

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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1 Representative Fiorentino offered the following:

2

3 **Amendment (with title amendment)**

4 Remove everything after the enacting clause and insert:

5 Section 1. Section 744.7101, Florida Statutes, is created
6 to read:

7 744.7101 Popular name.--Sections 744.7101-744.715 may be
8 referred to by the popular name the "Joining Forces for Public
9 Guardianship Act."

10 Section 2. Section 744.711, Florida Statutes, is created
11 to read:

12 744.711 Legislative findings and intent.--The Legislature
13 finds that public guardianship programs are necessary to ensure
14 that the rights and best interests of Florida's vulnerable
15 indigent and incapacitated residents are protected. In addition,
16 the Legislature finds that the best solution to this problem is

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17 to encourage each county to establish, through the Statewide
18 Public Guardianship Office, a local office of public guardian
19 for the purpose of providing guardianship services to
20 incapacitated persons when a private guardian is not available.
21 Therefore, the Legislature intends to establish the Joining
22 Forces for Public Guardianship grant program for the purpose of
23 assisting counties to establish and fund community-supported
24 public guardianship programs.

25 Section 3. Section 744.712, Florida Statutes, is created
26 to read:

27 744.712 Joining Forces for Public Guardianship grant
28 program; purpose.--The Joining Forces for Public Guardianship
29 grant program shall be established and administered by the
30 Statewide Public Guardianship Office within the Department of
31 Elderly Affairs. The purpose of the program is to provide
32 startup funding to encourage communities to develop and
33 administer locally funded and supported public guardianship
34 programs to address the needs of indigent and incapacitated
35 residents.

36 (1) The Statewide Public Guardianship Office may
37 distribute the grant funds as follows:

38 (a) As initial startup funding to encourage counties that
39 have no office of public guardian to establish an office, or as
40 initial startup funding to open an additional office of public
41 guardian within a county whose public guardianship needs require
42 more than one office of public guardian.

43 (b) As support funding to operational offices of public
44 guardian that demonstrate a necessity for funds to meet the

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45 public guardianship needs of a particular geographic area in the
46 state that the office serves.

47 (c) To assist counties that have an operating public
48 guardianship program but that propose to expand the geographic
49 area or population of persons they serve, or to develop and
50 administer innovative programs to increase access to public
51 guardianship in this state.

52
53 Notwithstanding this subsection, the executive director of the
54 office may award emergency grants if he or she determines that
55 the award is in the best interests of public guardianship in
56 this state. Before making an emergency grant, the executive
57 director must obtain the written approval of the Secretary of
58 Elderly Affairs. Subsections (2), (3), and (4) do not apply to
59 the distribution of emergency grant funds.

60 (2) One or more grants may be awarded within a county.
61 However, a county may not receive an award that equals, or
62 multiple awards that cumulatively equal, more than 20 percent of
63 the total amount of grant funds appropriated during any fiscal
64 year.

65 (3) If an applicant is eligible and meets the requirements
66 to receive grant funds more than once, the Statewide Public
67 Guardianship Office shall award funds to prior awardees in the
68 following manner:

69 (a) In the second year that grant funds are awarded, the
70 cumulative sum of the award provided to one or more applicants
71 within the same county may not exceed 75 percent of the total
72 amount of grant funds awarded within that county in year one.

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73 (b) In the third year that grant funds are awarded, the
74 cumulative sum of the award provided to one or more applicants
75 within the same county may not exceed 60 percent of the total
76 amount of grant funds awarded within that county in year one.

77 (c) In the fourth year that grant funds are awarded, the
78 cumulative sum of the award provided to one or more applicants
79 within the same county may not exceed 45 percent of the total
80 amount of grant funds awarded within that county in year one.

81 (d) In the fifth year that grant funds are awarded, the
82 cumulative sum of the award provided to one or more applicants
83 within the same county may not exceed 30 percent of the total
84 amount of grant funds awarded within that county in year one.

