

By the Committee on Health, Aging and Long-Term Care; and
Senators Forman and Grant

317-1709A-99

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 or contract with public guardians;
26 providing for transfer of oversight
27 responsibility from the chief judge of the
28 circuit to the office; providing for the
29 suspension or removal of public guardians, as
30 specified; amending s. 744.706, F.S.; providing
31 for the preparation of the budget of the

1 Statewide Public Guardianship Office; amending
2 s. 744.707, F.S.; revising language with
3 respect to procedures and rules to include
4 reference to the Statewide Public Guardianship
5 Office; amending s. 744.708, F.S.; revising
6 language with respect to reports and standards;
7 providing reference to audits by the Auditor
8 General; amending s. 744.709, F.S.; relating to
9 surety bond requirements for public guardians;
10 clarifying the funding source for such bonds;
11 amending s. 744.1085, F.S.; revising language
12 with respect to professional guardians to
13 include reference to the Statewide Public
14 Guardianship Office; amending s. 744.3135,
15 F.S., relating to credit and criminal
16 investigations of guardians; authorizing credit
17 and criminal investigations of nonprofessional
18 or public guardians; deleting exemption of the
19 spouse or child of a ward from credit and
20 criminal investigations when appointed a
21 guardian of the ward; providing a procedure for
22 obtaining fingerprint cards and for maintaining
23 the results of certain investigations; amending
24 s. 28.241, F.S.; providing for funds for public
25 guardians; providing for increase of court
26 service charges and fees for support of public
27 guardians; providing an appropriation;
28 providing for the transfer of resources from
29 the judicial branch to the executive branch of
30 state government; providing an effective date.
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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.--
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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. Section 744.702, Florida Statutes, is
11 amended to read:

12 744.702 Legislative intent.--The Legislature finds
13 that private guardianship is inadequate where there is no
14 willing and responsible family member or friend, other person,
15 bank, or corporation available to serve as guardian for an
16 incapacitated person, and such person does not have adequate
17 income or wealth for the compensation of a private guardian.
18 The Legislature intends through this act to establish the
19 Statewide Public Guardianship Office, and permit the
20 establishment of offices ~~office~~ of public guardian for the
21 purpose of providing guardianship services for incapacitated
22 persons when no private guardian is available. The Legislature
23 further finds that alternatives to guardianship and less
24 intrusive means of assistance should always be explored,
25 including, but not limited to, guardian advocates, before an
26 individual's rights are removed through an adjudication of
27 incapacity. The purpose of this legislation is to provide a
28 public guardian only to those persons whose needs cannot be
29 met through less drastic means of intervention.

30 Section 3. Section 744.7021, Florida Statutes, is
31 created to read:

1 744.7021 Statewide Public Guardianship Office.--There
2 is hereby created the Statewide Public Guardianship Office
3 within the Department of Elderly Affairs. The Department of
4 Elderly Affairs shall provide administrative support and
5 service to the office to the extent requested by the executive
6 director within the available resources of the department. The
7 Statewide Public Guardianship Office may request the
8 assistance of the Inspector General of the Department of
9 Elderly Affairs in providing auditing services, and the Office
10 of General Counsel of the department may provide assistance in
11 rulemaking and other matters as needed to assist the Statewide
12 Public Guardianship Office. The Statewide Public Guardianship
13 Office shall not be subject to control, supervision, or
14 direction by the Department of Elderly Affairs in the
15 performance of its duties.

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

27 (2) The Statewide Public Guardianship Office shall
28 within available resources have oversight responsibilities for
29 all public guardians.

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

1 (b) The office, in consultation with local
2 guardianship offices, shall develop statewide performance
3 measures and standards.

4 (c) The office shall review the various methods of
5 funding guardianship programs, the kinds of services being
6 provided by such programs, and the demographics of the wards.
7 In addition, the office shall review and make recommendations
8 regarding the feasibility of recovering a portion or all of
9 the costs of providing public guardianship services from the
10 assets or income of the wards.

11 (d) No later than October 1, 2000, the office shall
12 submit to the Governor, the President of the Senate, the
13 Speaker of the House of Representatives, and the Chief Justice
14 of the Supreme Court an interim report describing the progress
15 of the office in meeting the goals as described in this
16 section. No later than October 1, 2001, the office shall
17 submit to the Governor, the President of the Senate, the
18 Speaker of the House of Representatives, and the Chief Justice
19 of the Supreme Court a proposed public guardianship plan
20 including alternatives for meeting the state's guardianship
21 needs. This plan may include recommendations for less than the
22 entire state, may include a phase-in system, and shall include
23 estimates of the cost of each of the alternatives. Each year
24 thereafter, the office shall provide a status report and
25 provide further recommendations to address the need for public
26 guardianship services and related issues.

