

By Senator Forman

32-832-98

See HB

1 A bill to be entitled
2 An act relating to guardianship; amending s.
3 744.369, F.S.; extending the time to review
4 certain reports; authorizing random field
5 audits; amending s. 744.702, F.S.; providing
6 legislative intent to establish the Statewide
7 Public Guardianship Office; directing the
8 Department of Elderly Affairs to provide
9 certain services and support; creating s.
10 744.7021, F.S.; providing for the Statewide
11 Public Guardianship Office within the
12 Department of Elderly Affairs; providing for an
13 executive director and oversight
14 responsibilities; requiring submission of a
15 guardianship plan and yearly status reports to
16 the Governor, the President of the Senate, the
17 Speaker of the House of Representatives, and
18 the Chief Justice of the Supreme Court;
19 requiring the office to develop a training
20 program; authorizing demonstration projects;
21 providing for rules; amending s. 744.703, F.S.;
22 providing for the executive director to
23 establish offices of public guardian and to
24 appoint public guardians; providing for
25 transfer of oversight responsibility from the
26 chief judge of the circuit to the office;
27 providing for the suspension of public
28 guardians, as specified; amending s. 744.706,
29 F.S.; providing for the preparation of the
30 budget of the Statewide Public Guardianship
31 Office; amending s. 744.707, F.S.; revising

1 language with respect to procedures and rules
2 to include reference to the Statewide Public
3 Guardianship Office; amending s. 744.708, F.S.;
4 revising language with respect to reports and
5 standards; amending s. 744.709, F.S.; providing
6 that surety bonds can be purchased from funds
7 appropriated to the Statewide Public
8 Guardianship Office; amending s. 744.1085,
9 F.S.; revising language with respect to
10 professional guardians to include reference to
11 the Statewide Public Guardianship Office;
12 amending s. 744.3135, F.S.; providing a
13 procedure for obtaining fingerprint cards and
14 for maintaining the results of certain
15 investigations; amending s. 28.241, F.S.;
16 providing for funds for public guardians;
17 providing an effective date.

18
19 WHEREAS, the Legislature has recognized that private
20 guardianship is inadequate when there is no willing and
21 responsible family member or friend, other person, bank, or
22 corporation available to serve as guardian for an
23 incapacitated person and such person does not have adequate
24 income or wealth for the compensation of a private guardian,
25 and

26 WHEREAS, a few judicial circuits have been able to
27 establish public guardianship programs to provide guardianship
28 services to some of the state's vulnerable citizens, and
29 additional circuits would like to have public guardians
30 available, and

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1 WHEREAS, many of the state's vulnerable citizens are
2 going without this service that is necessary for the exercise
3 of an incapacitated person's constitutional rights, and

4 WHEREAS, the Legislature recognizes the need for a
5 statewide office to assist in finding ways to meet the
6 guardianship needs of incapacitated citizens, and

7 WHEREAS, there is a growing problem in Florida
8 involving functionally incapacitated persons who are unable to
9 access needed services, and

10 WHEREAS, the magnitude of this compelling problem
11 demands legislative action to protect our state's most
12 vulnerable citizens, NOW, THEREFORE,

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14 Be It Enacted by the Legislature of the State of Florida:

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16 Section 1. Subsections (1) and (2) of section 744.369,
17 Florida Statutes, are amended to read:

18 744.369 Judicial review of guardianship reports.--

19 (1) The court shall review the initial guardianship
20 report within 60 days after the filing of the clerk's report
21 of findings to the court. The court shall review the annual
22 guardianship report within 30 ~~45~~ days after the filing of the
23 clerk's report of findings to the court.

24 (2) The court may appoint general or special masters
25 to assist the court in its review function. The court may
26 require the general or special master to conduct random field
27 audits.