85 (e) In the sixth year that grant funds are awarded, the
86 cumulative sum of the award provided to one or more applicants
87 within the same county may not exceed 15 percent of the total
88 amount of grant funds awarded within that county in year one.

89
90 The Statewide Public Guardianship Office may not award grant
91 funds to any applicant within a county that has received grant
92 funds for more than 6 years.

93 (4) Grant funds shall be used only to provide direct
94 services to indigent wards, except that up to 10 percent of the
95 grant funds may be retained by the awardee for administrative
96 expenses.

97 (5) Implementation of the program is subject to a specific
98 appropriation by the Legislature in the General Appropriations
99 Act.

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100 Section 4. Section 744.713, Florida Statutes, is created
101 to read:

102 744.713 Program administration; duties of the Statewide
103 Public Guardianship Office.--The Statewide Public Guardianship
104 Office shall administer the grant program. The office shall:

105 (1) Publicize the availability of grant funds to entities
106 that may be eligible for the funds.

107 (2) Establish an application process for submitting a
108 grant proposal.

109 (3) Request, receive, and review proposals from applicants
110 seeking grant funds.

111 (4) Determine the amount of grant funds each awardee may
112 receive and award grant funds to applicants.

113 (5) Develop a monitoring process to evaluate grant
114 awardees, which may include an annual monitoring visit to each
115 awardee's local office.

116 (6) Ensure that persons or organizations awarded grant
117 funds meet and adhere to the requirements of this act.

118 (7) Adopt rules as necessary to administer the grant
119 program and this act.

120 Section 5. Section 744.714, Florida Statutes, is created
121 to read:

122 744.714 Eligibility.--

123 (1) Any person or organization that has not been awarded a
124 grant must meet all of the following conditions to be eligible
125 to receive a grant:

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126 (a) The applicant must meet or directly employ staff that
127 meet the minimum qualifications for a public guardian under this
128 chapter.

129 (b) The applicant must have already been appointed by, or
130 is pending appointment by, the Statewide Public Guardianship
131 Office to become an office of public guardian in this state.

132 (2) Any person or organization that has been awarded a
133 grant must meet all of the following conditions to be eligible
134 to receive another grant:

135 (a) The applicant must meet or directly employ staff that
136 meet the minimum qualifications for a public guardian under this
137 chapter.

138 (b) The applicant must have been appointed by, or is
139 pending reappointment by, the Statewide Public Guardianship
140 Office to be an office of public guardian in this state.

141 (c) The applicant must have achieved a satisfactory
142 monitoring score during the applicant's most recent evaluation.

143 Section 6. Section 744.715, Florida Statutes, is created
144 to read:

145 744.715 Grant application requirements; review criteria;
146 awards process.--Grant applications must be submitted to the
147 Statewide Public Guardianship Office for review and approval.

148 (1) A grant application must contain:

149 (a) The specific amount of funds being requested.

150 (b) The proposed annual budget for the office of public
151 guardian for which the applicant is applying on behalf of,
152 including all sources of funding, and a detailed report of
153 proposed expenditures, including administrative costs.

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154 (c) The total number of wards the applicant intends to
155 serve during the grant period.

156 (d) Evidence that the applicant has:

157 1. Attempted to procure funds and has exhausted all
158 possible other sources of funding; or

159 2. Procured funds from local sources, but the total amount
160 of the funds collected or pledged is not sufficient to meet the
161 need for public guardianship in the geographic area that the
162 applicant intends to serve.

163 (e) An agreement or confirmation from a local funding
164 source, such as a county, municipality, or any other public or
165 private organization, that the local funding source will
166 contribute matching funds to the public guardianship program
167 totaling not less than \$1 for every \$1 of grant funds awarded.
168 For purposes of this section, an applicant may provide evidence
169 of agreements or confirmations from multiple local funding
170 sources showing that the local funding sources will pool their
171 contributed matching funds to the public guardianship program
172 for a combined total of not less than \$1 for every \$1 of grant
173 funds awarded. In-kind contributions, such as materials,
174 commodities, office space, or other types of facilities,
175 personnel services, or other items as determined by rule shall
176 be considered by the office and may be counted as part or all of
177 the local matching funds.

