

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1225 Guardianship

**SPONSOR(S):** Children, Families & Seniors Subcommittee; Ahern and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1226

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	11 Y, 0 N, As CS	Langston	Brazzell
2) Health Care Appropriations Subcommittee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

CS/HB 1225 substantially reorganizes ch. 744, F.S. It expands the duties of the Statewide Public Guardianship Office (SPGO) within the Department of Elder Affairs (DOEA) to oversee professional guardians as well as public guardians. The bill renames the SPGO as the Office of Public and Professional Guardian (OPPG).

The bill provides that the executive director of the new OPPG is appointed by the Secretary of DOEA. The bill sets out the new duties and responsibilities of the executive director of the OPPG. It also requires the annual registration of professional guardians through the OPPG.

Currently, the SPGO only oversees registration of professional guardians, including the denial, suspension, or revocation of the registration; the new OPPG retains its duties relating to registration, including the denial, suspension, or revocation of the registration. In addition, the OPPG will be responsible for periodic monitoring and the discipline of professional guardians.

OPPG is directed to adopt rules to establish disciplinary oversight, including the receiving complaints, investigating complaints, conducting hearings, and taking administrative action pursuant to ch. 120, F.S.

The bill changes the process for selecting court-appointed professional guardians. It requires the courts to appoint professional guardians in the order in which names appear on the registry, unless the court makes a finding on the record to appoint a professional guardian out of order.

The bill will have an indeterminate significant negative fiscal impact on DOEA. DOEA will incur costs overseeing the approximately 450 professional guardians in addition to the 50 public guardians it currently oversees. There is no fiscal impact on local governments.

The bill provides for an effective date of January 1, 2016.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Guardianship

When an individual is unable to make legal decisions regarding his or her person or property, a guardian may be appointed to act on his or her behalf. A guardian is someone who has been appointed by the court to act on behalf of a ward (an individual who has been adjudicated incapacitated) regarding his or her person or property or both.<sup>1</sup>

The process to determine an individual's incapacity and the subsequent appointment of a guardian begins with a verified petition detailing the factual information supporting the reasons the petitioner believes the individual to be incapacitated, including the rights the alleged incapacitated person is incapable of exercising.<sup>2</sup> Once a person has been adjudicated incapacitated, the court may appoint a guardian. The order appointing a guardian must be consistent with the incapacitated person's welfare and safety, must be the least restrictive appropriate alternative, and must reserve to the incapacitated person the right to make decisions in all matters commensurate with the person's ability to do so.<sup>3</sup>

##### *Who Can Be Appointed Guardian*

The following meet the criteria to be appointed guardian of a ward:

- Any resident of Florida who is 18 years of age or older and has full legal rights and capacity;
- A nonresident if he or she is related to the ward by blood, marriage, or adoption;
- A trust company, a state banking corporation or state savings association authorized and qualified to exercise fiduciary powers in this state, or a national banking association or federal savings and loan association authorized and qualified to exercise fiduciary powers in Florida;
- A nonprofit corporation organized for religious or charitable purposes and existing under the laws of Florida;
- A judge who is related to the ward by blood, marriage, or adoption, or has a close relationship with the ward or the ward's family, and serves without compensation; or
- A provider of health care services to the ward, whether direct or indirect, when the court specifically finds that there is no conflict of interest with the ward's best interests.<sup>4</sup>

##### *Relationship Between Guardian and Ward*

The relationship between a guardian and his or her ward is a fiduciary one.<sup>5</sup> A fiduciary relationship exists between two persons when one of them is under a duty to act for or to give advice for the benefit of another upon matters within the scope of that relationship.<sup>6</sup> Section 744.446, F.S., explicitly states that there is a fiduciary relationship which exists between the guardian and the ward and that such relationship may not be used for the private gain of the guardian other than the remuneration for fees and expenses provided by law. Additionally, s. 744.362, F.S., imposes specific duties upon a guardian consistent with the basic duties of a fiduciary. The two most basic fiduciary duties are the duty of loyalty and the duty of care. As such, the guardian must act in the best interest of the ward and carry out his or her responsibilities in an informed and considered manner. Should a guardian breach his or her fiduciary duty to the ward, the court is authorized to intervene.<sup>7</sup>

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<sup>1</sup> S. 744.012(9), F.S.

