

By: Representatives Ishee, Fredericks,
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To: Local and Private
Legislation

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 613

1 AN ACT TO AUTHORIZE THE BOARD OF SUPERVISORS OF HARRISON
2 COUNTY TO ESTABLISH AN OFFICE OF PUBLIC GUARDIAN FOR THE PURPOSES
3 OF PROVIDING GUARDIANSHIP AND CONSERVATORSHIP SERVICES FOR
4 INCAPACITATED AND VULNERABLE PERSONS, SERVING AS GUARDIAN AD LITEM
5 IN CHANCERY COURT CASES WHENEVER THE APPOINTMENT OF A GUARDIAN AD
6 LITEM IS REQUIRED BY LAW OR IS OTHERWISE NEEDED, AND INITIATING
7 DRUG AND ALCOHOL COMMITMENTS ON BEHALF OF INDIGENT FAMILIES; TO
8 PROVIDE THAT THE PUBLIC GUARDIAN SHALL BE SELECTED BY THE BOARD OF
9 SUPERVISORS BASED UPON RECOMMENDATION FROM THE SENIOR CHANCELLOR
10 OF THE EIGHTH CHANCERY COURT DISTRICT; AND FOR RELATED PURPOSES.

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

12 **SECTION 1.** (1) The Legislature recognizes that:

13 (a) In many instances, private guardianship fails or is
14 inadequate whenever there is no willing, responsible family
15 member, friend, bank, corporation or other person available to
16 serve as guardian for an incapacitated person and whenever such
17 person does not have adequate resources to compensate a private
18 guardian;

19 (b) Whenever private attorneys are appointed by the
20 court to serve as conservators, guardians or guardians ad litem,
21 these attorneys are subject to the distractions of private
22 practice, resulting in little consistency in the quality of
23 representation they provide; and

24 (c) Initiating involuntary alcohol and drug commitments
25 without the services of an attorney is difficult and that persons
26 without financial resources to hire an attorney must go without
27 assistance.

28 (2) By the passage of this act, the Legislature intends to
29 authorize the Board of Supervisors of Harrison County to establish
30 an office of public guardian for the purposes of (a) providing
31 guardianship and conservatorship services for the incapacitated

32 and vulnerable persons of the county; (b) serving as guardian ad
33 litem in chancery court cases whenever the appointment of a
34 guardian ad litem is required by law or is otherwise needed; and
35 (c) initiating drug and alcohol commitments on behalf of indigent
36 families of the county.

37 **SECTION 2.** (1) The Board of Supervisors of Harrison County,
38 upon recommendation of the senior chancellor for the Eighth
39 Chancery Court District, may appoint a person to serve as public
40 guardian for the county. The person appointed to serve as public
41 guardian must be an attorney in good standing with the Mississippi
42 Bar who has been licensed to practice in this state for not less
43 than five (5) years. The public guardian may not accept
44 additional employment or hold additional offices that would
45 constitute a conflict of interest with his services as public
46 guardian. The term of office of the public guardian shall be four
47 (4) years. A person may be reappointed by the board of
48 supervisors and may serve successive terms as public guardian upon
49 review and recommendation by the senior chancellor for the Eighth
50 Chancery Court District. The public guardian, subject to the
51 availability of funds made available by the Board of Supervisors
52 of Harrison County, may employ and maintain such staff as may be
53 necessary to carry out the functions of the office.

54 (2) Upon taking office, the public guardian shall take the
55 oath of office and shall give bond to the Harrison County Board of
56 Supervisors, with sufficient sureties, to be payable conditioned
57 and approved as provided by law, in a penalty equal to three
58 percent (3%) of the sum of all the state and county taxes shown by
59 the assessment rolls and the levies to have been collected in the
60 county for the year immediately preceding the beginning of his
61 term of office; however, the bond shall not exceed One Hundred
62 Thousand Dollars (\$100,000.00). The bond premiums shall be paid
63 from any available funds of the county.

64 **SECTION 3.** (1) (a) The public guardian may be appointed to
65 serve as conservator of a person, or his or her estate, who has
66 been adjudicated incapacitated under Section 93-13-251,
67 Mississippi Code of 1972, if:

68 (i) There is no family member, friend, bank,
69 corporation or other person willing and qualified to serve as
70 conservator.