178 (f) A detailed plan describing how the office of public
179 guardian for which the applicant is applying on behalf of will
180 be funded in future years.

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181 (g) Any other information determined by rule as necessary
182 to assist in evaluating grant applicants.

183 (2) If the Statewide Public Guardianship Office determines
184 that an applicant meets the requirements for an award of grant
185 funds, the office may award the applicant any amount of grant
186 funds the executive director deems appropriate, if the amount
187 awarded meets the requirements of this act. The office may adopt
188 a rule allocating the maximum allowable amount of grant funds
189 that may be expended on any ward.

190 (3) A grant awardee must submit a new grant application
191 for each year of additional funding.

192 (4)(a) In the first year of the Joining Forces for Public
193 Guardianship grant program's existence, the Statewide Public
194 Guardianship Office shall give priority in awarding grant funds
195 to those entities that:

196 1. Are operating as appointed offices of public guardians
197 in this state.

198 2. Meet all of the requirements for being awarded a grant
199 under this act.

200 3. Demonstrate a need for grant funds during the current
201 fiscal year due to a loss of local funding formerly raised
202 through court filing fees.

203 (b) In each fiscal year after the first year that grant
204 funds are distributed, the Statewide Public Guardianship Office
205 may give priority to awarding grant funds to those entities
206 that:

207 1. Meet all of the requirements of this act for being
208 awarded grant funds.

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209 2. Submit with their application an agreement or
210 confirmation from a local funding source, such as a county,
211 municipality, or any other public or private organization, that
212 the local funding source will contribute matching funds totaling
213 an amount equal to or exceeding \$2 for every \$1 of grant funds
214 awarded by the office. An entity may submit with its application
215 agreements or confirmations from multiple local funding sources
216 showing that the local funding sources will pool their
217 contributed matching funds to the public guardianship program
218 for a combined total of not less than \$2 for every \$1 of grant
219 funds awarded. In-kind contributions allowable under this
220 section shall be evaluated by the Statewide Public Guardianship
221 Office and may be counted as part or all of the local matching
222 funds.

223 Section 7. Subsection (25) of section 393.063, Florida
224 Statutes, is amended to read:

225 393.063 Definitions.--For the purposes of this chapter:

226 (25) "Guardian advocate" means a person appointed by a
227 written order of the circuit court to represent a person with
228 developmental disabilities under ~~in any proceedings brought~~
229 ~~pursuant to s. 393.12, and excludes the use of the same term as~~
230 ~~applied to a guardian advocate for mentally ill persons in~~
231 ~~chapter 394.~~

232 Section 8. Paragraph (h) of subsection (2) of section
233 393.12, Florida Statutes, is amended to read:

234 393.12 Capacity; appointment of guardian advocate.--

235 (2) APPOINTMENT OF A GUARDIAN ADVOCATE.--

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236 (h) Powers and duties of guardian advocate.--A guardian
237 advocate for a person with developmental disabilities shall be a
238 ~~any~~ person or corporation qualified to act as guardian, with the
239 same powers, duties, and responsibilities required of a guardian
240 under ~~pursuant to~~ chapter 744 or those defined by court order
241 under ~~pursuant to~~ this section. However, a guardian advocate may
242 not be required to file an annual accounting under s. 744.3678
243 if the court determines that the person with developmental
244 disabilities receives income only from social security benefits
245 and the guardian advocate is the person's representative payee
246 for the benefits.

247 Section 9. Subsections (10) through (19) of section
248 744.102, Florida Statutes, are renumbered as subsections (11)
249 through (20), respectively, and a new subsection (10) is added
250 to said section to read:

251 744.102 Definitions.--As used in this chapter, the term:

252 (10) "Guardian advocate" means a person appointed by a
253 written order of the court to represent a person with
254 developmental disabilities under s. 393.12. As used in this
255 chapter, the term does not apply to a guardian advocate
256 appointed for a person determined incompetent to consent to
257 treatment under s. 394.4598.

