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FISCAL IMPACT REPORT

ORIGINAL DATE 1/30/09

SPONSOR Ortiz y Pino LAST UPDATED _____ HB _____

SHORT TITLE Guardian & Conservator Needs Assessments SB 135

ANALYST Wilson

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	\$200.0	Recurring	General Fund

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$0.1	\$0.1	\$0.1	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Aging & Long Term Services Department (ALTSD)
 Department of Finance & Administration (DFA)
 Developmental Disabilities Planning Council (DDPC)

SUMMARY

Synopsis of Bill

Senate Bill appropriates \$200,000 from the general fund in FY 2010 to local Government Division of DFA in order to contract for a demonstration program in Bernalillo county that ensures the safety and well-being of the population under protection of guardianships and conservatorships by monitoring the status of wards and their guardians and conservators.

FISCAL IMPLICATIONS:

The appropriation of \$200,000 contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY 2010 shall revert to the general fund.

There will be a minimal fiscal impact on the Second Judicial district court based on the amount of time court staff spends working with the contractors involved in the pilot program.

According to the December 2008 revenue estimate, FY10 recurring revenue will only support a base expenditure level that is \$293 million, or 2.6 percent, less than the FY09 appropriation. All appropriations outside of the general appropriation act will be viewed in this declining revenue context.

SIGNIFICANT ISSUES:

The demonstration program created by this bill is a recommendation from the Guardianship Task Force Report which came out of HJM 34 in the 2007 legislative session and HM 6 in the 2008 legislative session.

A critical finding in the Guardianship Task Force Report is that there is no system in place in New Mexico that assures effective oversight and monitoring of all court-appointed guardians. This bill will fund a pilot program of in-depth review and monitoring of guardians and guardianship cases in the Second Judicial District through the use of special limited visitors. The pilot program will provide statistically significant data about the extent of lack of oversight and accountability.

A statewide monitoring program, including budgetary recommendations, could then be developed based upon the information collected. In the process, the measure would provide immediate benefit to the hundreds of adults under guardianship whose cases are reviewed.

ADMINISTRATIVE IMPLICATIONS

There will be a minimal impact on the Second Judicial district court based on the amount of time court staff spends working with the contractors involved in the pilot program.

Other affected agencies should be able to handle the provisions in this bill as part of ongoing responsibilities

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 135 relates to HB 161, Guardian of Protected Person Responsibilities which also follows recommendations of the Guardianship Task Force.

OTHER SUBSTANTIVE ISSUES

The DDPC provided the following:

This bill has broad support ranging from the Chief Justice of the New Mexico Supreme Court and the AOC and all the other members Task Forces which considered it.

The Task Force began its work in 2007 based on HJM 34, sponsored by Rep. Jim Trujillo of Santa Fe, and completed its recommendations under HM 6 from the 2008 session, also sponsored by Rep. Trujillo. The DDPC convened the Task Force under both memorials, and logistical support was provided by the Protection & Advocacy System (P&A) pursuant to a contract from the DDPC. Task Force meetings were facilitated by Linda Siegel, and were open to all interested parties.

The invited representatives included:

- the Administrative Office of the Courts,
- the Adult Protective Services Division of the Aging and Long-term Services Department,
- the Department of Health,
- the Attorney General's Office,
- other appropriate state agencies,
- district court judges,
- the New Mexico Guardianship Association,
- the Protection and Advocacy System,
- the Senior Citizens Law Office,
- Individual and corporate guardians,
- elders,
- individuals with disabilities,
- advocates or other representatives of elders or adults with disabilities and
- other interested individuals.

This recommendation from the Task Forces is the fallback position While New Mexico needs a comprehensive program or system, we recognize that a comprehensive program cannot be created immediately. This study will involve low-cost measures to the extent possible: students, work-study programs and volunteers to compile the data so it can be used as a model state wide to implement monitoring.

This Bill will help ensure the safety and well-being of the population under protection of guardianships and conservatorships by monitoring the status of protected persons and their guardians and conservators who currently have little or no oversight leaving the persons they protect vulnerable to neglect and possible exploitation. Also, this Bill will contribute toward maximizing the autonomy and self-determination of this population.

We should note that some of the components of the state's current system are fundamentally sound. The Probate Code reflects a commitment to protection of the rights of incapacitated adults, although there are many areas where the Code can be improved and strengthened. There are many individual judges who are creative and diligent in providing oversight of guardians, although there is no uniformity to these practices, and

there are many other players throughout the state working hard to make the system function. Recently the New Mexico Guardianship Association developed a training video for new guardians under a contract with the DDPC Office of Guardianship. Greater education with this outline of basic responsibilities should contribute to improved compliance and reporting of wrongdoing.

Nonetheless, the Task Force is united in seeing this and other recommendations as an urgent call to action. The need for an on-going program to monitor guardians, who hold such extensive power over the most vulnerable residents of our state, must be addressed as both a programmatic and budget priority.

In the past month we have all seen the calamitous results of a lack of regulation and oversight in America's financial and mortgage markets. The Task Force believes we must take the opportunity to begin developing a system for oversight that would prevent problems, or address individual situations that may already have become calamitous without our knowledge. With the projected aging of New Mexico's population in the near future, as well as other population trends, the number of persons needing guardianship will continue to grow and the need for oversight has become emergent.

DW/mt