

SENATE BILL NO. 157—SENATORS MATHEWS, WIENER,
HECK, AMODEI, HORSFORD, RAGGIO AND TOWNSEND

FEBRUARY 26, 2007

JOINT SPONSOR: ASSEMBLYWOMAN MCCLAIN

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing the appointment of a public guardian and the management of the office and cases of a public guardian. (BDR 20-272)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to public guardians; allowing a board of county commissioners to pay the necessary expenses incurred by a public guardian during a guardianship; allowing a board of county commissioners to establish a revolving fund to pay for the necessary expenses incurred by a public guardian during a guardianship; requiring a public guardian to reimburse the county from the assets of the ward for any expenses paid by the county; requiring boards of county commissioners to establish the office of public guardian; revising provisions governing the appointment or designation of a public guardian; revising the requirements governing eligibility to utilize a public guardian; revising provisions concerning attorneys retained by a public guardian; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 **Section 9** of this bill changes existing law, which currently allows a board of
2 county commissioners to establish the office of public guardian, by requiring the
3 board of county commissioners of each county to establish the office of public
4 guardian. (NRS 253.150) **Section 9** provides a board of county commissioners with
5 four alternative methods to meet this requirement: (1) appoint a public guardian for
6 a term of 4 years; (2) designate a county officer to serve as ex officio public



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guardian; (3) except in a county whose population is 100,000 or more (currently Clark and Washoe Counties), contract with a private professional guardian to act as public guardian; or (4) contract with the board of county commissioners of a neighboring county which is in the same judicial district to use the neighboring county's public guardian as the public guardian of the county. After the board of county commissioners has designated or appointed a public guardian, **section 3** of this bill allows the board to establish regulations for the form of reports and budgets made by the public guardian and to review reports and budgets submitted to the board by the public guardian. **Section 10** of this bill requires the public guardian of a county to appoint one or more deputies to perform the duties of his office in his absence. (NRS 253.175)

Existing law provides that a resident of the State is eligible to have the public guardian appointed as his guardian if there is no individual able and willing to serve as his guardian or if the resident does not have assets sufficient to pay for a private guardian. (NRS 253.200) **Section 11** of this bill eliminates inability to pay for a private guardian as a condition for eligibility for having the public guardian appointed as guardian but requires that the individual is a resident of the county in which guardianship proceedings are filed. **Section 11** also requires that the public guardian or deputy public guardian receive a copy of any petition for the appointment of the public guardian as a guardian before such a petition is filed.

Section 2 of this bill allows a county to advance to the public guardian the necessary expenses incurred or to be incurred by the public guardian during a guardianship. However, if a county provides such an advance, the public guardian must reimburse the county from the assets of the estate of the ward as soon as, and to the extent that, those assets become available. The board of county commissioners may establish a revolving fund to be used to pay for advances to the public guardian of necessary expenses or must pay such advances from the county general fund.

Existing law allows a public guardian to retain an attorney to assist him when necessary for the proper administration of a guardianship but requires that such employment be rotated among the attorneys practicing in the county who are qualified and willing to accept such employment. (NRS 253.215) In addition to such rotation of employment, **section 12** of this bill allows the public guardian to retain one attorney to assist him or to obtain the assistance of the district attorney's office if the board of county commissioners approves such assistance.

Section 13 of this bill clarifies that a public guardian is not required to hire or be licensed as a private investigator to investigate the financial status, assets and personal history of a person for whom he has been appointed as guardian. (NRS 253.220)

Under existing law, the reasonable value of the services rendered by the public guardian without cost to a ward must be allowed as a claim against the estate of the ward upon the death of the ward. (NRS 253.240) **Section 14** of this bill allows claims for such services against a ward's estate before the death of the ward upon approval of a court.



