

By the Committee on Health, Aging, and Long-Term Care; and
Senator Saunders

317-2187-04

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; amending s.
26 744.3031, F.S.; extending the authority of an
27 emergency temporary guardian for specified time
28 periods; amending s. 744.3201, F.S.; requiring
29 the petition to determine incapacity to include
30 the telephone number of the petitioner and the
31 alleged incapacitated person; amending s.

1 744.3215, F.S.; providing that if the right to
2 contract is removed, the incapacitated person
3 must receive court approval before getting
4 married; amending s. 744.331, F.S.; requiring
5 the chief judge of each judicial circuit to
6 maintain a list of attorneys in the circuit and
7 to appoint the attorneys to represent persons
8 alleged to be incapacitated on a rotating
9 basis; directing members of the examining
10 committee to communicate with a person alleged
11 to be incapacitated in the language or medium
12 used by the person alleged to be incapacitated;
13 prohibiting a family member or attending
14 physician from serving as a member of the
15 examining committee; providing exceptions;
16 requiring each member of the examining
17 committee to consult with the family or
18 attending physician; directing each member of
19 the examining committee to file a report within
20 a specified period; providing effective dates.

21
22 Be It Enacted by the Legislature of the State of Florida:
23

24 Section 1. Section 744.7101, Florida Statutes, is
25 created to read:

26 744.7101 Short title.--Sections 744.7101-744.715 may
27 be cited as the "Joining Forces for Public Guardianship Act."

28 Section 2. Section 744.711, Florida Statutes, is
29 created to read:

30 744.711 Legislative findings and intent.--The
31 Legislature finds that public guardianship programs are

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

13 Section 3. Section 744.712, Florida Statutes, is
14 created to read:

15 744.712 Joining Forces for Public Guardianship grant
16 program; purpose.--The Joining Forces for Public Guardianship
17 matching grant program shall be established and administered
18 by the Statewide Public Guardianship Office within the
19 Department of Elderly Affairs. The purpose of the program is
20 to provide start-up funding to encourage communities to
21 develop and administer locally funded and supported public
22 guardianship programs to address the needs of indigent and
23 incapacitated residents.

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

26 (a) As initial start-up funding to encourage counties
27 that have no office of public guardian to establish an office,
28 or as initial start-up funding to open an additional office of
29 public guardian within a county whose public guardianship
30 needs require more than one office of public guardian.

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1 (b) As support funding to operational offices of
2 public guardian that demonstrate a necessity for funds to meet
3 the public guardianship needs of a particular geographic area
4 in the state which the office serves.

5 (c) To assist counties that have an operating public
6 guardianship program but that propose to expand the geographic
7 area or population of persons they serve, or to develop and
8 administer innovative programs to increase access to public
9 guardianship in this state.

10
11 Notwithstanding this subsection, the executive director of the
12 office may award emergency grants if he or she determines that
13 the award is in the best interests of public guardianship in
14 this state. Before making an emergency grant, the executive
15 director must obtain the written approval of the Secretary of
16 Elderly Affairs. Subsections (2), (3), and (4) do not apply to
17 the distribution of emergency grant funds.

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

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

27 (a) In the second year that grant funds are awarded,
28 the cumulative sum of the award provided to one or more
29 applicants within the same county may not exceed 75 percent of
30 the total amount of grant funds awarded within that county in
31 year one.

1 (b) In the third 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 60 percent of
4 the total amount of grant funds awarded within that county in
5 year one.

6 (c) In the fourth 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 45 percent of
9 the total amount of grant funds awarded within that county in
10 year one.

11 (d) In the fifth 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 30 percent of
14 the total amount of grant funds awarded within that county in
15 year one.

16 (e) In the sixth 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 15 percent of
19 the total amount of grant funds awarded within that county in
20 year one.

21
22 The Statewide Public Guardianship Office may not award grant
23 funds to any applicant within a county that has received grant
24 funds for more than 6 years.

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

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

1 Section 4. Section 744.713, Florida Statutes, is
2 created to read:

3 744.713 Program administration; duties of the
4 Statewide Public Guardianship Office.--The Statewide Public
5 Guardianship Office shall administer the grant program. The
6 office shall:

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

9 (2) Establish an application process for submitting a
10 grant proposal.

11 (3) Request, receive, and review proposals from
12 applicants seeking grant funds.

