

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1159 Veterans' Guardianship

SPONSOR(S): Hukill

TIED BILLS: IDEN./SIM. BILLS:

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Civil Justice & Courts Policy Committee	12 Y, 0 N	Mato	De La Paz
2)	Elder & Family Services Policy Committee	14 Y, 0 N	Guzzo	Shaw
3)	Economic Development & Community Affairs Policy Council	15 Y, 0 N	Fudge	Tinker
4)				
5)				

SUMMARY ANALYSIS

The Veterans' Guardianship Laws were created to allow a VA guardian, appointed by the Department of Veterans Affairs (DVA), to manage the governmental benefits of disabled veterans who the DVA considers incompetent to manage their own benefits. Included in these benefits, is the payment of Social Security funds.

Guardians are compensated monthly at a rate not to exceed 5% of the annual income received and managed by the VA Guardian for the veteran's benefit.

In November 2006 the DVA Regional Office in St. Petersburg assumed a limited interpretation of s. 744.641, F.S., which excluded Social Security as commissionable income for which fees may be automatically taken. The DVA's reasoning was that Social Security was not specifically defined as "income" in the definitions section of the statute.

The bill amends s. 744.604(4) and (7), F.S., to clarify which benefits a guardian may be compensated for managing, by changing the definition of the terms "benefits" and "income" to include any other moneys due from the United States Government, payable through its agencies or entities.

The bill appears to have no fiscal impact.

The bill provides an effective date of July 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation:

The Department of Veterans Affairs (DVA) has the statutory power to appoint VA guardians of disabled veterans who the DVA considers incompetent to manage their government benefits. This power results in the appointment by a judge of VA Guardians for incompetent veterans, such guardians reporting to both the Florida court and the DVA.<sup>1</sup>

Some years ago an issue of receipt and management of Social Security benefits by VA Guardians was resolved by adoption of s. 744.622, F.S., which provides that the VA Guardian may claim and manage moneys due from the U.S. Government, *payable through its agencies and entities*" (emphasis supplied). The section was adopted to clarify that the VA Guardian should have priority to receive Social Security funds, which otherwise could be paid directly to the veteran or to another representative payee. The purpose was to assure that such funds would be in the hands of a single responsible party who is accountable to the courts and the DVA, providing additional financial safeguards for the veteran.

Section 744.641, F.S., provides for payment of VA Guardian fees as a commission of 5% on the monthly income received and managed by the VA Guardian for the veteran's benefit. These payments are automatic, in that they may be taken each month without petition to the court having jurisdiction over the guardianship.

In November 2006 the DVA Regional Office in St. Petersburg assumed a limited interpretation of s. 744.641, F.S., which excluded Social Security as commissionable income for which fees may be automatically taken. The DVA's reasoning was that Social Security was not specifically defined as "income" in the definitions section of the statute. S. 744.604 (4) and (7), F.S.

Section 744.604, F.S., provides definitions as used in the Veterans' Guardianship Laws.

Section 744.604(4), F.S., provides the definition of "benefits" meaning arrears of pay, bonus, pension, compensation, insurance, and all other moneys paid or payable by the United States through the United States Department of Veterans Affairs by reason of service in the Armed Forces of the United States.

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<sup>1</sup> S. 744.602, F.S.

Section 744.604(7), F.S., provides the definition of "income" meaning moneys received from the United States Department of Veterans Affairs as benefits, and revenue or profit from any property acquired in whole or in part with such moneys.

Effect of the Bill:

The bill amends s. 744.604, F.S., definitions of both "benefits" and "income," to include "any other moneys due from the United States Government, payable through its agencies or entities." The bill renumbers the statutes accordingly.

The bill clarifies within the definition of "income" that revenue or profit from any property acquired in whole or in part with moneys received from the United States Department of Veterans Affairs and any other moneys due from the United States Government, payable through its agencies or entities.

**B. SECTION DIRECTORY:**

Section 1: Amends s. 744.604, F.S., relating to definitions.

Section 2: Provides an effective date of July 1, 2010.

**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 to 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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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