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 253 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. 1. *A public guardian may file with the board of county commissioners a request for an advance of money to pay necessary expenses incurred, or to be incurred, by the public guardian during a guardianship. The board may approve or deny the request. If the board approves the request, the board shall determine the amount to be advanced and advance that amount to the public guardian.*

2. The board of county commissioners of any county may establish a revolving fund to be used to provide advances to the public guardian pursuant to subsection 1. If the board has established a revolving fund pursuant to this subsection, the board shall pay any advance approved pursuant to subsection 1 from the revolving fund to the extent that there is sufficient money in the revolving fund to pay the advance. After the money in the revolving fund has been exhausted, the board shall pay any advance, or any part of an advance, approved by the board from the general fund of the county. If the board has not established a revolving fund pursuant to this subsection, the board shall pay any advance approved pursuant to subsection 1 from the general fund of the county.

3. The public guardian must reimburse the county for any advance provided pursuant to subsection 1 from the assets of the estate of the ward as soon as, and to the extent that, the assets become available. If the board of county commissioners has established a revolving fund pursuant to subsection 2, the board shall deposit in the revolving fund the money obtained from a reimbursement provided pursuant to this subsection. If the board has not established a revolving fund pursuant to subsection 2, the board shall deposit in the general fund of the county the money obtained from a reimbursement provided pursuant to this subsection.

Sec. 3. 1. *The board of county commissioners may:*

(a) Establish regulations for the form of any reports or budgets made by the public guardian.

(b) Review reports or budgets submitted to the board by the public guardian.

2. The board of county commissioners may at any time investigate any guardianship for which the public guardian has been appointed.



Sec. 4. NRS 253.0415 is hereby amended to read as follows:
253.0415 1. The public administrator shall:

(a) Investigate:

(1) ~~[(The financial status of any proposed ward for whom he has been requested to serve as guardian to determine whether he is eligible to serve in that capacity.)~~

~~—(2)]~~ The financial status of any decedent for whom he has been requested to serve as administrator to determine the assets and liabilities of the estate.

~~[(3)]~~ (2) Whether there is any qualified person who is willing and able to serve as ~~[guardian for a ward or]~~ administrator of the estate of an intestate decedent to determine whether he is eligible to serve in that capacity.

(b) ~~[(Petition the court for appointment as guardian of the person and estate of any ward if, after investigation, the public administrator finds that he is eligible to serve. Except as otherwise provided in subsection 2, this petition for appointment as guardian must be made by the public administrator regardless of the amount of assets in the guardianship estate if no other qualified person having a prior right is willing and able to serve.)~~

~~—(c)]~~ Except as otherwise provided in NRS 253.0403 and 253.0425, petition the court for letters of administration of the estate of a person dying intestate if, after investigation, the public administrator finds that there is no other qualified person having a prior right who is willing and able to serve.

~~[(d)]~~ (c) Upon court order, act as ~~[-~~

~~—(1) Guardian of the person and estate of an adult ward; or~~

~~—(2) Administrator]~~ **administrator** of the estate of a person dying intestate,

~~[->]~~ regardless of the amount of assets in the estate of the ~~[ward or]~~ decedent if no other qualified person is willing and able to serve.

2. The public administrator is not eligible to serve as a guardian of the person and estate of a ward ~~[if the board of county commissioners of his county has established the office of public guardian pursuant to NRS 253.150,]~~ unless the board has designated the public administrator as ex officio public guardian.

Sec. 5. NRS 253.042 is hereby amended to read as follows:

253.042 In connection with an investigation conducted pursuant to subsection 1 of NRS 253.0415, a public administrator may:

1. Require ~~[any proposed ward or]~~ any spouse, parent, child or other kindred of the ~~[proposed ward]~~ **decedent** to give any information and to execute any written requests or authorizations necessary to provide the public administrator with access to records,



1 otherwise confidential, needed to evaluate the public administrator's
2 eligibility to serve.

3 2. Obtain information from the public records in any office of
4 the State or any of its agencies or subdivisions upon request and
5 without payment of any fee.

6 **Sec. 6.** NRS 253.044 is hereby amended to read as follows:

7 253.044 In a county whose population is less than 100,000, the
8 board of county commissioners may, after reviewing each case,
9 direct the public administrator or any other suitable person to:

10 1. Investigate ~~[-~~

11 ~~—(a) The financial status of any proposed ward for whom a~~
12 ~~request to serve as guardian has been received to determine whether~~
13 ~~there is a need for a guardian to be appointed and whether the public~~
14 ~~administrator or other suitable person designated by the board is~~
15 ~~able and eligible to serve in that capacity.~~

16 ~~—(b) Whether]~~ *whether* there is any qualified person who is
17 willing and able to serve as ~~[guardian for a ward or]~~ administrator of
18 the estate of an intestate decedent, and to determine whether there is
19 a need for ~~[a guardian or]~~ an administrator and whether the public
20 administrator or other suitable person designated by the board is
21 eligible to serve in that capacity.

