

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

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BILL: CS/SB 318

INTRODUCER: Judiciary Committee and Senator Diaz de la Portilla and others

SUBJECT: Guardianship Proceedings

DATE: April 1, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
2.	<u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 318 amends the power of attorney and guardianship statutes to:

- Permit the automatic suspension of a power of attorney during guardianship proceedings only if the petitioner specifically requests the suspension and states facts under oath supporting the suspension;
- Authorize mediation or alternative dispute resolution for guardianship conflicts;
- Authorize the appointment of the office of criminal conflict and civil regional counsel for indigent wards;
- Clarify that attorneys for a ward are entitled to compensation from the guardianship estate;
- Clarify that expert testimony is not necessary to establish compensation for a guardian or guardian's attorney;
- Provide that advance notice is not required before a hearing when appointing an emergency temporary guardian if the 24 hour advance notice could result in substantial harm to the alleged incapacitated person;
- Limit the appointment of an emergency temporary guardian to 60 days;
- Permit a nonprofit charitable corporation to serve as a guardian;
- Require a court, when modifying the authority of a health care surrogate in an advance directive, to specify in its orders to what extent a guardian's authority will supersede a health care surrogate and base that decision on findings of fact;
- Establish factors a court must consider in determining who to appoint as a guardian;

- Provide a code of conduct or ethical standards for a guardian and requires the reporting of abuse of a ward to the Department of Children and Families;
- Require guardianship plans to be filed in advance of the plan year;
- Authorize family members of wards to challenge a decision by a guardian which denies visitation to family members;
- Provide that the results of a court-ordered medical exam after a suggestion of capacity is filed is evidence that a court can use for determining capacity or restoring rights; and
- Require a court to give priority to scheduling restoration of capacity proceedings.

This bill does not have a discernable fiscal impact.

The bill takes effect upon becoming law.

## II. Present Situation:

### Power of Attorney

A power of attorney is an instrument that grants someone authority to act as an agent for the grantor.<sup>1</sup> The “principal” is the individual who grants authority to the agent who then acts in place of the principal, whether the term “agent” is actually used in the writing or not.<sup>2</sup> Under existing law, an alleged incapacitated person’s power of attorney is automatically suspended upon the filing of a petition to determine incapacity of the principal. The result is that the agent then loses the ability to act on behalf of the principal.

### Guardianship

#### *Background*

A guardianship is a relationship based upon trust in which one person, a guardian, has the legal duty and authority to care for the person or property of another person, who is referred to as a ward. A guardianship is established because a court has determined that the ward is not capable of managing his or her affairs, generally due to infancy, incapacity, or disability.<sup>3</sup> A guardian may be appointed over the person, over the property, or both.

When a court determines that someone is incapacitated,<sup>4</sup> it must consider whether there is an alternative to guardianship which will sufficiently meet the person’s needs. If no alternative can be found, then a guardian<sup>5</sup> must be appointed.<sup>6</sup> The Legislature has stated, however, that the

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<sup>1</sup> BLACK’S LAW DICTIONARY 1191 (7th ed. 1999).

<sup>2</sup> Sections 709.2102 (1), (9), and (11), F.S.

<sup>3</sup> BLACK’S LAW DICTIONARY 712 (9th ed. 2009).

<sup>4</sup> An “incapacitated person” is a person who has been judicially determined to lack the capacity to manage at least some of his or her property or to meet at least some of his or her essential health and safety requirements. Section 744.102(12), F.S.

<sup>5</sup> Various provisions in ch. 744, F.S., provide for a guardian ad litem, limited guardian, plenary guardian, standby guardian, foreign guardian, corporate guardian, nonprofit corporate guardian, preneed guardian, professional guardian, surrogate, and public guardian.

<sup>6</sup> Section 744.331(6)(b), F.S.

form of assistance be chosen in each situation that least interferes with the legal capacity of someone to act on his or her behalf.<sup>7</sup>

### ***Guardianship Proceedings***

A guardianship proceeding is initiated in circuit court when an adult files a petition to determine incapacity and alleges specifically the factual information on which the petitioner believes the incapacity is based.<sup>8</sup> Within 5 days after the petition is filed, the court must appoint a three member examining committee<sup>9</sup> to examine the allegedly incapacitated person to determine his or her incapacity. The members have 15 days<sup>10</sup> after their appointment to submit a written report to the court which sets an adjudicatory hearing to be held within 14 days<sup>11</sup> after the examining members' reports are filed. If the court finds on the basis of clear and convincing evidence that the person is incapacitated, the court must enter a written order determining the incapacity, but only with respect to those rights specified in the order.<sup>12</sup>

