



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

SB1929

Introduced 2/20/2009, by Sen. Ira I. Silverstein

#### SYNOPSIS AS INTRODUCED:

755 ILCS 5/13-1	from Ch. 110 1/2, par. 13-1
755 ILCS 5/13-1.2 new	
755 ILCS 5/13-3.1	from Ch. 110 1/2, par. 13-3.1
755 ILCS 5/13-5	from Ch. 110 1/2, par. 13-5

Amends the Probate Act of 1975. Provides that the Governor may appoint one person to serve as public guardian and public administrator in one or more counties (instead of one in each county). Provides that each public guardian must be certified by the Center for Guardianship Certification and that the Guardianship and Advocacy Commission shall provide professional training. Provides for fees and expenses for a public guardian and his or her temporary guardianship duties and establishes guidelines for fees. Makes other changes.

LRB096 11222 AJO 21627 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Probate Act of 1975 is amended by changing  
5 Sections 13-1, 13-3.1, and 13-5 and by adding Section 13-1.2 as  
6 follows:

7 (755 ILCS 5/13-1) (from Ch. 110 1/2, par. 13-1)

8 Sec. 13-1. Appointment and term of public administrator and  
9 public guardian.) Except as provided in Section 13-1.1, before  
10 the first Monday of December, 1977 and every 4 years  
11 thereafter, and as often as vacancies occur, the Governor, by  
12 and with the advice and consent of the Senate, shall appoint in  
13 each county a suitable person to serve as public administrator  
14 and a suitable person to serve as public guardian of the  
15 county. The Governor may appoint the same person to serve as  
16 public guardian and public administrator in one or more  
17 counties. In considering the number of counties of service for  
18 any prospective public guardian or public administrator the  
19 Governor may consider the population of the county and the  
20 ability of the prospective public guardian or public  
21 administrator to travel to multiple counties and manage estates  
22 in multiple counties. The Governor shall provide notice of any  
23 proposed public guardian and public administrator appointees

1 to the county executive of any county not subject to the  
2 provisions of Section 13-1.1, herein. Each person so appointed  
3 holds his office for 4 years from the first Monday of December,  
4 1977 and every 4 years thereafter or until his successor is  
5 appointed and qualified.

6 (Source: P.A. 81-1052.)

7 (755 ILCS 5/13-1.2 new)

8 Sec. 13-1.2. Certification requirement. Each person  
9 appointed as a public guardian shall be certified as a National  
10 Certified Guardian by the Center for Guardianship  
11 Certification within 6 months after his or her appointment. The  
12 Guardianship and Advocacy Commission shall provide public  
13 guardians with professional training opportunities and  
14 facilitate testing and certification opportunities at  
15 locations in Springfield and Chicago with the Center for  
16 Guardianship Certification. The cost of certification shall be  
17 considered an expense connected with the operation of the  
18 public guardian's office within the meaning of subsection (b)  
19 of Section 13-3.1 of this Article.

20 (755 ILCS 5/13-3.1) (from Ch. 110 1/2, par. 13-3.1)

21 Sec. 13-3.1.

22 (a) Compensation of public guardian.) In counties having a  
23 population in excess of 1,000,000 the public guardian shall be  
24 paid an annual salary, to be set by the County Board at a

1 figure not to exceed the salary of the public defender for the  
2 county. All expenses connected with the operation of the office  
3 shall be subject to the approval of the County Board and shall  
4 be paid from the county treasury. All fees collected shall be  
5 paid into the county treasury.

6 (b) In counties having a population of 1,000,000 or less  
7 the public guardian shall receive all the fees of his office  
8 and bear the expenses connected with the operation of the  
9 office. A public guardian shall be entitled to reasonable and  
10 appropriate compensation for services related to guardianship  
11 duties but all fees must be reviewed and approved by the court.  
12 A public guardian may petition the court for the payment of  
13 reasonable and appropriate fees on not less than a yearly  
14 basis, or sooner as approved by the court. Any fees or expenses  
15 charged by a public guardian shall be documented through  
16 billings and maintained by the guardian and supplied to the  
17 court for review. In considering the reasonableness of any fee  
18 petition brought by a public guardian under this Section, the  
19 court shall consider the following:

20 (1) the powers and duties assigned to the public  
21 guardian by the court;

22 (2) the necessity of any services provided;

23 (3) the time required, the degree of difficulty, and  
24 the experience needed to complete the task;

25 (4) the needs of the ward and the costs of  
26 alternatives; and

1           (5) other facts and circumstances material to the best  
2           interests of the ward or his or her estate.

3           (c) When the public guardian is appointed as the temporary  
4           guardian of a disabled adult pursuant to an emergency petition  
5           under circumstances when the court finds that the immediate  
6           establishment of a temporary guardianship is necessary to  
7           protect the disabled adult's health, welfare, or estate, the  
8           public guardian shall be entitled to reasonable and appropriate  
9           fees, as determined by the court, for the period of the  
10           temporary guardianship, including fees directly associated  
11           with establishing the temporary guardianship.

12           (Source: P.A. 81-1052.)

