

Committee Substitute for House Bill No. 213

An act relating to guardianship; amending s. 744.369, F.S.; extending the time to review certain reports; authorizing random field audits; amending s. 744.474, F.S.; providing certain relatives the ability to petition the court regarding removal of the guardian; amending s. 744.702, F.S.; providing legislative intent to establish the Statewide Public Guardianship Office; creating s. 744.7021, F.S.; providing for the Statewide Public Guardianship Office within the Department of Elderly Affairs; providing for an executive director and oversight responsibilities; providing for the Department of Elderly Affairs to provide certain services and support; requiring submission of a guardianship plan and yearly status reports to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court; requiring the office to develop a training program and curriculum committee; authorizing fees; authorizing demonstration projects; providing for rules; amending s. 744.703, F.S.; providing for the executive director to establish offices of public guardian and to appoint or contract with public guardians; providing for transfer of oversight responsibility from the chief judge of the circuit to the office; providing for the suspension of public guardians, as specified; amending s. 744.706, F.S.; providing for the preparation of the budget of the Statewide Public Guardianship Office; amending s. 744.707, F.S.; revising language with respect to procedures and rules to include reference to the Statewide Public Guardianship Office; amending s. 744.708, F.S.; revising language with respect to reports and standards; providing reference to audits by the Auditor General; amending s. 744.709, F.S.; revising language with respect to surety bonds; amending s. 744.1085, F.S.; revising language with respect to professional guardians to include reference to the Statewide Public Guardianship Office; amending s. 744.3135, F.S., relating to credit and criminal investigations of guardians; authorizing credit and criminal investigations of nonprofessional or public guardians; deleting exemption of the spouse or child of a ward from credit and criminal investigations when appointed a guardian of the ward; providing a procedure for obtaining fingerprint cards and for maintaining the results of certain investigations; amending s. 28.241, F.S.; providing for funds for public guardians; providing for the transfer of resources between agencies; providing effective dates.

WHEREAS, the Legislature has recognized that private guardianship is inadequate when there is no willing and responsible family member or friend, other person, bank, or corporation available to serve as guardian for an incapacitated person, and such person does not have adequate income or wealth for the compensation of a private guardian, and

WHEREAS, a few judicial circuits have been able to establish public guardianship programs to provide guardianship services to some of the state's vulnerable citizens, and additional circuits would like to have public guardians available, and

WHEREAS, many of the state's vulnerable citizens are going without this service which is necessary for the exercise of an incapacitated person's constitutional rights, and

WHEREAS, the Legislature recognizes the need for a statewide office to assist in finding ways to meet the guardianship needs of incapacitated citizens, and

WHEREAS, there is a growing problem in Florida involving functionally incapacitated persons who are unable to access needed services, and

WHEREAS, the magnitude of this compelling problem demands legislative action to protect our state's most vulnerable citizens, NOW, THEREFORE,

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

Section 1. Subsections (1) and (2) of section 744.369, Florida Statutes, are amended to read:

744.369 Judicial review of guardianship reports.—

(1) The court shall review the initial guardianship report within 60 days after the filing of the clerk's report of findings to the court. The court shall review the annual guardianship report within 30 15 days after the filing of the clerk's report of findings to the court.

(2) The court may appoint general or special masters to assist the court in its review function. The court may require the general or special master to conduct random field audits.

Section 2. Effective upon becoming a law, subsection (19) of section 744.474, Florida Statutes, is amended to read:

744.474 Reasons for removal of guardian.—A guardian may be removed for any of the following reasons, and the removal shall be in addition to any other penalties prescribed by law:

(19) Upon a showing by a person who did not receive notice of the petition for adjudication of incapacity, when such notice is required, or ~~and~~ who is related to the ward within the relationships specified for nonresident relatives in ss. 744.309(2) and 744.312(2) and who has not previously been rejected by the court as a guardian that:

(a) The current guardian is not a family member; and

(b) Removal of the current guardian is in the best interest of the ward,

the court may remove the current guardian and appoint the petitioner, or such person as the court deems in the best interest of the ward, either as guardian of the person or of the property, or both.

