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HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH SESSION

HOUSE FILE No. 2990

February 16, 2010

Authored by Hilstrom, Smith, Paymar and Ward

The bill was read for the first time and referred to the Committee on Civil Justice

March 4, 2010

Committee Recommendation and Adoption of Report:

To Pass as Amended and re-referred to the Committee on State and Local Government Operations Reform, Technology and Elections

March 11, 2010

Committee Recommendation and Adoption of Report:

To Pass as Amended and re-referred to the Committee on Public Safety Policy and Oversight

March 17, 2010

Committee Recommendation and Adoption of Report: To Pass and re-referred to the Committee on Finance

April 12, 2010

Committee Recommendation and Adoption of Report:

To Pass as Amended and re-referred to the Committee on Ways and Means

April 26, 2010

Committee Recommendation and Adoption of Report:

To Pass as Amended

Read Second Time

A bill for an act

relating to guardians ad litem; establishing the State Guardian Ad Litem Board; appropriating money; amending Minnesota Statutes 2008, sections 257.69, subdivision 2; 260B.331, subdivision 6; 260C.331, subdivisions 3, 6; 518.165, subdivision 3; proposing coding for new law in Minnesota Statutes, chapter 480.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2008, section 257.69, subdivision 2, is amended to read:

Subd. 2. **Guardian ad litem; legal fees.** (a) The court may order expert witness and guardian ad litem fees and other costs of the trial and pretrial proceedings, including appropriate tests, to be paid by the parties in proportions and at times determined by the court. The court shall require a party to pay part of the fees of court-appointed counsel according to the party's ability to pay, but if counsel has been appointed the appropriate agency shall pay the party's proportion of all other fees and costs. The agency responsible for child support enforcement shall pay the fees and costs for blood or genetic tests in a proceeding in which it is a party, is the real party in interest, or is acting on behalf of the child. However, at the close of a proceeding in which paternity has been established under sections 257.51 to 257.74, the court shall order the adjudicated father to reimburse the public agency, if the court finds he has sufficient resources to pay the costs of the blood or genetic tests. When a party bringing an action is represented by the county attorney, no filing fee shall be paid to the court administrator.

(b) In each fiscal year, the commissioner of management and budget shall deposit guardian ad litem reimbursements in the ~~general~~ special revenue fund and credit them to a separate account with the ~~trial courts~~ State Guardian Ad Litem Board. The balance of this account is appropriated to the ~~trial courts~~ State Guardian Ad Litem Board and does not cancel but is available until expended. ~~Expenditures by the state court administrator's~~

2.1 ~~office Revenue~~ from this account must be ~~based on the amount of the guardian ad litem~~  
2.2 ~~reimbursements received by the state from the courts in each judicial district spent in the~~  
2.3 ~~judicial district in which the reimbursement is collected.~~

2.4 Sec. 2. Minnesota Statutes 2008, section 260B.331, subdivision 6, is amended to read:

2.5 Subd. 6. **Guardian ad litem fees.** (a) In proceedings in which the court appoints a  
2.6 guardian ad litem pursuant to section 260B.163, subdivision 6, paragraph (a), the court  
2.7 may inquire into the ability of the parents to pay for the guardian ad litem's services and,  
2.8 after giving the parents a reasonable opportunity to be heard, may order the parents to  
2.9 pay guardian fees.

2.10 (b) In each fiscal year, the commissioner of management and budget shall deposit  
2.11 guardian ad litem reimbursements in the ~~general~~ special revenue fund and credit them to  
2.12 a separate account with the ~~trial courts~~ State Guardian Ad Litem Board. The balance of  
2.13 this account is appropriated to the ~~trial courts~~ State Guardian Ad Litem Board and does  
2.14 not cancel but is available until expended. ~~Expenditures by the state court administrator's~~  
2.15 ~~office Revenue~~ from this account must be ~~based on the amount of the guardian ad litem~~  
2.16 ~~reimbursements received by the state from the courts in each judicial district spent in the~~  
2.17 ~~judicial district in which the reimbursement is collected.~~

