

Bill No. CS for SB 702

Amendment No.

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11	Senator Forman moved the following amendment:		
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13	Senate Amendment (with title amendment)		
14	Delete everything after the enacting clause		
15			
16	and insert:		
17	Section 1. Subsections (1) and (2) of section 744.369,		
18	Florida Statutes, are amended to read:		
19	744.369 Judicial review of guardianship reports.--		
20	(1) The court shall review the initial guardianship		
21	report within 60 days after the filing of the clerk's report		
22	of findings to the court. The court shall review the annual		
23	guardianship report within <u>30</u> 45 days after the filing of the		
24	clerk's report of findings to the court.		
25	(2) The court may appoint general or special masters		
26	to assist the court in its review function. <u>The court may</u>		
27	<u>require the general or special master to conduct random field</u>		
28	<u>audits.</u>		
29	Section 2. Effective upon becoming a law, subsection		
30	(19) of section 744.474, Florida Statutes, is amended to read:		
31	744.474 Reasons for removal of guardian.--A guardian		

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1 may be removed for any of the following reasons, and the
2 removal shall be in addition to any other penalties prescribed
3 by law:

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

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

11 (b) Removal of the current guardian is in the best
12 interest of the ward,

13

14 the court may remove the current guardian and appoint the
15 petitioner, or such person as the court deems in the best
16 interest of the ward, either as guardian of the person or of
17 the property, or both.

18 Section 3. Section 744.702, Florida Statutes, is
19 amended to read:

20 744.702 Legislative intent.--The Legislature finds
21 that private guardianship is inadequate where there is no
22 willing and responsible family member or friend, other person,
23 bank, or corporation available to serve as guardian for an
24 incapacitated person, and such person does not have adequate
25 income or wealth for the compensation of a private guardian.
26 The Legislature intends through this act to establish the
27 Statewide Public Guardianship Office, and permit the
28 establishment of offices ~~office~~ of public guardian for the
29 purpose of providing guardianship services for incapacitated
30 persons when no private guardian is available. The Legislature
31 further finds that alternatives to guardianship and less

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1 intrusive means of assistance should always be explored,
2 including, but not limited to, guardian advocates, before an
3 individual's rights are removed through an adjudication of
4 incapacity. The purpose of this legislation is to provide a
5 public guardian only to those persons whose needs cannot be
6 met through less drastic means of intervention.

7 Section 4. Section 744.7021, Florida Statutes, is
8 created to read:

9 744.7021 Statewide Public Guardianship Office.--There
10 is hereby created the Statewide Public Guardianship Office
11 within the Department of Elderly Affairs. The Department of
12 Elderly Affairs shall provide administrative support and
13 service to the office to the extent requested by the executive
14 director within the available resources of the department. The
15 Statewide Public Guardianship Office may request the
16 assistance of the Inspector General of the Department of
17 Elderly Affairs in providing auditing services, and the Office
18 of General Counsel of the department may provide assistance in
19 rulemaking and other matters as needed to assist the Statewide
20 Public Guardianship Office. The Statewide Public Guardianship
21 Office shall not be subject to control, supervision, or
22 direction by the Department of Elderly Affairs in the
23 performance of its duties.

24 (1) The head of the Statewide Public Guardianship
25 Office is the executive director, who shall be appointed by
26 the Governor. The executive director must be a licensed
27 attorney with a background in guardianship law and knowledge
28 of social services available to meet the needs of
29 incapacitated persons, shall serve on a full-time basis, and
30 shall personally, or through representatives of the office,
31 carry out the purposes and functions of the Statewide Public

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1 Guardianship Office in accordance with state and federal law.
2 The executive director shall serve at the pleasure of and
3 report to the Governor.

4 (2) The Statewide Public Guardianship Office shall
5 within available resources have oversight responsibilities for
6 all public guardians.

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

9 (b) The office, in consultation with local
10 guardianship offices, shall develop statewide performance
11 measures and standards.

12 (c) The office shall review the various methods of
13 funding guardianship programs, the kinds of services being
14 provided by such programs, and the demographics of the wards.
15 In addition, the office shall review and make recommendations
16 regarding the feasibility of recovering a portion or all of
17 the costs of providing public guardianship services from the
18 assets or income of the wards.