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

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

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

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

22 Section 5. Section 744.714, Florida Statutes, is
23 created to read:

24 744.714 Eligibility.--

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

28 (a) The applicant must meet or directly employ staff
29 that meet the minimum qualifications for a public guardian
30 under this chapter.

31

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

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

8 (a) The applicant must meet or directly employ staff
9 that meet the minimum qualifications for a public guardian
10 under this chapter.

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

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

17 Section 6. Section 744.715, Florida Statutes, is
18 created to read:

19 744.715 Grant application requirements; review
20 criteria; awards process.--Grant applications must be
21 submitted to the Statewide Public Guardianship Office for
22 review and approval.

23 (1) A grant application must contain:

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

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

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

31 (d) Evidence that the applicant has:

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

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

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

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

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

26 (2) If the Statewide Public Guardianship Office
27 determines that an applicant meets the requirements for an
28 award of grant funds, the office may award the applicant any
29 amount of grant funds the executive director deems
30 appropriate, if the amount awarded meets the requirements of
31 this act. The office may adopt a rule allocating the maximum

1 allowable amount of grant funds which may be expended on any
2 ward.

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

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

9 1. Are operating as appointed offices of public
10 guardians in this state;

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

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

16 (b) In each fiscal year after the first year that
17 grant funds are distributed, the Statewide Public Guardianship
18 Office may give priority to awarding grant funds to those
19 entities that:

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

22 2. Submit with their application an agreement or
23 confirmation from a local funding source, such as a county or
24 local government, that the local funding source will
25 contribute matching funds totaling an amount equal to or
26 exceeding \$2 for every \$1 of grant funds awarded by the
27 office. An entity may submit with its application agreements
28 or confirmations from multiple local funding sources showing
29 that the local funding sources will pool their contributed
30 matching funds to the public guardianship program for a
31 combined total of not less than \$2 for every \$1 of grant funds

1 awarded. In-kind contributions allowable under this section
2 shall be evaluated by the Statewide Public Guardianship Office
3 and may be counted as part or all of the local matching funds.

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

6 393.063 Definitions.--For the purposes of this
7 chapter:

8 (25) "Guardian advocate" means a person appointed by a
9 written order of the circuit court to represent a person with
10 developmental disabilities under in any proceedings brought
11 ~~pursuant to s. 393.12, and excludes the use of the same term~~
12 ~~as applied to a guardian advocate for mentally ill persons in~~
13 ~~chapter 394.~~

14 Section 8. Paragraph (h) of subsection (2) of section
15 393.12, Florida Statutes, is amended to read:

16 393.12 Capacity; appointment of guardian advocate.--

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

18 (h) Powers and duties of guardian advocate.--A
19 guardian advocate for a person with developmental disabilities
20 shall be a any person or corporation qualified to act as
21 guardian, with the same powers, duties, and responsibilities
22 required of a guardian under pursuant to chapter 744 or those
23 defined by court order under pursuant to this section.
24 However, a guardian advocate may not be required to file an
25 annual accounting under s. 744.3678 if the court determines
26 that the person with developmental disabilities receives
27 income only from Social Security benefits and the guardian
28 advocate is the person's representative payee for the
29 benefits.

30 Section 9. Present subsections (10) through (19) of
31 section 744.102, Florida Statutes, are redesignated as

1 subsections (11) through (20), respectively, and a new
2 subsection (10) is added to that section to read:

3 744.102 Definitions.--As used in this chapter, the
4 term:

5 (10) "Guardian advocate" means a person appointed by a
6 written order of the court to represent a person with
7 developmental disabilities under s. 393.12. As used in this
8 chapter, the term does not apply to a guardian advocate
9 appointed for a person determined incompetent to consent to
10 treatment under s. 394.4598.

11 Section 10. Section 744.1083, Florida Statutes, is
12 amended to read:

13 744.1083 Professional guardian registration.--

14 (1) A professional guardian must register with the
15 Statewide Public Guardianship Office established in part IX of
16 this chapter.

17 (2) Annual registration shall be made on forms
18 furnished by the Statewide Public Guardianship Office and
19 accompanied by the applicable registration fee as determined
20 by rule. ~~The such~~ fee ~~may shall~~ not exceed \$100.