<sup>2</sup> S. 744.3201, F.S.

<sup>3</sup> S. 744.344, F.S.

<sup>4</sup> S. 744.309, F.S.

<sup>5</sup> *Lawrence v. Norris*, 563 So. 2d 195, 197 (Fla. 1st DCA 1990).

<sup>6</sup> *Doe v. Evans*, 814 So. 2d 370, 374 (Fla. 2002).

<sup>7</sup> S. 744.446(4), F.S.,

## Oversight of Guardians

Guardians are subject to the requirements of ch. 744, F.S. There are three main types of guardians: family or friends of the ward, professional guardians, and public guardians. The two types of guardians overseen by the Department of Elder Affairs (DOEA) are professional guardians and public guardians.

### Professional Guardians

A professional guardian is a guardian who has at any time rendered services to three or more wards as their guardian; however, a person serving as a guardian for two or more relatives is not considered a professional guardian. A public guardian is considered a professional guardian for purposes of regulation, education, and registration.<sup>8</sup> There are currently 465 professional guardians registered with the Statewide Public Guardianship Office (SPGO).<sup>9</sup> The number of wards they serve is unknown.

#### *Registration*

A professional guardian must register with the SPGO established in part IX of ch. 744.<sup>10</sup> As part of the registration the professional guardian must:

- Provide sufficient information to identify the professional guardian;
- Complete a minimum of 40 hours of instruction and training through a course approved or offered by the SPGO;
- Complete a minimum of 16 hours of continuing education every 2 calendar years through a course approved or offered by the SPGO;
- Successfully pass an examination approved by DOEA<sup>11</sup> to demonstrate competency to act as a professional guardian;
- Undergo a criminal background check by the Federal Bureau of Investigation (FBI) and the Florida Department of Law Enforcement (FDLE);
- Submit to a credit history check; and
- Maintain a current blanket bond.<sup>12</sup>

The executive director of the SPGO may deny registration to a professional guardian if the executive director determines that the guardian's proposed registration, including the guardian's credit or criminal investigations, indicates that registering the professional guardian would violate any provision of ch. 744, F.S. If the executive director denies registration to a professional guardian, the SPGO must send written notification of the denial to the chief judge of each judicial circuit in which the guardian was serving on the day of the SPGO's decision to deny the registration.<sup>13</sup> The court is the only entity that can remove a guardian from a case to which he or she has been appointed.

#### *Compensation*

The guardian, or an attorney who has rendered services to the ward or to the guardian on the ward's behalf,<sup>14</sup> is entitled to a reasonable fee for services rendered and reimbursement for costs incurred on behalf of the assets of the guardianship estate unless the court finds the requested compensation to be substantially unreasonable.<sup>15</sup> Before the fees may be paid, a petition for fees or expenses must be filed with the court and accompanied by an itemized description of the services performed for the fees

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<sup>8</sup> S. 744.012(7), F.S.

<sup>9</sup> Department of Elder Affairs, *2015 Legislative Bill Analysis*, March 6, 2015 (on file with Children, Families, and Seniors Subcommittee staff).

<sup>10</sup> S. 744.1083(1), F.S.

<sup>11</sup> The examination is currently administered by the University of South Florida's College of Education. University of South Florida, *Florida Professional Guardian Examination*, <http://guardianship.usf.edu/index.html> (last visited March 15, 2015).

<sup>12</sup> S. 744.1083(3), F.S.; s. 744.1085, F.S.; s. 744.3135, F.S.

<sup>13</sup> S. 744.1083(5), F.S.

<sup>14</sup> Fees for legal services may include customary and reasonable charges for work performed by legal assistants employed by and working under the direction of the attorney. S. 744.108(4), F.S.