19 (d) No later than October 1, 2000, the office shall
20 submit to the Governor, the President of the Senate, the
21 Speaker of the House of Representatives, and the Chief Justice
22 of the Supreme Court an interim report describing the progress
23 of the office in meeting the goals as described in this
24 section. No later than October 1, 2001, the office shall
25 submit to the Governor, the President of the Senate, the
26 Speaker of the House of Representatives, and the Chief Justice
27 of the Supreme Court a proposed public guardianship plan
28 including alternatives for meeting the state's guardianship
29 needs. This plan may include recommendations for less than the
30 entire state, may include a phase-in system, and shall include
31 estimates of the cost of each of the alternatives. Each year

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1 thereafter, the office shall provide a status report and
2 provide further recommendations to address the need for public
3 guardianship services and related issues.

4 (e) The office may provide assistance to local
5 governments or entities in pursuing grant opportunities. The
6 office shall review and make recommendations in the annual
7 report on the availability and efficacy of seeking Medicaid
8 matching funds. The office shall diligently seek ways to use
9 existing programs and services to meet the needs of public
10 wards.

11 (f) The office shall develop a guardianship training
12 program. The training program may be offered to all guardians
13 whether public or private. The office shall establish a
14 curriculum committee to develop the training program specified
15 in this part. The curriculum committee shall include, but not
16 be limited to, probate judges. A fee may be charged to private
17 guardians in order to defray the cost of providing the
18 training. In addition, a fee may be charged to any training
19 provider for up to the actual cost of the review and approval
20 of their curriculum. Any fees collected pursuant to this
21 paragraph shall be deposited in the Department of Elderly
22 Affairs Administrative Trust Fund to be used for the
23 guardianship training program.

24 (3) The office may conduct or contract for
25 demonstration projects, within funds appropriated or through
26 gifts, grants, or contributions for such purposes, to
27 determine the feasibility or desirability of new concepts of
28 organization, administration, financing, or service delivery
29 designed to preserve the civil and constitutional rights of
30 persons of marginal or diminished capacity. Any gifts, grants,
31 or contributions for such purposes shall be deposited in the

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1 Department of Elderly Affairs Administrative Trust Fund.

2 (4) The office has authority to adopt rules pursuant
3 to ss. 120.54 and 120.536(1) to carry out the provisions of
4 this section.

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

7 744.703 Office of public guardian; appointment,
8 notification.--

9 (1) The executive director of the Statewide Public
10 Guardianship Office ~~The chief judge of the judicial circuit,~~
11 after consultation with the chief judge and other circuit
12 judges within the judicial circuit and with appropriate
13 advocacy groups and individuals and organizations who are
14 knowledgeable about the needs of incapacitated persons, may
15 establish, within a county in the judicial circuit or within
16 the judicial circuit, an office of public guardian and if so
17 established, shall create a list of persons best qualified to
18 serve as the public guardian and such qualifications shall
19 include review pursuant to s. 744.3135. The public guardian
20 must have knowledge of the legal process and knowledge of
21 social services available to meet the needs of incapacitated
22 persons. A nonprofit corporation under s. 744.309(5) may be
23 appointed public guardian only if:

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

26 (b) It maintains a staff of professionally qualified
27 individuals to carry out the guardianship functions, including
28 a staff attorney who has experience in probate areas and
29 another person who has a master's degree in social work, or a
30 gerontologist, psychologist, registered nurse, or nurse
31 practitioner.

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1 (2) The executive director ~~chief judge~~ shall appoint
2 or contract with a the public guardian from the list of
3 candidates described in subsection (1). A public guardian must
4 meet the qualifications for a guardian as prescribed in s.
5 744.309(1)(a). Upon appointment of the public guardian, the
6 executive director ~~chief judge~~ shall notify the chief judge of
7 the judicial circuit and the Chief Justice of the Supreme
8 Court of Florida, in writing, of the appointment.

