

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1782

SPONSOR: Health, Aging, and Long-Term Care Committee and Senator Saunders

SUBJECT: Guardianship Programs

DATE: March 16, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Parham</u>	<u>Wilson</u>	<u>HC</u>	<u>Fav/CS</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>AHS</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill creates the “Joining Forces for Public Guardianship” grant program. The bill does the following related to the grant program:

- Provides legislative findings and intent;
- Provides for administration of the grant program by the Statewide Public Guardianship Office within the Department of Elderly Affairs (DOEA);
- Specifies how grant funds may be distributed and that emergency grant funds may be awarded if there is a public need, with specific provisions;
- Places limits on how much each county may receive in grant funds and specifies that awards made to counties in successive years shall reduce in value according to a determined scale;
- Provides that grant funds shall be used for direct services to wards;
- Provides that implementation of the Joining Forces grant program is subject to a specific appropriation by the Legislature in the General Appropriations Act;
- Provides the duties and responsibilities of the Statewide Public Guardianship Office related to the grant program;
- Establishes eligibility for the grant program and specifies the application process, application requirements, and proposal review criteria; and
- Provides that the grant application must contain, among other things, an agreement or confirmation from a local funding source, such as a county or local government, that the local funding source will contribute matching funds to the public guardianship program totaling not less than \$1 for every \$1 of grant funds awarded. In-kind contributions may be counted as part or all of the matching funds required.

The bill revises the definition of the term “guardian advocate” and provides that guardian advocates are exempt from annual accounting provisions if the court determines the ward receives income only from Social Security benefits and the guardian is the ward’s representative payee for the benefits.

The bill requires the clerks of court to forward the results of a credit or criminal investigation of any public or professional guardian to the Statewide Public Guardianship Office and provides that the executive director of the Statewide Public Guardianship Office may deny registration to a professional guardian if the director determines that the proposed registration, including the guardian’s credit or criminal investigations, indicates that registering the professional guardian would violate any provision of chapter 744, F.S.

The bill authorizes a circuit court to appoint a guardian advocate, without an adjudication of incapacity, for a person with developmental disabilities if the person lacks the capacity to do some, but not all, of the tasks necessary to care for his or her person, property, or estate, or if the person has voluntarily petitioned for the appointment of a guardian advocate.

The bill makes the following substantive changes related to a direct-support organization (DSO) under chapter 744, F.S.:

- Defines “direct support organization” as an organization whose sole purpose is supporting the Statewide Public Guardianship Office and specifies other qualifications;
- Requires the DSO to operate under a written contract with the Statewide Office of Public Guardianship and specifies the necessary provisions of the contract;
- Requires the Secretary of Elderly Affairs to appoint a board of directors for the DSO;
- Authorizes the DSO to use DOEA and Statewide Public Guardianship Office property and facilities;
- Provides that any moneys may be held in a separate depository account in the name of the DSO and that expenditures of the DSO shall be expressly used to support the Statewide Public Guardianship Office;
- Requires an annual audit of the DSO; and
- Provides for the dissolution of entities improperly using their DSO status.

The bill provides that the authority of an emergency temporary guardian may be extended for additional 60-day periods allowing for more time to address the needs of wards.

The bill clarifies that certain rights may be removed from a person by an order determining incapacity and that such rights may not be delegated to a guardian. The bill requires court approval for the right to marry if a right to contract is removed.

The bill makes the following changes to the procedures to determine the incapacity of an individual under s. 744.331, F.S.:

- Requires the Chief Judge to establish and maintain a list of attorneys from within the circuit to serve as court-appointed attorney for alleged incapacitated individuals;
- Requires that selection of attorneys be made on a rotating basis;

- Prohibits members of the examining committee from being associated with the petitioner, petitioner's counsel, or proposed guardian's counsel;
- Requires each member of the examining committee to submit a separate report rather than one report from the committee, and requires that each committee member submit their report within 15 days after appointment;
- Directs the Chief Judge to appoint qualified examining committee members from a list of qualified members within the circuit, and requires the Chief Judge to update the list annually; and
- Includes "attorney fees" in the costs assessed against the petitioner if the court finds the petition to have been filed in bad faith.