<sup>15</sup> S. 744.108(1), (8), F.S.

and expenses sought to be recovered.<sup>16</sup> When fees for a guardian or an attorney are submitted to the court for determination, the court shall consider:

- The time and labor required;
- The novelty and difficulty of the questions involved and the skill required to perform the services properly;
- The likelihood that the acceptance of the particular employment will preclude other employment of the person;
- The fee customarily charged in the locality for similar services;
- The nature and value of the incapacitated person's property, the amount of income earned by the estate, and the responsibilities and potential liabilities assumed by the person;
- The results obtained;
- The time limits imposed by the circumstances;
- The nature and length of the relationship with the incapacitated person; and
- The experience, reputation, diligence, and ability of the person performing the service.<sup>17</sup>

*Powers and Duties of the Guardian*

The guardian of an incapacitated person may exercise only those rights that have been removed from the ward and delegated to the guardian.<sup>18</sup> The guardian has a great deal of power when it comes to managing the ward's estate. Some of these powers require court approval before they may be exercised.

<b>Examples of Powers That May Be Exercised By a Guardian</b>	
<b>Upon Court Approval<sup>19</sup></b>	<b>Without Court Approval<sup>20</sup></b>
<ul style="list-style-type: none"> <li>• Enter into contracts that are appropriate for, and in the best interest of, the ward.</li> <li>• Perform, compromise, or refuse performance of a ward's existing contracts.</li> <li>• Alter the ward's property ownership interests, including selling, mortgaging, or leasing any real property (including the homestead), personal property, or any interest therein</li> <li>• Borrow money to be repaid from the property of the ward or the ward's estate.</li> <li>• Renegotiate, extend, renew, or modify the terms of any obligation owing to the ward.</li> <li>• Prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate.</li> <li>• Exercise any option contained in any policy of insurance payable to the ward.</li> <li>• Make gifts of the ward's property members of the ward's family in estate and income tax planning.</li> <li>• Pay reasonable funeral, interment, and grave marker expenses for the ward.</li> </ul>	<ul style="list-style-type: none"> <li>• Retain assets owned by the ward.</li> <li>• Receive assets from fiduciaries or other sources.</li> <li>• Insure the assets of the estate against damage, loss, and liability.</li> <li>• Pay taxes and assessments on the ward's property.</li> <li>• Pay reasonable living expenses for the ward, taking into consideration the wards current finances.</li> <li>• Pay incidental expenses in the administration of the estate.</li> <li>• Prudently invest liquid assets belonging to the ward.</li> <li>• Sell or exercise stock subscription or conversion rights.</li> <li>• Consent to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise of the ward.</li> <li>• Employ, pay or reimburse, persons, including attorneys, auditors, investment advisers, care managers, or agents, even if they are associated with the guardian, to advise or assist the guardian in the performance of his or her duties.</li> </ul>

There are also a number of duties imposed on a guardian. The guardian must:

- File an initial report within 60 days after the letters of guardianship are signed.
- File an annual report consisting of an annual accounting and/or an annual guardianship plan.
- Implement the guardianship plan.

<sup>16</sup> S. 744.108(5), (7), F.S.

<sup>17</sup> S. 744.108(2), F.S.

<sup>18</sup> S. 744.361(1), F.S.

<sup>19</sup> S. 744.441, F.S.

<sup>20</sup> S. 744.444, F.S.

- Consult with other guardians appointed, if any.
- Protect and preserve the property of the ward; invest it prudently, apply income first to the ward before the ward's dependents, and account for it faithfully.
- Observe the standards in dealing with the guardianship property that would be observed by a prudent person dealing with the property of another, and, if the guardian has special skills or is named guardian on the basis of representations of special skills or expertise, he or she is under a duty to use those skills.
- If authorized by the court, take possession of all of the ward's property and of the rents, income, issues, and profits from it, whether accruing before or after the guardian's appointment, and of the proceeds arising from the sale, lease, or mortgage of the property or of any part.
- Additionally, a professional guardian must ensure that each of the guardian's wards is personally visited by the guardian or one of the guardian's professional staff at least once each calendar quarter.<sup>21</sup>

#### *Responsibilities of the Clerk of the Circuit Court*

In addition to the duty to serve as the custodian of the guardianship files, the clerk shall review each initial and annual guardianship report to ensure that it contains required information about the ward.<sup>22</sup> The clerk is required to:

- Within 30 days after the date of filing of the initial or annual report of the guardian of the person, complete his or her review of the report.
- Within 90 days after the filing of the verified inventory and accountings by a guardian of the property, the clerk shall audit the verified inventory and the accountings and advise the court of the results of the audit.
- Report to the court when a report is not timely filed.

