

By Senator Saunders

37-1121A-04

1 A bill to be entitled
2 An act relating to guardianship; creating s.
3 744.7101, F.S.; providing a short title;
4 creating s. 744.711, F.S.; providing
5 legislative findings and intent relating to the
6 Joining Forces for Public Guardianship program;
7 creating s. 744.712, F.S.; establishing the
8 grant program; providing for the program's
9 purposes; creating s. 744.713, F.S.; providing
10 for the administration of the program by the
11 Statewide Public Guardianship Office; providing
12 the duties and responsibilities of the office
13 relating to the grant program; creating s.
14 744.714, F.S.; providing eligibility for grant
15 awards; creating s. 744.715, F.S.; providing
16 application requirements, an application
17 process, and review criteria; amending s.
18 393.063, F.S.; redefining the term "guardian
19 advocate" for purposes of provisions governing
20 services for the developmentally disabled;
21 amending s. 393.12, F.S.; exempting a guardian
22 advocate from a requirement to file an annual
23 accounting in certain situations; amending s.
24 744.102, F.S.; defining the term "guardian
25 advocate" for purposes of the Florida
26 Guardianship Law; amending s. 744.1083, F.S.;
27 requiring that additional information be
28 reviewed by the Statewide Public Guardianship
29 Office prior to registering a professional
30 guardian; creating s. 744.3085, F.S.;
31 recommending that courts consider appointing a

1 guardian advocate for persons with
2 developmental disabilities as a less
3 restrictive form of guardianship; amending s.
4 744.3135, F.S.; requiring the clerks of court
5 to forward certain information to the Statewide
6 Public Guardianship Office; amending s.
7 744.3678, F.S.; exempting a guardian from a
8 requirement to file an annual accounting in
9 certain situations; amending s. 744.7082, F.S.;
10 defining the term "direct-support
11 organization"; requiring the Secretary of
12 Elderly Affairs to appoint a board of directors
13 for the direct-support organization;
14 authorizing such an organization to use
15 property and facilities of the Department of
16 Elderly Affairs and the Statewide Public
17 Guardianship Office; requiring an annual audit
18 of the organization; providing for the
19 dissolution of entities improperly using the
20 direct-support organization designation;
21 amending ss. 121.091, 709.08, and 744.1085,
22 F.S., relating to the designation of
23 beneficiaries, the durable power of attorney,
24 and the regulation of professional guardians;
25 conforming cross-references; providing
26 effective dates.

27
28 Be It Enacted by the Legislature of the State of Florida:

29
30 Section 1. Section 744.7101, Florida Statutes, is
31 created to read:

1 744.7101 Short title.--Sections 744.7101-744.715 may
2 be cited as the "Joining Forces for Public Guardianship Act."

3 Section 2. Section 744.711, Florida Statutes, is
4 created to read:

5 744.711 Legislative findings and intent.--The
6 Legislature finds that public guardianship programs are
7 necessary to ensure that the rights and best interests of
8 Florida's vulnerable indigent and incapacitated residents are
9 protected. In addition, the Legislature finds that the best
10 solution to this problem is to encourage each county to
11 establish, through the Statewide Public Guardianship Office, a
12 local office of public guardian for the purpose of providing
13 guardianship services to incapacitated persons when a private
14 guardian is not available. Therefore, the Legislature intends
15 to establish the Joining Forces for Public Guardianship
16 matching grant program for the purpose of assisting counties
17 to establish and fund community-supported public guardianship
18 programs.

19 Section 3. Section 744.712, Florida Statutes, is
20 created to read:

21 744.712 Joining Forces for Public Guardianship grant
22 program; purpose.--The Joining Forces for Public Guardianship
23 matching grant program shall be established and administered
24 by the Statewide Public Guardianship Office within the
25 Department of Elderly Affairs. The purpose of the program is
26 to provide start-up funding to encourage communities to
27 develop and administer locally funded and supported public
28 guardianship programs to address the needs of indigent and
29 incapacitated residents.