This bill amends ss. 121.091, 393.063, 393.12, 744.102, 744.331, 744.1083, 744.1085, 744.3031, 744.3135, 744.3201, 744.3215, 744.3678, 744.7082, and 709.08, Florida Statutes.

This bill creates ss. 744.7101, 744.711, 744.712, 744.713, 744.714, 744.715, and 744.3085, Florida Statutes.

II. Present Situation:

The Florida Statewide Public Guardianship Program

Public guardianship programs provide guardianship services for incapacitated persons when a private guardianship is not available. A guardian is a surrogate decision-maker appointed by the court to make personal and/or financial decisions either: (1) for an adult with mental or physical disabilities who has been adjudicated incapacitated; or (2) for a minor in circumstances where the parents die or become incapacitated or if a child receives an inheritance, proceeds of a lawsuit, or insurance policy exceeding the amount allowed by statute.

The legal authority for guardianship in Florida is found in chapter 744, F.S. The court rules that control the relationships among the court, the ward, the guardian, and the attorney are found in Part III, Probate Rules, Florida Rules of Court. Together, these statutes and rules describe the duties and obligations of guardians, attorneys, and the courts, to ensure that they act in the best interests of the ward, minor, or individual who is alleged incapacitated.

Adult guardianship is the process by which the court finds an individual's ability to make decisions so impaired that the court gives the right to make decisions to another person. Guardianship is an option only when the court finds no less restrictive alternative; such as durable power of attorney, trust, health care surrogate or proxy, or other form of pre-need directive, to be appropriate and available.

Voluntary and involuntary guardianships are allowed under Florida law. A voluntary guardianship may be established for an adult who, though mentally competent, is incapable of managing his or her own estate and who voluntarily requests the appointment. Legislative intent establishes that the least restrictive form of guardianship is wanted. Thus, Florida law provides for limited as well as plenary adult guardianship. A limited guardianship is appropriate if the court finds the ward lacks the capacity to do some, but not all, of the tasks necessary to care for his or her person or property; and if the individual does not have pre-planned, written

instructions for all aspects of his or her life. A plenary guardian is a person appointed by the court to exercise all delegable legal rights and powers of the adult ward after the court finds an individual to be incapacitated.

Emergency temporary guardianship can be granted in emergency situations. In these cases, a guardian may be appointed for the person and/or property of an alleged incapacitated person prior to the appointment of a full guardian. This is done after a petition for incapacity has been filed when there appears to be imminent danger to the person; for example, having no one to make critical medical decision that must be made immediately. Veteran's Guardianship pertains only to veterans and is regulated by federal and state statutes. It is initiated and monitored through the federal Veterans Administration.

A guardian advocate is a special type of guardianship available for persons with developmental disabilities. Without requiring an adjudication of incapacity, the Circuit Court may appoint a guardian advocate if the person has a developmental disability and lacks the capacity to do some, but not all, of the tasks necessary to care for his or her person, property, or estate. The person may voluntarily petition for the appointment of a guardian advocate or join others as a petitioner. Only those rights the person cannot manage are removed. The guardian advocate is a less stringent, less costly, type of guardianship for persons with developmental disabilities.

Whether the court is dealing with a minor whose assets must be managed by another or an adult with a disability who is not capable of making decisions for him or herself, when the court removes an individual's right to manage his or her own affairs there is an additional duty to protect the individual. One of the court's duties is to appoint a guardian. All adult and minor guardianships are subject to court oversight.

Statewide Public Guardianship Office

Section 744.7021, F.S., creates the Statewide Public Guardianship Office, which is housed within DOEA. Local offices, directed by statute, provide guardianship services to persons who do not have adequate income or assets to afford a private guardian and when there is no private guardian willing to serve. The purpose of the legislation was to provide a public guardian only to those persons whose needs could not be met through less drastic means of intervention. Originally, the Guardianship Office was located in Tampa, Florida, and although created within DOEA, was not subject to control, supervision, or direction by DOEA. The Director of the Office was appointed by the Governor. During the 2003 Legislative Session, the Guardianship Office was moved to DOEA from its location in Tampa. The director is now appointed by the Secretary of Elderly Affairs, reports to and serves at the pleasure of the Secretary, and is subject to direction by DOEA. The director has oversight responsibility for all public guardians in the state. The offices of the public guardian were serving 1,584 wards statewide as of September 2003.