### ***Powers and Duties of a Guardian***

A guardian has a fiduciary relationship with a ward and is bound to act in good faith and trust on the ward's behalf. The guardian may not use that relationship for private gain except for the reimbursement of fees and expenses provided by law.<sup>13</sup> The guardian of an incapacitated person may only exercise the rights that have been removed from the ward and delegated to the guardian. In addition to performing all duties required of him or her by law, a guardian is required to file an initial guardianship report and an annual guardianship report, implement the guardianship plan, and at the termination of the guardianship, deliver the property of the ward to the person lawfully entitled to the property.<sup>14</sup> If the guardian breaches the fiduciary duty owed to the ward, the court is obligated to take the steps necessary to protect the ward and the ward's assets.<sup>15</sup>

### ***Responsibilities of the Clerk of Court and Judicial Review***

The clerk of the circuit court, as custodian of the guardianship files, must review each initial and annual guardianship report, which is later reviewed by the circuit court. The court retains jurisdiction over all guardianships and must review the appropriateness and extent of a guardianship annually.<sup>16</sup>

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<sup>7</sup> Section 744.1012, F.S.

<sup>8</sup> Section 744.3201, F.S.

<sup>9</sup> One member must be a psychiatrist or other physician and the remaining members must be a psychologist, gerontologist, another psychiatrist, or other physician, a registered nurse, nurse practitioner, licensed social worker, a person with an advanced degree in gerontology, or other person who has special skill, training, or education to advise the court in the form of an expert opinion.

<sup>10</sup> Section 744.331(3), F.S.

<sup>11</sup> Section 744.331(5), F.S.

<sup>12</sup> Section 744.331(6), F.S.

<sup>13</sup> Section 744.446, F.S.

<sup>14</sup> Section 744.361, F.S.

<sup>15</sup> Section 744.446, F.S.

<sup>16</sup> Sections 744.368 and 744.372, F.S.

### ***Termination of a Guardianship***

The relationship between a guardian and ward is terminated when a ward is restored to capacity, the guardian has been unable to find the ward after a diligent search, or for a guardian of the property, when the property subject to the guardianship has been exhausted.<sup>17</sup> The relationship is also terminated upon the death of the guardian or ward, by resignation<sup>18</sup> or removal of the guardian,<sup>19</sup> or by a change or domicile to a foreign jurisdiction.<sup>20</sup>

### **Resolution of Disputes Involving Guardianships**

Disputes often arise in guardianship matters and involve issues such as visitation, care plans, the ward's range of choices, medical care, whether less restrictive options are available to the ward, property issues, and financial decisions. These issues are litigated, often at great expense to the ward, and burden court calendars.

### **Court Monitors and Emergency Court Monitors**

A court is authorized under the guardianship chapter to appoint a court monitor over a matter under its jurisdiction, when an interested person inquires or upon its own motion. The order of appointment is served upon the guardian, the ward, and other interested persons as the court decides. The monitor serves to investigate, seek information, examine documents, or interview the ward and report his or her findings to the court in a report. The report is also served on the guardian, the ward, and any other person as the court decides. If the monitor's report indicates that the court needs to take action to protect the ward's interest, the court, after a hearing with notice, enters any necessary order to protect the ward or his or her estate. A court monitor may not be a family member or someone with a personal interest in the proceedings but may be allowed a reasonable fee for his or her services from the ward's property.<sup>21</sup>

Similarly, a court may appoint a court monitor on an emergency basis without notice. To do so, the court must find that there appears to be imminent danger that the physical or mental health or safety of the ward will be impaired, or the ward's property is in danger of being wasted or lost unless immediate action is taken. The emergency court monitor's authority expires 60 days after appointment or upon a finding of no probable cause, whichever occurs first, but may be extended for an additional 30 days upon a showing that the emergency condition still exists. The monitor has 15 days to file a report of findings and recommendation to the court after his or her appointment. As with a court monitor, the emergency monitor may be allowed a reasonable fee that is paid from the ward's property.<sup>22</sup>

### **Guardian and Attorney Fees and Expenses in Guardianship Proceedings**

Section 744.108, F.S., establishes that a guardian or attorney who has rendered services to the ward or the guardian on the ward's behalf is entitled to reasonable fees for those services and

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<sup>17</sup> Section 744.521, F.S.