2.18 Sec. 3. Minnesota Statutes 2008, section 260C.331, subdivision 3, is amended to read:

2.19 Subd. 3. **Court expenses.** The following expenses are a charge upon the county  
2.20 in which proceedings are held upon certification of the judge of juvenile court or upon  
2.21 such other authorization provided by law:

2.22 (1) the fees and mileage of witnesses, and the expenses and mileage of officers  
2.23 serving notices and subpoenas ordered by the court, as prescribed by law;

2.24 (2) the expense of transporting a child to a place designated by a child-placing agency  
2.25 for the care of the child if the court transfers legal custody to a child-placing agency;

2.26 (3) the expense of transporting a minor to a place designated by the court;

2.27 (4) reasonable compensation for an attorney appointed by the court to serve as  
2.28 counsel, ~~except in the Eighth Judicial District where the state courts shall pay for counsel~~  
2.29 ~~to a guardian ad litem until the recommendations of the task force created in Laws 1999,~~  
2.30 ~~chapter 216, article 7, section 42, are implemented.~~

2.31 The State ~~courts~~ Guardian Ad Litem Board shall pay for guardian ad litem expenses  
2.32 and reasonable compensation for an attorney to serve as counsel for a guardian ad litem, if  
2.33 necessary.

3.1 Sec. 4. Minnesota Statutes 2008, section 260C.331, subdivision 6, is amended to read:

3.2 Subd. 6. **Guardian ad litem fees.** (a) In proceedings in which the court appoints a  
3.3 guardian ad litem pursuant to section 260C.163, subdivision 5, clause (a), the court may  
3.4 inquire into the ability of the parents to pay for the guardian ad litem's services and,  
3.5 after giving the parents a reasonable opportunity to be heard, may order the parents to  
3.6 pay guardian fees.

3.7 (b) In each fiscal year, the commissioner of management and budget shall deposit  
3.8 guardian ad litem reimbursements in the ~~general~~ special revenue fund and credit them to  
3.9 a separate account with the ~~trial courts~~ State Guardian Ad Litem Board. The balance of  
3.10 this account is appropriated to the ~~trial courts~~ State Guardian Ad Litem Board and does  
3.11 not cancel but is available until expended. ~~Expenditures by the state court administrator's~~  
3.12 ~~office~~ Revenue from this account must be ~~based on the amount of the guardian ad litem~~  
3.13 ~~reimbursements received by the state from the courts in each judicial district~~ spent in the  
3.14 judicial district in which the reimbursement is collected.

3.15 Sec. 5. **[480.35] STATE GUARDIAN AD LITEM BOARD.**

3.16 Subdivision 1. **Structure; membership.** (a) The State Guardian Ad Litem Board is  
3.17 established in the judicial branch. The board is not subject to the administrative control  
3.18 of the judiciary. The State Guardian Ad Litem Board shall consist of seven members  
3.19 including:

3.20 (1) three members appointed by the Supreme Court who include two attorneys  
3.21 admitted to practice law in the state and one public member; and

3.22 (2) four members appointed by the governor.

3.23 The appointing authorities may not appoint an active judge to be a member of the  
3.24 State Guardian Ad Litem Board, but may appoint a retired judge.

3.25 (b) All candidates shall demonstrate an interest in maintaining a high quality,  
3.26 independent guardian ad litem program for the advocacy of the best interests of children  
3.27 as required in juvenile and family court. The candidates shall be well acquainted with the  
3.28 guardian ad litem program, as well as laws that affect a guardian ad litem's work, including  
3.29 the Minnesota Indian Family Preservation Act under sections 260.751 to 260.835; the  
3.30 federal Multiethnic Placement Act of 1994 under United States Code, title 42, section 662  
3.31 and amendments; and the federal Indian Child Welfare Act under United States Code,  
3.32 title 25, section 1901 et seq. At least three members of the board shall be from judicial  
3.33 districts other than the First, Second, Fourth, and Tenth Judicial Districts. The terms,  
3.34 compensation, and removal of members shall be as provided in section 15.0575. The  
3.35 Supreme Court shall appoint the chair from among the membership for a term of two years.

