

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

308-1719-00

1                                   A bill to be entitled

2           An act relating to guardianship; amending s.

3           744.3145, F.S.; transferring responsibility for

4           the education and training curriculum of

5           guardians from the court to the Statewide

6           Public Guardian; amending s. 744.3215, F.S.;

7           limiting specific authority for a guardian to

8           consent to the withdrawal or withholding of

9           life-prolonging procedures; amending s.

10          744.702, F.S.; providing legislative findings

11          and intent; amending s. 744.7021, F.S.;

12          providing that the head of the Statewide Public

13          Guardianship Office is the Statewide Public

14          Guardian; providing for compensation; deleting

15          an interim report requirement; revising the

16          date for the report on a proposed statewide

17          public guardianship plan to be submitted to the

18          Governor and Legislature; prescribing the

19          location of the Statewide Public Guardianship

20          Office; authorizing the Statewide Public

21          Guardian to convene a workgroup for the

22          development and recommendation of a plan for

23          professional guardian regulation; providing for

24          the appointment by the Statewide Public

25          Guardian of an advisory council for development

26          of curriculum and training programs for public

27          guardians; authorizing a court to appoint the

28          Statewide Public Guardian to investigate the

29          conduct of any guardian appointed by the court;

30          providing for the award of fees; requiring the

31          Statewide Public Guardianship Office to monitor

1 guardianship law and process for indigent and  
2 nonindigent residents; requiring periodic  
3 reports and recommendations; amending s.  
4 744.703, F.S.; allowing a public guardian to  
5 serve more than one judicial circuit; requiring  
6 a public guardianship office in each circuit;  
7 prohibiting more than one public guardian from  
8 serving one judicial circuit simultaneously;  
9 requiring a nonattorney public guardian to be  
10 represented by counsel; amending s. 744.704,  
11 F.S.; authorizing a public guardian to serve as  
12 a guardian advocate for a person adjudicated  
13 under ch. 393 or ch. 394, F.S., under certain  
14 circumstances; amending s. 744.705, F.S.;  
15 authorizing public guardians to recover from  
16 the ward's assets the guardian and attorney's  
17 fees in accordance with s. 744.108, F.S.;  
18 amending s. 744.708, F.S.; conforming  
19 provisions; amending s. 744.709, F.S.;  
20 providing for a waiver of the bond requirement  
21 of a public guardian; providing an effective  
22 date.

23

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

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26 Section 1. Subsection (3) of section 744.3145, Florida  
27 Statutes, is amended to read:

28 744.3145 Guardian education requirements.--

29 (3) Each person appointed by the court to be a  
30 guardian must complete the 8 hours of instruction and  
31 education within 1 year after his or her appointment as

1 guardian. The instruction and education must be completed  
2 through a course approved by the Statewide Public Guardian  
3 ~~chief judge of the circuit court~~ and taught by an a  
4 ~~court-approved~~ organization approved by the Statewide Public  
5 Guardian. Court-approved organizations may include, but are  
6 not limited to, community or junior colleges, guardianship  
7 organizations, and the local bar association or The Florida  
8 Bar.

9 Section 2. Subsection (4) of section 744.3215, Florida  
10 Statutes, is amended to read:

11 744.3215 Rights of persons determined incapacitated.--

12 (4) Without first obtaining specific authority from  
13 the court, as described in s. 744.3725, a guardian may not:

14 (a) Commit the ward to a facility, institution, or  
15 licensed service provider without formal placement proceeding,  
16 pursuant to chapter 393, chapter 394, or chapter 397.

17 (b) Consent on behalf of the ward to the performance  
18 on the ward of any experimental biomedical or behavioral  
19 procedure or to the participation by the ward in any  
20 biomedical or behavioral experiment. The court may permit  
21 such performance or participation only if:

22 1. It is of direct benefit to, and is intended to  
23 preserve the life of or prevent serious impairment to the  
24 mental or physical health of the ward; or

25 2. It is intended to assist the ward to develop or  
26 regain his or her abilities.

27 (c) Initiate a petition for dissolution of marriage  
28 for the ward.

29 (d) Consent on behalf of the ward to termination of  
30 the ward's parental rights.

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1           (e) Consent on behalf of the ward to the performance  
2 of a sterilization or abortion procedure on the ward.

3           (f) Consent to or otherwise direct on behalf of the  
4 ward to withdraw or withhold life-prolonging procedures. Any  
5 authority exercised under this paragraph must comply with  
6 chapter 765.

