

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

317-1161-00

1                                   A bill to be entitled  
2           An act relating to guardianship; amending s.  
3           744.702, F.S.; providing legislative findings  
4           and intent; amending s. 744.7021, F.S.;  
5           providing that the head of the Statewide Public  
6           Guardianship Office is the Statewide Public  
7           Guardian; providing for compensation; deleting  
8           an interim report requirement; revising the  
9           date for the report on a proposed statewide  
10          public guardianship plan to be submitted to the  
11          Governor and Legislature; prescribing the  
12          location of the Statewide Public Guardianship  
13          Office; providing for the appointment by the  
14          Statewide Public Guardian of advisory councils  
15          for development of curriculum and training  
16          programs for public guardians; authorizing a  
17          court to appoint the Statewide Public Guardian  
18          to investigate the conduct of any guardian  
19          appointed by the court; designating the  
20          Statewide Public Guardianship Office as  
21          guardian ombudsman when acting under such  
22          appointment; providing for fees to be paid by  
23          the guardian for such services when ordered by  
24          the court; providing that the Statewide Public  
25          Guardianship Office exercise oversight of  
26          access to the civil justice system by the  
27          elderly; requiring periodic reports and  
28          recommendations; requiring the Statewide Public  
29          Guardianship Office to monitor guardianship law  
30          and process for indigent and nonindigent  
31          residents; requiring periodic reports and

1 recommendations; amending s. 744.703, F.S.;  
2 allowing a public guardian to serve more than  
3 one judicial circuit; requiring a public  
4 guardianship office in each circuit;  
5 prohibiting more than one public guardian from  
6 serving one judicial circuit simultaneously;  
7 requiring a nonattorney public guardian to  
8 employ or contract with an attorney; amending  
9 s. 744.704, F.S.; authorizing a public guardian  
10 to serve as a guardian advocate for a person  
11 adjudicated under ch. 393 or ch. 394, F.S.,  
12 under certain circumstances; amending s.  
13 744.705, F.S.; authorizing public guardians to  
14 recover from the ward's assets the costs of  
15 administering the guardianship; providing a  
16 limitation; providing for deposit of such funds  
17 in the Department of Elderly Affairs  
18 Administrative Trust Fund credited to the  
19 account of the Statewide Public Guardianship  
20 Office; amending s. 744.708, F.S.; conforming  
21 provisions; amending s. 744.709, F.S.;  
22 providing for a waiver of the bond requirement  
23 of a public guardian; providing an effective  
24 date.

25  
26 Be It Enacted by the Legislature of the State of Florida:

27  
28 Section 1. Section 744.702, Florida Statutes, is  
29 amended to read:

30 744.702 Legislative findings and intent.--  
31

1           (1) The Legislature finds that private guardianship is  
2 inadequate where there is no willing and responsible family  
3 member or friend, other person, bank, or corporation available  
4 to serve as guardian for an incapacitated person, and such  
5 person does not have adequate income or wealth for the  
6 compensation of a private guardian. The Legislature finds that  
7 it is against state policy to allow a person to be adjudicated  
8 incapacitated and fail to provide that person with a guardian  
9 to exercise those rights that the court finds should be  
10 delegated to a guardian. The Legislature finds that it is  
11 against state policy to allow a person who is functionally  
12 incapable of exercising the rights enumerated in s.  
13 744.3215(1)(a)-(o) and s. 744.3215(3)(a)-(g) to be without the  
14 protection of guardianship because such person does not have  
15 adequate income or wealth for the compensation of a private  
16 guardian.The Legislature intends through this act to  
17 establish the Statewide Public Guardianship Office, and  
18 require ~~permit~~ the establishment of offices of public guardian  
19 for the purpose of providing guardianship services for  
20 incapacitated persons when no private guardian is available.  
21           (2) The Legislature finds that the number of persons  
22 in the state in need of guardianship and financially unable to  
23 afford the cost of a private guardian constitutes a crisis  
24 that must be addressed by the Executive and Legislative  
25 branches at the earliest possible date. It is, therefore, the  
26 intent of the Legislature that by not later than July 1, 2001,  
27 there be an office of public guardian established in each  
28 judicial circuit, staffed to appropriately manage the demand  
29 for public guardianship services in each judicial circuit.The  
30 Legislature ~~further~~ finds that alternatives to guardianship  
31 and less intrusive means of assistance should always be