Section 3. Section 744.702, Florida Statutes, is amended to read:

744.702 Legislative intent.—The Legislature finds that private guardianship is inadequate where there is no willing and responsible family member or friend, other person, bank, or corporation available to serve as guardian for an incapacitated person, and such person does not have adequate income or wealth for the compensation of a private guardian. The Legislature intends through this act to establish the Statewide Public Guardianship Office, and permit the establishment of offices office of public guardian for the purpose of providing guardianship services for incapacitated persons when no private guardian is available. The Legislature further finds that alternatives to guardianship and less intrusive means of assistance should always be explored, including, but not limited to, guardian advocates, before an individual's rights are removed through an adjudication of incapacity. The purpose of this legislation is to provide a public guardian only to those persons whose needs cannot be met through less drastic means of intervention.

Section 4. Section 744.7021, Florida Statutes, is created to read:

744.7021 Statewide Public Guardianship Office.—There is hereby created the Statewide Public Guardianship Office within the Department of Elderly Affairs. The Department of Elderly Affairs shall provide administrative support and service to the office to the extent requested by the executive director within the available resources of the department. The Statewide Public Guardianship Office may request the assistance of the Inspector General of the Department of Elderly Affairs in providing auditing services, and the Office of General Counsel of the department may provide assistance in rulemaking and other matters as needed to assist the Statewide Public Guardianship Office. The Statewide Public Guardianship Office shall not be subject to control, supervision, or direction by the Department of Elderly Affairs in the performance of its duties.

(1) The head of the Statewide Public Guardianship Office is the executive director, who shall be appointed by the Governor. The executive director must be a licensed attorney with a background in guardianship law and knowledge of social services available to meet the needs of incapacitated persons, shall serve on a full-time basis, and shall personally, or through representatives of the office, carry out the purposes and functions of the Statewide Public Guardianship Office in accordance with state and federal law. The executive director shall serve at the pleasure of and report to the Governor.

(2) The Statewide Public Guardianship Office shall within available resources have oversight responsibilities for all public guardians.

(a) The office shall review the current public guardian programs in Florida and other states.

(b) The office, in consultation with local guardianship offices, shall develop statewide performance measures and standards.

(c) The office shall review the various methods of funding guardianship programs, the kinds of services being provided by such programs, and the demographics of the wards. In addition, the office shall review and make

recommendations regarding the feasibility of recovering a portion or all of the costs of providing public guardianship services from the assets or income of the wards.

(d) No later than October 1, 2000, the office shall submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court an interim report describing the progress of the office in meeting the goals as described in this section. No later than October 1, 2001, the office shall submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court a proposed public guardianship plan including alternatives for meeting the state's guardianship needs. This plan may include recommendations for less than the entire state, may include a phase-in system, and shall include estimates of the cost of each of the alternatives. Each year thereafter, the office shall provide a status report and provide further recommendations to address the need for public guardianship services and related issues.

(e) The office may provide assistance to local governments or entities in pursuing grant opportunities. The office shall review and make recommendations in the annual report on the availability and efficacy of seeking Medicaid matching funds. The office shall diligently seek ways to use existing programs and services to meet the needs of public wards.

(f) The office shall develop a guardianship training program. The training program may be offered to all guardians whether public or private. The office shall establish a curriculum committee to develop the training program specified in this part. The curriculum committee shall include, but not be limited to, probate judges. A fee may be charged to private guardians in order to defray the cost of providing the training. In addition, a fee may be charged to any training provider for up to the actual cost of the review and approval of their curriculum. Any fees collected pursuant to this paragraph shall be deposited in the Department of Elderly Affairs Administrative Trust Fund to be used for the guardianship training program.

(3) The office may conduct or contract for demonstration projects, within funds appropriated or through gifts, grants, or contributions for such purposes, to determine the feasibility or desirability of new concepts of organization, administration, financing, or service delivery designed to preserve the civil and constitutional rights of persons of marginal or diminished capacity. Any gifts, grants, or contributions for such purposes shall be deposited in the Department of Elderly Affairs Administrative Trust Fund.