Funding of Public Guardianship through Court Filing Fees

Until the passage of House Bill 113-A in 2003 (Chapter 2003-402, L.O.F), each Florida county was authorized by s. 28.241, F.S., to impose, by ordinance or by special or local law, a fee of up to \$15 for each civil action filed, for the establishment, maintenance, or supplementation of a

public guardian. However, House Bill 113-A removed this authority effective July 1, 2004. This authority was rescinded as part of the legislative implementation of constitutional Revision 7 to Article V (relating to the Judicial Branch) of the State Constitution. Revision 7, adopted by the voters in 1998, requires the state to shift primary costs and funding for the operation of the state courts system to the state and to reallocate other costs and expenses among the local governments and other users and participants in the state courts system. As part of this implementation, all filing fees for trial and appellate proceedings were regulated by the state, with a portion to revert directly to the Department of Revenue to be used to fund court proceedings. The \$15 allowable additional expense that counties were authorized to institute to fund public guardianship programs was also rescinded.

Many groups have called for an expansion of guardianship services in Florida for the indigent and the developmentally disabled. However, according to DOEA, due to the changes made by HB 113-A, which are scheduled to take effect July 1, 2004, guardianship services can not be expanded, and the Statewide Public Guardianship Office reports that:

- At a minimum, \$1,016,140 in current funding for offices of public guardians will be lost statewide.
- At a minimum, 1,297 indigent wards who are currently utilizing the services of a public guardian may no longer have a guardian.
- Within Miami-Dade County alone, \$420,000 in funding for public guardianship will be lost and 780 wards may no longer have appointed public guardians.
- At least 3 of the 16 offices of public guardian statewide will lose 100 percent of their current funding. Many others could be rendered financially inoperable without funds derived from court filing fees.

Guardianship Task Force

Senate Bill 2568 (2003) created within DOEA a Guardianship Task Force for the purpose of examining guardianship and incapacity and making recommendations to the Governor and the Legislature for the improvement of processes and procedures related to guardianship and incapacity. The bill required the Task Force to be comprised of 10 members who should include:

- A judge with experience in guardianship proceedings who shall be appointed by the Florida Conference of Circuit Judges; Division for the 17th Judicial Circuit
- A representative of the Clerks of Court;
- A professor of law with experience in elder issues appointed by the Secretary of Elder Affairs;
- A representative of the Florida State Guardianship Association;
- A representative of the Florida Guardianship Foundation;
- A representative of the Real Property and Probate Section of The Florida Bar;
- A representative of the Elder Law Section of The Florida Bar;
- A professional as provided in s. 744.331(3), F.S., with experience performing examinations determining incapacity;
- A representative of the Florida Banker's Association; and

- A citizen or consumer appointed by the Executive Director of the Florida office of the American Association of Retired Persons.

The Task Force held three public meetings and solicited public testimony between October and December 2003. A preliminary report by the Task Force was completed in January 2004. The Task Force placed an emphasis on incapacity, restoration, advanced directives, and emergency temporary guardianship issues which included:

- The need for uniform procedures in selection of examining committee members and court appointed attorneys;
- Evaluation of the examining committee process; and
- The payment of the examining committee and court appointed attorney when guardianship is not established.

The Task Force made numerous recommendations. This bill implements some of these recommendations.

Governor's Joint Workgroup on Guardianship and the Developmentally Disabled

On June 5, 2003, the Governor issued Executive Order No. 03-103 to address the needs of adults with developmental disabilities who receive services through the Department of Children and Families, Developmental Disabilities Program, who may need assistance to knowingly make critical life decisions relating to their health, safety, finances, and residence while maintaining their right to self-determination.

The Executive Order established an 11-member Joint Work Group on Guardianship for the Developmentally Disabled. The work group was charged with developing a recommended plan of action for facilitating the provision of guardians or guardian alternatives for individuals with developmental disabilities consistent with their right to self-determination. The work group focused its recommendations for action on:

- Improving the ability to accurately identify the need for guardianship and guardianship alternatives among individuals with developmental disabilities;
- Improving access to legal assistance for individuals with developmental disabilities, including adequate due process protections;
- Increasing the availability of guardians and guardianship alternatives to serve individuals with developmental disabilities; and
- Enhancing the quality of guardianship and guardianship alternatives provided to individuals with developmental disabilities.