28 Section 2. Section 744.702, Florida Statutes, is
29 amended to read:

30 744.702 Legislative intent.--The Legislature finds
31 that private guardianship is inadequate where there is no

1 willing and responsible family member or friend, other person,
2 bank, or corporation available to serve as guardian for an
3 incapacitated person, and such person does not have adequate
4 income or wealth for the compensation of a private guardian.
5 The Legislature intends through this act to establish the
6 Statewide Public Guardianship Office, and permit the
7 establishment of offices ~~office~~ of public guardian for the
8 purpose of providing guardianship services for incapacitated
9 persons when no private guardian is available. The Legislature
10 further finds that alternatives to guardianship and less
11 intrusive means of assistance should always be explored,
12 including, but not limited to, guardian advocates, before an
13 individual's rights are removed through an adjudication of
14 incapacity. The purpose of this legislation is to provide a
15 public guardian only to those persons whose needs cannot be
16 met through less drastic means of intervention. In addition to
17 auditing services available from the Auditor General, the
18 Statewide Public Guardianship Office may have the assistance
19 of the Inspector General of the Department of Elderly Affairs
20 in providing auditing services, and the Office of General
21 Counsel of the department shall provide assistance in
22 rulemaking and other matters as needed to assist the Statewide
23 Public Guardianship Office. The executive director of the
24 Statewide Public Guardianship Office shall establish a
25 curriculum committee to develop the training program specified
26 in this part. The curriculum committee shall include, but not
27 be limited to, probate judges.

28 Section 3. Section 744.7021, Florida Statutes, is
29 created to read:

30 744.7021 Statewide Public Guardianship Office.--There
31 is hereby created the Statewide Public Guardianship Office

1 within the Department of Elderly Affairs. The Department of
2 Elderly Affairs shall provide administrative support and
3 service to the office to the extent requested by the executive
4 director within the available resources of the department. The
5 Statewide Public Guardianship Office shall not be subject to
6 control, supervision, or direction by the Department of
7 Elderly Affairs in the performance of its duties.

8 (1) The head of the Statewide Public Guardianship
9 Office is the executive director, who shall be appointed by
10 the Governor. The executive director must be a licensed
11 attorney with a background in guardianship law and knowledge
12 of social services available to meet the needs of
13 incapacitated persons, shall serve on a full-time basis, and
14 shall personally, or through representatives of the office,
15 carry out the purposes and functions of the Statewide Public
16 Guardianship Office in accordance with state and federal law.
17 The executive director shall serve at the pleasure of and
18 report to the Governor.

19 (2) The Statewide Public Guardianship Office shall
20 within available resources have oversight responsibilities for
21 all public guardians.

22 (a) The office shall review the current public
23 guardian programs in Florida and other states.

24 (b) The office, in consultation with local
25 guardianship offices, shall develop statewide performance
26 measures and standards.

27 (c) The office shall review the various methods of
28 funding guardianship programs, the kinds of services being
29 provided by such programs, and the demographics of the wards.
30 In addition, the office shall review and make recommendations
31 regarding the feasibility of recovering a portion or all of

1 the costs of providing public guardianship services from the
2 assets or income of the wards.

3 (d) No later than October 1, 1999, the office shall
4 submit to the Governor, the President of the Senate, the
5 Speaker of the House of Representatives, and the Chief Justice
6 of the Supreme Court an interim report describing the progress
7 of the office in meeting the goals as described in this
8 section. No later than October 1, 2000, the office shall
9 submit to the Governor, the President of the Senate, the
10 Speaker of the House of Representatives, and the Chief Justice
11 of the Supreme Court a proposed public guardianship plan
12 including alternatives for meeting the state's guardianship
13 needs. This plan may include recommendations for less than the
14 entire state, may include a phase-in system, and shall include
15 estimates of the cost of each of the alternatives. Each year
16 thereafter, the office shall provide a status report and
17 provide further recommendations to address the need for public
18 guardianship services and related issues.

19 (e) The office may provide assistance to local
20 governments or entities in pursuing grant opportunities. The
21 office shall review and make recommendations in the annual
22 report on the availability and efficacy of seeking Medicaid
23 matching funds. The office shall diligently seek ways to use
24 existing programs and services to meet the needs of public
25 wards.

26 (f) The office shall develop a guardianship training
27 program. The training program may be offered to all guardians
28 whether public or private. A fee may be charged to private
29 guardians in order to defray the cost of providing the
30 training.