258 Section 10. Section 744.1083, Florida Statutes, is amended
259 to read:

260 744.1083 Professional guardian registration.--

261 (1) A professional guardian must register with the
262 Statewide Public Guardianship Office established in part IX of
263 this chapter.

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264 (2) Annual registration shall be made on forms furnished
265 by the Statewide Public Guardianship Office and accompanied by
266 the applicable registration fee as determined by rule. ~~The Such~~
267 fee may ~~shall~~ not exceed \$100.

268 (3) Registration must include the following:

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

272 (b) If the professional guardian is a partnership or
273 association, the name, address, and date of birth of every
274 member, and the employer identification number of the
275 partnership or association.

276 (c) If the professional guardian is a corporation, the
277 name, address, and employer identification number of the
278 corporation; the name, address, and date of birth of each of its
279 directors and officers; the name of its resident agent; and the
280 name, address, and date of birth of each person having at least
281 a 10-percent interest in the corporation.

282 (d) The name, address, date of birth, and employer
283 identification number, if applicable, of each person providing
284 guardian-delegated financial or personal guardianship services
285 for wards.

286 (e) Documentation that the bonding and educational
287 requirements of s. 744.1085 have been met, ~~and that background~~
288 ~~screening has been conducted pursuant to s. 744.3135. Compliance~~
289 ~~with this section shall constitute compliance with the~~
290 ~~attestation requirement of s. 435.04(5).~~

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291 (f) Sufficient information to distinguish a guardian
292 providing guardianship services as a public guardian,
293 individually, through partnership, corporation, or any other
294 business organization.

295 (4) Prior to registering a professional guardian, the
296 Statewide Public Guardianship Office must receive and review
297 copies of the credit and criminal investigations conducted under
298 s. 744.3135. The credit and criminal investigations must have
299 been completed within the previous 2 years.

300 (5) The executive director of the office may deny
301 registration to a professional guardian if the executive
302 director determines that the guardian's proposed registration,
303 including the guardian's credit or criminal investigations,
304 indicates that registering the professional guardian would
305 violate any provision of this chapter. If the executive director
306 denies registration to a professional guardian, the Statewide
307 Public Guardianship Office must send written notification of the
308 denial to the chief judge of each judicial circuit in which the
309 guardian was serving on the day of the office's decision to deny
310 registration.

311 (6)(4) The Department of Elderly Affairs may adopt rules
312 necessary to administer this section.

313 (7)(5) A trust company, a state banking corporation or
314 state savings association authorized and qualified to exercise
315 fiduciary powers in this state, or a national banking
316 association or federal savings and loan association authorized
317 and qualified to exercise fiduciary powers in this state, may,
318 but is shall not be required to, register as a professional

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319 guardian under this section. If a trust company, state banking
320 corporation, state savings association, national banking
321 association, or federal savings and loan association described
322 in this subsection elects to register as a professional guardian
323 under this subsection, the requirements of subsections
324 ~~subsection~~ (3) and (4) do shall not apply and the registration
325 shall include only the name, address, and employer
326 identification number of the registrant, the name and address of
327 its registered agent, if any, and the documentation described in
328 paragraph (3)(e).

329 (8)(6) The Department of Elderly Affairs may contract with
330 the Florida Guardianship Foundation or other not-for-profit
331 entity to register professional guardians.

332 (9)(7) The department or its contractor shall ensure that
333 the clerks of the court and the chief judge of each judicial
334 circuit receive information about each registered professional
335 guardian.

336 (10)(8) A state college or university or an independent
337 college or university ~~as described in pursuant to s.~~
338 1009.98(3)(a), may, but is shall not ~~be~~ required to, register as
339 a professional guardian under this section. If a state college
340 or university or independent college or university elects to
341 register as a professional guardian under this subsection, the
342 requirements of subsection (3) do shall not apply and the
343 registration must shall include only the name, address, and
344 employer identification number of the registrant.

