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## FISCAL IMPACT REPORT

ORIGINAL DATE 01/30/12

SPONSOR King LAST UPDATED \_\_\_\_\_ HB 136

SHORT TITLE Office of Guardianship Fund SB \_\_\_\_\_

ANALYST Esquibel

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY12	FY13		
	\$4,168.6	Recurring	General Fund, Other Transfers

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to Appropriation in the General Appropriation Act

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Developmental Disabilities Planning Council (DDPC)  
 Attorney General's Office (AGO)  
 State Treasurer's Office (STO)

### SUMMARY

#### Synopsis of Bill

House Bill 136 (HB136) creates the Office of Guardianship fund. The bill states that this non-reverting fund will be created in the state treasury and will be administered by the Developmental Disabilities Planning Council. Revenue in the fund shall not revert or be transferred to any other state fund or expended for any purpose except as provided in the bill.

### FISCAL IMPLICATIONS

The bill creates an "Office of Guardianship fund" which would accrue appropriations, funds, gifts, donations, bequests and other income. Unexpended general fund revenue would not revert back to the general fund.

#### Continuing Appropriations Language

This bill creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the Legislature to establish spending priorities.

The Developmental Disabilities Planning Council's Office of Guardianship FY13 budget recommendation proposed by the LFC totals \$4.16 million, with the Executive budget recommendation totaling \$4.17 million.

The DDPC Office of Guardianship indicates it could perhaps generate approximately \$50 thousand from contributions and donations. The DDPC Office of Guardianship indicates it will seek funding from hospitals, nursing homes, and others. Current Pro Bono legal services are estimated at near \$100,000 per year state-wide. The following funding sources are used by some states related to guardianship of adults: county funds, grants/foundations, private donations, client fees, estate recovery, and other. The DDPC indicates these new funding sources will not adversely affect the current contract the Office of Guardianship has with the Human Services Department's Medicaid program which generates \$400 thousand of Medicaid matching funds.

The DDPC indicates the bill also provides that carry-over of unexpended money in the Office of Guardianship fund shall not revert or be transferred to any other state fund at the end of any fiscal year, and is appropriated in the following fiscal year. The DDPC indicates unexpended year-end funds result because there is a four to six month lag through the courts (i.e., from the time the Office of Guardianship approves a case for processing through completion of the legal process and court orders). Additionally, the DDPC indicates budget estimates are not accurate in avoiding going over budget, thus leaving surplus funds which would be critical the following year. The FY11 budget authorized non-reversion of unexpended funds and this is now in the DDPC's Office of Guardianship's fund balance and needs to be appropriated in our FY12 budget (approximately \$190,000 are available in carryover funds from FY11).

However, it should be noted the House Appropriations and Finance Committee acted on January 27, 2012, to provide the agency the authority to carryover and expend the funds as described above.

## **SIGNIFICANT ISSUES**

The bill creates in the state treasury and "office of guardianship fund" for all appropriations, funds, gifts, donations, bequests and other income of the Developmental Disabilities Planning Council's (DDPC) Office of Guardianship (OG). Money in this fund shall not revert or be transferred to any other state fund at the end of any fiscal year, and is appropriated in the following fiscal year. This fund will be used by the Office of Guardianship to further the purposes of the OG Act related to guardianship of adults:

- guardianship services to income-eligible incapacitated persons and their families (NM Probate Code §45-5), including temporary guardianships;
- Mental Health Treatment Guardians under Chapter 43, Article 1 Mental Health and Developmental Disabilities (§43-1-15);
- training and information, including alternatives to guardianship (advance directives, powers of attorney, and other); and
- petitioning the district court as an interested person for guardianship of persons believed to be incapacitated or to seek amendment or termination of existing guardianship orders if the needs or situation of protected persons have changed.

## **PERFORMANCE IMPLICATIONS**

The DDPC indicates its Office of Guardianship will be able to seek donations and contributions from hospitals, nursing homes, the Veterans Administration, and others. Appointing a guardian may be a significant cost savings to various entities, as well as reducing possible liability and conflicts of interest.

- These funds would be used by the agency for providing the legal services required to obtain guardians for these patients/clients.
- The funds would be beneficial to the hospitals, since they cannot release these patients without the patient having a guardian, and would also be beneficial to the patients.
- Hospitals, including the VA hospital, cannot petition directly for the Court to appoint a guardian due to the potential conflict of interest (i.e. interest of the patient versus the interest of the hospital).

The Office of Guardianship would be the Petitioner rather than the facility being the Petitioner in the court proceedings. The OG will arrange for the Guardian ad Litem to represent the legal interests of the alleged incapacitated adult, as well as arrange for the Court Visitor – again rather than the facility. The OG does not have the conflict of interest since saving the facility money is not one of our goals. The donations would go into a pooled fund rather than paying for a specific case for a hospital, nursing home, etc. The DDPC Office of Guardianship could also accept donations from others who may not have actual cases, but want to contribute. The DDPC OG has accepted money, but only related to one of its protected persons as reimbursement for their actual costs with corporate guardianship or for legal services.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

House Bill 136 duplicates Senate Bill 110, Create Office of Guardianship Fund.

## **TECHNICAL ISSUES**

The State Treasurer's Office indicates the following amendment is recommended to conform to the new business process adopted since the implementation of the statewide accounting system (SHARE):

On page 1, line 20, strike "state treasury" and insert in its place "statewide accounting system".

Another suggested amendment would be to strike "appropriations, funds" on line 21 and "other income" on line 22 and replace with "interest income". The purpose of this amendment would be to limit the fund to accrue only gifts, donations, bequests and interest income and still preserve the Legislature's authority to annually appropriate funds and establish spending priorities.

RAE/lj:svb