27 (e) Any medical, financial, or mental health records
28 necessary to evaluate the public guardianship system, to
29 assess the need for additional public guardianship offices or
30 services, or to develop the annual report of the Statewide
31 Public Guardianship Office to the Legislature, the Governor,

1 and the Chief Justice of the Supreme Court which are held by
2 an agency or the court and its agencies shall be provided to
3 the Statewide Public Guardianship Office upon request.

4 (f) 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 (g) 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,
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1 or contributions for such purposes shall be deposited in the
2 Department of Elderly Affairs Administrative Trust Fund.

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

6 Section 4. Section 744.703, Florida Statutes, is
7 amended to read:

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

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

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 by the
25 executive director who must consult with the chief judge prior
26 to such 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.

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

10 Section 5. 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
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1 raised through local effort or through the efforts of the
2 Statewide Public Guardianship Office.

3 Section 6. Section 744.707, Florida Statutes, is
4 amended to read:

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

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

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

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

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

18 744.708 Reports and standards.--

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

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

1 and a report on the ward's potential to be restored to
2 capacity.

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

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

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

28 Section 8. Section 744.709, Florida Statutes, is
29 amended to read:

30 744.709 Surety bond.--Upon taking office, a public
31 guardian shall file a bond with surety as prescribed in s.

1 45.011 to be approved by the clerk. The bond shall be payable
2 to the Governor and the Governor's successors in office, in
3 the penal sum of not less than \$5,000 nor more than \$25,000,
4 conditioned on the faithful performance of all duties by the
5 guardian. The amount of the bond shall be fixed by the
6 majority of the judges within the judicial circuit. In form
7 the bond shall be joint and several. The bond shall be
8 purchased from ~~with funding provided in~~ the funds of
9 ~~appropriated to the local judicial circuit for the~~ office of
10 public guardian.

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

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

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

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1 Section 10. Section 744.3135, Florida Statutes, is
2 amended to read:

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

27 Section 11. Subsection (1) of section 28.241, Florida
28 Statutes, is amended to read:

29 28.241 Filing charges for trial and appellate
30 proceedings.--

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1 (1) The party instituting any civil action, suit, or
2 proceeding in the circuit court shall pay to the clerk of that
3 court a service charge of \$40 in all cases in which there are
4 not more than five defendants and an additional service charge
5 of \$2 for each defendant in excess of five. An additional
6 service charge of \$10 shall be paid by the party seeking each
7 severance that is granted. An additional service charge of \$35
8 shall be paid to the clerk for all proceedings of garnishment,
9 attachment, replevin, and distress. An additional service
10 charge of \$8 shall be paid to the clerk for each civil action
11 filed, \$7 of such charge to be remitted by the clerk to the
12 State Treasurer for deposit into the General Revenue Fund
13 unallocated. An additional charge of \$2.50 shall be paid to
14 the clerk for each civil action brought in circuit or county
15 court, to be deposited into the Court Education Trust Fund;
16 the moneys collected shall be forwarded by the clerk to the
17 Supreme Court monthly for deposit in the fund. Service
18 charges in excess of those herein fixed may be imposed by the
19 governing authority of the county by ordinance or by special
20 or local law; and such excess shall be expended as provided by
21 such ordinance or any special or local law, now or hereafter
22 in force, to provide and maintain facilities, including a law
23 library, for the use of the courts of the county wherein the
24 service charges are collected; to provide and maintain
25 equipment; or for a legal aid program in such county. In
26 addition, the county is authorized to impose, by ordinance or
27 by special or local law, a fee of up to \$15~~\$10~~ for each civil
28 action filed, for the establishment, maintenance, or
29 supplementation of a public guardian pursuant to ss.
30 744.701-744.708, inclusive. Postal charges incurred by the
31 clerk of the circuit court in making service by certified or

1 registered mail on defendants or other parties shall be paid
2 by the party at whose instance service is made. That part of
3 the within fixed or allowable service charges which is not by
4 local or special law applied to the special purposes shall
5 constitute the total service charges of the clerk of such
6 court for all services performed by him or her in civil
7 actions, suits, or proceedings. The sum of all service
8 charges and fees permitted under this subsection may not
9 exceed \$200; however, the \$200 cap may be increased to \$210 in
10 order to provide for the establishment, maintenance, or
11 supplementation of a public guardian as authorized under this
12 subsection.

13 Section 12. There is hereby appropriated from the
14 General Revenue Fund in a lump sum to the Department of
15 Elderly Affairs the sum of \$300,000 in order to carry out the
16 purposes of this act.

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

25 Section 14. This act shall take effect October 1,
26 1999.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 702

The Statewide Public Guardianship Office is granted, at its request, access to any medical, financial, or mental health record held by an agency or a court when the Office considers such a record necessary to the evaluation of: (1) the public guardianship system or services rendered, (2) availability of the services, or (3) for purposes of producing the annual report required of the Office. The provision of law relating to the surety bond required for public guardians is amended to avoid ambiguous interpretation of the funding source for such bonds by clarifying that the funds used to purchase the bonds will continue to come from local sources. The exemption from background screening of spouses and children who petition to serve as guardian of a relative is repealed.