4.1 Subd. 2. **Duties and responsibilities.** (a) The State Guardian Ad Litem Board shall  
4.2 create and administer a statewide, independent guardian ad litem program to advocate for  
4.3 the best interests of children, minor parents, and incompetent adults in juvenile and family  
4.4 court cases as defined in Rule 901.01 of the Rules of Guardian Ad Litem Procedure in  
4.5 Juvenile and Family Court matters.

4.6 (b) The board shall:

4.7 (1) approve and recommend to the legislature a budget for the board and the  
4.8 guardian ad litem program;

4.9 (2) establish procedures for distribution of funding under this section to the guardian  
4.10 ad litem program; and

4.11 (3) establish guardian ad litem program standards, administrative policies,  
4.12 procedures, and rules consistent with statute, rules of court, and laws that affect a guardian  
4.13 ad litem's work, including the Minnesota Indian Family Preservation Act under sections  
4.14 260.751 to 260.835; the federal Multiethnic Placement Act of 1994 under United States  
4.15 Code, title 42, section 662 and amendments; and the federal Indian Child Welfare Act  
4.16 under United States Code, title 25, section 1901 et seq.

4.17 (c) The board may:

4.18 (1) adopt standards, policies, or procedures necessary to ensure quality advocacy  
4.19 for the best interests of children;

4.20 (2) propose statutory changes to the legislature and rule changes to the Supreme  
4.21 Court that are in the best interests of children and the operation of the guardian ad litem  
4.22 program; and

4.23 (3) appoint an advisory committee to make recommendations to assist the board in  
4.24 its duties and to report to the board on issues related to the guardian ad litem program.  
4.25 The advisory committee shall be subject to the provisions of section 15.059 and shall  
4.26 expire on June 30, 2014.

4.27 Subd. 3. **State guardian ad litem program administrator.** The State Guardian  
4.28 Ad Litem Board shall appoint a program administrator who serves at the pleasure of the  
4.29 board. The program administrator is not required to be licensed to practice law. The  
4.30 program administrator shall attend all meetings of the board, but may not vote, and shall:

4.31 (1) carry out all administrative functions necessary for the efficient and effective  
4.32 operation of the board and the guardian ad litem program, including but not limited to  
4.33 hiring, supervising, and disciplining program staff and guardians ad litem;

4.34 (2) implement, as necessary, resolutions, standards, rules, regulations, and policies  
4.35 of the board;

5.1 (3) keep the board fully advised as to its financial condition, and prepare and submit  
5.2 to the board the annual guardian ad litem program and State Guardian Ad Litem Board  
5.3 budget and other financial information as requested by the board;

5.4 (4) recommend to the board the adoption of rules and regulations necessary for the  
5.5 efficient operation of the board and the state guardian ad litem program; and

5.6 (5) perform other duties prescribed by the board.

5.7 Subd. 4. **Administration.** The board may contract with the Office of State Court  
5.8 Administrator for administrative support services for the fiscal years following fiscal  
5.9 year 2011.

5.10 Subd. 5. **Benefits.** Any guardian ad litem employee who transferred to state  
5.11 employment on or before July 1, 2005, may retain county benefits elected under section  
5.12 480.181.

5.13 Subd. 6. **Access to records.** Access to records of the state guardian ad litem program  
5.14 is subject to the Rules of Public Access for Records of the Judicial Branch. The State  
5.15 Guardian Ad Litem Board may propose amendments for Supreme Court consideration.

5.16 Subd. 7. **Fees and costs; civil actions on contested case.** Sections 15.039 and  
5.17 15.471 to 15.474 apply to the State Guardian Ad Litem Board.