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1 (3) The office may conduct or contract for
2 demonstration projects, within funds appropriated or through
3 gifts, grants, or contributions for such purposes, to
4 determine the feasibility or desirability of new concepts of
5 organization, administration, financing, or service delivery
6 designed to preserve the civil and constitutional rights of
7 indigent persons of marginal or diminished capacity due to the
8 infirmities of aging as manifested by Alzheimer's disease or
9 related memory disorders, organic brain damage, or other
10 physical, mental, or emotional dysfunctioning. The
11 demonstration projects should endeavor to address emergency
12 needs of affected persons prior to judicial intervention, to
13 utilize alternatives to guardianship, when possible, and to
14 develop innovative linkages between existing programs and
15 services including those funded through the Department of
16 Elderly Affairs Alzheimer's Disease Initiative and related
17 services, the adult protective services program, and local law
18 enforcement.

19 (4) The office may promulgate rules pursuant to the
20 requirements of chapter 120 to carry out the provisions of
21 this section.

22 Section 4. Section 744.703, Florida Statutes, is
23 amended to read:

24 744.703 Office of public guardian; appointment,
25 notification.--

26 (1) The executive director of the Statewide Public
27 Guardianship Office ~~The chief judge of the judicial circuit,~~
28 after consultation with the chief judge and other circuit
29 judges within the judicial circuit and with appropriate
30 advocacy groups and individuals and organizations who are
31 knowledgeable about the needs of incapacitated persons, may

1 establish, within a county in the judicial circuit or within
2 the judicial circuit, an office of public guardian and create
3 a list of persons best qualified to serve as the public
4 guardian. The public guardian must have knowledge of the legal
5 process and knowledge of social services available to meet the
6 needs of incapacitated persons. A nonprofit corporation under
7 s. 744.309(5) may be appointed public guardian only if:

8 (a) It has been granted tax-exempt status from the
9 United States Internal Revenue Service; and

10 (b) It maintains a staff of professionally qualified
11 individuals to carry out the guardianship functions, including
12 a staff attorney who has experience in probate areas and
13 another person who has a master's degree in social work, or a
14 gerontologist, psychologist, registered nurse, or nurse
15 practitioner.

16 (2) The executive director ~~chief judge~~ shall appoint
17 the public guardian from the list of candidates described in
18 subsection (1). A public guardian must meet the qualifications
19 for a guardian as prescribed in s. 744.309(1)(a). Upon
20 appointment of the public guardian, the executive director
21 ~~chief judge~~ shall notify the chief judge of the judicial
22 circuit and the Chief Justice of the Supreme Court of Florida,
23 in writing, of the appointment.

24 (3) If the needs of the county or circuit do not
25 require a full-time public guardian, a part-time public
26 guardian may be appointed at reduced compensation.

27 (4) A public guardian, whether full-time or part-time,
28 may not hold any position that would create a conflict of
29 interest.

30 (5) The public guardian is to be appointed for a term
31 of 4 years, after which her or his appointment must be

1 reviewed by the executive director ~~chief judge of the circuit,~~
2 and may be reappointed for a term of up to 4 years. A public
3 guardian may be suspended upon the request of the chief judge.
4 If a public guardian is suspended, the executive director
5 shall appoint an acting public guardian as soon as possible to
6 serve until such time as a permanent replacement is selected.
7 Removal of the public guardian from office during the term of
8 office must be by the executive director after consultation
9 with and upon the recommendation of the chief judge. This
10 section does not limit the application of ss. 744.474 and
11 744.477.

12 (6) Public guardians appointed by a chief judge
13 pursuant to this section may continue in their positions until
14 the expiration of the term pursuant to their agreement with
15 the chief judge. However, oversight of all public guardians
16 shall transfer to the Statewide Public Guardianship Office
17 upon the effective date of this act. The executive director of
18 the Statewide Public Guardianship Office shall be responsible
19 for all future appointments of public guardians pursuant to
20 this act.

21 Section 5. Section 744.706, Florida Statutes, is
22 amended to read:

23 744.706 Preparation of budget.--Each public guardian
24 shall prepare a budget for the operation of the office of
25 public guardian to be submitted to the Statewide Public
26 Guardianship Office ~~chief judge of the judicial circuit~~ for
27 inclusion in the Department of Elderly Affairs'~~circuit~~
28 ~~courts'~~ legislative budget request. The office of public
29 guardian shall be operated within the limitations of the
30 General Appropriations Act and any other funds appropriated by
31 the Legislature to that particular judicial circuit, subject

1 to the provisions of chapter 216. The Department of Elderly
2 Affairs shall make a separate and distinct request for an
3 appropriation for the Statewide Public Guardianship Office.
4 However, this section shall not be construed to preclude the
5 financing of any operations of the office of the public
6 guardian by moneys raised through local effort or through the
7 efforts of the Statewide Public Guardianship Office. All
8 public guardians who are funded in whole or in part by moneys
9 raised through local efforts, grants, or any other source must
10 submit a budget to the Statewide Public Guardianship Office
11 annually.

