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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 02/03/12  
**LAST UPDATED** 02/09/12    **HB** \_\_\_\_\_

**SPONSOR** Beffort

**SHORT TITLE** Create Office of Guardianship Fund    **SB** 110/aSPAC/aSFC

**ANALYST** Esquibel

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY12	FY13		
N/A	N/A	N/A	N/A

(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 SFC Amendments

The Senate Finance Committee amendments to Senate bill 110 as amended by the Senate Public Affairs Committee (SPAC) strike all of the SPAC amendments. Additionally, the SFC amendments add interest income to the Office of Guardianship fund's accrued revenue and stipulate the fund will be subject to annual appropriation by the Legislature.

#### Synopsis of SPAC Amendments

The Senate Public Affairs Committee amendments to Senate Bill 110 indicate the "Office of Guardianship fund" is created in the statewide accounting system as opposed to the state treasury. The amendments remove appropriations and funds from the list of revenue to be deposited into the Office of Guardianship fund, and specify that accrued interest income will be deposited into the fund.

#### Synopsis of Original Bill

Senate Bill 110 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.

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 gifts, contributions, donations and bequests. 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. 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). The agency has requested budget adjustment authority to accomplish these actions.

## **SIGNIFICANT ISSUES**

The bill creates in the state treasury an "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, but is subject to annual appropriation per the SFC amendments. 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 the OG's 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.

## **DUPLICATION**

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

## **TECHNICAL ISSUES**

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