<sup>18</sup> Section 744.467, F.S.

<sup>19</sup> Section 744.474, F.S.

<sup>20</sup> Section 744.524, F.S.

<sup>21</sup> Section 744.107, F.S.

<sup>22</sup> Section 744.1075, F.S.

reimbursement for those costs. The court is given a list of factors to consider in awarding those fees. It is not clear whether s. 744.108(8), F.S., covers all requests for attorney fees or is limited to only fees for the guardian's attorney. It is also unclear whether expert testimony is required to establish a reasonable fee for a guardian or an attorney.

### **Claims of Minors**

Section 744.3025(1)(a), F.S., provides that a court may appoint a guardian ad litem before approving a settlement of a claim for a minor when the gross settlement exceeds \$15,000. The statute does not specify criteria for the court to rely upon in determining whether there is a need for the appointment of a guardian ad litem.

### **Emergency Temporary Guardianship**

The process of appointing a guardian may take up to 34 days or longer, upon a showing of good cause. The statutes, however, provide a more timely remedy through an additional type of guardianship in an emergency situation. A court may appoint an emergency temporary guardian<sup>23</sup> for an allegedly incapacitated person upon a finding that there appears to be an imminent danger that:

- The physical or mental health or safety of the person will be seriously impaired; or
- The person's property is in danger of being wasted, misappropriated, or lost unless immediate action is taken.

Under those circumstances, a court may appoint an emergency temporary guardian after the filing of a petition for determination of incapacity and before the appointment of a guardian. The court must appoint counsel to represent the alleged incapacitated person during the proceedings. Further, the court may appoint an emergency temporary guardian on its own motion if no petition for appointment of guardian has been filed when the order determining incapacity is entered.<sup>24</sup>

The emergency temporary guardian's authority expires 90 days after the appointment or when a guardian is appointed, whichever occurs first. The authority may be extended for 90 additional days upon a showing that the emergency conditions continue to exist.<sup>25</sup> The emergency temporary guardian's authority and responsibility begin when the letters of emergency temporary guardian are issued. He or she must file a final report no later than 30 days after the emergency temporary guardianship expires<sup>26</sup> and the final report must be served on the successor guardian and the ward.<sup>27</sup>

### **Advance Directives**

An "advance directive" is a written document or oral statement that is witnessed in which a person states his or her desires regarding health care and includes, but is not limited to, the

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<sup>23</sup> Section 744.3031(1), F.S.

<sup>24</sup> Section 744.3031(2), F.S.

<sup>25</sup> Section 744.3031(3), F.S.

<sup>26</sup> Section 744.3031(7) and (8)(a), F.S.

<sup>27</sup> Section 744.3031(8)(d), F.S.

designation of a health care surrogate, a living will, or an anatomical gift.<sup>28</sup> An advance directive permits a competent adult to express his or her wishes regarding decisions relating to his or her own health, particularly the right to choose or refuse medical treatment.

### **Considerations When Appointing a Guardian**

The statutes provide a list of factors that a court must consider when appointing a guardian.<sup>29</sup> The court must give preference to a person who:

- Is related by blood or marriage;
- Has educational, professional, or business experience that is relevant to the services needed for the ward;
- Has the capacity to manage the ward's financial resources; or
- Has the ability to meet the law's requirements and unique needs of the case at hand.

The court must also consider:

- The wishes expressed by the incapacitated person as to who the guardian should be;
- The preferences of a minor who is over the age of 14 years as to who the guardian should be;
- Any person designated as a guardian in a will under which the ward is a beneficiary.

The court shall appoint the standby guardian or preneed guardian, unless that is contrary to the best interests of the ward.<sup>30</sup>

### **Guardianship Plans and Reports**

For a court to monitor and supervise a guardian's compliance, the guardian must file reports and plans for review. A guardian of the person must file an annual plan which updates information about the ward's condition, specifying the ward's needs and how those needs should be met in the upcoming year.<sup>31</sup> If the court requires calendar year planning, the plan must be filed by April 1 of that plan year. If not, the plan must be filed within 90 days after the anniversary month that the letters of guardianship were filed.<sup>32</sup> The approved report authorizes the guardian the necessary power to act within the terms of the plan and limits the powers of the guardian to those terms.<sup>33</sup>

### **Restoration to Capacity**

An incapacitated person retains the right to be restored to capacity at the earliest possible time.<sup>34</sup> The procedure for restoration is described in s. 744.464, F.S. Any interested person or the ward may file a suggestion of capacity stating that the ward is currently capable of exercising some or all or the rights which were removed. The statute is silent on what the evidentiary standard is that

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<sup>28</sup> Section 765.101, F.S.