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

1 (a) As initial start-up funding to encourage counties
2 that have no office of public guardian to establish an office,
3 or as initial start-up funding to open an additional office of
4 public guardian within a county whose public guardianship
5 needs require more than one office of public guardian.

6 (b) As support funding to operational offices of
7 public guardian that demonstrate a necessity for funds to meet
8 the public guardianship needs of a particular geographic area
9 in the state which the office serves.

10 (c) To assist counties that have an operating public
11 guardianship program but that propose to expand the geographic
12 area or population of persons they serve, or to develop and
13 administer innovative programs to increase access to public
14 guardianship in this state.

15
16 Notwithstanding this subsection, the executive director of the
17 office may award emergency grants if he or she determines that
18 the award is in the best interests of public guardianship in
19 this state. Before making an emergency grant, the executive
20 director must obtain the written approval of the Secretary of
21 Elderly Affairs.

22 (2) One or more grants may be awarded within a county.
23 However, a county may not receive an award that equals, or
24 multiple awards that cumulatively equal, more than 10 percent
25 of the total amount of grant funds appropriated during any
26 fiscal year.

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

31

1 (a) In the second year that grant funds are awarded,
2 the cumulative sum of the award provided to one or more
3 applicants within the same county may not exceed 75 percent of
4 the total amount of grant funds awarded within that county in
5 year one.

6 (b) In the third year that grant funds are awarded,
7 the cumulative sum of the award provided to one or more
8 applicants within the same county may not exceed 60 percent of
9 the total amount of grant funds awarded within that county in
10 year one.

11 (c) In the fourth year that grant funds are awarded,
12 the cumulative sum of the award provided to one or more
13 applicants within the same county may not exceed 45 percent of
14 the total amount of grant funds awarded within that county in
15 year one.

16 (d) In the fifth year that grant funds are awarded,
17 the cumulative sum of the award provided to one or more
18 applicants within the same county may not exceed 30 percent of
19 the total amount of grant funds awarded within that county in
20 year one.

21 (e) In the sixth year that grant funds are awarded,
22 the cumulative sum of the award provided to one or more
23 applicants within the same county may not exceed 15 percent of
24 the total amount of grant funds awarded within that county in
25 year one.

26
27 The Statewide Public Guardianship Office may not award grant
28 funds to any applicant within a county that has received grant
29 funds for 6 or more years.

30 (4) Grant funds shall be used only to provide direct
31 services to indigent wards, except that up to 10 percent of

1 the grant funds may be retained by the awardee for
2 administrative expenses.

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

6 Section 4. Section 744.713, Florida Statutes, is
7 created to read:

8 744.713 Program administration; duties of the
9 Statewide Public Guardianship Office.--The Statewide Public
10 Guardianship Office shall administer the grant program. The
11 office shall:

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

14 (2) Establish an application process for submitting a
15 grant proposal.

16 (3) Request, receive, and review proposals from
17 applicants seeking grant funds.

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

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

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

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

27 Section 5. Section 744.714, Florida Statutes, is
28 created to read:

29 744.714 Eligibility.--
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31

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

4 (a) The applicant must meet or directly employ staff
5 that meet the minimum qualifications for a public guardian
6 under this chapter.

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

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

14 (a) The applicant must meet or directly employ staff
15 that meet the minimum qualifications for a public guardian
16 under this chapter.

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

20 (c) The applicant must have achieved a satisfactory
21 monitoring score during the applicant's most recent monitoring
22 visit.

23 Section 6. Section 744.715, Florida Statutes, is
24 created to read:

25 744.715 Grant application requirements; review
26 criteria; awards process.--Grant applications must be
27 submitted to the Statewide Public Guardianship Office for
28 review and approval.