22 2. ~~[Petition the court for appointment as guardian of the person~~
23 ~~or as guardian of the person and estate of any ward if, after~~
24 ~~investigation, the public administrator or other suitable person~~
25 ~~designated by the board finds that there is a need for such an~~
26 ~~appointment and that he is able and eligible to serve. If no other~~
27 ~~qualified person having a prior right is willing and able to serve, the~~
28 ~~public administrator or other suitable person designated by the board~~
29 ~~shall petition for appointment as guardian regardless of the amount~~
30 ~~of assets in the estate of the proposed ward.~~

31 ~~—3.]~~ Petition the court for letters of administration of the estate
32 of a person dying intestate if, after investigation, the public
33 administrator or other suitable person designated by the board finds
34 that there is no other qualified person having a prior right who is
35 willing and able to serve.

36 ~~[4.]~~ 3. File an affidavit pursuant to NRS 253.0403 to
37 administer the estate if, after investigation, the public administrator
38 or other suitable person designated by the board finds that the gross
39 value of the decedent's property situated in this State does not
40 exceed \$20,000.

41 ~~[5.]~~ 4. Act, upon order of a court, as ~~[-~~

42 ~~—(a) Guardian of the person and estate of an adult ward; or~~

43 ~~—(b) Administrator]~~ *administrator* of the estate of a person dying
44 intestate,



~~{→}~~ regardless of the amount of assets in the estate of the ward or decedent if no other qualified person is willing and able to serve.

Sec. 7. NRS 253.0445 is hereby amended to read as follows:

253.0445 In an investigation conducted pursuant to subsection 1 of NRS 253.044, a public administrator or other suitable person designated by the board of county commissioners may:

1. Require any ~~{proposed ward or any}~~ spouse, parent, child or other kindred of the ~~{proposed ward}~~ *decedent* to give any information and to execute any written requests or authorizations necessary to provide the public administrator or other suitable person designated by the board with access to records, otherwise confidential, needed to evaluate the public administrator's or other suitable person's eligibility to serve.

2. Obtain information from the public records in any office of the State or any of its agencies or subdivisions upon request and without payment of any fee.

Sec. 8. NRS 253.091 is hereby amended to read as follows:

253.091 1. The board of county commissioners shall:

(a) Establish regulations for the form of any reports made by the public administrator.

(b) Review reports submitted to the board by the public administrator.

(c) Investigate any complaint received by the board against the public administrator.

2. The board of county commissioners may at any time investigate any ~~{guardianship or}~~ estate for which the public administrator is serving as ~~{guardian or}~~ administrator.

Sec. 9. NRS 253.150 is hereby amended to read as follows:

253.150 1. The board of county commissioners of ~~{any county may}~~ *each county shall* establish the office of public guardian.

2. The board of county commissioners ~~{may}~~ *shall*:

(a) Appoint a public guardian, who serves at the pleasure of the board, for a term of 4 years from the day of appointment; ~~{or}~~

(b) Designate an elected or appointed county officer as ex officio public guardian ~~{}~~;

(c) Except in a county whose population is 100,000 or more, contract with a private professional guardian to act as public guardian; or

(d) Contract with the board of county commissioners of a neighboring county in the same judicial district to designate as public guardian the public guardian of the neighboring county.

3. The compensation of a public guardian appointed or designated pursuant to subsection 2 must be fixed by the board of county commissioners and paid out of the county general fund.