7           Section 3. Section 744.702, Florida Statutes, is  
8 amended to read:

9           744.702 Legislative findings and intent.--

10          (1) The Legislature finds that private guardianship is  
11 inadequate where there is no willing and responsible family  
12 member or friend, other person, bank, or corporation available  
13 to serve as guardian for an incapacitated person, and such  
14 person does not have adequate income or wealth for the  
15 compensation of a private guardian. The Legislature finds that  
16 it is against state policy to allow a person to be adjudicated  
17 incapacitated and fail to provide that person with a guardian  
18 to exercise those rights that the court finds should be  
19 delegated to a guardian. The Legislature finds that it is  
20 against state policy to allow a person who is functionally  
21 incapable of exercising the rights enumerated in s.  
22 744.3215(1)(a)-(o) and s. 744.3215(3)(a)-(g) to be without the  
23 protection of guardianship regardless of the origin of the  
24 person's incapacity or the incapacitated person's economic  
25 circumstances.The Legislature intends through this act to  
26 establish the Statewide Public Guardianship Office, and  
27 require ~~permit~~ the establishment of offices of public guardian  
28 for the purpose of providing guardianship services for  
29 incapacitated persons when no private guardian is available.

30          (2) The Legislature finds that the number of persons  
31 in the state in need of guardianship and financially unable to

1 afford the cost of a private guardian constitutes a crisis  
2 that must be addressed by the Executive and Legislative  
3 branches at the earliest possible date. It is, therefore, the  
4 intent of the Legislature that by July 1, 2001, there be an  
5 office of public guardian established in each judicial  
6 circuit, staffed to appropriately manage the demand for public  
7 guardianship services in each judicial circuit.The  
8 Legislature ~~further~~ finds that alternatives to guardianship  
9 and less intrusive means of assistance should always be  
10 explored, including, but not limited to, guardian advocates,  
11 before an individual's rights are removed through an  
12 adjudication of incapacity. The purpose of this legislation is  
13 to provide a public guardian only to those persons whose needs  
14 cannot be met through less drastic means of intervention and  
15 to ensure that each person who needs a guardian and who meets  
16 the income and asset limitation, as set forth in s. 744.704,  
17 will have access to the court to have his or her need for a  
18 guardian addressed. The Legislature finds that those persons  
19 requiring public guardianship are the responsibility of the  
20 state and that the state should properly fund public  
21 guardianship services.

22 (3) The Legislature finds that in many instances the  
23 appointment of professional guardians to provide pro-bono  
24 public guardianship services is the only access indigent  
25 incapacitated persons have to guardianship services. While the  
26 Legislature does not want to discourage the provision of  
27 pro-bono guardianship services to incapacitated indigent  
28 persons by professional guardians, in some instances the  
29 pro-bono case load of professional guardians is as much as 50  
30 percent, overburdening such professional guardians to the

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1 extent that their economic competitiveness is degraded,  
2 resulting in the undersupply of guardianship services.

3 (4) The Legislature finds guardianship regulation is  
4 currently the responsibility of the courts and that there has  
5 been such rapid growth in the need for guardianship services  
6 that the court ought to have the administrative burden of  
7 guardianship regulation relieved. Accordingly, the Statewide  
8 Public Guardian is authorized to convene a workgroup  
9 consisting of representatives of the court system, attorneys,  
10 guardians, and other interested persons for the purpose of  
11 developing and recommending a plan for professional  
12 guardianship regulation to the Legislature.

13 Section 4. Section 744.7021, Florida Statutes, is  
14 amended to read:

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

30 (1) The head of the Statewide Public Guardianship  
31 Office is the Statewide Public Guardian ~~executive director~~,

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

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

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

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

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

28 (d) ~~No later than October 1, 2000, the office shall~~  
29 ~~submit to the Governor, the President of the Senate, the~~  
30 ~~Speaker of the House of Representatives, and the Chief Justice~~  
31 ~~of the Supreme Court an interim report describing the progress~~

1 ~~of the office in meeting the goals as described in this~~  
2 ~~section.~~ No later than January 1, 2001 ~~October 1, 2001~~, the  
3 office shall submit to the Governor, the President of the  
4 Senate, the Speaker of the House of Representatives, and the  
5 Chief Justice of the Supreme Court a proposed public  
6 guardianship plan including alternatives for meeting the  
7 state's guardianship needs. This plan shall ~~may~~ include  
8 recommendations for ~~less than~~ the entire state, ~~may include a~~  
9 ~~phase-in system,~~ and shall include estimates of the cost of  
10 each of the alternatives. Each year thereafter, or as the need  
11 exists, the office shall provide a status report and provide  
12 further recommendations related to ~~address the need for~~ public  
13 guardianship services, guardianship law, guardianship  
14 procedure, and related issues.

