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DATE: February 24, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
Elder Affairs & Long Term Care
ANALYSIS**

BILL #: HB 213

RELATING TO: Guardianship

SPONSOR(S): Rep. Crow & others

COMPANION BILL(S): SB 702

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

- (1) ELDER AFFAIRS & LONG TERM CARE
 - (2) REAL PROPERTY & PROBATE
 - (3) GOVERNMENTAL RULES & REGULATIONS
 - (4) HEALTH & HUMAN SERVICES APPROPRIATIONS
 - (5)
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I. SUMMARY:

HB 213 creates the Statewide Public Guardianship Office within the Department of Elder 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 statewide 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 statewide 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 include a plan incorporating 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 clarifies that the court must consider the results of the required investigations in appointing a guardian.

This bill will have a fiscal impact.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

In 1986, the Legislature created the Public Guardianship Act. See 86-120, L.O.F.; 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, Florida Statutes, 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.)

As a result of the foregoing OPPAGA reports, the Committee on Real Property & Probate held two public hearings prior to the introduction of a committee bill for to the 1998 Legislative session.

There has been significant consideration given to issues relating to both private and public guardianship in the past. Following is a list of some of the prior Study Commissions or Task Force groups which have studied guardianship issues.

- ▶ A National Study of Public Guardianship and the Elderly, December, 1979
- ▶ Final Report of the Public Guardianship Pilot Program, February 1, 1984
- ▶ Guardianship Study, Department of Health and Rehabilitative Services, November 1985
- ▶ Final Report of the Advisory Committee on Public Guardianship, October 1, 1987
- ▶ Report and Recommendations of the Study Commission on Guardianship Law, March 1, 1989
- ▶ Guardianship Oversight Board Final Report, June 30, 1994
- ▶ The Florida Supreme Court, 1994
- ▶ Report to the Governor and Legislature on the Activities of the Governor's Elder Abuse Prevention Task Force, April 1997

In addition, a two-year study entitled "Involuntary Admission and Guardianship Project" relating to the developmentally disabled and guardian advocacy is nearing completion. This project is being funded by the Development Disabilities Council, and is housed in the Department of Children & Families.

This bill also addresses issues relating to private guardians. Section 744.369, Florida Statutes, 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, Florida Statutes, 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 federal criminal background checks have occurred since that time.

B. EFFECT OF PROPOSED CHANGES:

HB 213 creates the Statewide Public Guardianship Office, and places it for administrative purposes within the Department of Elder Affairs. The existing public guardianship program, which is 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. As well, the office will assist counties and circuits in finding ways to provide public guardianship services.

The bill permits the courts to require a 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 office.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

The bill permits the new Statewide Public Guardianship Office to make rules.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

The bill moves the responsibilities for administering the public guardianship programs from the various circuit courts to the new Statewide Public Guardianship Office.

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

The bill moves the responsibilities for administering the public guardianship program from the various circuit courts to the new Statewide Public Guardianship Office.

- (2) what is the cost of such responsibility at the new level/agency?

The Statewide Public Guardianship Office will require an appropriation of \$300,000. This amount is included in the Governor's recommended budget request.

- (3) how is the new agency accountable to the people governed?

Currently, public guardians are appointed by the chief judge of the circuit courts. The public guardians act as advocates on behalf of the wards they represent. This bill will move the hiring and oversight of the public guardians to the statewide office. The bill requires the statewide office to select the public guardians from a list prepared at the local level. The bill maintains significant involvement of the chief judges.

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

N/A

- b. Does the bill require or authorize an increase in any fees?

The law currently permits local governments to impose a filing fee of up to \$10 for purposes of establishing or maintaining a public guardian office. Broward, Hillsborough, Martin, and Palm Beach Counties are at the filing fee cap of \$200. This bill would allow counties which are at the cap to exceed the cap by \$10 in order to establish or maintain a public guardian office.

- c. Does the bill reduce total taxes, both rates and revenues?

N/A

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

See b. above.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

The beneficiaries of this legislation will be the state's poor and vulnerable citizens who are functionally incapacitated.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

The bill amends sections 744.369, 744.702, 744.703, 744.706, 744.707, 744.708, 744.1085, 744.3135, and 28.241, and creates section 744.7021, Florida Statutes.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. 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.

Section 2. Amends s. 744.702, F.S., to provide that the Legislature intends to establish the Statewide Public Guardianship Office. This section is amended to specify that guardian advocacy should be explored as one of the less intrusive means of assistance before an individual's rights are removed through an adjudication of incapacity.