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

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

15 (5) The public guardian is to be appointed for a term
16 of 4 years, after which her or his appointment must be
17 reviewed by the executive director ~~chief judge of the circuit,~~
18 and may be reappointed for a term of up to 4 years. The
19 executive director may suspend a public guardian with or
20 without the request of the chief judge. If a public guardian
21 is suspended, the executive director shall appoint an acting
22 public guardian as soon as possible to serve until such time
23 as a permanent replacement is selected. A public guardian may
24 be removed from office during the term of office only by the
25 executive director who must consult with the chief judge prior
26 to said removal. A recommendation of removal made by the chief
27 judge must be considered by the executive director. ~~Removal of~~
28 ~~the public guardian from office during the term of office must~~
29 ~~be by the chief judge. This section does not limit the~~
30 ~~application of ss. 744.474 and 744.477.~~

31 (6) Public guardians who have been previously

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1 appointed by a chief judge prior to the effective date of this
2 act pursuant to this section may continue in their positions
3 until the expiration of their term pursuant to their
4 agreement. However, oversight of all public guardians shall
5 transfer to the Statewide Public Guardianship Office upon the
6 effective date of this act. The executive director of the
7 Statewide Public Guardianship Office shall be responsible for
8 all future appointments of public guardians pursuant to this
9 act.

10 Section 6. Section 744.706, Florida Statutes, is
11 amended to read:

12 744.706 Preparation of budget.--Each public guardian,
13 whether funded in whole or in part by money raised through
14 local efforts, grants, or any other source or whether funded
15 in whole or in part by the state, shall prepare a budget for
16 the operation of the office of public guardian to be submitted
17 to the Statewide Public Guardianship Office ~~chief judge of the~~
18 ~~judicial circuit for inclusion in the circuit courts'~~
19 ~~legislative budget request.~~ As appropriate, the Statewide
20 Public Guardianship Office will include such budgetary
21 information in the Department of Elderly Affairs' legislative
22 budget request. The office of public guardian shall be
23 operated within the limitations of the General Appropriations
24 Act and any other funds appropriated by the Legislature to
25 that particular judicial circuit, subject to the provisions of
26 chapter 216. The Department of Elderly Affairs shall make a
27 separate and distinct request for an appropriation for the
28 Statewide Public Guardianship Office. However, this section
29 shall not be construed to preclude the financing of any
30 operations of the office of the public guardian by moneys
31 raised through local effort or through the efforts of the

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1 Statewide Public Guardianship Office.

2 Section 7. Section 744.707, Florida Statutes, is
3 amended to read:

4 744.707 Procedures and rules.--The public guardian,
5 subject to the oversight of the Statewide Public Guardianship
6 Office,is authorized to:

7 (1) Formulate and adopt necessary procedures to assure
8 the efficient conduct of the affairs of the ward and general
9 administration of the office and staff.

10 (2) Contract for services necessary to discharge the
11 duties of the office.

12 (3) Accept the services of volunteer persons or
13 organizations and provide reimbursement for proper and
14 necessary expenses.

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

17 744.708 Reports and standards.--

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

24 (4) Within 6 months of his or her appointment as
25 guardian of a ward, the public guardian shall submit to the
26 clerk of the court for placement in the ward's guardianship
27 file and to the executive director of the Statewide Public
28 Guardianship Office ~~the chief judge of the circuit~~ a report on
29 his or her efforts to locate a family member or friend, other
30 person, bank, or corporation to act as guardian of the ward
31 and a report on the ward's potential to be restored to

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1 capacity.

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

10 (7) The ratio for professional staff to wards shall be
11 1 professional to 40 wards. The Statewide Public Guardianship
12 Office chief judge of the circuit upon application of the
13 public guardian, or upon the court's own motion, may increase
14 or decrease enlarge or recede from the ratio after
15 consultation with the local public guardian and the chief
16 judge of the circuit court for good cause. The basis of the
17 decision to increase or decrease the prescribed ratio shall be
18 reported in the annual report to the Governor, the President
19 of the Senate, the Speaker of the House of Representatives,
20 and the Chief Justice of the Supreme Court.

21 (8) The term "professional," for purposes of this
22 part, shall not include the public guardian nor the executive
23 director of the Statewide Public Guardianship Office. The
24 term "professional" shall be limited to those persons who
25 exercise direct supervision of individual wards under the
26 direction of the public guardian.