29 (1) A grant application must contain:

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

31

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

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

7 (d) Evidence that the applicant has:

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

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

14 (e) An agreement or confirmation from a county or
15 local government that the county or local government will
16 contribute matching funds to the public guardianship program
17 totaling not less than \$1 for every \$1 of grant funds awarded.
18 For purposes of this section, an applicant may provide
19 evidence of agreements or confirmations from multiple counties
20 or local governments showing that the counties or local
21 governments will pool their contributed matching funds to the
22 public guardianship program for a combined total of not less
23 than \$1 for every \$1 of grant funds awarded. In-kind
24 contributions, such as materials, commodities, office space,
25 or other types of facilities, personnel services, or other
26 items as determined by rule shall be considered by the office
27 and may be counted as part or all of the matching funds
28 required of the county or local government.

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

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

3 (2) If the Statewide Public Guardianship Office
4 determines that an applicant meets the requirements for an
5 award of grant funds, the office may award the applicant any
6 amount of grant funds the executive director deems
7 appropriate, if the amount awarded meets the requirements of
8 this act. The office may adopt a rule allocating the maximum
9 allowable amount of grant funds which may be expended on any
10 ward.

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

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

17 1. Are operating as appointed offices of public
18 guardians in this state;

19 2. Meet all of the requirements for being awarded a
20 grant under this act; and

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

24 (b) In each fiscal year after the first year that
25 grant funds are distributed, the Statewide Public Guardianship
26 Office may give priority to awarding grant funds to those
27 entities that:

28 1. Meet all of the requirements of this act for being
29 awarded grant funds; and

30 2. Submit with their application an agreement or
31 confirmation from a county or local government that the county

1 or local government will contribute matching funds totaling an
2 amount equal to or exceeding \$2 for every \$1 of grant funds
3 awarded by the office. An entity may submit with its
4 application agreements or confirmations from multiple counties
5 or local governments showing that the counties or local
6 governments will pool their contributed matching funds to the
7 public guardianship program for a combined total of not less
8 than \$2 for every \$1 of grant funds awarded. In-kind
9 contributions allowable under this section shall be evaluated
10 by the Statewide Public Guardianship Office and may be counted
11 as local matching funds.

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

14 393.063 Definitions.--For the purposes of this
15 chapter:

16 (25) "Guardian advocate" means a person appointed by a
17 written order of the circuit court to represent a person with
18 developmental disabilities under ~~in any proceedings brought~~
19 ~~pursuant to s. 393.12, and excludes the use of the same term~~
20 ~~as applied to a guardian advocate for mentally ill persons in~~
21 ~~chapter 394.~~

22 Section 8. Paragraph (h) of subsection (2) of section
23 393.12, Florida Statutes, is amended to read:

24 393.12 Capacity; appointment of guardian advocate.--

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

26 (h) Powers and duties of guardian advocate.--A
27 guardian advocate for a person with developmental disabilities
28 shall be a ~~any~~ person or corporation qualified to act as
29 guardian, with the same powers, duties, and responsibilities
30 required of a guardian under ~~pursuant to~~ chapter 744 or those
31 defined by court order under ~~pursuant to~~ this section.

1 However, a guardian advocate may not be required to file an
2 annual accounting under s. 744.3678 if the court determines
3 that the person with developmental disabilities receives
4 income only from government benefits and the guardian advocate
5 is the person's representative payee for the benefits.

6 Section 9. Present subsections (10) through (19) of
7 section 744.102, Florida Statutes, are redesignated as
8 subsections (11) through (20), respectively, and a new
9 subsection (10) is added to that section to read:

10 744.102 Definitions.--As used in this chapter, the
11 term:

12 (10) "Guardian advocate" means a person appointed by a
13 written order of the court to represent a person with
14 developmental disabilities under s. 393.12. As used in this
15 chapter, the term does not apply to a guardian advocate
16 appointed for a person determined incompetent to consent to
17 treatment under s. 394.4598.

18 Section 10. Section 744.1083, Florida Statutes, is
19 amended to read:

20 744.1083 Professional guardian registration.--

21 (1) A professional guardian must register with the
22 Statewide Public Guardianship Office established in part IX of
23 this chapter.