1 **4. As used in this section, “private professional guardian”**
2 **means a person who receives compensation for services as a**
3 **guardian to three or more wards who are not related to the person**
4 **by blood or marriage. The term does not include:**

5 **(a) A governmental agency.**

6 **(b) A banking corporation, as defined in NRS 657.016, or an**
7 **organization permitted to act as fiduciary pursuant to NRS**
8 **662.245 if it is appointed as guardian of an estate only.**

9 **(c) A trust company, as defined in NRS 669.070.**

10 **(d) A court-appointed attorney licensed to practice law in this**
11 **State.**

12 **Sec. 10.** NRS 253.175 is hereby amended to read as follows:

13 253.175 1. A public guardian ~~may~~ **shall** appoint **one or**
14 **more** deputies to perform the duties of his office ~~in his absence.~~
15 A deputy so appointed may transact all official business relating to
16 the office of the public guardian to the same extent as the public
17 guardian, except that the deputy is not authorized to employ or
18 terminate the employment of subordinates in the office. Before
19 entering upon the discharge of his duties, each deputy must take and
20 subscribe to the constitutional oath of office. The appointment of a
21 deputy must not be construed to confer upon that deputy
22 policymaking authority for the office of the county public guardian
23 or the county by which the deputy is employed.

24 2. Each appointment must be in writing and recorded, with the
25 oath of office of that deputy, in the office of the county recorder.
26 Any revocation or resignation of an appointment must be recorded
27 in the office of the county recorder.

28 3. The public guardian is responsible on his official bond for
29 any official malfeasance or nonfeasance of his deputies and may
30 require a bond for the faithful performance of the official duties of
31 his deputies.

32 4. The compensation of a deputy public guardian must be fixed
33 by the board of county commissioners and paid out of the county
34 general fund.

35 **Sec. 11.** NRS 253.200 is hereby amended to read as follows:

36 253.200 1. **A resident of Nevada is eligible to have the**
37 **public guardian of the county in which he resides appointed as his**
38 **temporary individual guardian pursuant to NRS 159.0523 or**
39 **159.0525.**

40 2. A resident of Nevada is eligible to have the public guardian
41 **of a county** appointed as his **permanent or general** individual
42 guardian if he:

43 (a) Has no relative or friend able and willing to serve as his
44 guardian; ~~for~~ **and**



(b) ~~Lacks sufficient assets to provide the requisite compensation to a private guardian.~~ *Is a resident of that county.*

~~[2-]~~ 3. A person ~~[so]~~ qualified ~~[.]~~ *pursuant to subsection 1 or 2,* or anyone on his behalf, may petition the district court of the county in which he resides to make the appointment.

4. *Before a petition for the appointment of the public guardian as a guardian may be filed pursuant to subsection 3, a copy of the petition and copies of all accompanying documents to be filed must be delivered to the public guardian or a deputy public guardian.*

5. *Any petition for the appointment of the public guardian as a guardian filed pursuant to subsection 3 must include a statement signed by the public guardian or deputy public guardian and in substantially the following form:*

The undersigned is the Public Guardian or a Deputy Public Guardian ofCounty. The undersigned certifies that he has received a copy of this petition and all accompanying documents to be filed with the court.

6. *A petition for the appointment of the public guardian as permanent or general guardian must be filed separately from a petition for the appointment of a temporary guardian.*

7. *If a person other than the public guardian served as temporary guardian prior to the appointment of the public guardian as permanent or general guardian, the temporary guardian must file an accounting and report with the court in which the petition for the appointment of a public guardian was filed within 30 days of the appointment of the public guardian as permanent or general guardian.*

8. *For the purposes of this section:*

(a) *Except as otherwise provided in paragraph (b), the county of residence of a person is the county to which the person moved with the intent to reside for an indefinite period.*

(b) *The county of residence of a person placed in institutional care is the county that was the county of residence of the person before the person was placed in institutional care by a guardian or agency or under power of attorney.*

Sec. 12. NRS 253.215 is hereby amended to read as follows:

253.215 1. When necessary for the proper administration of a guardianship, a public guardian may ~~retain~~ :

(a) *Retain* an attorney to assist him ~~[, rotating this employment in successive guardianships among the attorneys practicing]~~ *if the attorney practices law* in the county ~~[who are]~~ *and is* qualified by experience and willing to serve ~~[.]~~ *or rotate this employment*



1 *among attorneys who practice law in the county and who are*
2 *qualified by experience and willing to serve; or*

3 (b) *Upon approval of the board of county commissioners,*
4 *obtain assistance from the office of the district attorney of the*
5 *county.*

6 2. ~~[The]~~ Any attorney's fee must be paid from the assets of the
7 ward.