21 (3) Registration must include the following:

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

25 (b) If the professional guardian is a partnership or
26 association, the name, address, and date of birth of every
27 member, and the employer identification number of the
28 partnership or association.

29 (c) If the professional guardian is a corporation, the
30 name, address, and employer identification number of the
31 corporation; the name, address, and date of birth of each of

1 its directors and officers; the name of its resident agent;
2 and the name, address, and date of birth of each person having
3 at least a 10-percent interest in the corporation.

4 (d) The name, address, date of birth, and employer
5 identification number, if applicable, of each person providing
6 guardian-delegated financial or personal guardianship services
7 for wards.

8 (e) Documentation that the bonding and educational
9 requirements of s. 744.1085 have been met, ~~and that background~~
10 ~~screening has been conducted pursuant to s. 744.3135.~~
11 ~~Compliance with this section shall constitute compliance with~~
12 ~~the attestation requirement of s. 435.04(5).~~

13 (f) Sufficient information to distinguish a guardian
14 providing guardianship services as a public guardian,
15 individually, through partnership, corporation, or any other
16 business organization.

17 (4) Prior to registering a professional guardian, the
18 Statewide Public Guardianship Office must receive and review
19 copies of the credit and criminal investigations conducted
20 under s. 744.3135. The credit and criminal investigations must
21 have been completed within the previous 2 years.

22 (5) The executive director of the office may deny
23 registration to a professional guardian if the executive
24 director determines that the guardian's proposed registration,
25 including the guardian's credit or criminal investigations,
26 indicates that registering the professional guardian would
27 violate any provision of this chapter. If the executive
28 director denies registration to a professional guardian, the
29 Statewide Public Guardianship Office must send written
30 notification of the denial to the chief judge of each judicial
31

1 circuit in which the guardian was serving on the day of the
2 office's decision to deny registration.

3 (6)~~(4)~~ The Department of Elderly Affairs may adopt
4 rules necessary to administer this section.

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

20 (8)~~(6)~~ The Department of Elderly Affairs may contract
21 with the Florida Guardianship Foundation or other
22 not-for-profit entity to register professional guardians.

23 (9)~~(7)~~ The department or its contractor shall ensure
24 that the clerks of the court and the chief judge of each
25 judicial circuit receive information about each registered
26 professional guardian.

27 (10)~~(8)~~ A state college or university or an
28 independent college or university ~~as described in pursuant to~~
29 s. 1009.98(3)(a), may, but is ~~shall~~ not ~~be~~ required to,
30 register as a professional guardian under this section. If a
31 state college or university or independent college or

1 university elects to register as a professional guardian under
2 this subsection, the requirements of subsection (3) ~~do shall~~
3 not apply and the registration must ~~shall~~ include only the
4 name, address, and employer identification number of the
5 registrant.

6 Section 11. Section 744.3085, Florida Statutes, is
7 created to read:

8 744.3085 Guardian advocates.--A circuit court may
9 appoint a guardian advocate, without an adjudication of
10 incapacity, for a person with developmental disabilities if
11 the person lacks the capacity to do some, but not all, of the
12 tasks necessary to care for his or her person, property, or
13 estate, or if the person has voluntarily petitioned for the
14 appointment of a guardian advocate. Unless otherwise
15 specified, the proceeding shall be governed by the Florida
16 Probate Rules. In accordance with the legislative intent of
17 this chapter, courts are encouraged to consider appointing a
18 guardian advocate, when appropriate, as a less restrictive
19 form of guardianship.

20 Section 12. Section 744.3135, Florida Statutes, as
21 amended by section 114 of chapter 2003-402, Laws of Florida,
22 is amended to read:

23 744.3135 Credit and criminal investigation.--The court
24 may require a nonprofessional guardian and shall require a
25 professional or public guardian, and all employees of a
26 professional guardian who have a fiduciary responsibility to a
27 ward, to submit, at their own expense, to an investigation of
28 the guardian's credit history and to undergo level 2
29 background screening as required under s. 435.04. The clerk of
30 the court shall obtain fingerprint cards from the Federal
31 Bureau of Investigation and make them available to guardians.

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

23 (1) Upon receiving the results of a credit or criminal
24 investigation of any public or professional guardian, the
25 clerk of the court shall forward copies of the results to the
26 Statewide Public Guardianship Office in order that the results
27 may be maintained in the guardian's registration file.