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

28 (3) Registration must include the following:

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

1 (b) If the professional guardian is a partnership or
2 association, the name, address, and date of birth of every
3 member, and the employer identification number of the
4 partnership or association.

5 (c) If the professional guardian is a corporation, the
6 name, address, and employer identification number of the
7 corporation; the name, address, and date of birth of each of
8 its directors and officers; the name of its resident agent;
9 and the name, address, and date of birth of each person having
10 at least a 10-percent interest in the corporation.

11 (d) The name, address, date of birth, and employer
12 identification number, if applicable, of each person providing
13 guardian-delegated financial or personal guardianship services
14 for wards.

15 (e) Documentation that the bonding and educational
16 requirements of s. 744.1085 have been met, ~~and that background~~
17 ~~screening has been conducted pursuant to s. 744.3135.~~
18 ~~Compliance with this section shall constitute compliance with~~
19 ~~the attestation requirement of s. 435.04(5).~~

20 (f) Sufficient information to distinguish a guardian
21 providing guardianship services as a public guardian,
22 individually, through partnership, corporation, or any other
23 business organization.

24 (4) Prior to registering a professional guardian, the
25 Statewide Public Guardianship Office must receive and review
26 copies of the credit and criminal investigations conducted
27 under s. 744.3135. The credit and criminal investigations must
28 have been completed within the previous 2 years.

29 (5) The executive director of the office may deny
30 registration to a professional guardian if the executive
31 director determines that the guardian's proposed registration,

1 including the guardian's credit or criminal investigations,
2 indicates that registering the professional guardian would
3 violate any provision of this chapter. If the executive
4 director denies registration to a professional guardian, the
5 Statewide Public Guardianship Office must send written
6 notification of the denial to the chief judge of each judicial
7 circuit in which the guardian was serving on the day of the
8 office's decision to deny registration.

9 (6)(4) The Department of Elderly Affairs may adopt
10 rules necessary to administer this section.

11 (7)(5) A trust company, a state banking corporation or
12 state savings association authorized and qualified to exercise
13 fiduciary powers in this state, or a national banking
14 association or federal savings and loan association authorized
15 and qualified to exercise fiduciary powers in this state, may,
16 but is shall not be required to, register as a professional
17 guardian under this section. If a trust company, state banking
18 corporation, state savings association, national banking
19 association, or federal savings and loan association described
20 in this subsection elects to register as a professional
21 guardian under this subsection, the requirements of subsection
22 (3) do shall not apply and the registration must shall include
23 only the name, address, and employer identification number of
24 the registrant, the name and address of its registered agent,
25 if any, and the documentation described in paragraph (3)(e).

26 (8)(6) The Department of Elderly Affairs may contract
27 with the Florida Guardianship Foundation or other
28 not-for-profit entity to register professional guardians.

29 (9)(7) The department or its contractor shall ensure
30 that the clerks of the court and the chief judge of each
31

1 judicial circuit receive information about each registered
2 professional guardian.

3 (10)~~(8)~~ A state college or university or an
4 independent college or university ~~as described in pursuant to~~
5 s. 1009.98(3)(a), may, but is ~~shall~~ not ~~be~~ required to,
6 register as a professional guardian under this section. If a
7 state college or university or independent college or
8 university elects to register as a professional guardian under
9 this subsection, the requirements of subsection (3) do ~~shall~~
10 not apply and the registration must ~~shall~~ include only the
11 name, address, and employer identification number of the
12 registrant.

13 Section 11. Section 744.3085, Florida Statutes, is
14 created to read:

15 744.3085 Guardian advocates.--A probate court may
16 appoint a guardian advocate, without an adjudication of
17 incapacity, for a person with developmental disabilities if
18 the person lacks the capacity to do some, but not all, of the
19 tasks necessary to care for his or her person, property, or
20 estate, or if the person has voluntarily petitioned for the
21 appointment of a guardian advocate. Unless otherwise
22 specified, the proceeding shall be governed by the Florida
23 Rules of Civil Procedure. In accordance with the legislative
24 intent of this chapter, courts are encouraged to consider
25 appointing a guardian advocate, when appropriate, as a less
26 restrictive form of guardianship.