<sup>29</sup> Section 744.312, F.S.

<sup>30</sup> Section 744.312(4), F.S.

<sup>31</sup> Section 744.3675, F.S.

<sup>32</sup> Section 744.367(1), F.S.

<sup>33</sup> Section 744.369(8), F.S.

<sup>34</sup> Section 744.3215(1)(c), F.S.

is used to determine restoration of capacity. Clear guidance is needed in the statute to remove this uncertainty.

### **III. Effect of Proposed Changes:**

#### **Suspension of a Power of Attorney (Sections 1, 2, and 12)**

This bill creates s. 744.3203, F.S., to address the suspension of a power of attorney when the incapacity of the principal is alleged. When someone files a petition to determine incapacity but before the order is entered, the alleged incapacitated person's power of attorney is suspended when the petitioner files a motion stating that a power of attorney should be suspended or modified for any of the following reasons:

- The agent's decision are not consistent with the alleged incapacitated person's known desires;
- The power of attorney is invalid;
- The agent has not discharged his or her duties or incapacity or illness renders him or her incapable of discharging those duties; or
- The agent has abused powers.

It is not grounds to suspend a power of attorney if a dispute exists between the agent and the petitioner and the matter is appropriately resolved in a different forum or a legal proceeding other than a guardianship proceeding.

The petitioner's motion must identify one of the four grounds listed above and allege specific statements of fact demonstrating that there are grounds to justify the suspension of the power of attorney. The petitioner must sign the petition and declare that he or she has read the motion and that the facts stated in it are true.

The court must schedule an expedited hearing for the motion when the agent files a response. The court order must set forth what powers the agent is permitted to exercise, if any, pending the outcome of the petition to determine the principal's incapacity. The intent appears to be that, in an emergency situation, a specific power can be reinstated without a hearing and without notice to all interested persons.

Sections 709.2109(3) and 709.2119(2), F.S., are amended to conform to the changes created by s. 744.3203, F.S.

#### **Resolution of Disputes Involving Guardianships (Section 3)**

This bill creates a new section of law which permits a court, upon its own motion or that of an interested party, to refer a guardianship matter to mediation or alternative dispute resolution. The court must find that mediation or alternative dispute resolution is in the best interests of an alleged incapacitated person, ward, or minor to order the proceeding.

Alternative dispute resolution is defined as a procedure for settling disputes by processes other than litigation. This often involves arbitration or mediation.<sup>35</sup> Mediation is defined as a process in which a neutral third person or panel considers the parties' facts and arguments and renders a decision which may or may not be binding.<sup>36</sup>

### **Court Monitors and Emergency Court Monitors (Sections 4 and 5)**

The bill provides that a court may appoint the office of criminal conflict and civil regional counsel to serve as a court monitor or emergency court monitor if a ward is indigent.

### **Guardian and Attorney Fees and Expenses in Guardianship Proceedings (Section 6)**

This bill amends s. 744.108, F.S., to clarify that attorneys for the ward, whether court appointed or otherwise, are entitled to compensation from the guardianship estate. Language is created to clarify that expert testimony is not necessary to establish compensation for the guardian or the guardian's attorney. This change will benefit wards in many instances by eliminating charges for expert witness fees.

### **Claims of Minors (Section 7)**

The bill amends s. 744.3025(1)(a), F.S., to provide that a court may appoint a guardian ad litem only if the court believes a guardian ad litem is necessary to protect the minor's interest in a claim that exceeds \$15,000. A new subsection (3) is created and states that the settlement of a claim under this section is subject to the confidentiality provisions of the guardianship chapter.<sup>37</sup>

### **Emergency Temporary Guardian (Section 8)**

#### *Notice Provisions*

The bill amends s. 744.3031, F.S., to provide that a court may appoint an emergency temporary guardian after a petition for determination of incapacity has been held, but only after that hearing is duly noticed. The notice of filing of a petition for appointment of an emergency temporary guardian and notice of any hearing on that petition must be served on the alleged incapacitated person and his or her attorney at least 24 hours before a hearing is held unless the petitioner demonstrates that substantial harm will occur if the 24-hour notice is given.