345 Section 11. Section 744.3085, Florida Statutes, is created
346 to read:

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347 744.3085 Guardian advocates.--A circuit court may appoint
348 a guardian advocate, without an adjudication of incapacity, for
349 a person with developmental disabilities if the person lacks the
350 capacity to do some, but not all, of the tasks necessary to care
351 for his or her person, property, or estate, or if the person has
352 voluntarily petitioned for the appointment of a guardian
353 advocate. Unless otherwise specified, the proceeding shall be
354 governed by the Florida Probate Rules. In accordance with the
355 legislative intent of this chapter, courts are encouraged to
356 consider appointing a guardian advocate, when appropriate, as a
357 less restrictive form of guardianship.

358 Section 12. Section 744.3135, Florida Statutes, as amended
359 by section 114 of chapter 2003-402, Laws of Florida, is amended
360 to read:

361 744.3135 Credit and criminal investigation.--The court may
362 require a nonprofessional guardian and shall require a
363 professional or public guardian, and all employees of a
364 professional guardian who have a fiduciary responsibility to a
365 ward, to submit, at their own expense, to an investigation of
366 the guardian's credit history and to undergo level 2 background
367 screening as required under s. 435.04. The clerk of the court
368 shall obtain fingerprint cards from the Federal Bureau of
369 Investigation and make them available to guardians. Any guardian
370 who is so required shall have his or her fingerprints taken and
371 forward the proper fingerprint card along with the necessary fee
372 to the Florida Department of Law Enforcement for processing. The
373 professional guardian shall pay to the clerk of the court a fee
374 of up to \$7.50 for handling and processing professional guardian

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375 files. The results of the fingerprint checks shall be forwarded
376 to the clerk of court who shall maintain the results in a
377 guardian file and shall make the results available to the court.
378 If credit or criminal investigations are required, the court
379 must consider the results of the investigations before ~~in~~
380 appointing a guardian. Professional guardians and all employees
381 of a professional guardian who have a fiduciary responsibility
382 to a ward, so appointed, must resubmit, at their own expense, to
383 an investigation of credit history, and undergo level 1
384 background screening as required under s. 435.03, at least every
385 2 years after the date of their appointment. At any time, the
386 court may require guardians or their employees to submit to an
387 investigation of credit history and undergo level 1 background
388 screening as required under s. 435.03. The court must consider
389 the results of these investigations in reappointing a guardian.

390 (1) Upon receiving the results of a credit or criminal
391 investigation of any public or professional guardian, the clerk
392 of the court shall forward copies of the results to the
393 Statewide Public Guardianship Office in order that the results
394 may be maintained in the guardian's registration file.

395 (2) This section does ~~shall~~ not apply to a professional
396 guardian, or to the employees of a professional guardian, which
397 ~~that~~ is a trust company, a state banking corporation or state
398 savings association authorized and qualified to exercise
399 fiduciary powers in this state, or a national banking
400 association or federal savings and loan association authorized
401 and qualified to exercise fiduciary powers in this state.

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402 Section 13. Subsection (5) is added to section 744.3678,
403 Florida Statutes, as amended by section 116 of chapter 2003-402,
404 Laws of Florida, to read:

405 744.3678 Annual accounting.--

406 (5) This section does not apply if the court determines
407 that the ward receives income only from social security benefits
408 and the guardian is the ward's representative payee for the
409 benefits.

410 Section 14. Effective upon this act becoming a law,
411 section 744.7082, Florida Statutes, is amended to read:

412 (Substantial rewording of section. See
413 s. 744.7082, F.S., for present text.)

414 744.7082 Direct-support organization; definition; use of
415 property; board of directors; audit; dissolution.--

416 (1) DEFINITION.--As used in this section, the term
417 "direct-support organization" means an organization whose sole
418 purpose is to support the Statewide Public Guardianship Office
419 and is:

420 (a) A not-for-profit corporation incorporated under
421 chapter 617 and approved by the Department of State.