27 Section 12. Section 744.3135, Florida Statutes, as
28 amended by section 114 of chapter 2003-402, Laws of Florida,
29 is amended to read:

30 744.3135 Credit and criminal investigation.--The court
31 may require a nonprofessional guardian and shall require a

1 professional or public guardian, and all employees of a
2 professional guardian who have a fiduciary responsibility to a
3 ward, to submit, at their own expense, to an investigation of
4 the guardian's credit history and to undergo level 2
5 background screening as required under s. 435.04. The clerk of
6 the court shall obtain fingerprint cards from the Federal
7 Bureau of Investigation and make them available to guardians.
8 Any guardian who is so required shall have his or her
9 fingerprints taken and forward the proper fingerprint card
10 along with the necessary fee to the Florida Department of Law
11 Enforcement for processing. The professional guardian shall
12 pay to the clerk of the court a fee of up to \$7.50 for
13 handling and processing professional guardian files. The
14 results of the fingerprint checks shall be forwarded to the
15 clerk of court who shall maintain the results in a guardian
16 file and shall make the results available to the court. If
17 credit or criminal investigations are required, the court must
18 consider the results of the investigations before ~~in~~
19 appointing a guardian. Professional guardians and all
20 employees of a professional guardian who have a fiduciary
21 responsibility to a ward, so appointed, must resubmit, at
22 their own expense, to an investigation of credit history, and
23 undergo level 1 background screening as required under s.
24 435.03, at least every 2 years after the date of their
25 appointment. At any time, the court may require guardians or
26 their employees to submit to an investigation of credit
27 history and undergo level 1 background screening as required
28 under s. 435.03. The court must consider the results of these
29 investigations in reappointing a guardian.

30 (1) Upon receiving the results of a credit or criminal
31 investigation of any public or professional guardian, the

1 clerk of the court shall forward copies of the results to the
2 Statewide Public Guardianship Office in order that the results
3 may be maintained in the guardian's registration file.

4 (2) This section does ~~shall~~ not apply to a
5 professional guardian, or to the employees of a professional
6 guardian, which ~~that~~ is a trust company, a state banking
7 corporation or state savings association authorized and
8 qualified to exercise fiduciary powers in this state, or a
9 national banking association or federal savings and loan
10 association authorized and qualified to exercise fiduciary
11 powers in this state.

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

15 744.3678 Annual accounting.--

16 (5) This section does not apply if the court
17 determines that the ward receives income only from government
18 benefits and the guardian is the ward's representative payee
19 for the benefits.

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

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

24 744.7082 Direct-support organization; definition; use
25 of property; board of directors; audit; dissolution.--

26 (1) DEFINITION.--As used in this section, the term
27 "direct-support organization" means an organization whose sole
28 purpose is to support the Statewide Public Guardianship Office
29 and is:

30 (a) A not-for-profit corporation incorporated under
31 chapter 617 and approved by the Department of State;

1 (b) Organized and operated to conduct programs and
2 activities; to raise funds; to request and receive grants,
3 gifts, and bequests of moneys; to acquire, receive, hold,
4 invest, and administer, in its own name, securities, funds,
5 objects of value, or other property, real or personal; and to
6 make expenditures to or for the direct or indirect benefit of
7 the Statewide Public Guardianship Office; and

8 (c) Determined by the Statewide Public Guardianship
9 Office to be consistent with the goals of the office, in the
10 best interests of the state, and in accordance with the
11 adopted goals and mission of the Department of Elderly Affairs
12 and the Statewide Public Guardianship Office.

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

16 (a) Certification by the Statewide Public Guardianship
17 Office that the direct-support organization is complying with
18 the terms of the contract and is doing so consistent with the
19 goals and purposes of the office and in the best interests of
20 the state. This certification must be made annually and
21 reported in the official minutes of a meeting of the
22 direct-support organization.