1 explored, including, but not limited to, guardian advocates,  
2 before an individual's rights are removed through an  
3 adjudication of incapacity. The purpose of this legislation is  
4 to provide a public guardian only to those persons whose needs  
5 cannot be met through less drastic means of intervention and  
6 to ensure that each person who needs a guardian and who meets  
7 the income and asset limitation, as set forth in s. 744.704,  
8 will have access to the court to have his or her need for a  
9 guardian addressed. The Legislature finds that those persons  
10 requiring public guardianship are the responsibility of the  
11 state and that the state should properly fund public  
12 guardianship services.

13 (3) The Legislature finds that the practice of courts  
14 requiring or appointing professional guardians to provide  
15 public guardianship services without remuneration discourages  
16 the establishment of private services by those who cannot  
17 afford to operate a professional guardianship business due to  
18 the burden of non-fee-producing public guardianship services.  
19 As such, this practice creates a crisis in the availability of  
20 guardianship services for all economic levels of wards in the  
21 state.

22 (4) The Legislature finds that there is an increasing  
23 need for guardianship services not only among the elderly, but  
24 among people of all ages, including those who are  
25 developmentally disabled. It is the intent of the Legislature  
26 that the Statewide Public Guardianship Office be the provider  
27 of support for all public guardianship services through  
28 whatever agency or under whatever program these services are  
29 needed and that the services of the Statewide Public  
30 Guardianship Office are not to be construed as limited to  
31 providing guardian services to only elderly persons.

1           (5) The Legislature finds that the guardianship  
2 profession is largely unregulated and that in the interest of  
3 protecting the public, and in the interest of raising the  
4 standards and accountability of professional guardians, the  
5 law should provide for the regulation of professional  
6 guardians by the Statewide Public Guardianship Office.

7           (6) The Legislature finds that there is no agency  
8 available in the state for courts to turn to as a guardianship  
9 ombudsman. There are cases in which guardians are appointed,  
10 often friends or family members, when the issue is raised,  
11 either upon suggestion of the court or by petition of a third  
12 party, as to the adequacy of the services provided by the  
13 guardian, and in which there is reason to believe that a  
14 disinterested agency should evaluate and report to the court  
15 concerning the propriety and appropriateness of the guardian's  
16 services. The Legislature finds that it is in the best  
17 interest of wards that the Statewide Public Guardianship  
18 Office, as guardian ombudsman, have the authority, when  
19 appointed, to investigate the conduct of guardians and report  
20 its findings to the court that has jurisdiction over the  
21 investigated guardian.

22           Section 2. Section 744.7021, Florida Statutes, is  
23 amended to read:

24           744.7021 Statewide Public Guardianship Office.--There  
25 is ~~hereby~~ created the Statewide Public Guardianship Office  
26 within the Department of Elderly Affairs. The Department of  
27 Elderly Affairs shall provide administrative support and  
28 service to the office to the extent requested by the Statewide  
29 Public Guardian ~~executive director~~ within the available  
30 resources of the department. The Statewide Public Guardianship  
31 Office may request the assistance of the Inspector General of

1 the Department of Elderly Affairs in providing auditing  
2 services, and the Office of General Counsel of the department  
3 may provide assistance in rulemaking and other matters as  
4 needed to assist the Statewide Public Guardianship Office. The  
5 Statewide Public Guardianship Office shall not be subject to  
6 control, supervision, or direction by the Department of  
7 Elderly Affairs in the performance of its duties.

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

22 (2) The Statewide Public Guardianship Office shall,  
23 ~~within available resources,~~ have oversight responsibilities  
24 for all public guardians.

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

27 (b) The office, in consultation with local  
28 guardianship offices, shall develop statewide performance  
29 measures and standards.

30 (c) The office shall review the various methods of  
31 funding guardianship programs, the kinds of services being

1 provided by such programs, and the demographics of the wards.  
2 In addition, the office shall review and make recommendations  
3 regarding the feasibility of recovering a portion or all of  
4 the costs of providing public guardianship services from the  
5 assets or income of the wards.

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

23 (e) The office may provide assistance to local  
24 governments or entities in pursuing grant opportunities. The  
25 office shall review and make recommendations in the annual  
26 report on the availability and efficacy of seeking Medicaid  
27 matching funds. The office shall diligently seek ways to use  
28 existing programs and services to meet the needs of public  
29 wards.

