

Bill No. CS/HB 3883, 2nd Eng.

Amendment No.

| | <u>Senate</u> | CHAMBER ACTION | <u>House</u> |
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| 11 | Senator Forman moved the following amendment to amendment | | |
| 12 | (723774): | | |
| 13 | | | |
| 14 | Senate Amendment (with title amendment) | | |
| 15 | On page 346, between lines 5 and 6, | | |
| 16 | | | |
| 17 | insert: | | |
| 18 | Section 180. Subsections (1) and (2) of section | | |
| 19 | 744.369, 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 <u>30</u> 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. <u>The court may</u> | | |
| 28 | <u>require the general or special master to conduct random field</u> | | |
| 29 | <u>audits.</u> | | |
| 30 | Section 181. Section 744.702, Florida Statutes, is | | |
| 31 | amended to read: | | |

Bill No. CS/HB 3883, 2nd Eng.

Amendment No. ____

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

31 744.7021 Statewide Public Guardianship Office.--There

Bill No. CS/HB 3883, 2nd Eng.

Amendment No. ____

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

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

Bill No. CS/HB 3883, 2nd Eng.

Amendment No. ____

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.

31 (3) The office may conduct or contract for

Bill No. CS/HB 3883, 2nd Eng.

Amendment No. ____

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

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

21 Section 183. Section 744.703, Florida Statutes, is
22 amended to read:

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

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

Bill No. CS/HB 3883, 2nd Eng.

Amendment No. ____

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

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

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

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

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

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

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

Bill No. CS/HB 3883, 2nd Eng.

Amendment No. ____

1 and may be reappointed for a term of up to 4 years. A public
2 guardian may be suspended upon the request of the chief judge.
3 If a public guardian is suspended, the executive director
4 shall appoint an acting public guardian as soon as possible to
5 serve until such time as the public guardian is reinstated or
6 a permanent replacement is selected. A public guardian may be
7 removed from office during the term of office only by the
8 executive director who must consult with the chief judge prior
9 to said removal. A recommendation of removal made by the chief
10 judge must be considered by the executive director.~~Removal of~~
11 ~~the public guardian from office during the term of office must~~
12 ~~be by the chief judge. This section does not limit the~~
13 ~~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 184. 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

Bill No. CS/HB 3883, 2nd Eng.

Amendment No. ____

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 185. 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 186. Subsections (3), (4), (5), (7), and (8)
28 of 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,

Bill No. CS/HB 3883, 2nd Eng.

Amendment No. ____

1 by September 1 for the preceding fiscal year with the
2 Statewide Public Guardianship Office ~~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 office
20 of public guardian shall be subject to audits by the Auditor
21 General pursuant to 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 Speaker of the House of Representatives, and the Chief Justice

Bill No. CS/HB 3883, 2nd Eng.

Amendment No. ____

1 of the Supreme Court.

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

8 Section 187. Subsection (3) of section 744.1085,
9 Florida Statutes, is amended to read:

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

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

28 Section 188. Section 744.3135, Florida Statutes, is
29 amended to read:

30 744.3135 Credit and criminal investigation.--The court
31 may require a prospective guardian and shall require a

Bill No. CS/HB 3883, 2nd Eng.

Amendment No. ____

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

23 Section 189. Subsection (1) of section 28.241, Florida
24 Statutes, is amended to read:

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

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

Bill No. CS/HB 3883, 2nd Eng.

Amendment No. ____

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

Bill No. CS/HB 3883, 2nd Eng.

Amendment No. ____

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

8 Section 190. There is hereby appropriated from the
9 General Revenue fund in a lump sum to the Department of Elder
10 Affairs the sum of \$300,000 in order to carry out the purposes
11 of this act.

12 Section 191. All powers, duties and functions,
13 records, personnel, property, and unexpended balances of
14 appropriations, allocations, or other funds relating to the
15 public guardianship program under Chapter 744, Florida
16 Statutes, are transferred by a type two transfer, as defined
17 in s. 20.06(2), Florida Statutes, from the Circuit Court
18 budget entity within the Judicial Branch to the Department of
19 Elder Affairs.

20
21 (Redesignate subsequent sections.)

22
23
24 ===== T I T L E A M E N D M E N T =====

25 And the title is amended as follows:

26 On page 360, line 11, after the semicolon

27
28 insert:

29 amending s. 744.369, F.S.; extending the time
30 to review certain reports; authorizing random
31 field audits; amending s. 744.702, F.S.;

Bill No. CS/HB 3883, 2nd Eng.

Amendment No. ____

1 providing legislative intent to establish the
2 Statewide Public Guardianship Office; directing
3 the Department of Elderly Affairs to provide
4 certain services and support; creating s.
5 744.7021, F.S.; providing for the Statewide
6 Public Guardianship Office within the
7 Department of Elderly Affairs; providing for an
8 executive director and oversight
9 responsibilities; requiring submission of a
10 guardianship plan and yearly status reports to
11 the Governor, the President of the Senate, the
12 Speaker of the House of Representatives, and
13 the Chief Justice of the Supreme Court;
14 requiring the office to develop a training
15 program; authorizing demonstration projects;
16 providing for rules; amending s. 744.703, F.S.;
17 providing for the executive director to
18 establish offices of public guardian and to
19 appoint public guardians; providing for
20 transfer of oversight responsibility from the
21 chief judge of the circuit to the office;
22 providing for the suspension of public
23 guardians, as specified; amending s. 744.706,
24 F.S.; providing for the preparation of the
25 budget of the Statewide Public Guardianship
26 Office; amending s. 744.707, F.S.; revising
27 language with respect to procedures and rules
28 to include reference to the Statewide Public
29 Guardianship Office; amending s. 744.708, F.S.;
30 revising language with respect to reports and
31 standards; providing reference to audits by the

Bill No. CS/HB 3883, 2nd Eng.

Amendment No. ____

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

2 revising language with respect to professional

3 guardians to include reference to the Statewide

4 Public Guardianship Office; amending s.

5 744.3135, F.S.; providing a procedure for

6 obtaining fingerprint cards and for maintaining

7 the results of certain investigations; amending

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

9 guardians; providing for an appropriation;

10 providing for a transfer of resources between

11 agencies;

12

13 WHEREAS, the Legislature has recognized that private

14 guardianship is inadequate when there is no willing and

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

16 corporation available to serve as guardian for an

17 incapacitated person, and such person does not have adequate

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

19 and

20 WHEREAS, a few judicial circuits have been able to

21 establish public guardianship programs to provide guardianship

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

23 additional circuits would like to have public guardians

24 available, and

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

26 going without this service which is necessary for the exercise

27 of an incapacitated person's constitutional rights, and

28 WHEREAS, the Legislature recognizes the need for a

29 statewide office to assist in finding ways to meet the

30 guardianship needs of incapacitated citizens, and

31 WHEREAS, there is a growing problem in Florida

Bill No. CS/HB 3883, 2nd Eng.

Amendment No. ____

1 involving functionally incapacitated persons who are unable to
2 access needed services, and

3 WHEREAS, the magnitude of this compelling problem
4 demands legislative action to protect our state's most
5 vulnerable citizens, NOW, THEREFORE,

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