422 (b) Organized and operated to conduct programs and
423 activities; to raise funds; to request and receive grants,
424 gifts, and bequests of moneys; to acquire, receive, hold,
425 invest, and administer, in its own name, securities, funds,
426 objects of value, or other property, real or personal; and to
427 make expenditures to or for the direct or indirect benefit of
428 the Statewide Public Guardianship Office.

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429 (c) Determined by the Statewide Public Guardianship Office
430 to be consistent with the goals of the office, in the best
431 interests of the state, and in accordance with the adopted goals
432 and mission of the Department of Elderly Affairs and the
433 Statewide Public Guardianship Office.

434 (2) CONTRACT.--The direct-support organization shall
435 operate under a written contract with the Statewide Public
436 Guardianship Office. The written contract must provide for:

437 (a) Certification by the Statewide Public Guardianship
438 Office that the direct-support organization is complying with
439 the terms of the contract and is doing so consistent with the
440 goals and purposes of the office and in the best interests of
441 the state. This certification must be made annually and reported
442 in the official minutes of a meeting of the direct-support
443 organization.

444 (b) The reversion of moneys and property held in trust by
445 the direct-support organization:

446 1. To the Statewide Public Guardianship Office if the
447 direct-support organization is no longer approved to operate for
448 the office;

449 2. To the Statewide Public Guardianship Office if the
450 direct-support organization ceases to exist;

451 3. To the Department of Elderly Affairs if the Statewide
452 Public Guardianship Office ceases to exist; or

453 4. To the state if the Department of Elderly Affairs
454 ceases to exist.

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456 The fiscal year of the direct-support organization shall begin
457 on July 1 of each year and end on June 30 of the following year.

458 (c) The disclosure of the material provisions of the
459 contract, and the distinction between the Statewide Public
460 Guardianship Office and the direct-support organization, to
461 donors of gifts, contributions, or bequests, including such
462 disclosure on all promotional and fundraising publications.

463 (3) BOARD OF DIRECTORS.--The Secretary of Elderly Affairs
464 shall appoint a board of directors for the direct-support
465 organization from a list of nominees submitted by the executive
466 director of the Statewide Public Guardianship Office.

467 (4) USE OF PROPERTY.--The Department of Elderly Affairs
468 may permit, without charge, appropriate use of fixed property
469 and facilities of the department or the Statewide Public
470 Guardianship Office by the direct-support organization. The
471 department may prescribe any condition with which the direct-
472 support organization must comply in order to use fixed property
473 or facilities of the department or the Statewide Public
474 Guardianship Office.

475 (5) MONEYS.--Any moneys may be held in a separate
476 depository account in the name of the direct-support
477 organization and subject to the provisions of the written
478 contract with the Statewide Public Guardianship Office.
479 Expenditures of the direct-support organization shall be
480 expressly used to support the Statewide Public Guardianship
481 Office. The expenditures of the direct-support organization may
482 not be used for the purpose of lobbying as defined in s. 11.045.

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483 (6) AUDIT.--The direct-support organization shall provide
484 for an annual financial audit in accordance with s. 215.981.

485 (7) DISSOLUTION.--After July 1, 2004, any not-for-profit
486 corporation incorporated under chapter 617 that is determined by
487 a circuit court to be representing itself as a direct-support
488 organization created under this section, but that does not have
489 a written contract with the Statewide Public Guardianship Office
490 in compliance with this section, is considered to meet the
491 grounds for a judicial dissolution described in s.
492 617.1430(1)(a). The Statewide Public Guardianship Office shall
493 be the recipient for all assets held by the dissolved
494 corporation which accrued during the period that the dissolved
495 corporation represented itself as a direct-support organization
496 created under this section.

497 Section 15. Paragraph (c) of subsection (8) of section
498 121.091, Florida Statutes, is amended to read:

499 121.091 Benefits payable under the system.--Benefits may
500 not be paid under this section unless the member has terminated
501 employment as provided in s. 121.021(39)(a) or begun
502 participation in the Deferred Retirement Option Program as
503 provided in subsection (13), and a proper application has been
504 filed in the manner prescribed by the department. The department
505 may cancel an application for retirement benefits when the
506 member or beneficiary fails to timely provide the information
507 and documents required by this chapter and the department's
508 rules. The department shall adopt rules establishing procedures
509 for application for retirement benefits and for the cancellation

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510 of such application when the required information or documents
511 are not received.