On August 6, 2003, the Joint Workgroup issued its final report.¹ The Joint Workgroup made numerous recommendations for further action. This bill implements some of these recommendations.

¹ A copy of the report is available online at http://www.state.fl.us/cf_web/news/finalguardianshipreport.pdf.

III. Effect of Proposed Changes:

Section 1. Creates s. 744.7101, F.S., citing ss. 744.7101-744.715, F.S., as the “Joining Forces for Public Guardianship Act.”

Section 2. Creates s. 744.711, F.S., providing legislative findings and intent. The Legislature finds that:

- Public guardianship programs are necessary to ensure that the rights and best interests of Florida’s vulnerable indigent and incapacitated residents are protected; and
- The best solution to this problem is to encourage each county to establish, through the Statewide Public Guardianship Office, a local office of public guardian for the purpose of providing guardianship services to incapacitated persons when a private guardian is not available.

The Legislature intends to establish the Joining Forces for Public Guardianship matching grant program for the purpose of assisting counties to establish and fund community-supported public guardianship programs.

Section 3. Creates s. 744.712, F.S., providing the purpose of the Joining Forces for Public Guardianship grant program. The program is to be established and administered by the Statewide Public Guardianship Office within DOEA. The purpose of the program is to provide start-up funding to encourage communities to develop and administer locally-funded and supported public guardianship programs to address the needs of indigent and incapacitated residents.

The Statewide Public Guardianship Office may distribute the grant funds for the following purposes:

- As initial start-up funding to encourage counties that have no office of public guardian to establish an office or to open an additional office of public guardian within a county that needs more than one office;
- As support funding to operational offices of public guardian to meet the needs of a particular geographic area in the state which the office serves; and
- To assist counties that have an operating public guardianship program to expand the geographic area or population of persons they serve, or to develop and administer innovative programs to increase access to public guardianship.

The executive director of the Statewide Public Guardianship Office, with prior authorization from the Secretary of Elderly Affairs, may award emergency grants if she or he determines that the award is in the best interest of public guardianship in this state. The limitations on the amount of grant funds any one county may receive contained in subsections (2), (3), and (4) of this section do not apply to the distribution of emergency grants.

Subsection (2) provides that a county may not receive an award that equals, or multiple awards that cumulatively equal, more than 10 percent of the total amount of funds available statewide

during a fiscal year. Under subsection (3), awards made to counties in successive years must reduce in value according to the following scale. In year 2, the cumulative sum of the award provided to one or more applicants within the same county may not exceed 75 percent of the total amount of funds awarded within that county in year one; in year 3, the cumulative sum may not exceed 60 percent of the funds awarded within that county in year one; in year 4, the cumulative sum may not exceed 45 percent of the funds awarded within that county in year one; in year 5, the cumulative sum may not exceed 30 percent of the funds awarded within that county in year one; and in year 6, the cumulative sum may not exceed 15 percent of the funds awarded within that county in year one. Joining Forces grantees may not receive funds for more than 6 years.

Under subsection (4), all Joining Forces grant funds must be used for direct services to wards, except for 10 percent that may be retained for administrative purposes. Implementation of the Joining Forces grant program is subject to a specific appropriation by the Legislature in the General Appropriations Act.

Section 4. Creates s. 744.713, F.S., providing that the Statewide Public Guardianship Office shall administer the grant program. The office is to:

- Publicize the availability of grant funds to entities that may be eligible for the funds;
- Establish an application process for submitting a grant proposal;
- Request, receive, and review proposals from applicants seeking grant funds;
- Determine the amount of grant funds the awardees may receive and award grant funds to applicants;
- Develop a monitoring process to evaluate grant awardees, which may include an annual monitoring visit to each awardee's local office; and
- Ensure that persons or organizations awarded grant funds meet and adhere to the requirements of this act.

This section also gives the Statewide Public Guardianship Office the authority to adopt the rules necessary to implement the grant program.