If the clerk has reason to believe further review is appropriate, the clerk may request and review records and documents that reasonably impact guardianship assets, including, but not limited to, the beginning inventory balance and any fees charged to the guardianship.<sup>23</sup>

#### *Discipline of Guardian*

If a guardian who is currently registered with the SPGO violates a provision of ch. 744, F.S., the executive director of the SPGO may suspend or revoke the guardian's registration. SPGO does not have the authority to take any other disciplinary action against the professional guardian. Currently, the SPGO does not monitor professional guardians, nor does it conduct investigations into complaints received regarding professional guardians; it only undertakes those actions for public guardians.<sup>24</sup>

Once the executive director suspends or revokes a professional guardian's registration, the SPGO must send written notification of the suspension or revocation to the chief judge of each judicial circuit in which the guardian was serving on the day of the decision to suspend or revoke the registration.<sup>25</sup> SPGO has no authority to remove a guardian from cases to which he or she has been appointed; the court that appointed the guardian is the entity with the authority to remove a guardian. The court may remove a guardian for a number of reasons, including:

- Fraud in obtaining her or his appointment.
- Failure to discharge her or his duties.
- Abuse of her or his powers.
- An incapacity or illness, including substance abuse, which renders the guardian incapable of discharging her or his duties.

<sup>21</sup> S. 744.361, F.S.

<sup>22</sup> S. 744.368, F.S.

<sup>23</sup> Id.

<sup>24</sup> Email from Department of Elder Affairs, *FW: DOEA Summary of Programs and Services (override)*, March 16, 2015. (on file with Children, Families, and Seniors Subcommittee staff).

<sup>25</sup> S. 744.1083(5), F.S.

- Failure to comply with any order of the court.
- The wasting, embezzlement, or other mismanagement of the ward's property.
- Development of a conflict of interest between the ward and the guardian.
- A material failure to comply with the guardianship report.
- A failure to comply with the rules for timely filing the initial and annual guardianship reports.
- A failure to fulfill the guardianship education requirements.<sup>26</sup>

## Public Guardianship

The "Public Guardianship Act"<sup>27</sup> was created by the Florida Legislature in 1999 to help provide services to meet the needs of vulnerable persons who lack the capacity to make decisions on their own behalf.<sup>28</sup> SPGO is responsible for appointing and overseeing Florida's public guardians.<sup>29</sup>

The Public Guardianship Act authorizes the executive director of the SPGO, after consultation with the chief judge and other circuit judges within the judicial circuit and with appropriate advocacy groups to establish, within a county in the judicial circuit or within the judicial circuit, one or more offices of public guardian.<sup>30</sup> Once established, the executive director must create a list of persons best qualified to serve as the public guardian.<sup>31</sup> The public guardian is directed to maintain a staff or contract with professionally qualified individuals to carry out the guardianship functions.<sup>32</sup> As of January 2013, there were 13 offices of public guardian that served 27 of 67 counties; by December of that year, SPGO expanded public guardianship services to cover all 67 counties.<sup>33</sup>

As of December 31, 2014, there were 51 public guardians, serving approximately 3,000 wards, overseen by SPGO. SPGO monitors the public guardians by conducting in depth investigations into the local programs<sup>34</sup> administration and use of financial resources.<sup>35</sup> SPGO's fiscal monitoring includes investigating whether public guardians are spending state resources reasonably and whether they are spending the wards' assets reasonably.<sup>36</sup> SPGO reviews the case files and notes if there are any show cause orders or other issues that need to be addressed; additionally, SPGO conducts random site visits for at least 20% of the wards belonging to each public guardian.<sup>37</sup>

## Problems in the Guardianship System

In 2003, the Florida Supreme Court Commission on Fairness, Committee on Guardianship Monitoring, conducted a review of how effectively guardians were fulfilling their duties and obligations.<sup>38</sup> At that time, Florida was already confronting issues such as how the courts would be able to adequately exercise their legal, ethical, and moral responsibilities to monitor guardianship cases and protect the incapacitated adults entrusted to their care.<sup>39</sup> The committee received input from citizens that there was

<sup>26</sup> S. 744.477, F.S.