30 (f) The office shall develop a guardianship training  
31 program. The training program may be offered to all guardians

1 whether public or private. The office shall establish a  
2 curriculum committee to develop the training program specified  
3 in this part. The curriculum committee shall include, but not  
4 be limited to, probate judges. A fee may be charged to private  
5 guardians in order to defray the cost of providing the  
6 training. In addition, a fee may be charged to any training  
7 provider for up to the actual cost of the review and approval  
8 of their curriculum. Any fees collected pursuant to this  
9 paragraph shall be deposited in the Department of Elderly  
10 Affairs Administrative Trust Fund to be used for the  
11 guardianship training program. In order to facilitate  
12 development of guardianship training programs and the  
13 establishment of curriculum and in order to have the  
14 assistance of academicians in the area of mental health, the  
15 office shall be housed at the Louis de la Parte Florida Mental  
16 Health Institute on the campus of the University of South  
17 Florida. The institute shall provide adequate office space and  
18 support services as necessary for the office. This does not  
19 preclude the establishment of a second office in the  
20 Department of Elderly Affairs in Tallahassee.

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

30 (4) The Statewide Public Guardian may appoint advisory  
31 councils to facilitate the collection of expertise for the



1 development of curriculum and training programs as well as the  
2 proposed public guardianship plan. Council members shall serve  
3 without compensation other than reimbursement for reasonably  
4 incurred expenses.

5 (5) The Statewide Public Guardian may be appointed by  
6 any court in the state to investigate and report to the court  
7 as to the propriety of the conduct of any guardian appointed  
8 by the court. When appointed by a court to conduct such an  
9 investigation, the Statewide Public Guardian, or his or her  
10 designee, is acting as guardian ombudsman. Upon completion of  
11 the investigation, as ordered by the court, the Statewide  
12 Public Guardian may petition the guardian for fees if any  
13 impropriety was uncovered through the investigation. Any fees  
14 collected must be deposited with the Department of Elderly  
15 Affairs Administrative Trust Fund and credited to the account  
16 of the Statewide Public Guardianship Office and shall be made  
17 available to the Statewide Public Guardian to supplement the  
18 budgets of the public guardians and to offset the costs of the  
19 office in conducting such investigations.

20 (6) The office shall have oversight of access to the  
21 civil justice system by the elderly including, but not limited  
22 to, guardianship and shall periodically report to the  
23 Governor, the Chief Justice of the Supreme Court, the  
24 President of the Senate, and the Speaker of the House of  
25 Representatives as to recommendations for changes in rules,  
26 budget, and funding.

27 (7) The office shall monitor guardianship law and the  
28 guardianship process in the state and shall periodically  
29 report and recommend to the Governor, the Chief Justice of the  
30 Supreme Court, the President of the Senate, and the Speaker of  
31 the House of Representatives needed legislation, rules, and

1 funding to provide for adequate access to, efficiency of, and  
2 availability of the courts and services for both indigent and  
3 nonindigent residents.

4 (8)(4) The office has authority to adopt rules  
5 pursuant to ss. 120.536(1) and 120.54 to carry out the  
6 provisions of this section.

7 Section 3. Section 744.703, Florida Statutes, is  
8 amended to read:

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

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

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

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

1 gerontologist, psychologist, registered nurse, or nurse  
2 practitioner.

3 (2) A public guardian appointed under this section may  
4 serve more than one circuit; however, there must be an open  
5 and adequately staffed office providing public guardianship  
6 services within each judicial circuit. A judicial circuit may  
7 not be simultaneously served by more than one public guardian.  
8 A public guardian who is not an attorney must have a staff  
9 attorney or contract with an attorney to perform the legal  
10 functions of the wards.

11 (3)~~(2)~~ The Statewide Public Guardian ~~executive~~  
12 ~~director~~ shall appoint or contract with a public guardian from  
13 the list of candidates described in subsection (1). A public  
14 guardian must meet the qualifications for a guardian as  
15 prescribed in s. 744.309(1)(a). Upon appointment of a ~~the~~  
16 public guardian, the Statewide Public Guardian ~~executive~~  
17 ~~director~~ shall notify the chief judge of the judicial circuit  
18 and the Chief Justice of the Supreme Court of Florida, in  
19 writing, of the appointment.