Section 5. Creates s. 744.714, F.S., establishing the eligibility requirements for the grant program. In order to be eligible to apply for a grant, a person or organization must meet, or directly employ staff that meet, the minimum qualifications for a public guardian under chapter 744, F.S., and must have already been appointed by, or be pending appointment by, the Statewide Public Guardianship Office to become an office of public guardian in Florida. In order to be eligible to receive a grant in subsequent years, a previous recipient must meet the qualifications of initial grantees, as well as achieve a satisfactory monitoring score during their most recent evaluation.

Section 6. Creates s. 744.715, F.S., providing the requirements for a grant application. All grant applications must be submitted to the Statewide Public Guardianship Office for review and approval. Grant applications must contain:

- The specific amount of funds being requested;
- The proposed annual budget for the office of public guardian for which the application is being submitted, including all sources of funding, and a detailed report of proposed expenditures, including administrative costs;
- The total number of wards the applicant intends to serve during the grant period;
- Evidence that the applicant has:
 - Attempted to procure funds and has exhausted all possible other sources of funding; or
 - Procured funds from local sources, but the total amount of the funds collected or pledged is not sufficient to meet the need for public guardianship in the geographic area that the applicant intends to serve;
- An agreement or confirmation from a local funding source, such as a county or local government, that the local funding source will contribute matching funds to the public guardianship program totaling not less than \$1 for every \$1 of grant funds awarded. For purposes of this section, multiple counties or local governments can pool their contributed matching funds to the public guardianship program for a combined total of not less than \$1 for every \$1 of grant funds awarded. In-kind contributions, such as materials, commodities, office space, or other types of facilities, personnel services, or other items as determined by rule shall be considered by the office and may be counted as part or all of the local matching funds;
- A detailed plan describing how the office of public guardian for which the application is being submitted will be funded in future years; and
- Any other information determined by rule as necessary to assist in evaluating grant applications.

The Statewide Public Guardianship Office may award the applicant any amount of grant funds the executive director deems appropriate, if the amount awarded meets the requirements of this act. The office may adopt a rule allocating the maximum allowable amount of grant funds which may be expended on any ward. A grant awardee must submit a new grant application for each year of additional funding under the program.

This section specifies that the Statewide Office of Public Guardianship must give priority during the first year of the Joining Forces program to entities that:

- Are operating as appointed offices of public guardians in this state;
- Meet all of the requirements for being awarded a grant under this act; and

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

This section specifies that the Statewide Office of Public Guardianship may give priority after the first year of the Joining Forces program to entities that:

- Meet all of the requirements of this act for being awarded grant funds; and
- Submit with their application an agreement or confirmation from a local funding source, such as a county or local government, that the local funding source will contribute matching funds totaling an amount equal to or exceeding \$2 for every \$1 of grant funds awarded by the office. An entity may submit with its application agreements or confirmations from multiple counties or local governments showing that the counties or local governments will pool their contributed matching funds to the public guardianship program for a combined total of not less than \$2 for every \$1 of grant funds awarded. In-kind contributions allowable under this section must be evaluated by the Statewide Public Guardianship Office and may be counted as local matching funds.

Section 7. Amends s. 393.063, F.S., revising the definition of the term “guardian advocate.” Subsection (25) is amended to read, a “guardian advocate” means a person appointed by a written order of the court to represent a person with developmental disabilities under s. 393.12, F.S. This section deletes the provision that excludes the use of the same term as applied to a guardian advocate for mentally ill persons in chapter 394, F.S.

Section 8. Amends s. 393.12, F.S., relating to the powers and duties of the guardian advocate. A guardian advocate for a person with developmental disabilities is exempted from filing an annual accounting pursuant to s. 744.3678, F.S., if a court determines that the ward only receives income through Social Security benefits and that the guardian advocate is the person’s representative payee for such benefits.

Section 9. Amends s. 744.102, F.S., which provides a definition of the term “guardian advocate” for purposes of chapter 744, F.S. This section provides that the term “guardian advocate” as used in chapter 744, F.S., shall be defined as a person appointed by a written order of the court to represent a person with developmental disabilities under s. 393.12, F.S., but shall not have the same meaning as a guardian advocate for a person determined incompetent to consent to treatment under s. 394.4598, F.S.

