

By the Committee on Judiciary and Senator Forman

308-2150-98

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 provisions 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 provisions with respect to reports and
5 standards; providing for the offices of public
6 guardian to be subject to audits by the Auditor
7 General; amending s. 744.709, F.S.; providing
8 that surety bonds can be purchased from funds
9 appropriated to the Statewide Public
10 Guardianship Office; amending s. 744.1085,
11 F.S.; revising provisions with respect to
12 professional guardians to include reference to
13 the Statewide Public Guardianship Office;
14 amending s. 744.3135, F.S.; providing a
15 procedure for obtaining fingerprint cards and
16 for maintaining the results of certain
17 investigations; amending s. 28.241, F.S.;
18 providing for funds for public guardians;
19 providing an effective date.

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

28 WHEREAS, a few judicial circuits have been able to
29 establish public guardianship programs to provide guardianship
30 services to some of the state's vulnerable citizens, and
31

1 additional circuits would like to have public guardians
2 available, and

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

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

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

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

15

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

17

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

20 744.369 Judicial review of guardianship reports.--

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

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

30 Section 2. Section 744.702, Florida Statutes, is
31 amended to read:

1 744.702 Legislative intent.--The Legislature finds
2 that private guardianship is inadequate where there is no
3 willing and responsible family member or friend, other person,
4 bank, or corporation available to serve as guardian for an
5 incapacitated person, and such person does not have adequate
6 income or wealth for the compensation of a private guardian.
7 The Legislature intends through this act to establish the
8 Statewide Public Guardianship Office, and permit the
9 establishment of offices ~~office~~ of public guardian for the
10 purpose of providing guardianship services for incapacitated
11 persons when no private guardian is available. The Legislature
12 further finds that alternatives to guardianship and less
13 intrusive means of assistance should always be explored,
14 including, but not limited to, guardian advocates, before an
15 individual's rights are removed through an adjudication of
16 incapacity. The purpose of this legislation is to provide a
17 public guardian only to those persons whose needs cannot be
18 met through less drastic means of intervention. The Statewide
19 Public Guardianship Office may have the assistance of the
20 Inspector General of the Department of Elderly Affairs in
21 providing auditing services, and the Office of General Counsel
22 of the department shall provide assistance in rulemaking and
23 other matters as needed to assist the Statewide Public
24 Guardianship Office. The executive director of the Statewide
25 Public Guardianship Office shall establish a curriculum
26 committee to develop the training program specified in this
27 part. The curriculum committee shall include, but not be
28 limited to, probate judges.

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

31

1 744.7021 Statewide Public Guardianship Office.--There
2 is created the Statewide Public Guardianship Office within the
3 Department of Elderly Affairs. The Department of Elderly
4 Affairs shall provide administrative support and service to
5 the office to the extent requested by the executive director
6 within the available resources of the department. The
7 Statewide Public Guardianship Office shall not be subject to
8 control, supervision, or direction by the Department of
9 Elderly Affairs in the performance of its duties.

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

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

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

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

29 (c) The office shall review the various methods of
30 funding guardianship programs, the kinds of services being
31 provided by such programs, and the demographics of the wards.

1 In addition, the office shall review and make recommendations
2 regarding the feasibility of recovering a portion or all of
3 the costs of providing public guardianship services from the
4 assets or income of the wards.

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

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

28 (f) The office shall develop a guardianship training
29 program. The training program may be offered to all guardians
30 whether public or private. A fee may be charged to private
31

1 guardians in order to defray the cost of providing the
2 training.

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

21 (4) The office may adopt rules pursuant to the
22 requirements of chapter 120 to carry out the provisions of
23 this section.

24 Section 4. Section 744.703, Florida Statutes, is
25 amended to read:

26 744.703 Office of public guardian; appointment,
27 notification.--

28 (1) The executive director of the Statewide Public
29 Guardianship Office ~~The chief judge of the judicial circuit,~~
30 after consultation with the chief judge and other circuit
31 judges within the judicial circuit and with appropriate

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

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

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

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

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

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

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

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

23 Section 5. Section 744.706, Florida Statutes, is
24 amended to read:

25 744.706 Preparation of budget.--Each public guardian
26 shall prepare a budget for the operation of the office of
27 public guardian to be submitted to the Statewide Public
28 Guardianship Office ~~chief judge of the judicial circuit~~ for
29 inclusion in the Department of Elderly Affairs'~~circuit~~
30 ~~courts'~~ legislative budget request. The office of public
31 guardian shall be operated within the limitations of the

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

14 Section 6. Section 744.707, Florida Statutes, is
15 amended to read:

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

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

22 (2) Contract for services necessary to discharge the
23 duties of the office.

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

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

29 744.708 Reports and standards.--

30 (3) A public guardian shall file an annual report on
31 the operations of the office of public guardian, in writing,

1 by September 1 for the preceding fiscal year with the
2 Statewide Public Guardianship Office, which ~~chief judge of the~~
3 ~~judicial circuit who~~ shall have responsibility for supervision
4 of the operations of the office of public guardian.

