F I S C A L   I M P A C T   R E P O R T

		ORIGINAL DATE	02/01/13		
SPONSOR	Padilla	**LAST UPDATED**	03/11/13	**HB**	
SHORT TITLE	Office of Guardianship Fund			**SB**	152/aSFC
				ANALYST	Esquibel

APPROPRIATION (dollars in thousands)

Appropriation		**Recurring or Nonrecurring**	**Fund Affected**
FY13	**FY14**		
	***See Fiscal Implications**	Recurring	Office of Guardianship Fund

(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)
Department of Health (DOH)

SUMMARY

Synopsis of SFC Amendment

The Senate Finance Committee amendment to Senate Bill 152 removes the appropriations and other funds from the revenue that may be accrued under the proposed non-reverting “Office of Guardianship” fund. The amendment also allows for the collection and accrual of interest income from the gifts, donations and bequests that may accrue in the fund.

Synopsis of Original Bill

Senate Bill 152 (SB 152) creates the Office of Guardianship fund. The bill proposes that this non-reverting fund would be created in the state treasury and be administered by the Developmental Disabilities Planning Council (DDPC). Revenue in the fund would 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 proposes to create an “Office of Guardianship Fund” which would accrue all gifts, donations, bequests and interest income from the DDPC’s Office of Guardianship. 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 Legislative Finance Committee (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.

Currently, HB 2 has $4.53 million for guardianship. For FY11 through FY14, the Legislature has authorized non-reversion of unexpended funds and appropriated these funds for the DDPC's Office of Guardianship.

The Senate Finance Committee adopted the suggested amendment to strike "all appropriations, funds" on line 21 and "other income" on line 22 and replace with "interest income". The purpose of this amendment was to limit the fund to accrue only gifts, donations, bequests and interest income and still preserve the Legislature's authority to annually appropriate general fund revenue and establish spending priorities.

The fiscal impact of the bill is that, under the SFC amendments, it cannot take the appropriations the Office of Guardianship currently receives from the general fund and other transfers from the Medicaid program and move these revenues to the proposed "Office of Guardianship Fund" and provide for a continuing appropriation of all these revenues. The Legislature has already been granting non-reversion budget authority to the Office of Guardianship for the last three fiscal years.

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, Veterans' Administration and others. 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 unexpended year-end funds result because there is a four to six month lag through the courts from the time the Office of Guardianship approves a case for processing through completion of the legal process and court orders.

SIGNIFICANT ISSUES

The DDPC indicated 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 Office of Guardianship 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. The donations would go into a pooled fund rather than paying for a specific case for a hospital, nursing home, etc. Under the provisions of the bill, the DDPC Office of Guardianship could also accept donations from others who may not have actual cases, but want to contribute. The DDPC Office of Guardianship could accept money under the provisions of the bill, but only related to one of its protected persons as reimbursement for their actual costs with corporate guardianship or for legal services.

TECHNICAL ISSUES

The State Treasurer's Office indicated 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 21, strike "state treasury" and insert in its place "statewide accounting system".

SB 152 would create a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language for general fund revenue in the statutory provisions for newly created funds, as earmarking reduces the ability of the Legislature to establish spending priorities.

RAE/svb:blm