

By the Committee on Real Property & Probate and
Representatives Crow, Byrd and Lynn

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. 744.474, F.S.; providing
6 certain relatives the ability to petition the
7 court regarding removal of the guardian;
8 amending s. 744.702, F.S.; providing
9 legislative intent to establish the Statewide
10 Public Guardianship Office; creating s.
11 744.7021, F.S.; providing for the Statewide
12 Public Guardianship Office within the
13 Department of Elderly Affairs; providing for an
14 executive director and oversight
15 responsibilities; providing for the Department
16 of Elderly Affairs to provide certain services
17 and support; requiring submission of a
18 guardianship plan and yearly status reports to
19 the Governor, the President of the Senate, the
20 Speaker of the House of Representatives, and
21 the Chief Justice of the Supreme Court;
22 requiring the office to develop a training
23 program and curriculum committee; authorizing
24 fees; authorizing demonstration projects;
25 providing for rules; amending s. 744.703, F.S.;
26 providing for the executive director to
27 establish offices of public guardian and to
28 appoint or contract with public guardians;
29 providing for transfer of oversight
30 responsibility from the chief judge of the
31 circuit to the office; providing for the

1 suspension of public guardians, as specified;
2 amending s. 744.706, F.S.; providing for the
3 preparation of the budget of the Statewide
4 Public Guardianship Office; amending s.
5 744.707, F.S.; revising language with respect
6 to procedures and rules to include reference to
7 the Statewide Public Guardianship Office;
8 amending s. 744.708, F.S.; revising language
9 with respect to reports and standards;
10 providing reference to audits by the Auditor
11 General; amending s. 744.709, F.S.; revising
12 language with respect to surety bonds; amending
13 s. 744.1085, F.S.; revising language with
14 respect to professional guardians to include
15 reference to the Statewide Public Guardianship
16 Office; amending s. 744.3135, F.S., relating to
17 credit and criminal investigations of
18 guardians; authorizing credit and criminal
19 investigations of nonprofessional or public
20 guardians; deleting exemption of the spouse or
21 child of a ward from credit and criminal
22 investigations when appointed a guardian of the
23 ward; providing a procedure for obtaining
24 fingerprint cards and for maintaining the
25 results of certain investigations; amending s.
26 28.241, F.S.; providing for funds for public
27 guardians; providing an appropriation;
28 providing for the transfer of resources between
29 agencies; providing effective dates.
30
31

1 WHEREAS, the Legislature has recognized that private
2 guardianship is inadequate when there is no willing and
3 responsible family member or friend, other person, bank, or
4 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 and

8 WHEREAS, a few judicial circuits have been able to
9 establish public guardianship programs to provide guardianship
10 services to some of the state's vulnerable citizens, and
11 additional circuits would like to have public guardians
12 available, and

13 WHEREAS, many of the state's vulnerable citizens are
14 going without this service which is necessary for the exercise
15 of an incapacitated person's constitutional rights, and

16 WHEREAS, the Legislature recognizes the need for a
17 statewide office to assist in finding ways to meet the
18 guardianship needs of incapacitated citizens, and

19 WHEREAS, there is a growing problem in Florida
20 involving functionally incapacitated persons who are unable to
21 access needed services, and

22 WHEREAS, the magnitude of this compelling problem
23 demands legislative action to protect our state's most
24 vulnerable citizens, NOW, THEREFORE,

25

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

27

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

30 744.369 Judicial review of guardianship reports.--

31

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

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

10 Section 2. Effective upon becoming a law, subsection
11 (19) of section 744.474, Florida Statutes, is amended to read:

12 744.474 Reasons for removal of guardian.--A guardian
13 may be removed for any of the following reasons, and the
14 removal shall be in addition to any other penalties prescribed
15 by law:

16 (19) Upon a showing by a person who did not receive
17 notice of the petition for adjudication of incapacity, when
18 such notice is required, or ~~and~~ who is related to the ward
19 within the relationships specified for nonresident relatives
20 in ss. 744.309(2) and 744.312(2) and who has not previously
21 been rejected by the court as a guardian that:

22 (a) The current guardian is not a family member; and

23 (b) Removal of the current guardian is in the best
24 interest of the ward,

25
26 the court may remove the current guardian and appoint the
27 petitioner, or such person as the court deems in the best
28 interest of the ward, either as guardian of the person or of
29 the property, or both.

30 Section 3. 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.

19 Section 4. Section 744.7021, Florida Statutes, is
20 created to read:

21 744.7021 Statewide Public Guardianship Office.--There
22 is hereby created the Statewide Public Guardianship Office
23 within the Department of Elderly Affairs. The Department of
24 Elderly Affairs shall provide administrative support and
25 service to the office to the extent requested by the executive
26 director within the available resources of the department. The
27 Statewide Public Guardianship Office may request the
28 assistance of the Inspector General of the Department of
29 Elderly Affairs in providing auditing services, and the Office
30 of General Counsel of the department may provide assistance in
31 rulemaking and other matters as needed to assist the Statewide

1 Public Guardianship Office. The Statewide Public Guardianship
2 Office shall not be subject to control, supervision, or
3 direction by the Department of Elderly Affairs in the
4 performance of its duties.