#### *Length of Time a Guardian May Serve*

The current statute limits an emergency temporary guardian's authority to 90 days, but this bill limits the authority to 60 days. Current law provides that the emergency temporary guardian's authority may be extended for 90 days, but this bill limits an extension to 60 days and requires that a hearing be held first to demonstrate that the emergency conditions still exist.

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<sup>35</sup> BLACK'S LAW DICTIONARY 78 (7th ed. 1999).

<sup>36</sup> Section 44.1011(2), F.S.

<sup>37</sup> This language links this bill to SB 360 which creates a public records exemption to protect the confidentiality of records relating to the settlement of a claim on behalf of a minor or ward.



### ***Filing of a Final Report***

Currently, an emergency temporary guardian must file a final report within 30 days after the emergency temporary guardianship expires.<sup>38</sup> Under this bill, a court may not authorize final payment for the emergency temporary guardian's fee or the fees of his or her attorney until the final report is filed. This bill provides that, if the final report is not timely filed, the court shall issue an order to show cause to the emergency temporary guardian to appear and explain why no further action should be taken against him or her by the court. The court's order must specify the time and place of the hearing within a reasonable time after service of the order to allow the guardian to prepare a defense. Prior to the hearing, the court may:

- Suspend the emergency temporary guardian if he or she has become a successor guardian;
- Appoint a guardian ad litem; or
- Issue any other appropriate order to protect the physical or mental health or safety or the property of the ward.

A copy of the order must be transmitted to all parties when it is issued.

After the hearing on the order to show cause, the court may impose sanctions on the emergency temporary guardian or take any other action authorized by law including:

- Entering a judgment of contempt;
- Ordering an accounting;
- Freezing assets;
- Referring the case to local law enforcement agencies or the state attorney;
- Filing an abuse, neglect, or exploitation complaint with the Department of Children and Families; and
- Initiating proceedings to remove the emergency temporary guardian.

### ***Not For Profit Corporation as Guardian (Section 9)***

This bill amends s. 744.309, F.S., to resolve an inconsistency in the statutes which allows a nonprofit entity to register as a professional guardian, but also requires a guardian to be a human. Under this amended language, a nonprofit charitable corporation is expressly authorized to serve as a guardian.

### ***Advance Directives (Section 10)***

This bill amends s. 744.3115, F.S., to provide that, in circumstances in which the ward executed any advance directive before his or her incapacity, the court must specify in the order and letters of guardianship what authority the guardian may exercise over the ward regarding health care decisions and what authority, if any, the surrogate shall continue to exercise over the ward regarding health care decisions. Any order revoking or modifying the authority of the surrogate must be supported by specific written findings of fact. If the court determines that the guardian will be responsible for making health care decisions for the ward, the guardian will assume the surrogate's responsibilities. These changes are designed to strengthen a person's choice regarding who should make medical decisions on his or her behalf.

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<sup>38</sup> Section 744.3031(8), F.S.

### **Considerations When Appointing a Guardian (Section 11)**

This bill amends the existing group of factors a court must consider when determining who to appoint as a guardian for an incapacitated person. The court must now also consider the wishes of close relatives if the person cannot express a preference.

Unless a standby or preneed guardian is appointed, a court:

- Must use a rotation system to appoint a guardian or support its order with written findings of fact;
- May not give preference to a person based solely on the fact that he or she was appointed to serve as an emergency temporary guardian; and
- May not appoint as the permanent guardian a professional guardian who served as an emergency temporary guardian.

The final two objections above only apply if an interested person objects to the appointment of the guardian. The court may waive these restrictions if special requirements of the guardianship require that the court appoint a guardian with special talents or specific prior experience but the court must note those findings.

### **Letters of Guardianship (Section 13)**

This section provides that letters of guardianship for all guardianships, not just limited guardianships, must specify the authority of a guardian with respect to a ward's advance directive. In a sense, this is a conforming change to reflect the amendment made to s. 744.3115, F.S., relating to advance directives.

### **Abuse, Neglect, or Exploitation by a Guardian (Section 14)**

The bill creates a code of conduct or ethical standards for guardians and requires a person to report abuse, neglect, or exploitation of a ward by a guardian to the Department of Children and Families.

