

By Senator Forman

32-329A-99

See HB

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; creating s.
8 744.7021, F.S.; providing for the Statewide
9 Public Guardianship Office within the
10 Department of Elderly Affairs; providing for an
11 executive director and oversight
12 responsibilities; providing for the Department
13 of Elderly Affairs to provide certain services
14 and support; 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 and curriculum committee; authorizing
21 fees; authorizing demonstration projects;
22 providing for rules; amending s. 744.703, F.S.;
23 providing for the executive director to
24 establish offices of public guardian and to
25 appoint public guardians; providing for
26 transfer of oversight responsibility from the
27 chief judge of the circuit to the office;
28 providing for the suspension of public
29 guardians, as specified; amending s. 744.706,
30 F.S.; providing for the preparation of the
31 budget of the Statewide Public Guardianship

1 Office; amending s. 744.707, F.S.; revising
2 language with respect to procedures and rules
3 to include reference to the Statewide Public
4 Guardianship Office; amending s. 744.708, F.S.;
5 revising language with respect to reports and
6 standards; providing reference to audits by the
7 Auditor General; amending s. 744.1085, F.S.;
8 revising language with respect to professional
9 guardians to include reference to the Statewide
10 Public Guardianship Office; amending s.
11 744.3135, F.S.; providing a procedure for
12 obtaining fingerprint cards and for maintaining
13 the results of certain investigations; amending
14 s. 28.241, F.S.; providing for funds for public
15 guardians; providing an appropriation;
16 providing for the transfer of resources between
17 agencies; providing an effective date.

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

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

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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:

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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 ~~45~~ 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.

17 Section 3. Section 744.7021, Florida Statutes, is
18 created to read:

19 744.7021 Statewide Public Guardianship Office.--There
20 is hereby created the Statewide Public Guardianship Office
21 within the Department of Elderly Affairs. The Department of
22 Elderly Affairs shall provide administrative support and
23 service to the office to the extent requested by the executive
24 director within the available resources of the department. The
25 Statewide Public Guardianship Office may request the
26 assistance of the Inspector General of the Department of
27 Elderly Affairs in providing auditing services, and the Office
28 of General Counsel of the department may provide assistance in
29 rulemaking and other matters as needed to assist the Statewide
30 Public Guardianship Office. The Statewide Public Guardianship
31 Office shall not be subject to control, supervision, or

1 direction by the Department of Elderly Affairs in the
2 performance of its duties.

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

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

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

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

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

29 (d) No later than October 1, 2000, the office shall
30 submit to the Governor, the President of the Senate, the
31 Speaker of the House of Representatives, and the Chief Justice

1 of the Supreme Court an interim report describing the progress
2 of the office in meeting the goals as described in this
3 section. No later than October 1, 2001, 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 a proposed public guardianship plan
7 including alternatives for meeting the state's guardianship
8 needs. This plan may include recommendations for less than the
9 entire state, may include a phase-in system, and shall include
10 estimates of the cost of each of the alternatives. Each year
11 thereafter, the office shall provide a status report and
12 provide further recommendations to address the need for public
13 guardianship services and related issues.

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

21 (f) The office shall develop a guardianship training
22 program. The training program may be offered to all guardians
23 whether public or private. The office shall establish a
24 curriculum committee to develop the training program specified
25 in this part. The curriculum committee shall include, but not
26 be limited to, probate judges. A fee may be charged to private
27 guardians in order to defray the cost of providing the
28 training. In addition, a fee may be charged to any training
29 provider for up to the actual cost of the review and approval
30 of their curriculum. Any fees collected pursuant to this
31 paragraph shall be deposited in the Department of Elderly

1 Affairs Administrative Trust Fund to be used for the
2 guardianship training program.

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

12 (4) The office may promulgate rules pursuant to the
13 requirements of chapter 120 to carry out the provisions of
14 this section.

15 Section 4. Section 744.703, Florida Statutes, is
16 amended to read:

17 744.703 Office of public guardian; appointment,
18 notification.--

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

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1 A nonprofit corporation under s. 744.309(5) may be appointed
2 public guardian only if:

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

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

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

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

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

25 (5) The public guardian is to be appointed for a term
26 of 4 years, after which her or his appointment must be
27 reviewed by the executive director ~~chief judge of the circuit~~,
28 and may be reappointed for a term of up to 4 years. The
29 executive director may suspend a public guardian with or
30 without the request of the chief judge. If a public guardian
31 is suspended, the executive director shall appoint an acting

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

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

19 Section 5. Section 744.706, Florida Statutes, is
20 amended to read:

21 744.706 Preparation of budget.--Each public guardian,
22 whether funded in whole or in part by money raised through
23 local efforts, grants, or any other source or whether funded
24 in whole or in part by the state, shall prepare a budget for
25 the operation of the office of public guardian to be submitted
26 to the Statewide Public Guardianship Office ~~chief judge of the~~
27 ~~judicial circuit for inclusion in the circuit courts'~~
28 ~~legislative budget request. As appropriate, the Statewide~~
29 Public Guardianship Office will include such budgetary
30 information in the Department of Elderly Affairs' legislative
31 budget request. The office of public guardian shall be

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

11 Section 6. Section 744.707, Florida Statutes, is
12 amended to read:

13 744.707 Procedures and rules.--The public guardian,
14 subject to the oversight of the Statewide Public Guardianship
15 Office, is authorized to:

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

19 (2) Contract for services necessary to discharge the
20 duties of the office.

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

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

26 744.708 Reports and standards.--

27 (3) A public guardian shall file an annual report on
28 the operations of the office of public guardian, in writing,
29 by September 1 for the preceding fiscal year with the
30 Statewide Public Guardianship Office ~~chief judge of the~~
31

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 increase
24 or decrease ~~enlarge or recede from the ratio after~~
25 consultation with the local public guardian and the chief
26 judge of the circuit court for good cause. The basis of the
27 decision to increase or decrease the prescribed ratio shall be
28 reported in the annual report to the Governor, the President
29 of the Senate, the Speaker of the House of Representatives,
30 and the Chief Justice of the Supreme Court.

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

7 Section 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 nonprofessional or public ~~prospective~~ guardian
31 and shall require a professional guardian, to submit, at his

1 or her own expense, to an investigation of the prospective
2 guardian's credit history and an investigatory check by the
3 National Crime Information Center and the Florida Crime
4 Information Center systems by means of fingerprint checks by
5 the Department of Law Enforcement and the Federal Bureau of
6 Investigation. The court shall waive the credit and criminal
7 investigation for a guardian who is the spouse or child of the
8 ward. The clerk of the court shall obtain fingerprint cards
9 from the Federal Bureau of Investigation and make them
10 available to guardians. Any guardian who is so required shall
11 have his or her fingerprints taken and forward the proper
12 fingerprint card along with the necessary fee to the Florida
13 Department of Law Enforcement for processing. The professional
14 guardian shall pay to the clerk of the court a fee of \$5 for
15 handling and processing professional guardian files. The
16 results of the fingerprint checks shall be forwarded to the
17 clerk of court who shall maintain the results in a guardian
18 file and shall make the results available to the court. If
19 credit or criminal investigations are required, the court must
20 consider the results of the investigations in appointing a
21 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
9 Elderly Affairs the sum of \$300,000 in order to carry out the
10 purposes 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 Elderly Affairs.

19 Section 13. This act shall take effect October 1,
20 1999.

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23 HOUSE SUMMARY

24 Creates the Statewide Public Guardianship Office within
25 the Department of Elderly Affairs to have oversight
26 responsibility for all public guardians. See bill for
27 details.

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