

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1775 (PCB FFF 04-05) Guardianship  
**SPONSOR(S):** Future of Florida's Families and Fiorentino  
**TIED BILLS:** **IDEN./SIM. BILLS:**

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Future of Florida's Families	12 Y, 0 N	Walsh	Liem
2)			
3)			
4)			
5)			

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### SUMMARY ANALYSIS

PCB FFF 04-05 creates the Joining Forces for Public Guardianship Act, which is intended to assist counties to fund public guardianship needs and to open local offices of public guardian.

The PCB provides operational requirements for the direct-support organization (DSO) that supports the Statewide Public Guardianship Office (SPGO).

The PCB requires the SPGO to review credit and criminal investigations prior to registration of a public or professional guardian.

The PCB clarifies the definition and role of a guardian advocate in both the law on developmental disabilities and guardianship.

The PCB exempts guardian advocates from the requirement to file an annual accounting under certain circumstances.

The matching grant program established within the Joining Forces for Public Guardianship Act is included within the Governor's recommended budget for \$5 million in funding. The PCB specifies that the grant program is subject to a specific appropriation by the legislature.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h1775.fff.doc  
**DATE:** March 18, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |   |  |   |
|--------------------------------------|---|--|---|
| 1. Reduce government?                | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. Lower taxes?                      | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |
| 5. Empower families?                 | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |

For any principle that received a “no” above, please explain:

The PCB establishes a matching grant program intended to increase the number of local offices of public guardian statewide.

#### B. EFFECT OF PROPOSED CHANGES:

##### Creation of Joining Forces for Public Guardianship Act (Sections 12 through 17)

The Statewide Public Guardianship Office (SPGO) was created by the legislature<sup>1</sup> in order to provide guardianship services to the state’s indigent and incapacitated citizens when no private guardian is available. Its responsibilities include establishment of local offices of public guardian and registration of professional guardians. There are 16 local offices in 22 counties statewide,<sup>2</sup> which in 2003 served 1,716 wards. The SPGO is within and under the supervision of the Secretary of the Department of Elder Affairs (DOEA).<sup>3</sup>

Each county is authorized to impose a fee of up to \$15 per civil action for the provision of public guardianship services. Implementation of Revision 7 to Article V relating to state funding of the court system, however, makes that funding source unavailable to counties after July 1, 2004.<sup>4</sup> DOEA reports that a minimum of \$1 million in current funding for offices of public guardian will be lost statewide, and at least 3 of the 16 offices of public guardian will lose all of their funding, with others facing operational shortfalls without funds derived from the filing fees.

The PCB creates the Joining Forces for Public Guardianship Act and establishes the Joining Forces for Public Guardianship matching grant program (grant program) to assist counties in the formation and funding of public guardianship offices. The grant program is to provide start-up and support funding for counties to implement offices of public guardian.

The PCB provides that the funds may be distributed in the following ways:

- (1) As start up funding to encourage those counties that have no office of public guardian to establish one or to open an additional office in counties where the need for public guardianship services requires.
- (2) As support funding for currently operating offices.
- (3) To expand existing offices to assist additional persons or a larger geographic area, or to develop innovate programs designed to increase access to public guardianship services.

<sup>1</sup> Chapter 99-277, L.O.F.

<sup>2</sup> [http://elderaffairs.state.fl.us/does/english/PUBGUARD/public\\_guardians.html](http://elderaffairs.state.fl.us/does/english/PUBGUARD/public_guardians.html)

<sup>3</sup> Chapter 2003-57, L.O.F. Prior to this transfer, the SPGO was housed administratively within DOEA, but not subject to its control or supervision.

<sup>4</sup> S. 28.241, F.S.

- (4) With the written approval of the secretary of DOEA, provide emergency grants in the best interest of the public guardianship program.

More than one program within a county may receive an award; no one county, however, may receive more than 10 percent of the total available funds. If a county is eligible to receive multiple grants, the SPGO must allocate the sum of the awards so that the total support essentially phases out over a six-year period, with an amount no greater than 15 percent of the first year's grant awarded in that county. Grant awards may not be made to any applicant within a county that has received funds for six or more years.

The PCB provides that funds may be used only for direct services, with 10 percent retained for administrative purposes, and that funding of the program is subject to a specific legislative appropriation.