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

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

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

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

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

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1 (d) No later than October 1, 2000, 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, 2001, 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. The office shall establish a
27 curriculum committee to develop the training program specified
28 in this part. The curriculum committee shall include, but not
29 be limited to, probate judges. A fee may be charged to private
30 guardians in order to defray the cost of providing the
31 training. In addition, a fee may be charged to any training

1 provider for up to the actual cost of the review and approval
2 of their curriculum. Any fees collected pursuant to this
3 paragraph shall be deposited in the Department of Elderly
4 Affairs Administrative Trust Fund to be used for the
5 guardianship training program.

6 (3) The office may conduct or contract for
7 demonstration projects, within funds appropriated or through
8 gifts, grants, or contributions for such purposes, to
9 determine the feasibility or desirability of new concepts of
10 organization, administration, financing, or service delivery
11 designed to preserve the civil and constitutional rights of
12 persons of marginal or diminished capacity. Any gifts, grants,
13 or contributions for such purposes shall be deposited in the
14 Department of Elderly Affairs Administrative Trust Fund.

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

18 Section 5. Section 744.703, Florida Statutes, is
19 amended to read:

20 744.703 Office of public guardian; appointment,
21 notification.--

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

1 include review pursuant to s. 744.3135. The public guardian
2 must have knowledge of the legal process and knowledge of
3 social services available to meet the needs of incapacitated
4 persons. A nonprofit corporation under s. 744.309(5) may be
5 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 or contract with a ~~the~~ public guardian from the list of
16 candidates described in subsection (1). A public guardian must
17 meet the qualifications for a guardian as prescribed in s.
18 744.309(1)(a). Upon appointment of the public guardian, the
19 executive director ~~chief judge~~ shall notify the chief judge of
20 the judicial circuit and the Chief Justice of the Supreme
21 Court of Florida, 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. The

1 executive director may suspend a public guardian with or
2 without the request of the chief judge. If a public guardian
3 is suspended, the executive director shall appoint an acting
4 public guardian as soon as possible to serve until such time
5 as a permanent replacement is selected. A public guardian may
6 be 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 who have been previously
14 appointed by a chief judge prior to the effective date of this
15 act pursuant to this section may continue in their positions
16 until the expiration of their term pursuant to their
17 agreement. However, oversight of all public guardians shall
18 transfer to the Statewide Public Guardianship Office upon the
19 effective date of this act. The executive director of the
20 Statewide Public Guardianship Office shall be responsible for
21 all future appointments of public guardians pursuant to this
22 act.

23 Section 6. Section 744.706, Florida Statutes, is
24 amended to read:

25 744.706 Preparation of budget.--Each public guardian,
26 whether funded in whole or in part by money raised through
27 local efforts, grants, or any other source or whether funded
28 in whole or in part by the state, shall prepare a budget for
29 the operation of the office of public guardian to be submitted
30 to the Statewide Public Guardianship Office ~~chief judge of the~~
31 ~~judicial circuit for inclusion in the circuit courts+~~

1 ~~legislative budget request.~~ As appropriate, the Statewide
2 Public Guardianship Office will include such budgetary
3 information in the Department of Elderly Affairs' legislative
4 budget request. The office of public guardian shall be
5 operated within the limitations of the General Appropriations
6 Act and any other funds appropriated by the Legislature to
7 that particular judicial circuit, subject to the provisions of
8 chapter 216. The Department of Elderly Affairs shall make a
9 separate and distinct request for an appropriation for the
10 Statewide Public Guardianship Office. However, this section
11 shall not be construed to preclude the financing of any
12 operations of the office of the public guardian by moneys
13 raised through local effort or through the efforts of the
14 Statewide Public Guardianship Office.

15 Section 7. Section 744.707, Florida Statutes, is
16 amended to read:

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

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

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

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

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

30 744.708 Reports and standards.--

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1 (3) A public guardian shall file an annual report on
2 the operations of the office of public guardian, in writing,
3 by September 1 for the preceding fiscal year with the
4 Statewide Public Guardianship Office ~~chief judge of the~~
5 ~~judicial circuit~~ who shall have responsibility for supervision
6 of the operations of the office of public guardian.

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

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

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

1 reported in the annual report to the Governor, the President
2 of the Senate, the Speaker of the House of Representatives,
3 and the Chief Justice of the Supreme Court.

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

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

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

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

30 Section 10. Section 744.3135, Florida Statutes, is
31 amended to read:

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

25 Section 11. Subsection 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 from ~~with funding provided in the funds of~~
6 ~~appropriated to the local judicial circuit for the~~ office of
7 public guardian.

8 Section 12. Subsection (1) of section 28.241, Florida
9 Statutes, is amended to read:

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

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

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

24 Section 13. There is hereby appropriated from the
25 General Revenue Fund in a lump sum to the Department of
26 Elderly Affairs the sum of \$300,000 in order to carry out the
27 purposes of this act.

28 Section 14. All powers, duties and functions, records,
29 personnel, property, and unexpended balances of
30 appropriations, allocations, or other funds relating to the
31 public guardianship program under chapter 744, Florida

1 Statutes, are transferred by a type two transfer, as defined
2 in s. 20.06(2), Florida Statutes, from the Circuit Court
3 budget entity within the Judicial Branch to the Department of
4 Elderly Affairs.

5 Section 15. Except as otherwise provided herein, this
6 act shall take effect October 1, 1999.

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