 (2006) at \$10. The Livescan costs are also borne by the guardian.

HB 457 (2006) inadvertently failed to limit the use of Livescan to professional guardians in order to keep from potentially overwhelming the public employee systems around the state with requests from thousands of non-professional guardians.

In addition, at the time the Guardianship Task Force was meeting, the availability of electronic fingerprinting was limited; the only network was developed by the school districts. Thus, the language adopted in HB 457 (2006) relating to use of electronic fingerprinting steers guardians to that network --- "A guardian may use any electronic fingerprinting equipment used for criminal history record checks **of public employees**."⁷ Further, HB 457 (2006) placed a cap of \$10 on the fee the agency administering the electronic fingerprinting can impose, and requires the agency to submit the results to SPGO.⁸

In the last several years, electronic fingerprinting has become more widely available, and additional public and private operators have developed to meet the fingerprinting needs of various professions and groups, *e.g.*, concealed weapons permits, private investigator licenses, and insurance agent licenses.

- HB 457 (2006) required that "each guardian" submitting fingerprints electronically must pay an annual fee to SPGO.⁹ The SPGO has no authority over non-professional guardians. Thus, non-professional guardians are required to pay a fee for which they receive no service.

⁶ Chapter 2006-178, Laws of Florida.

⁷ Section 744.3135(2)(a), F.S. Emphasis supplied.

⁸ *Ibid.*

⁹ Section 744.3135(3)(c), F.S.

- In several places, HB 457 (2006) tied resubmission of credit and criminal history records checks to the date the guardian was appointed by the court, rather than registered with the SPGO.

Effect of Proposed Legislation

PCB HCC 07-06a clarifies that the SPGO maintains the criminal and credit background check information for professional guardians, while the Clerks of Court maintain the criminal and credit background check information for non-professional guardians.

The PCB limits the use of electronic fingerprinting to professional guardians. The PCB also deletes references to the network of electronic fingerprinting equipment developed for public employees, the associated fee, and duties of the agency operators, and instead directs SPGO to develop rules relating to acceptable methods for completing electronic fingerprint criminal history record checks.

It clarifies that only professional guardians pay to SPGO the annual fee associated with electronic fingerprinting.

PCB HCC 07-06a clarifies that resubmission of credit and criminal history records checks relates to the date the guardian registered with the SPGO.

C. SECTION DIRECTORY:

Section 1: Amends s. 744.3135, F. S.; revises provisions relating to criminal history records checks for guardians; requires SPGO to adopt rules regarding acceptable methods for completing electronic fingerprinting; deletes reference to public employee equipment, fees, and duties; deletes dates that have passed; clarifies terminology.

Section 2: Provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The PCB requires the SPGO to develop rules relating to acceptable methods for completing electronic fingerprint criminal history record checks.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

At its March 27, 2007, meeting the Healthcare Council adopted a strike-all amendment to the PCB. The strike-all made changed the PCB as recommended by the Committee on Healthy Seniors in the following ways:

- FDLE requested that the phrase “state and national” be used to clarify the types of records checks to be completed, as follows: “a state and national criminal history record check using a fingerprint card.”
- In the last several years, electronic fingerprinting has become more widely available, and additional public and private operators have developed to meet the fingerprinting needs of various professions and groups, e.g., concealed weapons permits, private investigator licenses, and insurance agent licenses. Accordingly, the PCB was amended to delete references to the network of electronic fingerprinting equipment developed for public employees, the associated fee, and duties of the agency operators, and instead directs SPGO to develop rules relating to electronic fingerprinting.

This analysis is drafted to the strike-all adopted by the Healthcare Council.