

Bill No. CS for SB 2158

Amendment No. ____

Senate

CHAMBER ACTION

House

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Senator Forman moved the following amendment:

Senate Amendment (with title amendment)

On page 7, lines 9-11, delete those lines

and insert:

Section 8. Subsections (1) and (2) of section 744.369, Florida Statutes, are amended to read:

744.369 Judicial review of guardianship reports.--

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

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

Section 9. Section 744.702, Florida Statutes, is amended to read:

744.702 Legislative intent.--The Legislature finds

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

28 Section 10. 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

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

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

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

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

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

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1 assets or income of the wards.

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

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

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

30 (3) The office may conduct or contract for
31 demonstration projects, within funds appropriated or through

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

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

20 Section 11. Section 744.703, Florida Statutes, is
 21 amended to read:

22 744.703 Office of public guardian; appointment,
 23 notification.--

24 (1) The executive director of the Statewide Public
 25 Guardianship Office ~~The chief judge of the judicial circuit,~~
 26 after consultation with the chief judge and other circuit
 27 judges within the judicial circuit and with appropriate
 28 advocacy groups and individuals and organizations who are
 29 knowledgeable about the needs of incapacitated persons, may
 30 establish, within a county in the judicial circuit or within
 31 the judicial circuit, an office of public guardian and create

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1 a list of persons best qualified to serve as the public
2 guardian. The public guardian must have knowledge of the legal
3 process and knowledge of social services available to meet the
4 needs of incapacitated persons. A nonprofit corporation under
5 s. 744.309(5) may be appointed public guardian only if:

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

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

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

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

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

28 (5) The public guardian is to be appointed for a term
29 of 4 years, after which her or his appointment must be
30 reviewed by the executive director ~~chief judge of the circuit~~,
31 and may be reappointed for a term of up to 4 years. A public

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1 guardian may be suspended upon the request of the chief judge.
2 If a public guardian is suspended, the executive director
3 shall appoint an acting public guardian as soon as possible to
4 serve until such time as the public guardian is reinstated or
5 a permanent replacement is selected. A public guardian may be
6 removed from office during the term of office only by the
7 executive director who must consult with the chief judge prior
8 to said removal. A recommendation of removal made by the chief
9 judge must be considered by the executive director. Removal of
10 the public guardian from office during the term of office must
11 be by the chief judge. This section does not limit the
12 application of ss. 744.474 and 744.477.

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

22 Section 12. Section 744.706, Florida Statutes, is
23 amended to read:

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

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

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

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

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

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

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

26 Section 14. Subsections (3), (4), (5), (7), and (8) of
27 section 744.708, Florida Statutes, are amended to read:

28 744.708 Reports and standards.--

29 (3) A public guardian shall file an annual report on
30 the operations of the office of public guardian, in writing,
31 by September 1 for the preceding fiscal year with the

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1 ~~Statewide Public Guardianship Office chief judge of the~~
2 ~~judicial circuit~~ who shall have responsibility for supervision
3 of the operations of the office of public guardian.

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

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

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

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

7 Section 15. Subsection (3) of section 744.1085,
8 Florida Statutes, is amended to read:

9 744.1085 Regulation of professional guardians;
10 application; bond required; educational requirements;
11 audits.--

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

27 Section 16. Section 744.3135, Florida Statutes, is
28 amended to read:

29 744.3135 Credit and criminal investigation.--The court
30 may require a prospective guardian and shall require a
31 professional guardian, to submit, at his or her own expense,

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

22 Section 17. Subsection (1) of section 28.241, Florida
23 Statutes, is amended to read:

24 28.241 Filing charges for trial and appellate
25 proceedings.--

26 (1) The party instituting any civil action, suit, or
27 proceeding in the circuit court shall pay to the clerk of that
28 court a service charge of \$40 in all cases in which there are
29 not more than five defendants and an additional service charge
30 of \$2 for each defendant in excess of five. An additional
31 service charge of \$10 shall be paid by the party seeking each