20 (4)~~(3)~~ If the needs of the county or circuit do not  
21 require a full-time public guardian, a part-time public  
22 guardian may be appointed at reduced compensation.

23 (5)~~(4)~~ A public guardian, whether full-time or  
24 part-time, may not hold any position that would create a  
25 conflict of interest.

26 (6)~~(5)~~ The public guardian is to be appointed for a  
27 term of 4 years, after which her or his appointment must be  
28 reviewed by the Statewide Public Guardian ~~executive director~~,  
29 and may be reappointed for a term of up to 4 years. The  
30 Statewide Public Guardian ~~executive director~~ may suspend a  
31 public guardian with or without the request of the chief

1 judge. If a public guardian is suspended, the Statewide Public  
2 Guardian ~~executive director~~ shall appoint an acting public  
3 guardian as soon as possible to serve until such time as a  
4 permanent replacement is selected. A public guardian may be  
5 removed from office during the term of office only by the  
6 Statewide Public Guardian, ~~executive director~~ who must consult  
7 with the chief judge prior to said removal. A recommendation  
8 of removal made by the chief judge must be considered by the  
9 Statewide Public Guardian ~~executive director~~.

10 ~~(7)(6)~~ Public guardians who have been previously  
11 appointed by a chief judge prior to the effective date of this  
12 act pursuant to this section may continue in their positions  
13 until the expiration of their term pursuant to their  
14 agreement. However, oversight of all public guardians shall  
15 transfer to the Statewide Public Guardianship Office upon the  
16 effective date of this act. The ~~executive director of the~~  
17 Statewide Public Guardian Guardianship Office shall be  
18 responsible for all future appointments of public guardians  
19 pursuant to this act.

20 Section 4. Subsection (1) of section 744.704, Florida  
21 Statutes, is amended and subsection (10) is added to that  
22 section to read:

23 744.704 Powers and duties.--

24 (1) A public guardian may serve as a guardian of a  
25 person adjudicated incapacitated under this chapter, as a  
26 guardian advocate for a person adjudicated under chapter 393,  
27 or as a guardian advocate for a person adjudicated under  
28 chapter 394:

29 (a) If there is no family member or friend, other  
30 person, bank, or corporation willing and qualified to serve as  
31 guardian; and

1 (b) If the assets of the ward do not exceed the asset  
2 level for Medicaid eligibility, plus \$2,000, exclusive of  
3 homestead and exempt property as defined in s. 4, Art. X of  
4 the State Constitution, and the ward's income, from all  
5 sources, is less than \$6,000~~\$4,000~~ per year. Income from  
6 public welfare programs, supplemental security income,  
7 optional state supplement, a disability pension, or a social  
8 security pension shall be excluded in such computation.  
9 However, a ward whose total income, counting excludable  
10 income, exceeds \$30,000 a year may not be served.

11 (10) A public guardian may not be compelled to serve  
12 as a guardian advocate for a person receiving services under  
13 chapter 393 or under chapter 394 if the public guardian finds  
14 that he or she does not have sufficient staff to do so.

15 Section 5. Section 744.705, Florida Statutes, is  
16 amended to read:

17 744.705 Costs of public guardian.--

18 (1) ~~All~~ Costs of administration, including filing  
19 fees, shall be paid from the budget of the office of public  
20 guardian. No costs of administration, including filing fees,  
21 shall be recovered from the assets or the income of the ward  
22 except as provided in this section.

23 (2) In any proceeding for appointment of a public  
24 guardian, or in any proceeding involving the estate of a ward  
25 for whom a public guardian has been appointed guardian, the  
26 court may waive any court costs or filing fees.

27 (3) At the time of filing and simultaneously with the  
28 filing of a ward's annual accounting, report, and plan, or at  
29 such time as the ward's assets exceed the Medicaid asset  
30 limitation, a public guardian may file a petition to recover  
31 all or some of the costs attributable to the administration of

1 the guardianship. The petition must be itemized and show the  
2 method of charges for direct case management and charges for  
3 purely administrative functions. The petition must be verified  
4 and must affirmatively show that all competing needs of the  
5 ward have been met and can reasonably be expected to be met in  
6 the coming reporting year. At no time may an award of recovery  
7 of costs for the year exceed the average annual cost per award  
8 of providing guardianship services to all persons served by  
9 the public guardian. Any award collected for cost recovery  
10 must be deposited in the Department of Elderly Affairs  
11 Administrative Trust Fund and credited to the account of the  
12 Statewide Public Guardianship Office and must be made  
13 available to the Statewide Public Guardian to supplement the  
14 budgets of the public guardians serving the judicial circuits  
15 of the state.