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

22 (f) The office shall develop a guardianship training  
23 program. The training program may be offered to all guardians  
24 whether public or private. The office shall establish a  
25 curriculum committee that shall use the recommended minimum  
26 content for the professional guardianship course developed by  
27 the Florida Guardianship Education Coalition to develop the  
28 training program specified in this part. The curriculum  
29 committee shall include, but not be limited to, probate  
30 judges. A fee may be charged to private guardians in order to  
31 defray the cost of providing the training. In addition, a fee



1 may be charged to any training provider for up to the actual  
2 cost of the review and approval of their curriculum. Any fees  
3 collected pursuant to this paragraph shall be deposited in the  
4 Department of Elderly Affairs Administrative Trust Fund to be  
5 used for the guardianship training program. In order to  
6 facilitate development of guardianship training programs and  
7 the establishment of curriculum and in order to have the  
8 assistance of academicians in the area of mental health, the  
9 office shall be housed at the Louis de la Parte Florida Mental  
10 Health Institute on the campus of the University of South  
11 Florida. The institute shall provide adequate office space and  
12 support services as necessary for the office. The Statewide  
13 Public Guardian may establish satellite offices in other areas  
14 of the state as necessary.

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

24 (4) The Statewide Public Guardian may establish an  
25 advisory council for the purpose of facilitating the  
26 collection of expertise and assisting in the development of  
27 curriculum and training programs for guardians and the  
28 proposed public guardianship plan. If an advisory council is  
29 created, the advisory council may not consist of more than 12  
30 members and shall be established as follows:

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1           (a) The council shall include at least one member each  
2 representing circuit court judges in probate and guardianship  
3 law, the Elder Law Section of The Florida Bar, the Florida  
4 Association of Public Guardians, licensed physicians  
5 specializing in geriatric medicine, the office of the Attorney  
6 General as liaison on elder affairs or elder law, the State  
7 Office of Long-Term Care Ombudsman, academicians or  
8 researchers in the field of geriatrics who are on the faculty  
9 of a university, and elder or senior citizens or consumers  
10 from the elder or senior citizen community.

11           (b) Council members shall be appointed by the  
12 Statewide Public Guardian, except that the elder or senior  
13 citizen or consumer from the elder or senior citizen community  
14 shall be appointed by the Governor.

15           (c) Council members shall be appointed for 4-year  
16 staggered terms, except for any initial lesser term required  
17 to achieve staggering. Members may be reappointed for an  
18 additional 4-year term.

19           (d) Council members shall serve without remuneration  
20 but may be reimbursed for per diem and travel expenses as  
21 provided in s. 112.061 to the extent that resources are  
22 available.

23           (5) In instances in which the court determines that a  
24 court monitor, as provided for in s. 744.107, needs to be a  
25 disinterested agency from outside the circuit, the court may  
26 appoint the Statewide Public Guardian or the designee of the  
27 Statewide Public Guardian, except that in no instance may the  
28 Statewide Public Guardian designate the local public guardian  
29 within the circuit. The Statewide Public Guardian may be  
30 awarded a reasonable fee as determined by the court to be paid  
31 from the property of the ward.

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

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

6           744.703 Office of public guardian; appointment,  
7 notification.--

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

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

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

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1           (2) A public guardian appointed under this section may  
2 serve more than one circuit; however, there must be an open  
3 and adequately staffed office providing public guardianship  
4 services within each judicial circuit served. A judicial  
5 circuit may not be simultaneously served by more than one  
6 public guardian. A public guardian who is not an attorney must  
7 be represented by council in all guardianship proceedings.

8           (3)~~(2)~~ The Statewide Public Guardian ~~executive~~  
9 ~~director~~ shall appoint or contract with a public guardian from  
10 the list of candidates described in subsection (1). A public  
11 guardian must meet the qualifications for a guardian as  
12 prescribed in s. 744.309(1)(a). Upon appointment of a ~~the~~  
13 public guardian, the Statewide Public Guardian ~~executive~~  
14 ~~director~~ shall notify the chief judge of the judicial circuit  
15 and the Chief Justice of the Supreme Court of Florida, in  
16 writing, of the appointment.

17           (4)~~(3)~~ If the needs of the county or circuit do not  
18 require a full-time public guardian, a part-time public  
19 guardian may be appointed at reduced compensation.

20           (5)~~(4)~~ A public guardian, whether full-time or  
21 part-time, may not hold any position that would create a  
22 conflict of interest.