<sup>27</sup> S. 744.701, F.S.

<sup>28</sup> Department of Elder Affairs, *2015 Legislative Bill Analysis*, March 6, 2015 (on file with Children, Families, and Seniors Subcommittee staff).

<sup>29</sup> S. 744.7021, F.S.

<sup>30</sup> S. 744.703(1), F.S.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Florida is the only state, except for Delaware, which has three counties, to accomplish statewide coverage of public guardian services in every county. Florida Department of Elder Affairs, *Summary of Programs and Services*, February, 2014, *available at* [http://elderaffairs.state.fl.us/doea/pubs/pubs/sops2014/2014%20SOPS\\_complete.pdf](http://elderaffairs.state.fl.us/doea/pubs/pubs/sops2014/2014%20SOPS_complete.pdf)

<sup>34</sup> These are entities that have contracted with SPGO to provide public guardian services.

<sup>35</sup> Email from Department of Elder Affairs, *FW: DOEA Summary of Programs and Services (override)*, March 16, 2015. (on file with Children, Families, and Seniors Subcommittee staff).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Florida Supreme Court Commission on Fairness, Committee on Guardianship Monitoring, 2003, *available at* <http://flcourts.org/core/fileparse.php/260/urlt/guardianshipmonitoring.pdf>

<sup>39</sup> *Id.*

abuse, neglect, and misuse of ward's funds.<sup>40</sup> As a result, the committee stated that, though the majority of guardians are law-abiding and are diligently fulfilling their complex responsibilities, a small percentage are not properly handling guardianship matters, and as a result, monitoring is necessary.<sup>41</sup> In 2004, DOEA released the Final Report of its Guardianship Task Force<sup>42</sup> which also advocated for additional oversight of professional guardians. These reports triggered a number of the requirements for professional guardian registration that are now in place. Since then, media outlets have continued to report on issues within the guardianship system.<sup>43 44</sup>

## Effect of Proposed Changes

CS/HB 1225 substantially reorganizes ch. 744, F.S. It includes a legislative finding that private guardianship is inadequate where there is no willing and responsible family member or friend, other person, bank, or corporation available to serve as guardian for an incapacitated person and such person does not have adequate income or wealth for the compensation of the private guardian. The term "private guardian" is not presently defined in statute, nor is it defined by the bill.

The bill expands the responsibilities of SPGO within DOEA regarding oversight of professional guardians. The bill renames the SPGO as the Office of Public and Professional Guardian (OPPG).

The bill provides that the executive director of the new OPPG is appointed by the Secretary of DOEA. The bill sets out the new duties and responsibilities of the executive director of the Office of Public and Professional Guardians. OPPG is responsible for development of training curriculum, and for setting minimum requirements for instructional hours and examination score necessary for passage of the guardianship examination.

The new duties imposed on OPPG are:

- The development and implementation of a monitoring tool for periodic oversight of professional guardians;
- The development of procedures to review allegations that a professional guardian has violated an applicable statute, rule, regulation, standard of practice, fiduciary duty, or other requirement governing appropriate conduct;
- The establishment of disciplinary proceedings, including receiving complaints, investigating complaints, conducting hearings, and taking administrative action pursuant to ch. 120, F.S.

OPPG is directed to adopt rules regarding these duties.

To facilitate monitoring of the professional guardians, the bill provides the OPPG increased access to court records. Specifically, the bill provides OPPG access to all court records for the guardianship cases to which professional guardians are appointed and requires that they be made available through the Florida Courts E-Portal, when available. Allowing the OPPG to access these records electronically will reduce the cost to review them.