13           (755 ILCS 5/13-5) (from Ch. 110 1/2, par. 13-5)

14           Sec. 13-5. Powers and duties of public guardian.) The court  
15           may appoint the public guardian as the guardian of any disabled  
16           adult who is in need of a public guardian and whose estate  
17           exceeds \$25,000. When a disabled adult who has a smaller estate  
18           is in need of guardianship services, the court shall appoint  
19           the State guardian pursuant to Section 30 of the Guardianship  
20           and Advocacy Act. If the public guardian is appointed guardian  
21           of a disabled adult and the estate of the disabled adult is  
22           thereafter reduced to less than \$25,000, the court may, upon  
23           the petition of the public guardian and the approval by the  
24           court of a final accounting of the disabled adult's estate,  
25           discharge the public guardian and transfer the guardianship to

1 the State guardian. The public guardian shall serve not less  
2 than 14 days' notice to the State guardian of the hearing date  
3 regarding the transfer. When appointed by the court, the public  
4 guardian has the same powers and duties as other guardians  
5 appointed under this Act, with the following additions and  
6 modifications:

7 (a) The public guardian shall monitor the ward and his care  
8 and progress on a continuous basis. Monitoring shall at minimum  
9 consist of monthly contact with the ward, and the receipt of  
10 periodic reports from all individuals and agencies, public or  
11 private, providing care or related services to the ward.

12 (b) Placement of a ward outside of the ward's home may be  
13 made only after the public guardian or his representative has  
14 visited the facility in which placement is proposed.

15 (c) The public guardian shall prepare an inventory of the  
16 ward's belongings and assets and shall maintain insurance on  
17 all of the ward's real and personal property. No personal  
18 property shall be removed from the ward's possession except for  
19 storage pending final placement or for liquidation in  
20 accordance with this Act.

21 (d) The public guardian shall make no substantial  
22 distribution of the ward's estate without a court order.

23 (e) The public guardian may liquidate assets of the ward to  
24 pay for the costs of the ward's care and for storage of the  
25 ward's personal property only after notice of such pending  
26 action is given to all potential heirs at law, unless notice is

1 waived by the court; provided, however, that a person who has  
2 been so notified may elect to pay for care or storage or to pay  
3 fair market value of the asset or assets sought to be sold in  
4 lieu of liquidation.

5 (f) Real property of the ward may be sold at fair market  
6 value after an appraisal of the property has been made by a  
7 licensed appraiser; provided, however, that the ward's  
8 residence may be sold only if the court finds that the ward is  
9 not likely to be able to return home at a future date.

10 (g) The public guardian shall, at such intervals as the  
11 court may direct, submit to the court an affidavit setting  
12 forth in detail the services he has provided for the benefit of  
13 the ward. ~~The court shall set reasonable and appropriate fees~~  
14 ~~for such services. Except in a county that has a population~~  
15 ~~exceeding 3,000,000 people, the public guardian may petition~~  
16 ~~the court for the payment of reasonable and appropriate fees on~~  
17 ~~not less than a quarterly basis, or sooner as approved by the~~  
18 ~~court.~~

19 (h) Upon the death of the ward, the public guardian shall  
20 turn over to the court-appointed administrator all of the  
21 ward's assets and an account of his receipt and administration  
22 of the ward's property. A guardian ad litem shall be appointed  
23 for an accounting when the estate exceeds the amount set in  
24 Section 25-1 of this Act for administration of small estates.

25 (i) (1) On petition of any person who appears to have an  
26 interest in the estate, the court by temporary order may

1           restrain the public guardian from performing specified  
2           acts of administration, disbursement or distribution, or  
3           from exercise of any powers or discharge of any duties of  
4           his office, or make any other order to secure proper  
5           performance of his duty, if it appears to the court that  
6           the public guardian might otherwise take some action  
7           contrary to the best interests of the ward. Persons with  
8           whom the public guardian may transact business may be made  
9           parties.

10           (2) The matter shall be set for hearing within 10 days  
11           unless the parties otherwise agree or unless for good cause  
12           shown the court determines that additional time is  
13           required. Notice as the court directs shall be given to the  
14           public guardian and his attorney of record, if any, and to  
15           any other parties named defendant in the petition.

16           (j) On petition of the public guardian, the court in its  
17           discretion may for good cause shown transfer guardianship to  
18           the State guardian.

19           (k) No later than January 31 of each year, the public  
20           guardian shall file an annual report with the clerk of the  
21           Circuit Court, indicating, with respect to the period covered  
22           by the report, the number of cases which he has handled, the  
23           date on which each case was assigned, the date of termination  
24           of each case which has been closed during the period, the  
25           disposition of each terminated case, and the total amount of  
26           fees collected during the period from each ward.



1           (1) (Blank). ~~When the public guardian is appointed~~  
2 ~~temporary guardian of a disabled adult pursuant to an emergency~~  
3 ~~petition under circumstances where the court finds that the~~  
4 ~~immediate establishment of a temporary guardianship is~~  
5 ~~necessary to protect the disabled adult's health, welfare, or~~  
6 ~~estate, the public guardian shall be entitled to reasonable and~~  
7 ~~appropriate fees, as determined by the court, for the period of~~  
8 ~~the temporary guardianship, including fees directly associated~~  
9 ~~with establishing the temporary guardianship.~~

10           (Source: P.A. 92-840, eff. 8-22-02.)