28 (2) This section does ~~shall~~ not apply to a
29 professional guardian, or to the employees of a professional
30 guardian, which ~~that~~ is a trust company, a state banking
31 corporation or state savings association authorized and

1 qualified to exercise fiduciary powers in this state, or a
2 national banking association or federal savings and loan
3 association authorized and qualified to exercise fiduciary
4 powers in this state.

5 Section 13. Subsection (5) is added to section
6 744.3678, Florida Statutes, as amended by section 116 of
7 chapter 2003-402, Laws of Florida, to read:

8 744.3678 Annual accounting.--

9 (5) This section does not apply if the court
10 determines that the ward receives income only from Social
11 Security benefits and the guardian is the ward's
12 representative payee for the benefits.

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

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

17 744.7082 Direct-support organization; definition; use
18 of property; board of directors; audit; dissolution.--

19 (1) DEFINITION.--As used in this section, the term
20 "direct-support organization" means an organization whose sole
21 purpose is to support the Statewide Public Guardianship Office
22 and is:

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

25 (b) Organized and operated to conduct programs and
26 activities; to raise funds; to request and receive grants,
27 gifts, and bequests of moneys; to acquire, receive, hold,
28 invest, and administer, in its own name, securities, funds,
29 objects of value, or other property, real or personal; and to
30 make expenditures to or for the direct or indirect benefit of
31 the Statewide Public Guardianship Office; and

1 (c) Determined by the Statewide Public Guardianship
2 Office to be consistent with the goals of the office, in the
3 best interests of the state, and in accordance with the
4 adopted goals and mission of the Department of Elderly Affairs
5 and the Statewide Public Guardianship Office.

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

9 (a) Certification by the Statewide Public Guardianship
10 Office that the direct-support organization is complying with
11 the terms of the contract and is doing so consistent with the
12 goals and purposes of the office and in the best interests of
13 the state. This certification must be made annually and
14 reported in the official minutes of a meeting of the
15 direct-support organization.

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

18 1. To the Statewide Public Guardianship Office if the
19 direct-support organization is no longer approved to operate
20 for the office;

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

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

25 4. To the state if the Department of Elderly Affairs
26 ceases to exist.

27
28 The fiscal year of the direct-support organization shall begin
29 on July 1 of each year and end on June 30 of the following
30 year.

31

1 (c) The disclosure of the material provisions of the
2 contract, and the distinction between the Statewide Public
3 Guardianship Office and the direct-support organization, to
4 donors of gifts, contributions, or bequests, including such
5 disclosure on all promotional and fundraising publications.

6 (3) BOARD OF DIRECTORS.--The Secretary of Elderly
7 Affairs shall appoint a board of directors for the
8 direct-support organization from a list of nominees submitted
9 by the executive director of the Statewide Public Guardianship
10 Office.

11 (4) USE OF PROPERTY.--The Department of Elderly
12 Affairs may permit, without charge, appropriate use of fixed
13 property and facilities of the department or the Statewide
14 Public Guardianship Office by the direct-support organization.
15 The department may prescribe any condition with which the
16 direct-support organization must comply in order to use fixed
17 property or facilities of the department or the Statewide
18 Public Guardianship Office.

19 (5) MONEYS.--Any moneys may be held in a separate
20 depository account in the name of the direct-support
21 organization and subject to the provisions of the written
22 contract with the Statewide Public Guardianship Office.
23 Expenditures of the direct-support organization shall be
24 expressly used to support the Statewide Public Guardianship
25 Office. The expenditures of the direct-support organization
26 may not be used for the purpose of lobbying as defined in s.
27 11.045.

28 (6) AUDIT.--The direct-support organization shall
29 provide for an annual financial audit in accordance with s.
30 215.981.

31

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

13 Section 15. Paragraph (c) of subsection (8) of section
14 121.091, Florida Statutes, is amended to read:

15 121.091 Benefits payable under the system.--Benefits
16 may not be paid under this section unless the member has
17 terminated employment as provided in s. 121.021(39)(a) or
18 begun participation in the Deferred Retirement Option Program
19 as provided in subsection (13), and a proper application has
20 been filed in the manner prescribed by the department. The
21 department may cancel an application for retirement benefits
22 when the member or beneficiary fails to timely provide the
23 information and documents required by this chapter and the
24 department's rules. The department shall adopt rules
25 establishing procedures for application for retirement
26 benefits and for the cancellation of such application when the
27 required information or documents are not received.