12 Section 6. Section 744.707, Florida Statutes, is
13 amended to read:

14 744.707 Procedures and rules.--The public guardian,
15 subject to the oversight of the Statewide Public Guardianship
16 Office, is authorized to:

17 (1) Formulate and adopt necessary procedures to assure
18 the efficient conduct of the affairs of the ward and general
19 administration of the office and staff.

20 (2) Contract for services necessary to discharge the
21 duties of the office.

22 (3) Accept the services of volunteer persons or
23 organizations and provide reimbursement for proper and
24 necessary expenses.

25 Section 7. Subsections (3), (4), (5), (7), and (8) of
26 section 744.708, Florida Statutes, are amended to read:

27 744.708 Reports and standards.--

28 (3) A public guardian shall file an annual report on
29 the operations of the office of public guardian, in writing,
30 by September 1 for the preceding fiscal year with the
31 Statewide Public Guardianship Office, which ~~chief judge of the~~

1 ~~judicial circuit who~~ shall have responsibility for supervision
2 of the operations of the office of public guardian.

3 (4) Within 6 months of his or her appointment as
4 guardian of a ward, the public guardian shall submit to the
5 clerk of the court for placement in the ward's guardianship
6 file and to the executive director of the Statewide Public
7 Guardianship Office ~~the chief judge of the circuit~~ a report on
8 his or her efforts to locate a family member or friend, other
9 person, bank, or corporation to act as guardian of the ward
10 and a report on the ward's potential to be restored to
11 capacity.

12 (5) An independent audit by a qualified certified
13 public accountant shall be performed at least every 2 years.
14 The audit should include an investigation into the practices
15 of the office for managing the person and property of the
16 wards. A copy of the report shall be submitted to the
17 Statewide Public Guardianship Office.

18 (7) The ratio for professional staff to wards shall be
19 1 professional to 40 wards. The Statewide Public Guardianship
20 Office ~~chief judge of the circuit upon application of the~~
21 ~~public guardian, or upon the court's own motion,~~ may enlarge
22 or recede from the ratio after consultation with the local
23 public guardian and the chief judge of the circuit court ~~for~~
24 ~~good cause.~~ The basis of the decision to enlarge or recede
25 from the prescribed ratio shall be reported in the annual
26 report to the Governor, the President of the Senate, the
27 Speaker of the House of Representatives, and the Chief Justice
28 of the Supreme Court.

29 (8) The term "professional," for purposes of this
30 part, shall not include the public guardian nor the executive
31 director of the Statewide Public Guardianship Office. The

1 term "professional" shall be limited to those persons who
2 exercise direct supervision of individual wards under the
3 direction of the public guardian.

4 Section 8. Subsection (3) of section 744.1085, Florida
5 Statutes, is amended to read:

6 744.1085 Regulation of professional guardians;
7 application; bond required; educational requirements;
8 audits.--

9 (3) Each professional guardian defined in s.
10 744.102(15), on October 1, 1997, must receive a minimum of 40
11 hours of instruction and training by October 1, 1998, or
12 within 1 year after becoming a professional guardian,
13 whichever occurs later. Each professional guardian must
14 receive a minimum of 16 hours of continuing education every 2
15 calendar years after the year in which the initial 40-hour
16 educational requirement is met. The instruction and education
17 must be completed through a course approved or offered by the
18 Statewide Public Guardianship Office ~~chief judge of the~~
19 ~~circuit court and taught by a court-approved organization~~. The
20 expenses incurred to satisfy the educational requirements
21 prescribed in this section may not be paid with the assets of
22 any ward. This subsection does not apply to any attorney who
23 is licensed to practice law in this state.