The PCB requires that the grant program is to be administered by the SPGO. They are to publicize the program; establish the application process; review the grant proposals; award the grant funds; develop a monitoring process to evaluate grant recipients; and ensure adherence to the act. The SPGO is granted authority to adopt rules to implement the grant program.

The PCB requires that grant applicants must meet the statutory requirements to act as a guardian, and must already be, or awaiting appointment as, an office of public guardian. To be eligible for subsequent grants, an awardee must maintain its initial eligibility and achieve satisfactory monitoring scores.

The PCB details the application review process, including submission of a detailed budget and evidence that the applicant has attempted to procure other moneys to fund the office. The applicant is also required to submit an agreement or confirmation from a local funding source, including county or local governments, to contribute matching funds totaling at least \$1 for every \$1 of grant funds awarded. The commitment may be from more than one local funding source, so long as the total of the commitments is at least \$1 for every \$1 of grant funds awarded. In-kind matching contributions are to be determined by rule and may be accepted.

The PCB provides that in the first year of the grant program, priority consideration for grant awards shall be given to currently operating offices of public guardian that lost their funding due to Article V revisions. In subsequent years, priority shall be given to those applicants who submit confirmation of a local match equal to or exceeding \$2 for each \$1 awarded.

#### Direct-Support Organization (Section 11)

The Public Guardianship Alliance, Inc., is the direct-support organization that already is established to benefit the SPGO.<sup>5</sup> The PCB strengthens the relationship between the two organizations and directs the ability of the DSO to expend funds.

The PCB provides that the DSO may only be organized to assist the SPGO, and that the SPGO must determine that the DSO is acting in the best interests of the state.

It requires that the DSO operate under contract to the SPGO. The contract must provide for annual certification by the SPGO that the DSO is operating in the best interest of the state, for reversion of money and property held in trust by the DSO, and for disclosure of the provisions of the contract to donors and in promotions and fundraising.

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<sup>5</sup> See s. 744.7982, F.S. The direct-support organization is a not-for-profit corporation organized to operate for the direct or indirect benefit of the Statewide Public Guardianship Office or individual offices of public guardian.

The PCB allows the DSO to use DOEA's property and facilities; directs the use of DSO moneys; and requires that the DSO provide an annual financial audit.

The PCB also requires that any existing DSO that has not entered into a written contract with the SPGO by July 1, 2004, shall be considered to meet the grounds for judicial dissolution. The assets of the dissolved corporation will revert to the SPGO.

#### Registration of Professional Guardians (Sections 6, 7, and 9)

The PCB clarifies existing law to explicitly require the clerk of the court to forward copies of credit or criminal investigations of public or professional guardians to the SPGO for maintenance in the guardian's registration file.

The PCB requires the SPGO to review recent credit or criminal investigations prior to registering a public or professional guardian. Without the ability to examine these records, the SPGO could unknowingly register a felon as a professional or public guardian in violation of the statutory guardianship requirements.

#### Guardian Advocates (Sections 2, 3, 5, and 8)

The PCB clarifies the definition and role of a guardian advocate in both the law on developmental disabilities and guardianship to implement the recommendations of the Governor's Joint Work Group on Guardianship and the Developmentally Disabled (Joint Work Group).<sup>6</sup> It is intended to expand the use of guardian advocacy as an alternative to full guardianship, thereby increasing options for the developmentally disabled.

The PCB amends the definition of guardian advocate in s. 393.063, F.S., to clarify that a guardian advocate is appointed by the court after a s. 393.12 proceeding, rather than the person who represents the developmentally disabled individual during that proceeding. The PCB then amends that definition into Chapter 744, the guardianship laws, in order to provide increased "visibility" of this alternative to full guardianship for the developmentally disabled to practitioners and judges in the field. Finally, the PCB authorizes a circuit court to appoint a guardian advocate for a developmentally disabled person without an adjudication of incapacity, and encourages courts to consider such an appointment when appropriate as a less restrictive form of guardianship.

#### Waiver of Annual Accounting Requirements (Sections 3 and 10)

Because the Social Security Administration requires the representative payee to file an annual accounting, waiver of the annual accounting requirement for guardian advocates or guardians who are also the ward's representative payee was proposed by the Joint Work Group in order to reduce the paperwork burden on family members and volunteers. The PCB waives the annual accounting required of guardian advocates if the ward's only income is derived from government benefits and the guardian advocate is the ward's representative payee. As to waiver of the annual accounting requirement for guardians, see Drafting Issues below.