71 (ii) The assets of the ward do not exceed the
72 assets level for Medicaid eligibility, and the ward's income, from
73 all sources, is less than Four Thousand Dollars (\$4,000.00) per
74 year. Income from public welfare programs, supplemental security
75 income, disability pensions or other social security pension shall
76 be excluded in such computations. However, a ward whose total
77 income, counting excludable income, exceeds Thirty Thousand
78 Dollars (\$30,000.00) a year may not be served.

79 (iii) The public guardian finds that assets or
80 income of the ward exceeds the amount set forth in subparagraph
81 (a)(ii) of this subsection, the guardian shall submit a
82 resignation and petition for the appointment of a successor
83 conservator. The public guardian shall not be dismissed until
84 such time as a private conservator is appointed. If a qualified
85 successor is not available, the public guardian may remain as
86 conservator if the guardian makes reasonable efforts to obtain a
87 successor.

88 (b) The public guardian, when appointed conservator of
89 an incapacitated person, shall seek a family member, friend, bank,
90 corporation or other person who is qualified and willing to serve
91 as conservator. Upon determining that there is someone qualified
92 and willing to serve as a conservator, either the public guardian
93 or the qualified person shall petition the court for appointment
94 of a successor conservator.

95 (c) When a person is appointed successor conservator,
96 he or she immediately succeeds to all rights, duties,
97 responsibilities and powers of the preceding public guardian.

98 (d) While serving as conservator for a person or estate
99 pursuant to this act, the public guardian shall be vested with the
100 same duties, powers and responsibilities as a guardian of a minor,
101 and all laws relative to the guardianship of a minor shall be
102 applicable to a conservator, including the provisions of Chapter
103 13, Title 93, Mississippi Code of 1972.

104 (e) No fees shall be recovered from the assets or
105 income of the ward for conservatorship services provided by the
106 public guardian. However, in cases where the assets or income of
107 the ward exceeds the amount set forth in subparagraph (1)(a)(ii)
108 of this section, and a qualified successor conservator is not
109 available, a reasonable fee may be collected for the services of
110 the public guardian, which fee shall be deposited into the Public
111 Guardian Fund. All fees collected under this section shall be
112 approved in advance by order of the Harrison County Chancery
113 Court.

114 (2) (a) The public guardian may be appointed to serve as
115 guardian ad litem in chancery court cases where the appointment of
116 a guardian ad litem is required by law or where otherwise needed
117 in chancery court matters. In such cases, the public guardian
118 shall have the same powers, duties and responsibilities as that of
119 private guardians ad litem.

120 (b) No fees shall be collected for guardian ad litem
121 services provided by the public guardian.

122 However, upon a finding by the court that one (1) or both
123 parties has sufficient assets to pay for the services of the
124 public guardian, a reasonable fee may be collected, and same shall
125 be deposited in the Public Guardian Fund. All fees collected
126 pursuant to this section shall be approved in advance by order of
127 the Harrison County Chancery Court.

128 (3) The public guardian may initiate alcohol and drug
129 commitment proceedings on behalf of indigent families.

130 (4) The public guardian may be appointed in any chancery
131 court matter wherein the court determines such services are
132 needed.

133 (5) In any proceeding for appointment of a public guardian,
134 or in any proceeding involving the estate of a ward for whom a
135 public guardian has been appointed guardian, the court costs or
136 filing fees may be waived at the request of the public guardian.

137 (6) No later than January 31 of each year, the public
138 guardian shall file an annual report with the Clerk of the
139 Harrison County Chancery Court, indicating, with respect to the
140 period covered by the report, the number of cases handled, the
141 date on which each case was assigned, the date of termination of
142 each case which has been closed during the period, the disposition
143 of each terminated case, and the total amount of fees collected
144 during the period.

145 **SECTION 4.** The provisions of Sections 1 through 4 of this
146 act shall be repealed from and after July 1, 2009.

147 **SECTION 5.** This act shall take effect and be in force from
148 and after July 1, 2004.