

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Judiciary Committee

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BILL: SB 1548

INTRODUCER: Senator Joyner

SUBJECT: Veterans' Guardianship

DATE: April 16, 2010

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pardue	Pardue	MS	<b>Favorable</b>
2.	Anderson	Maclure	JU	<b>Pre-meeting</b>
3.			HA	
4.				
5.				
6.				

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**I. Summary:**

This bill expands the definition of the word “benefits,” which is used as part of the basis to determine a guardian’s compensation for services provided to a veteran who is unable to manage his or her own affairs. Specifically, the bill expands benefits beyond those moneys paid through the U.S. Department of Veterans Affairs as VA benefits to include any other moneys due from the United States Government and payable through its agencies.

This change would expand the basis from which the guardian may receive compensation for guardianship services to include other income sources such as the veteran’s Social Security benefits.

This bill amends section 744.604, Florida Statutes.

**II. Present Situation:**

**Veterans’ Guardians**

Chapter 744, F.S., known as the Florida Guardianship Law, establishes an overall framework for safeguarding individuals who have been declared incompetent to handle their own affairs. Sections 744.602 through 744.653, F.S., are collectively known as the Veterans Guardianship Law.

The Veterans' Guardianship Law provides specific requirements relating to veterans' guardianship needs and authorizes an appointed guardian to receive moneys due a ward<sup>1</sup> from the U.S. Government. The guardian may receive income and benefits payable to the account of a ward from the U.S. Department of Veterans Affairs, the U.S. Armed Forces, and any other agency or entity of the U.S. Government, together with the income derived from investments of these moneys.<sup>2</sup>

A guardian is defined as any person acting as a fiduciary for a ward's person or the ward's estate, or both.<sup>3</sup>

The term "benefits" is currently defined as 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.<sup>4</sup>

The term "income" is defined as moneys received from the U.S. Department of Veterans Affairs as benefits, and revenue or profit from any property acquired in whole or in part with such moneys.<sup>5</sup>

Upon notification by the U.S. Department of Veterans Affairs that a veteran has been found by the department to be incompetent and has been rated incompetent, a person who under existing law is entitled to priority of appointment may file a petition with a court of competent jurisdiction to be appointed the veteran's guardian.<sup>6</sup>

Any resident of Florida who has the right to manage his or her own affairs and is 18 years of age or older is qualified to act as a guardian. No judge shall act as a guardian unless the judge is related to the ward by blood, marriage, or adoption, or has maintained a close relationship with the ward or the ward's family, and serves without compensation.<sup>7</sup> A nonresident may serve as a guardian if he or she is a spouse, brother, sister, uncle, aunt, niece, or nephew, or related by lineal consanguinity, or if legally adopted or the adoptive parent of the ward.<sup>8</sup>

A court may also appoint some other individual or a bank or trust company as guardian if the court determines that the appointment would be in the best interest of the veteran.<sup>9</sup>

The court shall give preference to the appointment of a person who:

- Is related by blood or marriage to the ward;
- Has educational, professional, or business experience relevant to the nature of the services to be provided to the ward;

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<sup>1</sup> Section 744.102(22), F.S., defines a "ward" as a person for whom a guardian has been appointed.

<sup>2</sup> Section 744.622, F.S.

<sup>3</sup> Section 744.604, F.S.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Section 744.616, F.S.

<sup>7</sup> Section 744.309, F.S.

<sup>8</sup> *Id.*

<sup>9</sup> Section 744.618, F.S.

- Has the capacity to manage the financial resources involved; or
- Has the ability to meet the requirements of the law and the unique needs of the individual case.<sup>10</sup>

The court must also consider the wishes of the incapacitated person, the preferences of any minor over the age of 14 who will become affected by the appointment, and any person designated a guardian in the ward's will.<sup>11</sup>

A guardian must satisfactorily complete a training course within four months of appointment by a court. A professional guardian, defined as a person who receives compensation for guardianship services provided to more than two wards, must complete a minimum of 40 hours of training and instruction within one year of appointment.<sup>12</sup>

### **Guardians' Responsibilities**

A guardian may only exercise those rights that have been removed from the ward and delegated to the guardian. The guardian must also implement a guardianship plan. The guardian must file an initial guardianship report and file annual reports thereafter. A guardian who is given authority over any property of the ward shall:

- Protect and preserve the property and invest it prudently and account for it faithfully;
- Perform all other duties required of him or her by law; and
- At the termination of the guardianship, deliver the ward's property to the person lawfully entitled to it.