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

25 1. To the Statewide Public Guardianship Office if the
26 direct-support organization is no longer approved to operate
27 for the office;

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

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

1 4. To the state if the Department of Elderly Affairs
2 ceases to exist.

3
4 The fiscal year of the direct-support organization shall begin
5 on July 1 of each year and end on June 30 of the following
6 year.

7 (c) The disclosure of the material provisions of the
8 contract, and the distinction between the Statewide Public
9 Guardianship Office and the direct-support organization, to
10 donors of gifts, contributions, or bequests, including such
11 disclosure on all promotional and fundraising publications.

12 (3) BOARD OF DIRECTORS.--The Secretary of Elderly
13 Affairs shall appoint a board of directors for the
14 direct-support organization from a list of nominees submitted
15 by the executive director of the Statewide Public Guardianship
16 Office.

17 (4) USE OF PROPERTY.--The Department of Elderly
18 Affairs may permit, without charge, appropriate use of fixed
19 property and facilities of the department or the Statewide
20 Public Guardianship Office by the direct-support organization.
21 The department may prescribe any condition with which the
22 direct-support organization must comply in order to use fixed
23 property or facilities of the department or the Statewide
24 Public Guardianship Office.

25 (5) MONEYS.--Any moneys may be held in a separate
26 depository account in the name of the direct-support
27 organization and subject to the provisions of the written
28 contract with the Statewide Public Guardianship Office.
29 Expenditures of the direct-support organization shall be
30 expressly used to support the Statewide Public Guardianship
31 Office. The expenditures of the direct-support organization

1 may not be used for the purpose of lobbying as defined in s.
2 11.045.

3 (6) AUDIT.--The direct-support organization shall
4 provide for an annual financial audit in accordance with s.
5 215.981.

6 (7) DISSOLUTION.--After July 1, 2004, any
7 not-for-profit corporation incorporated under chapter 617 that
8 is determined by a circuit court to be representing itself as
9 a direct-support organization created under this section, but
10 that does not have a written contract with the Statewide
11 Public Guardianship Office in compliance with this section, is
12 considered to meet the grounds for a judicial dissolution
13 described in s. 617.1430(1)(a). The Statewide Public
14 Guardianship Office shall be the recipient for all assets held
15 by the dissolved corporation which accrued during the period
16 that the dissolved corporation represented itself as a
17 direct-support organization created under this section.

18 Section 15. Paragraph (c) of subsection (8) of section
19 121.091, Florida Statutes, is amended to read:

20 121.091 Benefits payable under the system.--Benefits
21 may not be paid under this section unless the member has
22 terminated employment as provided in s. 121.021(39)(a) or
23 begun participation in the Deferred Retirement Option Program
24 as provided in subsection (13), and a proper application has
25 been filed in the manner prescribed by the department. The
26 department may cancel an application for retirement benefits
27 when the member or beneficiary fails to timely provide the
28 information and documents required by this chapter and the
29 department's rules. The department shall adopt rules
30 establishing procedures for application for retirement

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1 benefits and for the cancellation of such application when the
2 required information or documents are not received.

3 (8) DESIGNATION OF BENEFICIARIES.--

4 (c) Notwithstanding the member's designation of
5 benefits to be paid through a trust to a beneficiary that is a
6 natural person as provided in s. 121.021(46), and
7 notwithstanding the provisions of the trust, benefits shall be
8 paid directly to the beneficiary if such person is no longer a
9 minor or incapacitated as defined in s. 744.102(11) and (12)
10 ~~s. 744.102(10) and (11)~~.