28 (8) DESIGNATION OF BENEFICIARIES.--

29 (c) Notwithstanding the member's designation of
30 benefits to be paid through a trust to a beneficiary that is a
31 natural person as provided in s. 121.021(46), and

1 notwithstanding the provisions of the trust, benefits shall be
2 paid directly to the beneficiary if such person is no longer a
3 minor or incapacitated as defined in s. 744.102(11) and (12)
4 ~~s. 744.102(10) and (11)~~.

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

8 709.08 Durable power of attorney.--

9 (1) CREATION OF DURABLE POWER OF ATTORNEY.--A durable
10 power of attorney is a written power of attorney by which a
11 principal designates another as the principal's attorney in
12 fact. The durable power of attorney must be in writing, must
13 be executed with the same formalities required for the
14 conveyance of real property by Florida law, and must contain
15 the words: "This durable power of attorney is not affected by
16 subsequent incapacity of the principal except as provided in
17 s. 709.08, Florida Statutes"; or similar words that show the
18 principal's intent that the authority conferred is exercisable
19 notwithstanding the principal's subsequent incapacity, except
20 as otherwise provided by this section. The durable power of
21 attorney is exercisable as of the date of execution; however,
22 if the durable power of attorney is conditioned upon the
23 principal's lack of capacity to manage property as defined in
24 s. 744.102(11)(a)~~s. 744.102(10)(a)~~, the durable power of
25 attorney is exercisable upon the delivery of affidavits in
26 paragraphs (4)(c) and (d) to the third party.

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

29 (b) Any third party may rely upon the authority
30 granted in a durable power of attorney that is conditioned on
31 the principal's lack of capacity to manage property as defined

1 in s. 744.102(11)(a)~~s. 744.102(10)(a)~~ only after receiving
2 the affidavits provided in paragraphs (c) and (d), and such
3 reliance shall end when the third party has received notice as
4 provided in subsection (5).

5 (d) A determination that a principal lacks the
6 capacity to manage property as defined in s. 744.102(11)(a) ~~s.~~
7 ~~744.102(10)(a)~~ must be made and evidenced by the affidavit of
8 a physician licensed to practice medicine pursuant to chapters
9 458 and 459 as of the date of the affidavit. A judicial
10 determination that the principal lacks the capacity to manage
11 property pursuant to chapter 744 is not required prior to the
12 determination by the physician and the execution of the
13 affidavit. For purposes of this section, the physician
14 executing the affidavit must be the primary physician who has
15 responsibility for the treatment and care of the principal.
16 The affidavit executed by a physician must state where the
17 physician is licensed to practice medicine, that the physician
18 is the primary physician who has responsibility for the
19 treatment and care of the principal, and that the physician
20 believes that the principal lacks the capacity to manage
21 property as defined in s. 744.102(11)(a)~~s. 744.102(10)(a)~~.
22 The affidavit may, but need not, be in the following form:

23
24 STATE OF.....
25 COUNTY OF.....
26

27 Before me, the undersigned authority, personally
28 appeared ...(name of physician)..., Affiant, who swore or
29 affirmed that:
30
31

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

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

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

13
14
15
16

.....
...(Affiant)...

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

20

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

22

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

25

26 Personally Known OR Produced Identification

27 ...(Type of Identification Produced)...

28

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

1 s. 744.102(11)(a)~~s. 744.102(10)(a)~~when any affidavit
2 presented has been executed more than 6 months prior to the
3 first presentation of the durable power of attorney to the
4 third party.

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

7 744.1085 Regulation of professional guardians;
8 application; bond required; educational requirements.--

9 (3) Each professional guardian defined in s.
10 744.102(16)~~s. 744.102(15)~~and public guardian must receive a
11 minimum of 40 hours of instruction and training. Each
12 professional guardian must receive a minimum of 16 hours of
13 continuing education every 2 calendar years after the year in
14 which the initial 40-hour educational requirement is met. The
15 instruction and education must be completed through a course
16 approved or offered by the Statewide Public Guardianship
17 Office. The expenses incurred to satisfy the educational
18 requirements prescribed in this section may not be paid with
19 the assets of any ward. This subsection does not apply to any
20 attorney who is licensed to practice law in this state.