Section 10. Amends s. 744.1083, F.S., related to professional guardian registration. This section provides that prior to registering professional guardians, the Statewide Public Guardianship Office must receive and review copies of credit and criminal investigations conducted under s. 744.3135, F.S., completed within the previous two years.

This section provides that the executive director of the Statewide Public Guardianship Office may deny registration to a professional guardian if the director determines that the proposed registration, including the guardian’s credit or criminal investigations indicates that registering the professional guardian would violate any provision of chapter 744, F.S. If the executive director denies registration to a professional guardian, the Statewide Public Guardianship Office

must send written notification of the denial to the chief judge of each judicial circuit in which the guardian was serving on the day of the office's decision to deny registration.

This section deletes language that compliance with s. 744.1083, F.S., constitutes compliance with the attestation requirement of s. 435.04(5), F.S.

Section 11. Creates s. 744.3085, F.S., authorizing a circuit court to appoint a guardian advocate, without an adjudication of incapacity, for a person with developmental disabilities if the person lacks the capacity to do some, but not all, of the tasks necessary to care for his or her person, property, or estate, or if the person has voluntarily petitioned for the appointment of a guardian advocate. This section specifies that the proceeding shall be governed by the Florida Probate Rules. This section also encourages courts to appoint guardian advocates, when appropriate, as a less restrictive form of guardianship.

Section 12. Amends s. 744.3135, F.S., requiring Clerks of the Court to forward copies of credit and criminal investigations of public and professional guardians to the Statewide Public Guardianship Office to be included in their guardian registration files. This section also clarifies that the court must consider the results of the investigations before appointing a guardian, if credit or criminal investigations are required.

Section 13. Amends s. 744.3678, F.S., to exempt guardians from filing an annual accounting if a court determines that the ward only receives income through Social Security benefits and the guardian is the ward's representative payee for such benefits.

Section 14. Substantially rewords s. 744.7082, F.S., relating to a DSO for the Statewide Public Guardianship Office. This section provides that, for the purposes of this section, the DSO may only be organized to assist the Statewide Public Guardianship Office, and that the Statewide Public Guardianship Office must determine that the not-for-profit corporation is acting in the best interests of the state. The DSO must be:

- A not-for-profit corporation incorporated under chapter 617, F.S., and approved by the Department of State;
- Organized and operated to conduct programs and activities; to raise funds; to request and receive grants, gifts, and bequests of moneys; to acquire, receive, hold, invest, and administer, in its own name, securities, funds, objects of value, or other property, real or personal; and to make expenditures to or for the direct or indirect benefit of the Statewide Public Guardianship Office; and
- Determined by the Statewide Public Guardianship Office to be consistent with the goals of the office, in the best interests of the state, and in accordance with the adopted goals and mission of DOEA and the Statewide Public Guardianship Office.

This section requires the DSO to operate under a written contract with the Statewide Public Guardianship Office. The written contract must provide for:

- Certification by the Statewide Public Guardianship Office that the direct-support organization is complying with the terms of the contract and is doing so consistent with the goals and purposes of the office and in the best interests of the state. This certification must be made annually and reported in the official minutes of a meeting of the direct-support organization.
- The reversion of moneys and property held in trust by the DSO goes to:
 - The Statewide Public Guardianship Office if the direct-support organization is no longer approved to operate for the office;
 - The Statewide Public Guardianship Office if the direct-support organization ceases to exist;
 - DOEA if the Statewide Public Guardianship Office ceases to exist; or
 - The state if DOEA ceases to exist.

A fiscal year for the purposes of the DSO is July 1 to June 30 of the following year.

- The disclosure of the material provisions of the contract, and the distinction between the Statewide Public Guardianship Office and the DSO, to donors of gifts, contributions, or bequests, including such disclosure on all promotional and fundraising publications.

This section authorizes the Secretary of Elderly Affairs to appoint a board of directors for the DSO from a list of nominees submitted by the executive director of the Statewide Public Guardianship Office.

This section allows DOEA to authorize the DSO to use department facilities free of charge under certain circumstances. DOEA may prescribe any condition with which the DSO must comply in order to use fixed property or facilities of DOEA or the Statewide Public Guardianship Office.