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

14 709.08 Durable power of attorney.--

15 (1) CREATION OF DURABLE POWER OF ATTORNEY.--A durable
16 power of attorney is a written power of attorney by which a
17 principal designates another as the principal's attorney in
18 fact. The durable power of attorney must be in writing, must
19 be executed with the same formalities required for the
20 conveyance of real property by Florida law, and must contain
21 the words: "This durable power of attorney is not affected by
22 subsequent incapacity of the principal except as provided in
23 s. 709.08, Florida Statutes"; or similar words that show the
24 principal's intent that the authority conferred is exercisable
25 notwithstanding the principal's subsequent incapacity, except
26 as otherwise provided by this section. The durable power of
27 attorney is exercisable as of the date of execution; however,
28 if the durable power of attorney is conditioned upon the
29 principal's lack of capacity to manage property as defined in
30 s. 744.102(11)(a)~~s. 744.102(10)(a)~~, the durable power of
31

1 attorney is exercisable upon the delivery of affidavits in
2 paragraphs (4)(c) and (d) to the third party.

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

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

12 (d) A determination that a principal lacks the
13 capacity to manage property as defined in s. 744.102(11)(a) ~~s.~~
14 ~~744.102(10)(a)~~ must be made and evidenced by the affidavit of
15 a physician licensed to practice medicine pursuant to chapters
16 458 and 459 as of the date of the affidavit. A judicial
17 determination that the principal lacks the capacity to manage
18 property pursuant to chapter 744 is not required prior to the
19 determination by the physician and the execution of the
20 affidavit. For purposes of this section, the physician
21 executing the affidavit must be the primary physician who has
22 responsibility for the treatment and care of the principal.
23 The affidavit executed by a physician must state where the
24 physician is licensed to practice medicine, that the physician
25 is the primary physician who has responsibility for the
26 treatment and care of the principal, and that the physician
27 believes that the principal lacks the capacity to manage
28 property as defined in s. 744.102(11)(a)~~s. 744.102(10)(a)~~.
29 The affidavit may, but need not, be in the following form:

30
31 STATE OF.....

1 COUNTY OF.....

2

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

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

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

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

18

19
20 ...(Affiant)...

21

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

25

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

27

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

30

31 Personally Known OR Produced Identification

1 ...(Type of Identification Produced)...

2

3 (f) A third party may not rely on the authority
4 granted in a durable power of attorney conditioned on the
5 principal's lack of capacity to manage property as defined in
6 s. 744.102(11)(a)~~s. 744.102(10)(a)~~when any affidavit
7 presented has been executed more than 6 months prior to the
8 first presentation of the durable power of attorney to the
9 third party.

10 Section 17. Subsection (3) of 744.1085, Florida
11 Statutes, is amended to read:

12 744.1085 Regulation of professional guardians;
13 application; bond required; educational requirements.--

14 (3) Each professional guardian defined in s.
15 744.102(16)~~s. 744.102(15)~~and public guardian must receive a
16 minimum of 40 hours of instruction and training. Each
17 professional guardian must receive a minimum of 16 hours of
18 continuing education every 2 calendar years after the year in
19 which the initial 40-hour educational requirement is met. The
20 instruction and education must be completed through a course
21 approved or offered by the Statewide Public Guardianship
22 Office. The expenses incurred to satisfy the educational
23 requirements prescribed in this section may not be paid with
24 the assets of any ward. This subsection does not apply to any
25 attorney who is licensed to practice law in this state.

26 Section 18. Except as otherwise expressly provided in
27 this act, this act shall take effect July 1, 2004.

28

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SENATE SUMMARY

Creates the "Joining Forces for Public Guardianship" program. Provides legislative findings and intent relating to the program. Establishes the grant program and the program's purposes. Provides for the Statewide Public Guardianship Office to administer the program. Provides the duties and responsibilities of the office relating to the grant program. Establishes eligibility for grant awards. Provides for application requirements, an application process, and review criteria. Requires the clerks of court to forward certain information to the Statewide Public Guardianship Office. Provides that guardians are exempt from annual accounting provisions in certain situations. Defines the term "direct-support organization." Requires the Secretary of Elderly Affairs to appoint a board of directors for the direct-support organization. Authorizes the organization to use property and facilities of the Department of Elderly Affairs and the Statewide Public Guardianship Office. Requires an annual audit of the direct-support organization. Provides for the dissolution of entities improperly using the direct-support organization designation. (See bill for details.)