

By Senator Bennett

21-1031-03

1 A bill to be entitled
2 An act relating to the Statewide Public
3 Guardianship Office; amending s. 744.1083,
4 F.S.; revising provisions relating to
5 registration of professional guardians;
6 providing for an application fee; amending s.
7 744.1085, F.S.; allowing the Statewide Public
8 Guardianship Office to charge a fee for
9 instructional courses; requiring approval of
10 courses; allowing a fee for review and approval
11 of courses; amending s. 744.3135, F.S.;
12 revising provisions relating to credit and
13 criminal investigation; amending s. 744.3145,
14 F.S.; requiring approval of specified courses;
15 allowing a fee; requiring persons appointed to
16 act as guardians to register and to renew that
17 registration; allowing the Statewide Public
18 Guardianship Office to contract with the clerk
19 of the court to perform specified services;
20 amending s. 744.534, F.S.; providing for
21 escheat of interest and income attributable to
22 unclaimed funds; amending s. 744.7021, F.S.;
23 revising the qualifications and duties of the
24 executive director of the office; deleting
25 obsolete reporting requirements; revising the
26 duties of the Statewide Public Guardianship
27 Office; providing for the transfer and use of
28 funds; amending s. 744.703, F.S.; prescribing
29 educational requirements for public guardians;
30 amending s. 744.706, F.S.; revising provisions
31 regarding the preparation of the budget;

1 amending s. 744.7082, F.S.; redefining the term
2 "direct-support organization"; providing an
3 effective date.
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5 Be It Enacted by the Legislature of the State of Florida:
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7 Section 1. Section 744.1083, Florida Statutes, is
8 amended to read:

9 744.1083 Professional guardian registration.--

10 (1)(a) A person may act as ~~Effective January 1, 2003,~~
11 a professional guardian only if the person possesses a valid
12 registration from ~~must register with~~ the Statewide Public
13 Guardianship Office ~~established in part IX of this chapter.~~

14 The Statewide Public Guardianship Office may contract with the
15 clerk of the court in each county to perform the
16 administrative functions associated with registering
17 professional guardians.

18 (b) A business organization may act as a professional
19 guardian only if the organization possesses a valid
20 registration from the Statewide Public Guardianship Office. No
21 business organization may be validly registered unless a
22 principal or employee of the organization, who agrees to serve
23 as the organization's qualifying agent for registration
24 purposes, possesses a valid registration from the Statewide
25 Public Guardianship Office. If an organization's qualifying
26 agent ceases to be a principal or employee of the
27 organization, the organization shall have 60 days to
28 substitute a new qualifying agent who possesses a valid
29 registration from the Statewide Public Guardianship Office and
30 to notify the Statewide Public Guardianship Office of this
31 substitution.

1 (2) Registration as a professional guardian under this
2 section shall be valid for a period of 2 years after issuance,
3 with registration renewable for additional 2-year periods.
4 ~~Annual registration shall be made on forms furnished by the~~
5 ~~Statewide Public Guardianship Office and accompanied by the~~
6 ~~applicable registration fee as determined by rule. Such fee~~
7 ~~shall not exceed \$25.~~

8 (3) Each application for registration shall be made on
9 a form or forms adopted for this purpose by the Statewide
10 Public Guardianship Office and shall be accompanied by the
11 applicable registration fee as determined by rule. Such fee
12 may not exceed \$50. Each application for registration must
13 include the following information, as well as any other
14 information reasonably required by the Statewide Public
15 Guardianship Office in order to fulfill its statutory
16 purposes:

17 (a) If the professional guardian is a natural person,
18 the name, address, date of birth, and employer identification
19 or social security number of the professional guardian.

20 (b) If the professional guardian is a partnership or
21 association, the name, address, and date of birth of its
22 qualifying agent and of every member, and the employer
23 identification number of the partnership or association.

24 (c) If the professional guardian is a corporation, the
25 name, address, and employer identification number of the
26 corporation; the name, address, and date of birth of its
27 qualifying agent and of each of its directors and officers;
28 the name of its resident agent; and the name, address, and
29 date of birth of each person having at least a 10-percent
30 interest in the corporation.

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1 (d) The name, address, date of birth, and employer
2 identification number, if applicable, of each employee of a
3 professional guardian who has a fiduciary responsibility to a
4 ward ~~person providing guardian-delegated financial or personal~~
5 guardianship services for wards.