512 (8) DESIGNATION OF BENEFICIARIES.--

513 (c) Notwithstanding the member's designation of benefits
514 to be paid through a trust to a beneficiary that is a natural
515 person as provided in s. 121.021(46), and notwithstanding the
516 provisions of the trust, benefits shall be paid directly to the
517 beneficiary if such person is no longer a minor or incapacitated
518 as defined in s. 744.102(11) and (12) ~~(10) and (11)~~.

519 Section 16. Subsection (1) and paragraphs (b), (d), and
520 (f) of subsection (4) of section 709.08, Florida Statutes, are
521 amended to read:

522 709.08 Durable power of attorney.--

523 (1) CREATION OF DURABLE POWER OF ATTORNEY.--A durable
524 power of attorney is a written power of attorney by which a
525 principal designates another as the principal's attorney in
526 fact. The durable power of attorney must be in writing, must be
527 executed with the same formalities required for the conveyance
528 of real property by Florida law, and must contain the words:
529 "This durable power of attorney is not affected by subsequent
530 incapacity of the principal except as provided in s. 709.08,
531 Florida Statutes"; or similar words that show the principal's
532 intent that the authority conferred is exercisable
533 notwithstanding the principal's subsequent incapacity, except as
534 otherwise provided by this section. The durable power of
535 attorney is exercisable as of the date of execution; however, if
536 the durable power of attorney is conditioned upon the
537 principal's lack of capacity to manage property as defined in s.

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538 744.102(11)(10)(a), the durable power of attorney is exercisable
539 upon the delivery of affidavits in paragraphs (4)(c) and (d) to
540 the third party.

541 (4) PROTECTION WITHOUT NOTICE; GOOD FAITH ACTS;
542 AFFIDAVITS.--

543 (b) Any third party may rely upon the authority granted in
544 a durable power of attorney that is conditioned on the
545 principal's lack of capacity to manage property as defined in s.
546 744.102(11)(10)(a) only after receiving the affidavits provided
547 in paragraphs (c) and (d), and such reliance shall end when the
548 third party has received notice as provided in subsection (5).

549 (d) A determination that a principal lacks the capacity to
550 manage property as defined in s. 744.102(11)(10)(a) must be made
551 and evidenced by the affidavit of a physician licensed to
552 practice medicine pursuant to chapters 458 and 459 as of the
553 date of the affidavit. A judicial determination that the
554 principal lacks the capacity to manage property pursuant to
555 chapter 744 is not required prior to the determination by the
556 physician and the execution of the affidavit. For purposes of
557 this section, the physician executing the affidavit must be the
558 primary physician who has responsibility for the treatment and
559 care of the principal. The affidavit executed by a physician
560 must state where the physician is licensed to practice medicine,
561 that the physician is the primary physician who has
562 responsibility for the treatment and care of the principal, and
563 that the physician believes that the principal lacks the
564 capacity to manage property as defined in s. 744.102(11)(10)(a).
565 The affidavit may, but need not, be in the following form:

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Amendment No. (for drafter's use only)

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STATE OF _____

COUNTY OF _____

Before me, the undersigned authority, personally appeared
... (name of physician) ..., Affiant, who swore or affirmed
that:

1. Affiant is a physician licensed to practice medicine in
... (name of state, territory, or foreign country)

2. Affiant is the primary physician who has responsibility
for the treatment and care of ... (principal's name)

3. To the best of Affiant's knowledge after reasonable
inquiry, Affiant believes that the principal lacks the capacity
to manage property, including taking those actions necessary to
obtain, administer, and dispose of real and personal property,
intangible property, business property, benefits, and income.

... (Affiant) ...

Sworn to (or affirmed) and subscribed before me this ...
(day of) ... (month) ..., ... (year) ..., by ... (name
of person making statement) ...