5.18 Sec. 6. Minnesota Statutes 2008, section 518.165, subdivision 3, is amended to read:

5.19 Subd. 3. **Fees.** (a) A guardian ad litem appointed under either subdivision 1 or 2  
5.20 may be appointed either as a volunteer or on a fee basis. If a guardian ad litem is appointed  
5.21 on a fee basis, the court shall enter an order for costs, fees, and disbursements in favor  
5.22 of the child's guardian ad litem. The order may be made against either or both parties,  
5.23 except that any part of the costs, fees, or disbursements which the court finds the parties  
5.24 are incapable of paying shall be borne by the State ~~courts~~ Guardian Ad Litem Board. The  
5.25 costs of court-appointed counsel to the guardian ad litem shall be paid by the ~~county in~~  
5.26 ~~which the proceeding is being held~~ State Guardian Ad Litem Board if a party is incapable  
5.27 of paying for them. ~~Until the recommendations of the task force created in Laws 1999,~~  
5.28 ~~chapter 216, article 7, section 42, are implemented, the costs of court-appointed counsel~~  
5.29 ~~to a guardian ad litem in the Eighth Judicial District shall be paid by the state courts if a~~  
5.30 ~~party is incapable of paying for them.~~ In no event may the court order that costs, fees, or  
5.31 disbursements be paid by a party receiving public assistance or legal assistance or by a  
5.32 party whose annual income falls below the poverty line as established under United States  
5.33 Code, title 42, section 9902(2).

5.34 (b) In each fiscal year, the commissioner of management and budget shall deposit  
5.35 guardian ad litem reimbursements in the ~~general~~ special revenue fund and credit them to

6.1 a separate account with the ~~trial courts~~ State Guardian Ad Litem Board. The balance of  
6.2 this account is appropriated to the ~~trial courts~~ State Guardian Ad Litem Board and does  
6.3 not cancel but is available until expended. ~~Expenditures by the state court administrator's~~  
6.4 ~~office~~ Revenue from this account must be ~~based on the amount of the guardian ad litem~~  
6.5 ~~reimbursements received by the state from the courts in each judicial district~~ spent in the  
6.6 judicial district in which the reimbursement is collected.

6.7 **Sec. 7. TRANSITION.**

6.8 The State Guardian Ad Litem Board shall be established by October 1, 2010. The  
6.9 state guardian ad litem program administrator shall be appointed according to Minnesota  
6.10 Statutes, section 480.35, and the operational structure of the board and guardian ad litem  
6.11 program shall be established during fiscal year 2011. During fiscal year 2011, the state  
6.12 court administrator and judicial district offices shall continue to provide administrative  
6.13 support and management oversight services and may authorize program expenditures until  
6.14 the board is established and thereafter, as requested by the State Guardian Ad Litem  
6.15 Board. Existing judicial branch policies for guardians ad litem shall apply until those  
6.16 policies are replaced by policies of the State Guardian Ad Litem Board.

6.17 **Sec. 8. FUNDING; TRANSFER.**

6.18 (a) All guardian ad litem reimbursement account balances on June 30, 2010, shall be  
6.19 transferred to the State Guardian Ad Litem Board from the trial courts and are appropriated  
6.20 to the State Guardian Ad Litem Board for the provision of guardian ad litem services.

6.21 (b) The appropriation to the State Guardian Ad Litem Board for costs associated with  
6.22 the establishment of the board and operation of the guardian ad litem program in fiscal  
6.23 year 2011 shall be paid for by a transfer of \$12,367,000 from the trial court appropriation  
6.24 for the guardian ad litem program. Thereafter, the legislature shall appropriate money to  
6.25 the State Guardian Ad Litem Board for the purpose of payment of all financial obligations  
6.26 of the board and guardian ad litem program.

6.27 **Sec. 9. EFFECTIVE DATE.**

6.28 Sections 1 to 8 are effective July 1, 2010.