6 (e) Documentation that the bonding and educational
7 requirements of s. 744.1085 have been met, including the name
8 of the educational course or courses completed, the date each
9 course was completed, and the providers of those courses, and
10 documentation that background screening has been conducted
11 pursuant to s. 744.3135. Upon a request from an applicant for
12 registration or from the Statewide Public Guardianship Office,
13 the clerk of the court must verify that the criminal history
14 and credit screenings results are in the guardian file. The
15 verification may be given on forms furnished by the Statewide
16 Public Guardianship Office.

17 (4)(a) At least 30 days before the expiration of a
18 professional guardian's registration, the professional
19 guardian must file an application for renewal with the
20 Statewise Public Guardianship Office, on a form or forms
21 adopted for this purpose, which shall contain information
22 similar to the information required for initial registration.
23 The application must be accompanied by the applicable renewal
24 fee, as determined by rule, which may not exceed \$50. The
25 application for renewal must contain documentation that the
26 bonding and continuing education requirements of s. 744.1085
27 have been met, including the name of the educational course or
28 courses completed, the date each course was completed, and the
29 providers of those courses.

30 (b) No renewal shall be issued unless a new background
31 screening has been conducted on the professional guardian

1 pursuant to s. 744.3135. The application for renewal must
2 contain documentation that a new background screening has been
3 conducted.

4 (c) If the Statewide Public Guardianship Office does
5 not receive, at least 30 days before the expiration of a
6 professional guardian's registration, a complete application
7 for renewal with all required documentation and fees, the
8 renewal shall be denied. Any subsequent request for
9 registration from that professional guardian must be submitted
10 as an application for new registration. In addition to the
11 requirements for new registration, such an application must be
12 accompanied by an additional delinquency fee, adopted by rule,
13 which may not exceed \$50, and by documentation that the
14 guardian has completed, within the last 2 years, at least 16
15 hours of continuing education meeting the requirements of s.
16 744.1085. This documentation must state the name of the
17 educational course or courses completed, the date each course
18 was completed, and the providers of those courses.

19 (5)(4) The Statewide Public Guardianship Office may
20 adopt rules necessary to administer this section.

21 (6)(5) A trust company, a state banking corporation or
22 state savings association authorized and qualified to exercise
23 fiduciary powers in this state, or a national banking
24 association or federal savings and loan association authorized
25 and qualified to exercise fiduciary powers in this state, may,
26 but shall not be required to, register as a professional
27 guardian under this section. If a trust company, state banking
28 corporation, state savings association, national banking
29 association, or federal savings and loan association described
30 in this subsection elects to register as a professional
31 guardian under this subsection, the requirements of subsection

1 (3) shall not apply and the registration shall include only
2 the name, address, and employer identification number of the
3 registrant, the name and address of its registered agent, if
4 any, and the documentation described in paragraph (3)(e).

5 (7) A court may not award fees for services provided
6 by a professional guardian unless the professional guardian
7 possesses a valid registration from the Statewide Public
8 Guardianship Office. The court may remove any professional
9 guardian that fails to register within 30 days after
10 appointment. The Statewide Public Guardianship Office, the
11 Attorney General, or the state attorney for the circuit may
12 petition for removal of any professional guardian that has
13 failed to register; or the court may act on its own motion to
14 remove a professional guardian that has failed to register.

15 Section 2. Subsection (3) of section 744.1085, Florida
16 Statutes, is amended, and subsection (4) is added to that
17 section, to read:

18 744.1085 Regulation of professional guardians;
19 application; bond required; educational requirements.--

20 (3) Each professional guardian ~~defined in s.~~
21 ~~744.102(15), on October 1, 1997,~~ must complete ~~receive~~ a
22 minimum of 40 hours of instruction and training before serving
23 as ~~by October 1, 1998, or within 1 year after becoming a~~
24 ~~professional guardian, whichever occurs later.~~ Each
25 professional guardian must complete ~~receive~~ a minimum of 16
26 hours of continuing education every 2 ~~calendar~~ years after the
27 issuance of registration ~~year in which the initial 40-hour~~
28 ~~educational requirement is met.~~ All such ~~The~~ instruction and
29 education must be completed through a course or courses
30 approved or offered by the Statewide Public Guardianship
31 Office, for which a fee may be charged. The expenses incurred

1 to satisfy the educational requirements prescribed in this
2 section may not be paid with the assets of any ward. This
3 subsection does not apply to any attorney who is licensed to
4 practice law in this state.