21 Section 18. Subsection (3) of section 744.3031,
22 Florida Statutes, is amended to read:

23 744.3031 Emergency temporary guardianship.--

24 (3) The authority of an emergency temporary guardian
25 expires 60 days after the date of appointment or when a
26 guardian is appointed, whichever occurs first. The authority
27 of the emergency temporary guardian may be extended for ~~an~~
28 additional 60-day periods ~~30 days~~ upon a showing that the
29 emergency conditions still exist.

30 Section 19. Subsection (2) of section 744.3201,
31 Florida Statutes, is amended to read:

1 744.3201 Petition to determine incapacity.--
2 (2) The petition must be verified and must:
3 (a) State the name, age, and present address and
4 telephone number of the petitioner and his or her relationship
5 to the alleged incapacitated person;
6 (b) State the name, age, county of residence, and
7 present address and telephone number of the alleged
8 incapacitated person;
9 (c) Specify the primary language spoken by the alleged
10 incapacitated person, if known;
11 (d) Allege that the petitioner believes the alleged
12 incapacitated person to be incapacitated and specify the
13 factual information on which this ~~such~~ belief is based and the
14 names and addresses of all persons known to the petitioner who
15 have knowledge of these ~~such~~ facts through personal
16 observations;
17 (e) State the name and address of the alleged
18 incapacitated person's attending or family physician, if
19 known;
20 (f) State which rights enumerated in s. 744.3215 the
21 alleged incapacitated person is incapable of exercising, to
22 the best of petitioner's knowledge. If the petitioner has
23 insufficient experience to make these ~~such~~ judgments, the
24 petition must so state; and
25 (g) State the names, relationships, and addresses of
26 the next of kin of the alleged incapacitated person, so far as
27 are known, specifying the dates of birth of any who are
28 minors.
29 Section 20. Subsections (1) and (3) of section
30 744.3215, Florida Statutes, are amended to read:
31 744.3215 Rights of persons determined incapacitated.--

- 1 (1) A person who has been determined to be
2 incapacitated retains the right:
- 3 (a) To privacy.
- 4 **(b)**~~(a)~~ To have an annual review of the guardianship
5 report and plan.
- 6 **(c)**~~(b)~~ To have continuing review of the need for
7 restriction of his or her rights.
- 8 **(d)**~~(c)~~ To be restored to capacity at the earliest
9 possible time.
- 10 **(e)**~~(d)~~ To be treated humanely, with dignity and
11 respect, and to be protected against abuse, neglect, and
12 exploitation.
- 13 **(f)**~~(e)~~ To have a qualified guardian.
- 14 **(g)**~~(f)~~ To remain as independent as possible, including
15 having his or her preference as to place and standard of
16 living honored, either as he or she expressed or demonstrated
17 his or her preference prior to the determination of his or her
18 incapacity or as he or she currently expresses his or her
19 preference, insofar as such request is reasonable.
- 20 **(h)**~~(g)~~ To be properly educated.
- 21 **(i)**~~(h)~~ To receive prudent financial management for his
22 or her property and to be informed how his or her property is
23 being managed, if he or she has lost the right to manage
24 property.
- 25 **(j)**~~(i)~~ To receive ~~necessary~~ services and
26 rehabilitation necessary to maximize quality of life.
- 27 **(k)**~~(j)~~ To be free from discrimination because of his
28 or her incapacity.
- 29 **(l)**~~(k)~~ To have access to the courts.
- 30 **(m)**~~(l)~~ To counsel.
- 31

1 (n)~~(m)~~ To receive visitors and communicate with
2 others.

3 (o)~~(n)~~ To notice of all proceedings related to
4 determination of capacity and guardianship, unless the court
5 finds the incapacitated person lacks the ability to comprehend
6 the notice.

7 ~~(o) To privacy.~~

8 (2) Rights that may be removed from a person by an
9 order determining incapacity but that may not be delegated to
10 a guardian include the right:

11 (a) To marry. If the right to contract is removed, the
12 right to marry is subject to the approval of the court.

13 (b) To vote.

14 (c) To personally apply for government benefits.

15 (d) To have a driver's license.

16 (e) To travel.

17 (f) To seek or retain employment.