Section 3. Creates s. 744.7021, F.S. This section creates 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. This section provides that the Statewide Public Guardianship Office may request the assistance of the Inspector General of the Department of Elder Affairs in providing auditing services. Also, the Office of the General Counsel may provide assistance in rulemaking and other matters as needed.

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.

The Statewide Public Guardianship Office has the following duties:

- ▶ within available resources, oversight of the public guardians;
- ▶ 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, 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, 2000 describing the progress of the office in meeting the goals as described in the bill, and no later than October 1, 2001, the office shall submit a proposed public guardianship plan including alternatives for meeting the state's guardianship needs. The interim and annual plans shall be submitted to the Governor, President of the Senate, Speaker of the House of Representatives, and the Chief Justice of the Supreme Court. The plan may include recommendations for less than the entire state, may include a phase-in system, and shall include estimates of the cost of each of the alternatives. The office must report each year thereafter and provide further recommendations to address the need for public guardianship services and related issues;
- ▶ the office may provide assistance to local governments or entities in pursuing grant opportunities;
- ▶ the office shall 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.
- ▶ the office 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.

This section gives the Statewide office rulemaking authority to carry out the provisions of this section.

Section 4. 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 must also create a list of persons best qualified to serve as the public guardian. This section will require the executive director to appoint the public guardian from the list of candidates promulgated in this way. Currently, the selection is made by the chief judge of the circuit.

The public guardians will be appointed for a term of 4 years, after which time their appointments must be reviewed. A guardian may be reappointed for a term of up to 4 years. This section provides that a public guardian may be suspended with or without 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 a permanent replacement is selected. A public guardian can be removed from his or her position by the executive director after consultation with 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.

Section 5. Amends s. 744.706, F.S., to require that budgets be submitted to the Statewide Public Guardianship Office for inclusion in the Department of Elder 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 copy of their budget to the Statewide Public Guardianship Office annually.

Section 6. Section 744.707, F.S., is amended to include a recognition of the Statewide Public Guardianship Office oversight responsibilities over public guardians.

Section 7. 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. In addition, this section is amended to specify that the office of public guardian is subject to audits by the Auditor General pursuant to s. 11.45.

This section provides that the ratio of professional staff to wards can be changed 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.

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

Section 8. Section 744.1085, F.S., is amended to provide that the continuing education will be approved by or offered by the Statewide Public Guardianship Office. Currently education programs are approved by the chief judge.

Section 9. Section 744.3135, F.S., is amended to clarify the intent of the changes to this section made by the Legislature in 1997. The section specifies that the clerks of court will obtain fingerprint cards from the Federal Bureau of Investigation, 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.

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.

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

Section 11. The bill provides for a \$300,000 appropriation.

Section 12. Provides for a type two transfer from the Circuit Court budget entity within the Judicial branch to the Department of Elderly Affairs.

Section 13. The act takes effect October 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

The cost of establishing the Statewide Public Guardianship Office, and providing for personnel, equipment and travel is estimated to be \$300,000. In addition, currently three circuits receive state funding for public guardianship offices. That funding is provided in the circuit court budget, administered by the Office of the State Courts Administrator. The total budget for the three offices is approximately \$700,000 for FY 1998-99. This appropriation will be moved to the Department of Elder Affairs budget to continue the existing public guardianship offices.

3. Long Run Effects Other Than Normal Growth:

Unknown.

4. Total Revenues and Expenditures:

\$300,000 for the Statewide Public Guardianship Office as indicated above.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

This 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.

The 1997 Legislature enacted a provision in law requiring "professional guardians" to have a federal and state criminal background check. However, the clerks of court opined that the language did not give them specific direction to receive the results of the background checks. Therefore, this bill contains clarifying language that the clerk of court will be the recipient of the investigation results for consideration by the judge in appointing guardians.

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

N/A

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:

The Department of Elder Affairs(DOEA) recommends amending section 744.709, F.S., relating to surety bonds. The section provides in the last sentence, that "[t]he bond shall be purchased with funding provided in the funds appropriated to the judicial circuit for the office of public guardian." DOEA recommends that this provision be amended as follows:

The bond shall be purchased ~~with funding provided in~~ from the funds ~~appropriated to of~~ the ~~judicial circuit for the~~ local office of public guardian.

The Department of Elder Affairs strongly supports this legislation. The Department notes that, although the bill contains an appropriation for \$300,000, the Governor's recommended budget also contains an appropriation request in this amount. DOEA suggests that, if the Governor's request is accepted by the Legislature, the appropriation language in the bill needs to be removed.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON Elder Affairs & Long Term Care:

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