16 Section 6. Subsections (4) and (8) of section 744.708,  
17 Florida Statutes, are amended to read:

18 744.708 Reports and standards.--

19 (4) Within 6 months of his or her appointment as  
20 guardian of a ward, the public guardian shall submit to the  
21 clerk of the court for placement in the ward's guardianship  
22 file and to the ~~executive director of the~~ Statewide Public  
23 Guardian Guardianship Office a report on his or her efforts to  
24 locate a family member or friend, other person, bank, or  
25 corporation to act as guardian of the ward and a report on the  
26 ward's potential to be restored to capacity.

27 (8) The term "professional," for purposes of this  
28 part, does ~~shall~~ not include the public guardian nor the  
29 ~~executive director of the~~ Statewide Public Guardian  
30 Guardianship Office. The term "professional" is ~~shall be~~

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1 limited to those persons who exercise direct supervision of  
2 individual wards under the direction of the public guardian.

3 Section 7. Section 744.709, Florida Statutes, is  
4 amended to read:

5 744.709 Surety bond.--Upon taking office, a public  
6 guardian shall file a bond with surety as prescribed in s.  
7 45.011 to be approved by the clerk, unless bond is waived by  
8 the chief judge of the judicial circuit. The bond shall be  
9 payable to the Governor and the Governor's successors in  
10 office, in the penal sum of not less than \$5,000 nor more than  
11 \$25,000, conditioned on the faithful performance of all duties  
12 by the guardian. The amount of the bond shall be fixed by the  
13 majority of the judges within the judicial circuit. In form  
14 the bond shall be joint and several. The bond shall be  
15 purchased from the funds of the local office of public  
16 guardian.

17 Section 8. This act shall take effect July 1, 2000.  
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2 COMMITTEE SUBSTITUTE FOR  
3 SB 1048

4 The revised bill:

- 5 - modifies the language that provides for the regulation  
6 of professional guardians by the Statewide Public  
Guardianship Office;
- 7 - clarifies a legislative finding that it is in the best  
8 interest of wards that the Statewide Public Guardianship  
Office, as guardian ombudsman, have authority to  
9 investigate and report its findings with respect to the  
conduct of a guardian to a court that has jurisdiction  
10 over the investigated guardian;
- 11 - revises language providing for the Statewide Public  
Guardian to be compensated at the same level as public  
12 defenders;
- 13 - designates the Statewide Public Guardian, or his or her  
14 designee, as guardian ombudsman when appointed by a  
court to investigate the conduct of a guardian under the  
court's jurisdiction;
- 15 - clarifies that the Statewide Public Guardian may  
16 petition the investigated guardian, if any impropriety  
was uncovered through the investigation, for  
17 reimbursement of costs resulting from investigation of  
the guardian and providing for crediting of any  
18 recovered fees to the Statewide Public Guardianship  
Office to supplement the public guardian budget and  
19 offset investigation costs;
- 20 - provides for the Statewide Public Guardianship Office to  
21 exercise oversight of access to the civil justice system  
by the elderly, monitor the state guardianship law and  
22 guardianship process, and requires that office to  
periodically report and make recommendations about  
23 certain specified administrative matters and needed  
legislation;
- 24 - clarifies that a judicial circuit may not be served by  
more than one public guardian simultaneously;
- 25 - excuses a public guardian from serving as a guardian  
26 advocate for a person receiving state-funded services  
for developmental disabilities when the public guardian  
is insufficiently staffed;
- 27 - deletes authority for a public guardian to petition a  
28 court to recover costs associated with guardianship  
services provided to a ward whose assets can be expected  
29 to exceed the Medicaid asset limitation; and
- 30 - deletes language the protected nursing homes, group  
31 homes, adult living facilities, or hospitals from  
certain legal procedures for giving opinions about  
whether patients or residents are unable to give



1 informed consent for medical treatment or are unable to  
2 conduct their affairs.  
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