The executive director retains the ability to suspend or revoke a guardian's registration. The bill specifies that after a disciplinary proceeding, pursuant to ch. 120, F.S., resulting in a final determination

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<sup>40</sup> Id.

<sup>41</sup> Id.

<sup>42</sup> Department of Elder Affairs, Guardianship Task Force – 2004 Final Report, *available at* <http://elderaffairs.state.fl.us/doea/pubguard/GTF2004FinalReport.pdf>

<sup>43</sup> An article from May 2014 provides anecdotal evidence of fraud within the guardianship system, noting that the appointed court monitor for Broward County has uncovered hundreds of thousands of dollars that guardians have misappropriated from their wards, and, over the course of two years, Palm Beach County's guardianship fraud hotline has investigated over 100 cases. Michael E. Miller, *Florida's Guardians Often Exploit the Vulnerable Residents They're Supposed to Protect*, MIAMI NEWTIMES, May 8, 2014, *available at* <http://www.miaminewtimes.com/2014-05-08/news/florida-guardian-elderly-fraud/full/>

<sup>44</sup> A three-part series published in December 2014 details abuses occurring in guardianships based on an evaluation of guardianship court case files and interviews with wards, family and friends caught in the system against their will. Barbara Peters Smith, *the Kindness of Strangers – Inside Elder Guardianship in Florida*, SARASOTA HERALD-TRIBUNE, December 6, 2014, *available at* <http://guardianship.heraldtribune.com/default.aspx>

of suspension or revocation, the OPPG must notify any court in which the professional guardian has been appointed.

Financial oversight of professional guardians remains with the courts. The bill expressly reserves the ability to conduct the financial audit of professional guardians specified in s. 744.368, F.S., to the courts. The courts remain responsible for reviewing annual financial reports filed with them by professional guardians. Nothing in this provision precludes the OPPG from conducting its own financial investigation of a professional guardian, should that be necessary.

The bill requires the annual registration of professional guardians. This registry will be used by the courts for appointing guardians. The registry will be compiled by the chief judge in each judicial circuit and certified by OPPG. This list will be provided to the clerk of the court. Courts will be required to appoint professional guardians in the order in which names appear on the applicable registry, unless the court makes a finding of good cause on the record to appoint a professional guardian out of order.

The bill will have an indeterminate significant negative impact on DOEA. DOEA will incur costs to regulate and oversee the approximately 450 professional guardians in addition to the 50 public guardians it currently oversees.

The bill provides for an effective date of July 1, 2015.

#### B. SECTION DIRECTORY:

**Section 1:** Provides directives to the Division of Law Revision and Information.

**Section 2:** Provides directives to the Division of Law Revision and Information.

**Section 3:** Provides directives to the Division of Law Revision and Information.

**Section 4:** Amends s. 744.1012, F.S., relating to legislative intent.

**Section 5:** Renumbers s. 744.201, F.S., as s. 744.1096, F.S.

**Section 6:** Amends s. 744.202, F.S., renumbered as 744.1097, F.S., relating to venue.

**Section 7:** Renumbers s. 744.2025, F.S., as s. 744.1098, F.S.

**Section 8:** Amends s. 744.7021, F.S., renumbering it as s. 744.2001, F.S., relating to the Office of Public and Professional Guardians.

**Section 9:** Amends s. 744.1083, F.S., renumbering it as s. 744.2002, F.S., relating to professional guardian registration.

**Section 10:** Amends s. 744.1085, F.S., renumbering it as s. 744.2003, F.S., relating to regulation of professional guardians; application; bond required; educational requirements.

**Section 11:** Creates s. 744.2004, F.S., relating to complaints; disciplinary proceedings; penalties; enforcement.

**Section 12:** Amends s. 744.344, F.S., renumbering it as s. 744.2005, F.S., relating to order of appointment.

**Section 13:** Amend s. 744.703, F.S., renumbering it as s. 744.2006, F.S., relating to the Office of Public and Professional Guardians; appointment, notification.