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

14 (5) An independent audit by a qualified certified
15 public accountant shall be performed at least every 2 years.
16 The audit should include an investigation into the practices
17 of the office for managing the person and property of the
18 wards. A copy of the report shall be submitted to the
19 Statewide Public Guardianship Office. In addition, the offices
20 of public guardian are subject to audits by the Auditor
21 General under s. 11.45.

22 (7) The ratio for professional staff to wards shall be
23 1 professional to 40 wards. The Statewide Public Guardianship
24 Office ~~chief judge of the circuit upon application of the~~
25 ~~public guardian, or upon the court's own motion,~~ may enlarge
26 or recede from the ratio after consultation with the local
27 public guardian and the chief judge of the circuit court ~~for~~
28 ~~good cause.~~ The basis of the decision to enlarge or recede
29 from the prescribed ratio shall be reported in the annual
30 report to the Governor, the President of the Senate, the
31

1 Speaker of the House of Representatives, and the Chief Justice
2 of the Supreme Court.

3 (8) The term "professional," for purposes of this
4 part, shall not include the public guardian nor the executive
5 director of the Statewide Public Guardianship Office. The
6 term "professional" shall be limited to those persons who
7 exercise direct supervision of individual wards under the
8 direction of the public guardian.

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

11 744.1085 Regulation of professional guardians;
12 application; bond required; educational requirements;
13 audits.--

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

29 Section 9. Section 744.3135, Florida Statutes, is
30 amended to read:

31

1 744.3135 Credit and criminal investigation.--The court
2 may require a prospective guardian and shall require a
3 professional guardian, to submit, at his or her own expense,
4 to an investigation of the prospective guardian's credit
5 history and an investigatory check by the National Crime
6 Information Center and the Florida Crime Information Center
7 systems by means of fingerprint checks by the Department of
8 Law Enforcement and the Federal Bureau of Investigation. The
9 court shall waive the credit and criminal investigation for a
10 guardian who is the spouse or child of the ward. The clerk of
11 the court shall obtain fingerprint cards from the Federal
12 Bureau of Investigation and make them available to guardians.
13 Any guardian who is so required by this provision or by the
14 court must have his or her fingerprints taken and shall
15 forward the proper fingerprint card along with the necessary
16 fee to the Florida Department of Law Enforcement for
17 processing. The prospective professional guardian shall pay to
18 the clerk of the court a fee of \$5 for handling and processing
19 professional guardian files. The results of the fingerprint
20 checks shall be forwarded to the clerk of court, who shall
21 maintain the results in a guardian file and shall make the
22 results available to the court. If credit or criminal
23 investigations are required, the court must consider the
24 results of the investigations in appointing a guardian.

25 Section 10. Section 744.709, Florida Statutes, is
26 amended to read:

27 744.709 Surety bond.--Upon taking office, a public
28 guardian shall file a bond with surety as prescribed in s.
29 45.011 to be approved by the clerk. The bond shall be payable
30 to the Governor and the Governor's successors in office, in
31 the penal sum of not less than \$5,000 nor more than \$25,000,

1 conditioned on the faithful performance of all duties by the
2 guardian. The amount of the bond shall be fixed by the
3 majority of the judges within the judicial circuit. In form
4 the bond shall be joint and several. ~~The bond shall be~~
5 ~~purchased with funding provided in the funds appropriated to~~
6 ~~the judicial circuit for the office of public guardian.~~

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

9 28.241 Filing charges for trial and appellate
10 proceedings.--

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

1 in force, to provide and maintain facilities, including a law
2 library, for the use of the courts of the county wherein the
3 service charges are collected; to provide and maintain
4 equipment; or for a legal aid program in such county. In
5 addition, the county is authorized to impose, by ordinance or
6 by special or local law, a fee of up to \$10 for each civil
7 action filed, for the establishment, maintenance, or
8 supplementation of a public guardian pursuant to ss.
9 744.701-744.708, inclusive. Postal charges incurred by the
10 clerk of the circuit court in making service by certified or
11 registered mail on defendants or other parties shall be paid
12 by the party at whose instance service is made. That part of
13 the within fixed or allowable service charges which is not by
14 local or special law applied to the special purposes shall
15 constitute the total service charges of the clerk of such
16 court for all services performed by him or her in civil
17 actions, suits, or proceedings. The sum of all service
18 charges and fees permitted under this subsection may not
19 exceed \$200; however, the \$200 cap may be increased to \$210 in
20 order to provide for the establishment, maintenance, or
21 supplementation of a public guardian as indicated in this
22 subsection.

23 Section 12. This act shall take effect October 1,
24 1998.

25
26
27
28
29
30
31

1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 1178

4 The Committee Substitute for Senate Bill 1178:

- 5 - Clarifies that public guardians are subject to audit by
6 the Auditor General.
- 7 - Allows reinstatement of a suspended public guardian.
- 8 - Clarifies that the executive director may remove a public
9 guardian either after consultation with or upon the
10 recommendation of the chief judge, as opposed to the
11 bill's provision for removal after consultation and with
12 the approval of the chief judge.
- 13 - Deletes a provision that a public guardian's surety bond
14 be purchased with funds appropriated for the office of
15 public guardian.
- 16 - Requires that guardians who undergo credit and criminal
17 investigations pay to the clerk of court a \$5 fee for
18 handling and processing.
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31