The guardian must observe the standards expected of a prudent person dealing with the property of another and exercise any special skills that may have formed the basis for the guardian's appointment.

The guardian, if authorized by the court, must take possession of all of the ward's property and the rents, income, issues, and profits from it, and the proceeds arising from the sale, lease, or mortgage of the property. All of these assets are in the hands of the guardian for the payment of debts, taxes, claims, charges, and expenses of the guardianship and for the care, support, maintenance, and education of the ward or the ward's dependents as provided for in the terms of the guardianship or by law.

The guardian must ensure that the ward is visited at least once each calendar quarter by the guardian or a member of his or her professional staff. During the personal visit, the guardian or the professional staff person shall assess:

- The ward's physical appearance and condition;
- The appropriateness of the ward's current living condition; and

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<sup>10</sup> Section 744.312, F.S.

<sup>11</sup> *Id.*

<sup>12</sup> Florida Department of Elder Affairs, Statewide Public Guardianship Office, *Guardianship Basics – A Handbook for Guardians* (Feb. 2009), <http://elderaffairs.state.fl.us/english/pubguard/GuardianshipBasics.pdf> (last visited Apr. 15, 2010).

- The need for any additional services and the necessity for continuation of existing services, taking into consideration all aspects of social, psychological, educational, direct service, health, and personal care needs.<sup>13</sup>

### **Guardians' Compensation**

Under Florida law, a veteran's guardian may receive up to 5 percent of the ward's income during any year as compensation for services. In the event that extraordinary services are rendered, the guardian may petition the court for additional compensation and upon authorization by the court receive such compensation payable from the estate of the ward. Extraordinary services approved by the U.S. Department of Veterans Affairs do not require a court hearing for approval of the fees but require a court order authorizing the guardian to withdraw the amount from the guardianship account.<sup>14</sup>

Florida law allows a guardian to deduct a reasonable amount from the ward's estate for the guardian's surety bond premiums.<sup>15</sup>

Federal law authorizes the Secretary of the Department of Veterans Affairs to grant a fiduciary who is appointed by the Secretary to receive a commission from a veteran's estate for services rendered. The commission may not exceed 4 percent of the benefits paid the veteran by the department each year. A commission may not be authorized for a fiduciary who receives any other form of remuneration or payment in connection with rendering services for administering a veteran's benefits.<sup>16</sup>

In November 2006, the U.S. Department of Veterans Affairs Regional Office in St. Petersburg, Florida, assumed a limited interpretation of s. 744.641, F.S., which excluded Social Security benefits as commissionable income for which fees may be automatically taken.<sup>17</sup> The Office took the position that Social Security benefits were not specifically defined as "income" in the definitions section of Florida Statutes.<sup>18</sup>

### **III. Effect of Proposed Changes:**

This bill expands the definition of the word "benefits" found in s. 744.604, F.S., of the Veterans' Guardianship Law, beyond those moneys paid through the U.S. Department of Veterans Affairs as VA benefits to include any other moneys due from the United States Government and payable through its agencies.

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<sup>13</sup> Section 744.361, F.S.

<sup>14</sup> Section 744.641, F.S.

<sup>15</sup> *Id.*

<sup>16</sup> 38 U.S.C. s. 5502.

<sup>17</sup> Guardianship Law and Procedure Committee, Real Property, Probate, and Trust Law Section, The Florida Bar, *White Paper: Legislative Changes to §744.602 et. seq.*, available at

[http://www.rpptl.org/Content/PDFs/RPPTL\\_ExCouncil\\_09\\_26\\_09\\_AGENDA.pdf](http://www.rpptl.org/Content/PDFs/RPPTL_ExCouncil_09_26_09_AGENDA.pdf) (see page 133 of Sept. 26, 2009, meeting packet of the Executive Council meeting of the Section; last visited Apr. 15, 2010) (on file with the Senate Committee on Judiciary).

<sup>18</sup> See s. 744.604(4) and (7), F.S.

This change would expand the basis from which the guardian may receive compensation for guardianship services to include other income sources such as the veteran's Social Security benefits.

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

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill's proposed change in the definition of the term "benefits" will allow a guardian to include a veteran's Social Security benefits in the basis for determining the guardian's fee for services. Senate professional staff were unable to obtain any data reflecting the current adequacy or inadequacy of guardians' compensation. The effect of this bill will allow a guardian increased compensation payable from the veteran's income.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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

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