24 Section 9. Section 744.3135, Florida Statutes, is
25 amended to read:

26 744.3135 Credit and criminal investigation.--The court
27 may require a prospective guardian and shall require a
28 professional guardian, to submit, at his or her own expense,
29 to an investigation of the prospective guardian's credit
30 history and an investigatory check by the National Crime
31 Information Center and the Florida Crime Information Center

1 systems by means of fingerprint checks by the Department of
2 Law Enforcement and the Federal Bureau of Investigation. The
3 court shall waive the credit and criminal investigation for a
4 guardian who is the spouse or child of the ward. The clerk of
5 the court shall obtain fingerprint cards from the Federal
6 Bureau of Investigation and make them available to guardians.
7 Any guardian who is so required by this provision or by the
8 court shall have his or her fingerprints taken and shall
9 forward the proper fingerprint card along with the necessary
10 fee to the Florida Department of Law Enforcement for
11 processing. The results of the fingerprint checks shall be
12 forwarded to the clerk of court, who shall maintain the
13 results in a guardian file and shall make the results
14 available to the court. If credit or criminal investigations
15 are required, the court must consider the results of the
16 investigations in appointing a guardian.

17 Section 10. Section 744.709, Florida Statutes, is
18 amended to read:

19 744.709 Surety bond.--Upon taking office, a public
20 guardian shall file a bond with surety as prescribed in s.
21 45.011 to be approved by the clerk. The bond shall be payable
22 to the Governor and the Governor's successors in office, in
23 the penal sum of not less than \$5,000 nor more than \$25,000,
24 conditioned on the faithful performance of all duties by the
25 guardian. The amount of the bond shall be fixed by the
26 majority of the judges within the judicial circuit. In form
27 the bond shall be joint and several. The bond shall be
28 purchased with funding provided in the funds appropriated to
29 the Statewide Public Guardianship Office ~~judicial circuit~~ for
30 the office of public guardian.

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1 Section 11. Subsection (1) of section 28.241, Florida
2 Statutes, is amended to read:

3 28.241 Filing charges for trial and appellate
4 proceedings.--

5 (1) The party instituting any civil action, suit, or
6 proceeding in the circuit court shall pay to the clerk of that
7 court a service charge of \$40 in all cases in which there are
8 not more than five defendants and an additional service charge
9 of \$2 for each defendant in excess of five. An additional
10 service charge of \$10 shall be paid by the party seeking each
11 severance that is granted. An additional service charge of \$35
12 shall be paid to the clerk for all proceedings of garnishment,
13 attachment, replevin, and distress. An additional service
14 charge of \$8 shall be paid to the clerk for each civil action
15 filed, \$7 of such charge to be remitted by the clerk to the
16 State Treasurer for deposit into the General Revenue Fund
17 unallocated. An additional charge of \$2.50 shall be paid to
18 the clerk for each civil action brought in circuit or county
19 court, to be deposited into the Court Education Trust Fund;
20 the moneys collected shall be forwarded by the clerk to the
21 Supreme Court monthly for deposit in the fund. Service
22 charges in excess of those herein fixed may be imposed by the
23 governing authority of the county by ordinance or by special
24 or local law; and such excess shall be expended as provided by
25 such ordinance or any special or local law, now or hereafter
26 in force, to provide and maintain facilities, including a law
27 library, for the use of the courts of the county wherein the
28 service charges are collected; to provide and maintain
29 equipment; or for a legal aid program in such county. In
30 addition, the county is authorized to impose, by ordinance or
31 by special or local law, a fee of up to \$10 for each civil

1 action filed, for the establishment, maintenance, or
2 supplementation of a public guardian pursuant to ss.
3 744.701-744.708, inclusive. Postal charges incurred by the
4 clerk of the circuit court in making service by certified or
5 registered mail on defendants or other parties shall be paid
6 by the party at whose instance service is made. That part of
7 the within fixed or allowable service charges which is not by
8 local or special law applied to the special purposes shall
9 constitute the total service charges of the clerk of such
10 court for all services performed by him or her in civil
11 actions, suits, or proceedings. The sum of all service
12 charges and fees permitted under this subsection may not
13 exceed \$200; however, the \$200 cap may be increased to \$210 in
14 order to provide for the establishment, maintenance, or
15 supplementation of a public guardian as indicated in this
16 subsection.

17 Section 12. This act shall take effect October 1,
18 1998.

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21 LEGISLATIVE SUMMARY

22 Creates the Statewide Public Guardianship Office within
23 the Department of Elderly Affairs to have oversight
24 responsibility for all public guardians. (See bill for
25 details.)
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