

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; providing reference to audits by the  
6 Auditor General; amending s. 744.1085, F.S.;  
7 revising language with respect to professional  
8 guardians to include reference to the Statewide  
9 Public Guardianship Office; amending s.  
10 744.3135, F.S.; providing a procedure for  
11 obtaining fingerprint cards and for maintaining  
12 the results of certain investigations; amending  
13 s. 28.241, F.S.; providing for funds for public  
14 guardians; providing for an appropriation;  
15 providing for a transfer of resources between  
16 agencies; providing an effective date.  
17

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

25 WHEREAS, a few judicial circuits have been able to  
26 establish public guardianship programs to provide guardianship  
27 services to some of the state's vulnerable citizens, and  
28 additional circuits would like to have public guardians  
29 available, and  
30  
31

1 WHEREAS, many of the state's vulnerable citizens are  
2 going without this service which 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,

13  
14 Be It Enacted by the Legislature of the State of Florida:

15  
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 ~~15~~ 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. The Statewide  
 17 Public Guardianship Office may have the assistance of the  
 18 Inspector General of the Department of Elderly Affairs in  
 19 providing auditing services, and the Office of General Counsel  
 20 of the department shall provide assistance in rulemaking and  
 21 other matters as needed to assist the Statewide Public  
 22 Guardianship Office. The executive director of the Statewide  
 23 Public Guardianship Office shall establish a curriculum  
 24 committee to develop the training program specified in this  
 25 part. The curriculum committee shall include, but not be  
 26 limited to, probate judges.

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

29 744.7021 Statewide Public Guardianship Office.--There  
 30 is hereby created the Statewide Public Guardianship Office  
 31 within the Department of Elderly Affairs. The Department of

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

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

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

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

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

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

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

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

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

29           (3) The office may conduct or contract for  
 30 demonstration projects, within funds appropriated or through  
 31 gifts, grants, or contributions for such purposes, to

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

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

19 Section 4. Section 744.703, Florida Statutes, is  
20 amended to read:

21 744.703 Office of public guardian; appointment,  
22 notification.--

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

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

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

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

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

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

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

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



1 If a public guardian is suspended, the executive director  
 2 shall appoint an acting public guardian as soon as possible to  
 3 serve until such time as the public guardian is reinstated or  
 4 a permanent replacement is selected. A public guardian may be  
 5 removed from office during the term of office only by the  
 6 executive director who must consult with the chief judge prior  
 7 to said removal. A recommendation of removal made by the chief  
 8 judge must be considered by the executive director. Removal of  
 9 the public guardian from office during the term of office must  
 10 be by the chief judge. This section does not limit the  
 11 application of ss. 744.474 and 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 copy of their budget to the Statewide Public  
11 Guardianship Office 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 ~~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. In addition, the office  
18 of public guardian shall be subject to audits by the Auditor  
19 General pursuant to s. 11.45.

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

31

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 8. Subsection (3) of section 744.1085, Florida  
8 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 9. 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,

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 10. 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

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

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 11. 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 12. 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 13. This act shall take effect October 1,  
20 1998.