18 Section 21. Subsections (2), (3), and (7) of section
19 744.331, Florida Statutes, are amended to read:

20 744.331 Procedures to determine incapacity.--

21 (2) ATTORNEY FOR THE ALLEGED INCAPACITATED PERSON.--

22 (a) The court shall appoint an attorney for each
23 person alleged to be incapacitated in all cases involving a
24 petition for adjudication of incapacity. The chief judge of
25 each judicial circuit shall establish and maintain a list of
26 attorneys practicing within the circuit or within each county
27 within the circuit to serve as court-appointed attorneys for
28 alleged incapacitated persons. The court shall appoint
29 attorneys for alleged incapacitated persons on a rotating
30 basis from the list maintained pursuant to this paragraph. The
31

1 alleged incapacitated person may substitute her or his own
2 attorney for the attorney appointed by the court.

3 (b) Any attorney representing an alleged incapacitated
4 person may not serve as guardian of the alleged incapacitated
5 person or as counsel for the guardian of the alleged
6 incapacitated person or the petitioner.

7 (3) EXAMINING COMMITTEE.--

8 (a) Within 5 days after a petition for determination
9 of incapacity has been filed, the court shall appoint an
10 examining committee consisting of three members.

11 1. One member of the examining committee must be a
12 psychiatrist or other physician. The remaining members of the
13 examining committee must be either a psychologist,
14 gerontologist, another psychiatrist, or other physician, a
15 registered nurse, nurse practitioner, licensed social worker,
16 a person with an advanced degree in gerontology from an
17 accredited institution of higher education, or other person
18 who by knowledge, skill, experience, training, or education
19 may, in the court's discretion, advise the court in the form
20 of an expert opinion.

21 2. One of three members of the examining committee
22 must have knowledge of the type of incapacity alleged in the
23 petition.

24 3. Members of the examining committee must be able to
25 communicate, either directly or through an interpreter, in the
26 language that the alleged incapacitated person speaks, or to
27 communicate in a medium understandable to the alleged
28 incapacitated person if she or he is able to communicate.

29 ~~Unless good cause is shown, the attending or family physician~~
30 ~~may not be appointed to the committee. If the attending or~~
31

1 ~~family physician is available for consultation, the committee~~
2 ~~must consult with the physician.~~

3 (b)1. Members of the examining committee may not be
4 related to or associated with one another or with the
5 petitioner, the petitioner's counsel, the proposed guardian's
6 counsel, or the person alleged to be totally or partially
7 incapacitated.

8 2. A member may not be employed by any private or
9 governmental agency that has custody of, or furnishes,
10 services or subsidies, directly or indirectly, to the person
11 or the family of the person alleged to be incapacitated or for
12 whom a guardianship is sought.

13 3. A petitioner may not serve as a member of the
14 examining committee.

15 4. Unless good cause is shown, the attending or family
16 physician may not serve as a member of the examining
17 committee.

18 (c) The chief judge of each judicial circuit shall
19 establish and update at least annually a list of qualified
20 examining committee members within the circuit or within each
21 county within the circuit to serve on examining committees.

22 The court shall appoint examining committee members who meet
23 the requirements of this section from the list maintained
24 under this paragraph. ~~Members of the examining committee must~~
25 ~~be able to communicate, either directly or through an~~
26 ~~interpreter, in the language that the alleged incapacitated~~
27 ~~person speaks or to communicate in a medium understandable to~~
28 ~~the alleged incapacitated person if she or he is able to~~
29 ~~communicate.~~

30 ~~(d)(b)~~ Each member of the examining committee shall
31 examine the alleged incapacitated person. The examining

1 committee shall determine the alleged incapacitated person's
2 ability to exercise the ~~those~~ rights specified in s. 744.3215.
3 In addition to the examination, the examining committee shall
4 have access to, and may consider, previous examinations of the
5 person, including, but not limited to, habilitation plans,
6 school records, and psychological and psychosocial reports
7 voluntarily offered for use by the alleged incapacitated
8 person. If the family or attending physician is available for
9 consultation, the committee members shall consult with the
10 physician. ~~The examining committee shall submit a report~~
11 ~~within 15 days after appointment.~~

12 (e) ~~(c)~~ The examination of the alleged incapacitated
13 person must include a comprehensive examination, a report of
14 which shall be filed by each ~~the~~ examining committee member as
15 part of his or her ~~its~~ written report. The comprehensive
16 examination reports ~~report~~ should be an essential element, but
17 not necessarily the only element, used in making a capacity
18 and guardianship decision. The comprehensive examination must
19 include, if indicated:

- 20 1. A physical examination;
- 21 2. A mental health examination; and
- 22 3. A functional assessment.