8 **Sec. 13.** NRS 253.220 is hereby amended to read as follows:

9 253.220 A public guardian ~~[shall]~~ *may* investigate the financial
10 status *, assets and personal and family history* of any person for
11 whom ~~[the appointment of]~~ the public guardian ~~[as his guardian is~~
12 ~~requested.]~~ *has been appointed as guardian, without hiring or*
13 *being licensed as a private investigator pursuant to chapter 648 of*
14 *NRS.* In connection with the investigation, the public guardian may
15 require ~~[that person]~~ *any proposed ward or any spouse, parent,*
16 *child or other kindred of the proposed ward to give any*
17 *information and* to execute and deliver any written requests or
18 authorizations necessary to provide the public guardian with access
19 to records, otherwise confidential, ~~[needed to evaluate eligibility.]~~
20 *which are needed by the public guardian.* The public guardian may
21 obtain information from any public record office of the State or any
22 of its agencies or subdivisions upon request and without payment of
23 any fees.

24 **Sec. 14.** NRS 253.240 is hereby amended to read as follows:

25 253.240 The reasonable value of a public guardian's services
26 rendered without cost to a ward shall be allowed as a claim against
27 the estate *of the ward* upon the ~~[death of the ward.]~~ *approval of the*
28 *court.* Money received in payment of a claim against the estate of
29 the ward shall be deposited by the public guardian to the credit of
30 the county general fund ~~[.]~~ *or any other county fund, as determined*
31 *by the board of county commissioners.*

32 **Sec. 15.** NRS 648.060 is hereby amended to read as follows:

33 648.060 1. ~~[No]~~ *Except as otherwise provided in NRS*
34 *253.220, no* person may:

35 (a) Engage in the business of private investigator, private
36 patrolman, process server, reposessor, dog handler, security
37 consultant, or polygraphic examiner or intern; or

38 (b) Advertise his business as such, irrespective of the name or
39 title actually used,

40 ➔ unless he is licensed pursuant to this chapter.

41 2. No person may be employed by a licensee unless the person
42 holds a work card issued by the sheriff of the county in which the
43 work is to be performed. The provisions of this subsection do not
44 apply to a person licensed pursuant to this chapter.



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3. A person licensed pursuant to this chapter may employ only another licensee, or a nonlicensed person who:

(a) Is at least 18 years of age.

(b) Is a citizen of the United States or lawfully entitled to remain and work in the United States.

(c) Is of good moral character and temperate habits.

(d) Has not been convicted of a felony or a crime involving moral turpitude or the illegal use or possession of a dangerous weapon.

Sec. 16. NRS 648.063 is hereby amended to read as follows:

648.063 An unlicensed person who performs a single act for which a license is required has engaged in the business for which the license is required and, unless exempt from licensing ~~or~~ *performing an investigation pursuant to NRS 253.220*, has violated NRS 648.060.

Sec. 17. NRS 648.203 is hereby amended to read as follows:

648.203 1. Except as otherwise provided in subsection 2 ~~or~~ *NRS 253.220*, it is unlawful for a person to:

(a) Allow an employee, including an independent contractor, to perform any work regulated pursuant to the provisions of this chapter unless the employee holds a work card authorizing his work which is issued by the sheriff of the county in which the work is performed. The provisions of this paragraph do not apply to a person licensed pursuant to this chapter.

(b) Work as a security guard unless he holds a work card authorizing his work as a security guard issued in accordance with applicable ordinances by the sheriff of the county in which the work is performed.

2. The provisions of subsection 1 do not apply in any county whose population is less than 100,000, but this subsection does not prohibit a board of county commissioners from adopting similar restrictions by ordinance.

3. The sheriff of any county in which such restrictions apply shall require any person applying for such a work card to submit a complete set of his fingerprints to the sheriff who may forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation to determine the applicant's criminal history.