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1 severance that is granted. An additional service charge of \$35
2 shall be paid to the clerk for all proceedings of garnishment,
3 attachment, replevin, and distress. An additional service
4 charge of \$8 shall be paid to the clerk for each civil action
5 filed, \$7 of such charge to be remitted by the clerk to the
6 State Treasurer for deposit into the General Revenue Fund
7 unallocated. An additional charge of \$2.50 shall be paid to
8 the clerk for each civil action brought in circuit or county
9 court, to be deposited into the Court Education Trust Fund;
10 the moneys collected shall be forwarded by the clerk to the
11 Supreme Court monthly for deposit in the fund. Service
12 charges in excess of those herein fixed may be imposed by the
13 governing authority of the county by ordinance or by special
14 or local law; and such excess shall be expended as provided by
15 such ordinance or any special or local law, now or hereafter
16 in force, to provide and maintain facilities, including a law
17 library, for the use of the courts of the county wherein the
18 service charges are collected; to provide and maintain
19 equipment; or for a legal aid program in such county. In
20 addition, the county is authorized to impose, by ordinance or
21 by special or local law, a fee of up to ~~\$15~~^{\$10} for each civil
22 action filed, for the establishment, maintenance, or
23 supplementation of a public guardian pursuant to ss.
24 744.701-744.708, inclusive. Postal charges incurred by the
25 clerk of the circuit court in making service by certified or
26 registered mail on defendants or other parties shall be paid
27 by the party at whose instance service is made. That part of
28 the within fixed or allowable service charges which is not by
29 local or special law applied to the special purposes shall
30 constitute the total service charges of the clerk of such
31 court for all services performed by him or her in civil

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1 actions, suits, or proceedings. The sum of all service
2 charges and fees permitted under this subsection may not
3 exceed \$200; however, the \$200 cap may be increased to \$210 in
4 order to provide for the establishment, maintenance, or
5 supplementation of a public guardian as indicated in this
6 subsection.

7 Section 18. There is hereby appropriated from the
8 General Revenue fund in a lump sum to the Department of Elder
9 Affairs the sum of \$300,000 in order to carry out the purposes
10 of this act.

11 Section 19. All powers, duties and functions, records,
12 personnel, property, and unexpended balances of
13 appropriations, allocations, or other funds relating to the
14 public guardianship program under Chapter 744, Florida
15 Statutes, are transferred by a type two transfer, as defined
16 in s. 20.06(2), Florida Statutes, from the Circuit Court
17 budget entity within the Judicial Branch to the Department of
18 Elder Affairs.

19 Section 20. This act shall take effect January 15,
20 1999, except that this section and sections 4, 5, 6, and 7 of
21 this act shall take effect upon becoming a law, and sections
22 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19 shall take
23 effect October 1, 1998.

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26 ===== T I T L E A M E N D M E N T =====

27 And the title is amended as follows:

28 On page 1, lines 19 and 20, delete those lines

29
30 and insert:

31 for additional judges; amending s. 744.369,

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

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1 Guardianship Office; amending s. 744.708, F.S.;

2 revising language with respect to reports and

3 standards; providing reference to audits by the

4 Auditor General; amending s. 744.1085, F.S.;

5 revising language with respect to professional

6 guardians to include reference to the Statewide

7 Public Guardianship Office; amending s.

8 744.3135, F.S.; providing a procedure for

9 obtaining fingerprint cards and for maintaining

10 the results of certain investigations; amending

11 s. 28.241, F.S.; providing for funds for public

12 guardians; providing for an appropriation;

13 providing for a transfer of resources between

14 agencies; providing effective dates;

15

16 WHEREAS, the Legislature has recognized that private

17 guardianship is inadequate when there is no willing and

18 responsible family member or friend, other person, bank, or

19 corporation available to serve as guardian for an

20 incapacitated person, and such person does not have adequate

21 income or wealth for the compensation of a private guardian,

22 and

23 WHEREAS, a few judicial circuits have been able to

24 establish public guardianship programs to provide guardianship

25 services to some of the state's vulnerable citizens, and

26 additional circuits would like to have public guardians

27 available, and

28 WHEREAS, many of the state's vulnerable citizens are

29 going without this service which is necessary for the exercise

30 of an incapacitated person's constitutional rights, and

31 WHEREAS, the Legislature recognizes the need for a

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1 statewide office to assist in finding ways to meet the
2 guardianship needs of incapacitated citizens, and

3 WHEREAS, there is a growing problem in Florida
4 involving functionally incapacitated persons who are unable to
5 access needed services, and

6 WHEREAS, the magnitude of this compelling problem
7 demands legislative action to protect our state's most
8 vulnerable citizens, NOW, THEREFORE,

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