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

29 744.1085 Regulation of professional guardians;
30 application; bond required; educational requirements;
31 audits.--

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

16 Section 10. Section 744.3135, Florida Statutes, is
17 amended to read:

18 744.3135 Credit and criminal investigation.--The court
19 may require a nonprofessional ~~prospective~~ guardian and shall
20 require a professional or public guardian, to submit, at his
21 or her own expense, to an investigation of the ~~prospective~~
22 guardian's credit history and an investigatory check by the
23 National Crime Information Center and the Florida Crime
24 Information Center systems by means of fingerprint checks by
25 the Department of Law Enforcement and the Federal Bureau of
26 Investigation. The clerk of the court shall obtain fingerprint
27 cards from the Federal Bureau of Investigation and make them
28 available to guardians. Any guardian who is so required shall
29 have his or her fingerprints taken and forward the proper
30 fingerprint card along with the necessary fee to the Florida
31 Department of Law Enforcement for processing. The professional

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1 guardian shall pay to the clerk of the court a fee of \$5 for
2 handling and processing professional guardian files. The
3 results of the fingerprint checks shall be forwarded to the
4 clerk of court who shall maintain the results in a guardian
5 file and shall make the results available to the court. If
6 credit or criminal investigations are required, the court must
7 consider the results of the investigations in appointing a
8 guardian.~~The court shall waive the credit and criminal~~
9 ~~investigation for a guardian who is the spouse or child of the~~
10 ~~ward.~~

11 Section 11. Subsection 744.709, Florida Statutes, is
12 amended to read:

13 744.709 Surety bond.--Upon taking office, a public
14 guardian shall file a bond with surety as prescribed in s.
15 45.011 to be approved by the clerk. The bond shall be payable
16 to the Governor and the Governor's successors in office, in
17 the penal sum of not less than \$5,000 nor more than \$25,000,
18 conditioned on the faithful performance of all duties by the
19 guardian. The amount of the bond shall be fixed by the
20 majority of the judges within the judicial circuit. In form
21 the bond shall be joint and several. The bond shall be
22 purchased from ~~with funding provided in the funds of~~
23 ~~appropriated to the local judicial circuit for the~~ office of
24 public guardian.

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

27 28.241 Filing charges for trial and appellate
28 proceedings.--

29 (1) The party instituting any civil action, suit, or
30 proceeding in the circuit court shall pay to the clerk of that
31 court a service charge of \$40 in all cases in which there are

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

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

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

18 Section 14. Except as otherwise provided herein, this
 19 act shall take effect October 1, 1999.

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 21

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

23 And the title is amended as follows:

24 Delete everything before the enacting clause

25
 26 and insert:

27 A bill to be entitled
 28 An act relating to guardianship; amending s.
 29 744.369, F.S.; extending the time to review
 30 certain reports; authorizing random field
 31 audits; amending s. 744.474, F.S.; providing

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1 certain relatives the ability to petition the
2 court regarding removal of the guardian;
3 amending s. 744.702, F.S.; providing
4 legislative intent to establish the Statewide
5 Public Guardianship Office; creating s.
6 744.7021, F.S.; providing for the Statewide
7 Public Guardianship Office within the
8 Department of Elderly Affairs; providing for an
9 executive director and oversight
10 responsibilities; providing for the Department
11 of Elderly Affairs to provide certain services
12 and support; 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 and curriculum committee; authorizing
19 fees; authorizing demonstration projects;
20 providing for rules; amending s. 744.703, F.S.;
21 providing for the executive director to
22 establish offices of public guardian and to
23 appoint or contract with public guardians;
24 providing for transfer of oversight
25 responsibility from the chief judge of the
26 circuit to the office; providing for the
27 suspension of public guardians, as specified;
28 amending s. 744.706, F.S.; providing for the
29 preparation of the budget of the Statewide
30 Public Guardianship Office; amending s.
31 744.707, F.S.; revising language with respect

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

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

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1 and

2 WHEREAS, a few judicial circuits have been able to
3 establish public guardianship programs to provide guardianship
4 services to some of the state's vulnerable citizens, and
5 additional circuits would like to have public guardians
6 available, and

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

10 WHEREAS, the Legislature recognizes the need for a
11 statewide office to assist in finding ways to meet the
12 guardianship needs of incapacitated citizens, and

13 WHEREAS, there is a growing problem in Florida
14 involving functionally incapacitated persons who are unable to
15 access needed services, and

16 WHEREAS, the magnitude of this compelling problem
17 demands legislative action to protect our state's most
18 vulnerable citizens, NOW, THEREFORE,

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