
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: S-4884.2/06 2nd draft

ATTY/TYPIST: RJS:seg

BRIEF DESCRIPTION: Creating a guardianship monitoring board to promote responsible monitoring of the guardianship program.

1 AN ACT Relating to a guardianship monitoring board; amending RCW
2 43.09.050, 11.92.010, and 11.92.180; and adding a new section to
3 chapter 11.92 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 11.92 RCW
6 to read as follows:

7 (1) The guardianship monitoring board is established not to exceed
8 twenty members. The state auditor shall appoint members of the board,
9 which shall be composed primarily of members of the accounting
10 profession, one probate attorney, no more than one professional
11 guardian, and such others as the auditor deems necessary. Members of
12 the judiciary may not be included on the board.

13 (2) Members of the board shall be appointed for staggered four-year
14 terms. Each member shall serve until a successor is appointed. A
15 vacancy shall be filled by appointment for the remainder of the term.

16 (3) Members of the board shall be compensated in accordance with
17 RCW 43.03.240.

18 (4) The guardianship monitoring board shall:

1 (a) Review the current standards for guardianship and recommend
2 revisions to these standards as the board deems necessary;

3 (b) Adopt fiduciary standards, such as generally accepted
4 accounting principles, for guardianships;

5 (c) Adopt standard fees and activities for which guardians may
6 charge;

7 (d) Approve each and every bill and report submitted by a
8 guardianship;

9 (e) Investigate complaints submitted by the auditor for violations
10 of law or standards adopted by the board and for breach of fiduciary
11 duty and report to the auditor and the appropriate court;

12 (f) Conduct full and random audits of the guardianships and report
13 to the auditor and the appropriate court;

14 (g) Refer any matter that the committee has reasonable cause to
15 believe constitutes breach of fiduciary duty or warrants criminal or
16 disciplinary proceedings to the appropriate authority;

17 (h) Require guardians to distribute and document receipt of
18 standards adopted by the board to clients, clients' families, and
19 clients' representatives; and

20 (i) Adopt rules under chapter 34.05 RCW to carry out the purposes
21 of this section.

22 **Sec. 2.** RCW 43.09.050 and 1992 c 118 s 6 are each amended to read
23 as follows:

24 The auditor shall:

25 (1) Except as otherwise specifically provided by law, audit the
26 accounts of all collectors of the revenue and other holders of public
27 money required by law to pay the same into the treasury;

28 (2) In his or her discretion, inspect the books of any person
29 charged with the receipt, safekeeping, and disbursement of public
30 moneys;

31 (3) Investigate improper governmental activity under chapter 42.40
32 RCW;

33 (4) Inform the attorney general in writing of the necessity for the
34 attorney general to direct prosecutions in the name of the state for
35 all official delinquencies in relation to the assessment, collection,
36 and payment of the revenue, against all persons who, by any means,

1 become possessed of public money or property, and fail to pay over or
2 deliver the same, and against all debtors of the state;

3 (5) Give information in writing to the legislature, whenever
4 required, upon any subject relating to the financial affairs of the
5 state, or touching any duties of his or her office;

6 (6) Report to the director of financial management in writing the
7 names of all persons who have received any moneys belonging to the
8 state, and have not accounted therefor;

9 (7) Authenticate with his or her official seal papers issued from
10 his or her office;

11 (8) Appoint members to the guardianship monitoring board and
12 screen, for referral to the guardianship monitoring board, complaints
13 against guardianships submitted by the courts, guardianship clients,
14 and clients' families to determine that the complaints are grounded in
15 standards adopted under section 1 of this act, that sufficient evidence
16 has been provided, and that the complaint is not awaiting a specific
17 court hearing;

18 (9) Make his or her official report annually on or before the 31st
19 of December.

20 **Sec. 3.** RCW 11.92.010 and 1975 1st ex.s. c 95 s 18 are each
21 amended to read as follows:

22 Guardians or limited guardians herein provided for shall at all
23 times be (~~under the general direction and control of~~) appointed and
24 terminated by the court ((making the appointment)). The conduct of the
25 guardians shall be under the direction and control of the guardianship
26 monitoring board and shall be subject to the standards adopted by the
27 guardianship monitoring board and to the board's audits, investigation
28 of complaints, and review of fees. For the purposes of chapters 11.88
29 and 11.92 RCW, all persons shall be of full and legal age when they
30 shall be eighteen years old.

31 **Sec. 4.** RCW 11.92.180 and 1995 c 297 s 8 are each amended to read
32 as follows:

33 A guardian or limited guardian shall be allowed such compensation
34 for his or her services as guardian or limited guardian as (~~the court~~
35 ~~shall deem~~) is approved by the guardianship monitoring board as just
36 and reasonable. Guardians and limited guardians shall not be

1 compensated at county or state expense. Additional compensation may be
2 allowed for other administrative costs, including services of an
3 attorney and for other services not provided by the guardian or limited
4 guardian. Where a guardian or limited guardian is an attorney, the
5 guardian or limited guardian shall separately account for time for
6 which compensation is requested for services as a guardian or limited
7 guardian as contrasted to time for which compensation for legal
8 services provided to the guardianship is requested. In all cases,
9 compensation of the guardian or limited guardian and his or her
10 expenses including necessary attorney's fees shall be ~~((fixed by the
11 court and may be allowed at any annual or final accounting; but))~~
12 suggested by the court at the inception of the guardianship and may be
13 allowed at any annual or final accounting submitted to the guardianship
14 monitoring board. The final decision with regard to compensation rests
15 with the guardianship monitoring board. At any time during the
16 administration of the estate, the guardian or limited guardian or his
17 or her attorney may apply to the ~~((court))~~ guardianship monitoring
18 board for an allowance upon the compensation or necessary expenses of
19 the guardian or limited guardian and for necessary attorney's fees for
20 services already performed. If the ~~((court))~~ guardianship monitoring
21 board finds that the guardian or limited guardian has failed to
22 discharge his or her duties as such in any respect, it may deny the
23 guardian any compensation whatsoever or may reduce the compensation
24 which would otherwise be allowed. Where the incapacitated person is a
25 department of social and health services client residing in a nursing
26 facility or in a residential or home setting and is required by the
27 department of social and health services to contribute a portion of
28 their income towards the cost of residential or supportive services
29 then the department shall be entitled to notice of proceedings as
30 described in RCW 11.92.150. The amount of guardianship fees and
31 additional compensation for administrative costs shall not exceed the
32 amount allowed by the department of social and health services by rule.

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