23           (6)~~(5)~~ The public guardian is to be appointed for a  
24 term of 4 years, after which her or his appointment must be  
25 reviewed by the Statewide Public Guardian ~~executive director~~,  
26 and may be reappointed for a term of up to 4 years. The  
27 Statewide Public Guardian ~~executive director~~ may suspend a  
28 public guardian with or without the request of the chief  
29 judge. If a public guardian is suspended, the Statewide Public  
30 Guardian ~~executive director~~ shall appoint an acting public  
31 guardian as soon as possible to serve until such time as a

1 permanent replacement is selected. A public guardian may be  
2 removed from office during the term of office ~~only~~ by the  
3 Statewide Public Guardian, ~~executive director~~ who must consult  
4 with the chief judge prior to said removal in accordance with  
5 ss. 744.474 and 744.477. A recommendation of removal made by  
6 the chief judge must be considered by the Statewide Public  
7 Guardian ~~executive director~~.

8 (7)~~(6)~~ Public guardians who have been previously  
9 appointed by a chief judge prior to the effective date of this  
10 act pursuant to this section may continue in their positions  
11 until the expiration of their term pursuant to their  
12 agreement. However, oversight of all public guardians shall  
13 transfer to the Statewide Public Guardianship Office upon the  
14 effective date of this act. The ~~executive director of the~~  
15 Statewide Public Guardian Guardianship Office shall be  
16 responsible for all future appointments of public guardians  
17 pursuant to this act.

18 Section 6. Subsection (1) of section 744.704, Florida  
19 Statutes, is amended and subsection (10) is added to that  
20 section to read:

21 744.704 Powers and duties.--

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

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

30 (b) If the assets of the ward do not exceed the asset  
31 level for Medicaid eligibility, plus \$2,000, exclusive of

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

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

13 Section 7. Subsection (1) of section 744.705, Florida  
14 Statutes, is amended to read:

15 744.705 Costs of public guardian.--

16 (1) ~~All~~ Costs of administration, including filing  
17 fees, shall be paid from the budget of the office of public  
18 guardian. No costs of administration, including filing fees,  
19 shall be recovered from the assets or the income of the ward,  
20 except that the court may award fees in accordance with s.  
21 744.108.

22 Section 8. Subsections (4) and (8) of section 744.708,  
23 Florida Statutes, are amended to read:

24 744.708 Reports and standards.--

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 Guardian Guardianship Office a report on his or her efforts to  
30 locate a family member or friend, other person, bank, or  
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1 corporation to act as guardian of the ward and a report on the  
2 ward's potential to be restored to capacity.

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

9 Section 9. Section 744.709, Florida Statutes, is  
10 amended to read:

11 744.709 Surety bond.--Upon taking office, a public  
12 guardian shall file a bond with surety as prescribed in s.  
13 45.011 to be approved by the clerk, unless bond is waived by  
14 the chief judge of the judicial circuit. The bond shall be  
15 payable to the Governor and the Governor's successors in  
16 office, in the penal sum of not less than \$5,000 nor more than  
17 \$25,000, conditioned on the faithful performance of all duties  
18 by the guardian. The amount of the bond shall be fixed by the  
19 majority of the judges within the judicial circuit. In form  
20 the bond shall be joint and several. The bond shall be  
21 purchased from the funds of the local office of public  
22 guardian.

23 Section 10. This act shall take effect July 1, 2000.  
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1                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2                   COMMITTEE SUBSTITUTE FOR  
3                   CS/SB 1048  
4 Transfers responsibility for the education and training  
5 curriculum of private guardians from the court to the  
6 Statewide Public Guardianship Office. (s. 744.3145, F.S.)  
7 Establishes an advisory council to assist the Statewide Public  
8 Guardian in developing education and training curriculum and  
9 provides membership criteria and appointment process.  
10 Requires a guardian to have specific authority to consent to  
11 the withdrawal or withholding of life-prolonging procedures.  
12 (s. 744.3145, F.S.)  
13 Revises and adds to the legislative findings consistent with  
14 the expanded responsibilities of the Statewide Public  
15 Guardianship Office.  
16 Authorizes the Statewide Public Guardianship Office to  
17 establish satellite offices.  
18 Clarifies the provision governing court appointment of the  
19 Statewide Public Guardian to investigate a guardianship under  
20 specified circumstances and provides for recovery of fees.  
21 Removes language directing the Statewide Public Guardianship  
22 Office to have oversight over and to report on the civil  
23 justice system.  
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