5 (4) The Statewide Public Guardianship Office must
6 approve a course before it may be used to satisfy the
7 educational requirements of this section. All amendments to
8 approved courses must be submitted to the Statewide Public
9 Guardianship Office for prior approval, and the office may
10 require a course provider to amend or update its course as a
11 condition of continued approval. Approval of a course may be
12 revoked if a provider fails to amend or update its course in a
13 timely manner upon the request of the Statewide Public
14 Guardianship Office. The office may charge a reasonable fee
15 for the review and approval of a course.

16 Section 3. Section 744.3135, Florida Statutes, is
17 amended to read:

18 744.3135 Credit and criminal investigation.--The court
19 may require a nonprofessional guardian and shall require a
20 professional or public guardian, and all employees of a
21 professional guardian who have a fiduciary responsibility to a
22 ward, to submit, ~~at their own expense,~~ to an investigation of
23 the guardian's credit history and to undergo level 2
24 background screening as required under s. 435.04. The expense
25 of the investigation may not be paid from the assets of a
26 ward.The clerk of the court shall obtain fingerprint cards
27 from the Federal Bureau of Investigation and make them
28 available to guardians. Any guardian who is so required shall
29 have his or her fingerprints taken and forward the proper
30 fingerprint card along with the necessary fee to the Florida
31 Department of Law Enforcement for processing. The professional

1 guardian shall pay to the clerk of the court a fee of \$5 for
2 handling and processing professional guardian files. The
3 results of the fingerprint checks shall be forwarded to the
4 clerk of court who shall maintain the results in a guardian
5 file and shall make the results available to the court and to
6 the Statewide Public Guardianship Office. If credit or
7 criminal investigations are required, the court must consider
8 the results of the investigations in appointing a guardian.
9 Guardians and all employees of a professional guardian who
10 have a fiduciary responsibility to a ward, so appointed, must
11 resubmit, at their own expense, to an investigation of credit
12 history, and undergo level 1 background screening as required
13 under s. 435.03, every 2 years after the date of their initial
14 registration with the Statewide Public Guardianship Office
15 appointment. A public guardian must resubmit to an
16 investigation of credit history, and undergo level 1
17 background screening as required under s. 435.03, every 2
18 years after the date of his or her appointment as public ~~The~~
19 ~~court must consider the results of these investigations in~~
20 ~~reappointing~~ a guardian. This section shall not apply to a
21 professional guardian, or to the employees of a professional
22 guardian, that is a trust company, a state banking corporation
23 or state savings association authorized and qualified to
24 exercise fiduciary powers in this state, or a national banking
25 association or federal savings and loan association authorized
26 and qualified to exercise fiduciary powers in this state.

27 Section 4. Effective October 1, 2003, subsection (3)
28 of section 744.3145, Florida Statutes, is amended, and
29 subsection (7) is added to that section, to read:

30 744.3145 Guardian education requirements.--
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1 (3) Each person appointed by the court to be a
2 guardian on or after October 1, 2003, must complete the 8
3 hours of instruction and education by 30 days ~~within 1 year~~
4 after his or her appointment as guardian. The instruction and
5 education must be completed through a course approved or
6 offered by the Statewide Public Guardianship Office ~~chief~~
7 ~~judge of the circuit court and taught by a court-approved~~
8 ~~organization.~~ The Statewide Public Guardianship Office must
9 approve a course before it may be used to satisfy the
10 educational requirements of this section. All amendments to
11 approved courses must be submitted to the Statewide Public
12 Guardianship Office for prior approval, and the office may
13 require a course provider to amend or update its course as a
14 condition of continued approval. Approval of a course may be
15 revoked if a provider fails to amend or update its course in a
16 timely manner upon the request of the Statewide Public
17 Guardianship Office. The office may charge a reasonable fee,
18 adopted by rule, for the review and approval of a course.
19 ~~Court-approved organizations may include, but are not limited~~
20 ~~to, community or junior colleges, guardianship organizations,~~
21 ~~and the local bar association or The Florida Bar.~~

22 (7) Each person appointed by the court to be a
23 guardian must register with the Statewide Public Guardianship
24 Office and must renew this registration every 2 years. The
25 Statewide Public Guardianship Office may contract with the
26 clerk of the court in each county to perform the
27 administrative functions associated with registering
28 guardians. Registration for all guardians, other than
29 professional guardians, shall be without charge or fee, and
30 each application for registration shall contain information
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1 comparable to that required for registration pursuant to s.
2 744.1083.