23
24 If any of these three aspects of the examination is not
25 indicated or cannot be accomplished for any reason, the
26 written report must explain the reasons for its omission.

27 (f) ~~(d)~~ Each member of the examining committee shall
28 submit a separate written report within 15 days after
29 appointment. ~~The committee's~~ written report must include:

- 30 1. To the extent possible, a diagnosis, prognosis, and
31 recommended course of treatment.

1 2. An evaluation of the alleged incapacitated person's
2 ability to retain her or his rights, including, without
3 limitation, the rights to marry; vote; contract; manage or
4 dispose of property; have a driver's license; determine her or
5 his residence; consent to medical treatment; and make
6 decisions affecting her or his social environment.

7 3. The results of the comprehensive examination and
8 the examining committee member's ~~members'~~ assessment of
9 information provided by the attending or family physician, if
10 any.

11 4. A description of any matters with respect to which
12 the person lacks the capacity to exercise rights, the extent
13 of that incapacity, and the factual basis for the
14 determination that the person lacks that capacity.

15 5. The date or dates that the examination was
16 conducted.

17 ~~6.5. The examining committee member's signature of~~
18 ~~each member of the committee.~~

19 ~~(g)(e)~~ A copy of each the report submitted by an
20 examining committee member must be served on the petitioner
21 and on the attorney for the alleged incapacitated person
22 within 3 days after the report is filed and at least 5 days
23 before the hearing on the petition.

24 (7) FEES.--

25 (a) The examining committee and any attorney appointed
26 under subsection (2) are entitled to reasonable fees to be
27 determined by the court.

28 (b) The fees awarded under paragraph (a) shall be paid
29 by the guardian from the property of the ward or, if the ward
30 is indigent, by the county. The county shall have a
31 creditor's claim against the guardianship property for any

1 amounts paid under this section. The county must file its
2 claim within 90 days after the entry of an order awarding
3 attorney ad litem fees. If the county does not file its claim
4 within the 90-day period, the county is thereafter barred from
5 asserting the claim. Upon petition by the county for payment
6 of the claim, the court shall enter an order authorizing
7 immediate payment out of the property of the ward. The board
8 of county commissioners shall keep a record of the ~~such~~
9 payments.

10 (c) If the petition is dismissed, costs of the
11 proceeding, including fees awarded under paragraph (a), may be
12 assessed against the petitioner if the court finds the
13 petition to have been filed in bad faith.

14 Section 22. Except as otherwise expressly provided in
15 this act, this act shall take effect July 1, 2004.

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 1782

4 The committee substitute makes the following changes to SB
5 1782:

6 Provides that emergency grants may be awarded at the
7 discretion of the Secretary, notwithstanding the limitations
8 on the amount of grant funds that any single county may
9 receive.

10 Provides that counties and local governments that utilize
11 private organizations to administer their grant programs will
12 be able to receive a Joining Forces grant.

13 Clarifies that guardians and guardian advocates are only
14 exempt from filing annual accounting reports if the wards only
15 income is through Social Security benefits.

16 Provides that any circuit court may appoint a guardian
17 advocate, when appropriate, and clarifies that the Florida
18 Probate Rules shall apply in hearings to appoint a guardian
19 advocate.

20 Provides that the authority of an emergency temporary guardian
21 may be extended for additional 60-day periods allowing for
22 more time to address the needs of wards.

23 Adds language that a person has the right to receive services
24 and rehabilitation necessary to maximize the quality of life.
25 The bill clarifies that certain rights may be removed from a
26 person by an order determining incapacity and that such rights
27 may not be delegated to a guardian. The bill requires court
28 approval for the right to marry if a right to contract is
29 removed.

30 Makes a number of changes to the "Procedures to Determine
31 Incapacity" under the Guardianship Program including:

-- Requires the Chief Judge to 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 and requires each committee
member to 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

1 the circuit, and requires the Chief Judge to update the
2 list annually; and
3 -- Adds "attorney fees" to the costs assessed against the
4 petitioner if the court finds the petition to have been
5 filed in bad faith.
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