**Section 14:** Renumbers s. 744.704, F.S., as s. 744.2007, F.S.

**Section 15:** Renumbers s. 744.705, F.S., as s. 744.2008, F.S.

**Section 16:** Amends s. 744.706, F.S., renumbering it as s. 744.2009, F.S., relating to preparation of budget.

**Section 17:** Amends s. 744.707, F.S., renumbering it as s. 744.2101, F.S., relating to procedures and rules.

**Section 18:** Renumbers s. 744.709, F.S., as s. 744.2102, F.S.

**Section 19:** Amends s. 744.708, F.S., renumbering it as s. 744.2103, F.S., relating to reports and standards.

**Section 20:** Amends s. 744.7081, F.S., renumbering it as s. 744.2104, F.S., relating to access to records by the Office of Public and Professional Guardians; confidentiality.

**Section 21:** Amends s. 744.7082, F.S., renumbering it as s. 744.2105, F.S., relating to direct-support organization; definition; use of property; board of directors; audit; dissolution.

**Section 22:** Amends s. 744.712, F.S., renumbering it as s. 744.2106, F.S., relating to Joining Forces for Public Guardianship grant program; purpose.



**Section 23:** Amends. 744.713, F.S., renumbering it as s. 744.2107, F.S., relating to program administration; duties of the Office of Public and Professional Guardians.

**Section 24:** Amends s. 744.714, F.S., renumbering it as s. 744.2108, F.S., relating to eligibility.

**Section 25:** Amends s. 744.715, F.S., renumbering it as s. 744.2109, F.S., relating to grant application requirements; review criteria; award process.

**Section 26:** Apeals s. 744.701, F.S., relating to short title.

**Section 27:** Repeals s. 744.702, F.S., relating to legislative intent.

**Section 28:** Repeals s. 744.7101, F.S., relating to short title.

**Section 29:** Repeals s. 744.711, F.S., relating to legislative findings and intent.

**Section 30:** Amends s. 400.148, F.S., relating to Medicaid "Up-or-Out" Quality of Care Contract Management Program.

**Section 31:** Amends s. 744.3135, F.S., relating to credit and criminal investigation.

**Section 32:** Amends s. 415.1102, F.S. relating to audlt protection teams.

**Section 33:** Amends s. 744.331, F.S., relating to procedures to determine incapacity.

**Section 34:** Amends s. 20.415, F.S., relating to Department of Elderly Affairs; trust funds.

**Section 35:** Conforms cross-references and makes technical changes.

**Section 36:** Provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

The bill will have an indeterminate significant negative fiscal impact on DOEA. DOEA will see increased costs associated with regulating professional guardians. DOEA would need budget and FTEs to perform the duties required by the bill. There would also be increased costs to DOEA's general counsel's office as the professional guardians will be able to challenge decisions by the new OPPG under ch. 120, F.S. The number of wards represented by the 456 guardians is unknown as this time and would need to be considered when estimating the cost of regulation.

### 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:

Not Applicable. This bill does not appear to affect county or municipal governments

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill requires DOEA to promulgate rules relating to OPPG's handling of complaints, disciplinary proceedings, penalties, and enforcement.

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

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 17, 2015 the Children, Families & Seniors Subcommittee adopted three amendments to HB 1225. The amendments:

- Clarify the scope of OPPG's monitoring duties for professional guardians, changing "regular" monitoring to "periodic" and removing the requirement that OPPG oversee "each" ward.
- Address OPPG's authority to discipline a professional guardian's registration, clarifying that OPPG has the authority to suspend or revoke a professional guardian's registration without court approval.
- Increase OPPG's access to court records, permitting access to call cases records where there is a professional guardian appointed and providing for access through electronic means, if available.
- Remove any reference to a professional guardian's "license" or "licensure" and replace with "registration" and certification" to conform the language of the bill to present law.
- Remove any references to the Florida Guardianship Foundation, as it is no longer an active corporation, and replace it, where necessary, with the Florida State Guardianship Association.
- The amendments also change the bill's effective date to January 1, 2016.

The bill was reported favorably as a committee substitute. The analysis is drafted to the Children, Families and Seniors Subcommittee substitute.