### C. SECTION DIRECTORY:

**Section 1:** Amends s. 121.091(8)(c), F.S., to conform cross references.

**Section 2:** Amends s. 393.063(25), F.S., to amend definition of "guardian advocate."

**Section 3:** Amends s. 393.12(2)(h), F.S., to clarify that a guardian advocate is appointed for a person with developmental disabilities; provide that a guardian advocate, acting as the representative payee

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<sup>6</sup> See *Final Report of the Governor's Joint Work Group on Guardianship and the Developmentally Disabled*, August 6, 2003.

for a person with developmental disabilities whose only income is from social security benefits, is exempt from the requirement to file an annual accounting for the ward.

**Section 4:** Amends ss. 709.08(1) and (4), F.S., to conform cross references.

**Section 5:** Amends s. 744.102, F.S. to add definition of "guardian advocate;" renumber sections.

**Section 6:** Amends s. 744.1083, F.S., to require pre-registration credit and criminal investigations of professional guardians; allow executive director to deny registration; require notice to appropriate chief judge(s) of denials; renumber sections.

**Section 7:** Amends s. 744.1085, F.S., to conform cross references.

**Section 8:** Creates s. 744.3085, F.S., to authorize circuit court to appoint guardian advocates; to encourage appointment of guardian advocates as a less restrictive form of guardianship.

**Section 9:** Amends s. 744.3135 as amended by s. 114 of Chapter 2003-402, L.O.F., to require clerk of the court to forward copies of the results of public and professional guardians' credit and criminal investigations to the Statewide Public Guardianship Office for inclusion and maintenance in the guardians' registration files.

**Section 10:** Amends s. 744.3678, F.S., to provide that the annual accounting requirement does not apply if the court determines that the only income received by the ward is from government benefits and the guardian is the representative payee.

**Section 11:** Amends s. 744.7082, F.S., relating to direct-support organization (DSO), to provide definition and organizational requirements; require that DSO be under contract with Statewide Public Guardianship Office; provide contractual requirements; provide for appointment of Board of Directors; provide for uses of property; provide for uses of moneys; require an annual financial audit; provide grounds for judicial dissolution of any DSO not under written contract with Statewide Public Guardianship Office; this section effective upon becoming law.

**Section 12:** Creates s. 744.7101, F.S., to provide popular name.

**Section 13:** Creates s. 744.711, F.S., to provide legislative findings and intent.

**Section 14:** Creates s. 744.712, F.S., to establish Joining Forces for Public Guardianship grant program with Statewide Public Guardianship Office within DOEA; provide purpose; direct distribution of grant funds.

**Section 15:** Creates s. 744.713, F.S., to provide for administration of grant program by and duties of Statewide Public Guardianship Office.

**Section 16:** Creates s. 744.714, F.S., to provide eligibility criteria for grant recipients.

**Section 17:** Creates s. 744.715, F.S., to specify grant application requirements, review criteria, and awards process.

**Section 18:** Provides effective date of July 1, 2004, except as otherwise provided.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

The PCB establishes the Joining Forces for Public Guardianship grant program, which is intended to assist counties to fund public guardianship needs and to open local offices of public guardian. DOEA reports that the grant program is included within the Governor's recommended budget for \$5 million in funding.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

The PCB requires that any applicant for a Joining Forces for Public Guardianship grant obtain a commitment from a local funding source, including county or local governments, for a one to one match of grant funds awarded. The match may be in the form of in-kind contributions.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill grants rulemaking authority to the SPGO to implement the provisions of the Joining Forces for Guardianship grant program.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

The following amendment was inadvertently omitted from consideration by the Committee on the Future of Florida's Families:

On line 354, delete "government" and insert "social security"

An identical change to Section 3 of the PCB was approved by the Committee at its March 10, 2004, meeting.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

At its March 10, 2004, meeting, the Committee on the Future of Florida's Families adopted seven amendments to the PCB as proposed. Those amendments were technical and/or corrected name references.

This analysis is drafted to the PCB as amended.