3 Section 5. Paragraph (c) of subsection (2) of section
4 744.534, Florida Statutes, is amended to read:

5 744.534 Disposition of unclaimed funds held by
6 guardian.--

7 (2)

8 (c) Within 5 years from the date of deposit with the
9 State Treasurer, on written petition to the court that
10 directed the deposit of the funds and informal notice to the
11 Department of Legal Affairs, and after proof of his or her
12 right to them, any person entitled to the funds, before or
13 after payment to the State Treasurer and deposit as provided
14 for in paragraph (a), may obtain a court order directing the
15 payment of the funds to him or her. All funds deposited with
16 the State Treasurer and not claimed within 5 years from the
17 date of deposit, along with all interest and income
18 attributable thereto, shall escheat to the state to be
19 deposited in the Department of Elderly Affairs Administrative
20 Trust Fund to be used solely for the benefit of public
21 guardianship as determined by the Statewide Public
22 Guardianship Office established in part IX of this chapter.

23 Section 6. Section 744.7021, Florida Statutes, is
24 amended to read:

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

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

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

22 (2) The Statewide Public Guardianship Office shall,
23 within available resources, be responsible for oversight and
24 supervision of ~~have oversight responsibilities for~~ all public
25 guardians and for administration of the registration and
26 educational requirements established under ss. 744.1083,
27 744.1085, and 744.3145.

28 (a) The office shall review the current public
29 guardian programs in Florida and other states.
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1 (b) The office, in consultation with local public
2 guardianship offices, shall develop statewide performance
3 measures and standards.

4 (c) The office shall review the various methods of
5 funding public guardianship programs, the kinds of services
6 being provided by such programs, and the demographics of the
7 wards. In addition, the office shall review and make
8 recommendations regarding the feasibility of recovering a
9 portion or all of the costs of providing public guardianship
10 services from the 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 of each year, 2001, the
17 office shall submit to the Governor, the President of the
18 Senate, the Speaker of the House of Representatives, and the
19 Chief Justice of the Supreme Court ~~a proposed public~~
20 ~~guardianship plan including alternatives for meeting the~~
21 ~~state's guardianship needs. This plan may include~~
22 ~~recommendations for less than the entire state, may include a~~
23 ~~phase-in system, and shall include estimates of the cost of~~
24 ~~each of the alternatives. Each year thereafter, the office~~
25 ~~shall provide~~ a status report and provide further
26 recommendations to address the need for public guardianship
27 services and related issues.

28 (e) The office may provide assistance to local
29 governments or entities in pursuing grant opportunities. The
30 office shall review and make recommendations in the annual
31 report on the availability and efficacy of seeking Medicaid

1 matching funds. The office shall diligently seek ways to use
2 existing programs and services to meet the needs of public
3 wards.

4 (f) The office shall administer and develop rules
5 governing the content of all a guardianship educational
6 courses required under ss. 744.1085 and 744.3145, the review
7 and approval of these educational courses, requirements for
8 continued approval, and the revocation of course approval.
9 ~~training program. The training program may be offered to all~~
10 ~~guardians whether public or private. The office shall~~
11 ~~establish a curriculum committee to develop the training~~
12 ~~program specified in this part. The curriculum committee shall~~
13 ~~include, but not be limited to, probate judges. A fee may be~~
14 ~~charged to private guardians in order to defray the cost of~~
15 ~~providing the training. In addition, a fee may be charged to~~
16 ~~any training provider for up to the actual cost of the review~~
17 ~~and approval of their curriculum. Any fees collected pursuant~~
18 ~~to this paragraph shall be deposited in the Department of~~
19 ~~Elderly Affairs Administrative Trust Fund to be used for the~~
20 ~~guardianship training program.~~

21 (g) The office shall administer the registration of
22 guardians pursuant to ss. 744.1083 and 744.3145 and shall
23 develop rules governing the application and registration
24 process, the granting or refusal of registrations, the
25 reporting of continuing education courses, the renewal of
26 registrations, and the suspension and revocation of
27 registrations.

28 (h) The office shall administer and develop rules for
29 the disciplining of guardians consistent with subsection (5).

30 (i) In furtherance of its statutory purposes, the
31 office may conduct programs and activities; initiate

1 developmental projects; raise funds; make expenditures;
2 request and receive grants, gifts, and bequests of moneys; and
3 receive, hold, invest, administer, and dispose of, in its own
4 name, securities, funds, objects of value, or other property,
5 real or personal, including patents, copyrights, and
6 trademarks and any related licenses and other rights or
7 interests therein. Any gifts, grants, or contributions for
8 such purposes shall be directed to the direct support
9 organization created under s. 744.7082 to be used pursuant to
10 the terms of the organization's agreement with the Statewide
11 Public Guardianship Office.