This section provides that any moneys may be held in a separate depository account in the name of the DSO and subject to the provisions of the written contract with the Statewide Public Guardianship Office. Expenditures of the DSO shall be expressly used to support the Statewide Public Guardianship Office. The expenditures of the DSO may not be used for the purpose of lobbying as defined in s. 11.045, F.S.

This section requires an annual audit of the DSO and allows a court to dissolve a not-for-profit corporation fraudulently representing itself as a DSO for the Statewide Public Guardianship Office. If a DSO is dissolved, the Statewide Public Guardianship Office shall be the recipient for all assets held by the dissolved corporation which accrued during the period that it represented itself as a DSO created under this section.

Section 15. Amends s. 121.091, F.S., related to designation of beneficiaries, to correct a statutory cross-reference.

Section 16. Amends s. 709.908, F.S., related to a durable power of attorney, to correct a statutory cross-reference.

Section 17. Amends s. 744.1085, F.S., related to regulation of professional guardians, to correct a statutory cross-reference.

Section 18. Amends s. 744.3031, F.S., providing that the authority of an emergency temporary guardian may be extended for additional 60-day periods rather than just an additional 30 days.

Section 19. Amends s. 744.3201, F.S., requiring that the petition to determine incapacity include the telephone number of the petitioner and the alleged incapacitated person.

Section 20. Amends s. 744.3215, F.S., moving the right to privacy to the beginning of the list of rights of persons determined incapacitated and clarifying that a person has the right to receive services and rehabilitation necessary to maximize quality of life. This section clarifies that certain rights may be removed from a person by an order determining incapacity but that such rights may not be delegated to a guardian. This section also requires court approval for the right to marry if a right to contract is removed.

Section 21. Amends s. 744.331, F.S., related to procedures to determine a person's incapacity. Specifically this section does the following:

- Provides that the Chief Judge shall establish and maintain a list of attorneys from within the circuit to serve as court-appointed attorneys for alleged incapacitated persons;
- Requires that selection of attorneys be made on a rotating basis;
- Expands language to prohibit members of an examining committee from also being associated with the petitioner, petitioner's counsel, or proposed guardian's counsel;
- Amends language to require each member of the examining committee to submit a separate report rather than one report from the committee;
- Directs the Chief Judge to appoint qualified examining committee members from a list of qualified members within the circuit, and requires the Chief Judge to update the list annually;
- Requires each committee member to submit their report within 15 days after appointment; and
- Adds "attorney fees" to the costs assessed against the petitioner if the court finds the petition to have been filed in bad faith.

Section 22. Provides that, except as otherwise expressly provided, the act shall take effect July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings under the requirements of Article I, s. 24(a) and (b) of the Florida Constitution.

C. **Trust Funds Restrictions:**

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, s. 19(f) of the Florida Constitution.

V. **Economic Impact and Fiscal Note:**

A. **Tax/Fee Issues:**

The bill requires any applicant for Joining Forces grant funds to obtain a commitment from a local funding source such as a county and/or local government to contribute matching funds totaling at least \$1 for every \$1 of grant funds awarded. In-kind contributions may be accepted.

B. **Private Sector Impact:**

This program could help to ensure that those individuals who need guardians will have access to a pool of guardians in their area.

C. **Government Sector Impact:**

Local Governments

This bill will have a fiscal impact on local government if they choose to participate in the Joining Forces grant program. The bill requires any applicant for Joining Forces grant funds to obtain a commitment from a local funding source such as a county and/or local government to contribute matching funds totaling at least \$1 for every \$1 of grant funds awarded. In-kind contributions may be accepted.

Department of Elderly Affairs

According to DOEA, this bill will have a fiscal impact on state government. The bill creates a Joining Forces for Public Guardianship grant program within the Statewide Public Guardianship Office at DOEA. The Department of Elderly Affairs indicated that the grant program can be run with existing departmental resources through the Statewide Public Guardianship Office.

The Governor proposed \$5 million in his recommended budget for state FY 2004-2005 to fund the grant program.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

Under Section 3 of the bill, awards made to counties after the first year of grant funding continue to decrease in the successive years. It is unclear how the decreased funding to counties will affect individual grantees that apply for a grant after the first year.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