### **Powers and Duties of a Guardian (Section 15)**

The bill amends s. 744.361(1), F.S., to confirm that a guardian of an incapacitated person is a fiduciary who may exercise only those rights removed from the ward and delegated to the guardian. That section is further amended to provide that a guardian:

- Shall act within the scope of the authority granted and as provided by law;
- Shall act in good faith;
- May not act in a manner contrary to the ward's best interests; and
- Shall use certain special skills or expertise, if any, when acting on the ward's behalf.

The bill also requires that a guardian over the property keep clear, distinct, and accurate records of the property.

Additional responsibilities of a guardian of a ward's person are enumerated. A professional guardian must also assess the nature and extent of visitation and communication with the ward's family and friends during a personal visit.

#### **Annual Guardianship Reports (Section 16)**

Existing law allows annual guardianship plans to be filed well after the plan year has begun. The changes under this bill require guardianship plans to be filed in advance.

#### **Judicial Review of Guardianship Reports (Section 17)**

The bill amends this section to provide that a guardian may continue to act under the authority of the last approved guardianship report until the next year's report is approved.

#### **Petition for Interim Judicial Review (Section 18)**

The bill amends this section to provide that at any time, an interested person may petition the court for review that the guardian is acting in a manner contrary to the power and duties of a guardian or is denying visitation between the ward and his or her relatives.

#### **Restoration to Capacity (Section 19)**

The bill amends s. 744.464(3), F.S., to establish a "preponderance of the evidence" burden of proof for the restoration of all or some of the ward's rights and requires the court to make specific findings of fact. The bill also provides that the ward has the burden of proving that the restoration of capacity is warranted. A new provision is added stating that a court must give priority to any suggestion of capacity and must advance the cause on the calendar.<sup>39</sup>

#### **Effective Date (Section 20 and 21)**

The bill takes effect upon becoming law and the amendments made in the bill apply to all proceedings pending when the bill becomes effective.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

This bill does not appear to affect the spending, revenues, or tax authority of cities or counties. As such, the bill does not appear to be a mandate.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

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<sup>39</sup> Section 744.464(4), F.S.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

Section 744.3203(3), F.S., suspension of a power of attorney before an incapacity determination, could be drafted more precisely for clarity. The intent appears to be that, in an emergency situation, a specific power can be reinstated without a hearing and notice being served on all interested persons. Perhaps an amendment could be developed to clarify the meaning of this subsection.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 709.2109, 709.2119, 744.1065, 744.107, 744.1075, 744.108, 744.3025, 744.3031, 744.309, 744.3115, 744.312, 744.3203, 744.345, 744.359, 744.361, 744.367, 744.369, 744.3715, and 744.464.

This bill creates the following sections of the Florida Statutes: 744.1065, 744.3203, and 744.359.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Judiciary on March 10, 2015:**

The committee substitute differs from the original bill in the following ways:

- A power of attorney may be suspended automatically during guardianship proceedings but only if the petitioner specifically requests the suspension and states facts under oath supporting the suspension.
- Courts may refer guardianship matters to mediation or alternative dispute resolution.
- Courts may appoint the office of criminal conflict counsel as court monitors and emergency court monitors for indigent wards.

- Attorneys for the ward, whether court appointed or otherwise, are entitled to compensation from the guardianship estate.
- Expert testimony is not necessary to establish compensation for the guardian or the guardian's attorney.
- If a court has already appointed a guardian to represent a minor, an additional appointment of a guardian ad litem is not necessary to represent a minor's interest in the settlement of a claim.
- Advance notice is not necessary to the alleged incapacitated person and his or her attorney before appointing an emergency temporary guardian if a petitioner demonstrates that substantial harm will occur if notice is given.
- A nonprofit charitable corporation is expressly authorized to serve as a guardian.
- If a court modifies the authority of a health care surrogate in an advance directive, the modification must be based on findings of fact.
- The factors a court must consider in determining who to appoint as guardian are revised. A court is discouraged from appointing as a permanent guardian a professional guardian who has served as an emergency temporary guardian.
- A code of conduct or ethical standards for guardians is established. A person is required to report abuse, neglect, or exploitation of a ward by a guardian to the Department of Children and Families.
- Guardianship plans are required to be filed in advance of the plan year.
- Family members of wards are authorized to challenge a decision by a guardian which denies visitation to family members.
- The results of a court-ordered medical exam after a suggestion of capacity is filed is evidence that may be used for determining capacity or restoring rights. Courts must give priority to scheduling restoration of capacity proceedings.

B. Amendments:

None.