12 (3) The office may conduct or contract for
13 demonstration projects, within funds appropriated or through
14 gifts, grants, or contributions for such purposes, to
15 determine the feasibility or desirability of new concepts of
16 organization, administration, financing, or service delivery
17 designed to preserve the civil and constitutional rights of
18 persons of marginal or diminished capacity. Any gifts, grants,
19 or contributions for such purposes shall be directed to the
20 direct support organization created under s. 744.7082 to be
21 used pursuant to the terms of the organization's contract with
22 the Statewide Public Guardianship Office ~~deposited in the~~
23 ~~Department of Elderly Affairs Administrative Trust Fund.~~

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

27 (5) All fees received by the Statewide Public
28 Guardianship Office pursuant to this chapter shall be
29 transferred to the Department of Elderly Affairs
30 Administrative Trust Fund to be used solely for the
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1 advancement of responsible public and private guardianship by
2 the Statewide Public Guardianship Office.

3 Section 7. Subsections (2) and (5) of section 744.703,
4 Florida Statutes, are amended to read:

5 744.703 Office of public guardian; appointment,
6 notification.--

7 (2) The executive director shall appoint or contract
8 with a public guardian from the list of candidates described
9 in subsection (1). A public guardian must meet the
10 qualifications for a guardian as prescribed in s.

11 744.309(1)(a) and must satisfy the same educational
12 requirements as a professional guardian under s. 744.1085.

13 Upon appointment of the public guardian, the 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 (5) The public guardian is to be appointed for a term
18 of 4 years, after which her or his appointment must be
19 reviewed by the executive director, and may be reappointed for
20 additional 4-year terms ~~a term of up to 4 years~~. The executive
21 director may suspend a public guardian with or without the
22 request of the chief judge. If a public guardian is suspended,
23 the executive director shall appoint an acting public guardian
24 as soon as possible to serve until such time as a permanent
25 replacement is selected. A public guardian may be removed from
26 office during the term of office only by the executive
27 director who must consult with the chief judge prior to said
28 removal. A recommendation of removal made by the chief judge
29 must be considered by the executive director.

30 Section 8. Section 744.706, Florida Statutes, is
31 amended to read:

1 744.706 Preparation of budget.--Each public guardian,
2 whether funded in whole or in part by money raised through
3 local efforts, grants, or any other source or whether funded
4 in whole or in part by the state, shall prepare a budget for
5 the operation of the office of public guardian to be submitted
6 to the Statewide Public Guardianship Office. As appropriate,
7 the Statewide Public Guardianship Office will include such
8 budgetary information in the Department of Elderly Affairs'
9 legislative budget request. The office of public guardian
10 shall be operated within the limitations of the General
11 Appropriations Act and any other funds appropriated by the
12 Legislature to that particular judicial circuit, subject to
13 the provisions of chapter 216. The Department of Elderly
14 Affairs shall make a separate and distinct request for an
15 appropriation for the Statewide Public Guardianship Office.
16 However, this section shall not be construed to preclude the
17 financing of any operations of the office of the public
18 guardian by moneys raised through local effort or through the
19 efforts of the Statewide Public Guardianship Office or its
20 direct-support organization.

21 Section 9. Subsection (1) of section 744.7082, Florida
22 Statutes, is amended to read:

23 744.7082 Direct-support organization.--

24 (1) As used in this section, the term "direct-support
25 organization" means a not-for-profit corporation incorporated
26 under chapter 617 and organized and operated to conduct
27 programs and activities; initiate developmental projects;
28 raise funds; request and receive grants, gifts, and bequests
29 of moneys; acquire, receive, hold, invest, ~~and~~ administer, and
30 dispose of, in its own name, securities, funds, objects of
31 value, or other property, real or personal, including patents,

1 copyrights, and trademarks and any related licenses and other
2 rights or interests therein; and make expenditures to or for
3 the direct or indirect benefit of the Statewide Public
4 Guardianship Office or individual offices of public guardians.

5 Section 10. This act shall take effect upon becoming a
6 law.

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9 SENATE SUMMARY

10 Revises varied provisions relating to public
11 guardianship. Revises powers and duties of the Statewide
12 Public Guardianship Office. Authorizes the imposition of
13 fees for registration, for instructional courses, and for
14 the review and approval of courses. Requires persons
15 appointed as public guardians to register and renew the
16 registration biennially. Authorizes the office to
17 contract with court clerks for certain services. (See
18 bill for details.)
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