... (Signature of Notary Public-State of Florida) ...

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593 ... (Print, Type, or Stamp Commissioned Name of Notary Public)

594 ...

595

596 Personally Known OR Produced Identification

597 ... (Type of Identification Produced) ...

598

599 (f) A third party may not rely on the authority granted in
600 a durable power of attorney conditioned on the principal's lack
601 of capacity to manage property as defined in s.

602 744.102(11)(10)(a) when any affidavit presented has been
603 executed more than 6 months prior to the first presentation of
604 the durable power of attorney to the third party.

605 Section 17. Subsection (3) of section 744.1085, Florida
606 Statutes, is amended to read:

607 744.1085 Regulation of professional guardians;
608 application; bond required; educational requirements.--

609 (3) Each professional guardian defined in s.
610 744.102(16)(15) and public guardian must receive a minimum of 40
611 hours of instruction and training. Each professional guardian
612 must receive a minimum of 16 hours of continuing education every
613 2 calendar years after the year in which the initial 40-hour
614 educational requirement is met. The instruction and education
615 must be completed through a course approved or offered by the
616 Statewide Public Guardianship Office. The expenses incurred to
617 satisfy the educational requirements prescribed in this section
618 may not be paid with the assets of any ward. This subsection
619 does not apply to any attorney who is licensed to practice law
620 in this state.

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621 Section 18. Except as otherwise provided herein, this act
622 shall take effect July 1, 2004.

623
624 ===== T I T L E A M E N D M E N T =====

625 Remove the entire title and insert:

626 A bill to be entitled
627 An act relating to public guardianship; creating s.
628 744.7101, F.S.; providing a popular name; creating s.
629 744.711, F.S.; providing legislative findings and intent;
630 creating s. 744.712, F.S.; creating the Joining Forces for
631 Public Guardianship grant program; providing a purpose;
632 providing for distribution of grant funds; providing
633 limitations on awards; providing requirements for
634 disbursement of grant funds to prior awardees; requiring
635 grant funds to be used for a certain purpose; providing
636 that program implementation is subject to specific
637 appropriation; creating s. 744.713, F.S.; requiring the
638 office to administer the grant program; providing
639 guidelines for such administration; creating s. 744.714,
640 F.S.; providing eligibility requirements to receive grant
641 funding; creating s. 744.715, F.S.; providing grant
642 application requirements; requiring matching funds from
643 local funding sources; amending s. 393.063, F.S.; revising
644 a definition; amending s. 393.12, F.S.; providing that a
645 guardian advocate may not be required to file an annual
646 accounting under certain circumstances; amending s.
647 744.102, F.S.; providing a definition; amending s.
648 744.1083, F.S.; deleting a requirement for background

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649 screening; requiring the Statewide Public Guardianship
650 Office to receive and review credit and criminal
651 investigations prior to registering a professional
652 guardian; authorizing the executive director of the office
653 to deny registration under certain circumstances; creating
654 s. 744.3085, F.S.; authorizing a circuit court to appoint
655 a guardian advocate under certain circumstances; amending
656 s. 744.3135, F.S.; requiring the clerk of the court to
657 forward copies of credit and criminal investigations of
658 public and professional guardians to the office to be
659 maintained in the guardians' files; amending s. 744.3678,
660 F.S.; specifying nonapplication of certain annual
661 accounting requirements to certain guardians under certain
662 circumstances; amending s. 744.7082, F.S.; providing a
663 definition; requiring a direct-support organization to
664 operate under written contract with the office; providing
665 the requirements of such contract; requiring the Secretary
666 of Elderly Affairs to appoint a board of directors for the
667 direct-support organization; authorizing the Department of
668 Elderly Affairs to allow the use of department facilities
669 and property by the organization; authorizing the
670 organization to hold moneys in a separate account;
671 requiring an annual audit; authorizing judicial
672 dissolution for corporations fraudulently representing
673 themselves as direct-support organizations; amending ss.
674 121.091, 709.08, and 744.1085, F.S.; correcting cross
675 references; providing effective dates.

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