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

Section 5. Section 744.703, Florida Statutes, is amended to read:

744.703 Office of public guardian; appointment, notification.—

(1) The executive director of the Statewide Public Guardianship Office
~~The chief judge of the judicial circuit~~, after consultation with the chief judge
~~and other~~ circuit judges within the judicial circuit and with appropriate

advocacy groups and individuals and organizations who are knowledgeable about the needs of incapacitated persons, may establish, within a county in the judicial circuit or within the judicial circuit, an office of public guardian and if so established, shall create a list of persons best qualified to serve as the public guardian and such qualifications shall include review pursuant to s. 744.3135. The public guardian must have knowledge of the legal process and knowledge of social services available to meet the needs of incapacitated persons. A nonprofit corporation under s. 744.309(5) may be appointed public guardian only if:

(a) It has been granted tax-exempt status from the United States Internal Revenue Service; and

(b) It maintains a staff of professionally qualified individuals to carry out the guardianship functions, including a staff attorney who has experience in probate areas and another person who has a master's degree in social work, or a gerontologist, psychologist, registered nurse, or nurse practitioner.

(2) ~~The executive director chief judge shall appoint or contract with a the public guardian from the list of candidates described in subsection (1). A public guardian must meet the qualifications for a guardian as prescribed in s. 744.309(1)(a). Upon appointment of the public guardian, the executive director chief judge shall notify the chief judge of the judicial circuit and the Chief Justice of the Supreme Court of Florida, in writing, of the appointment.~~

(3) If the needs of the county or circuit do not require a full-time public guardian, a part-time public guardian may be appointed at reduced compensation.

(4) A public guardian, whether full-time or part-time, may not hold any position that would create a conflict of interest.

(5) ~~The public guardian is to be appointed for a term of 4 years, after which her or his appointment must be reviewed by the executive director chief judge of the circuit, and may be reappointed for a term of up to 4 years. The executive director may suspend a public guardian with or without the request of the chief judge. If a public guardian is suspended, the executive director shall appoint an acting public guardian as soon as possible to serve until such time as a permanent replacement is selected. A public guardian may be removed from office during the term of office only by the executive director who must consult with the chief judge prior to said removal. A recommendation of removal made by the chief judge must be considered by the executive director. Removal of the public guardian from office during the term of office must be by the chief judge. This section does not limit the application of ss. 744.474 and 744.477.~~

(6) Public guardians who have been previously appointed by a chief judge prior to the effective date of this act pursuant to this section may continue in their positions until the expiration of their term pursuant to their agreement. However, oversight of all public guardians shall transfer to the State-wide Public Guardianship Office upon the effective date of this act. The

executive director of the Statewide Public Guardianship Office shall be responsible for all future appointments of public guardians pursuant to this act.

Section 6. Section 744.706, Florida Statutes, is amended to read:

744.706 Preparation of budget.—Each public guardian, whether funded in whole or in part by money raised through local efforts, grants, or any other source or whether funded in whole or in part by the state, shall prepare a budget for the operation of the office of public guardian to be submitted to the Statewide Public Guardianship Office chief judge of the judicial circuit for inclusion in the circuit courts' legislative budget request. As appropriate, the Statewide Public Guardianship Office will include such budgetary information in the Department of Elderly Affairs' legislative budget request. The office of public guardian shall be operated within the limitations of the General Appropriations Act and any other funds appropriated by the Legislature to that particular judicial circuit, subject to the provisions of chapter 216. The Department of Elderly Affairs shall make a separate and distinct request for an appropriation for the Statewide Public Guardianship Office. However, this section shall not be construed to preclude the financing of any operations of the office of the public guardian by moneys raised through local effort or through the efforts of the Statewide Public Guardianship Office.

Section 7. Section 744.707, Florida Statutes, is amended to read:

744.707 Procedures and rules.—The public guardian, subject to the oversight of the Statewide Public Guardianship Office, is authorized to:

(1) Formulate and adopt necessary procedures to assure the efficient conduct of the affairs of the ward and general administration of the office and staff.

(2) Contract for services necessary to discharge the duties of the office.

(3) Accept the services of volunteer persons or organizations and provide reimbursement for proper and necessary expenses.

Section 8. Subsections (3), (4), (5), (7), and (8) of section 744.708, Florida Statutes, are amended to read:

744.708 Reports and standards.—

(3) A public guardian shall file an annual report on the operations of the office of public guardian, in writing, by September 1 for the preceding fiscal year with the Statewide Public Guardianship Office chief judge of the judicial circuit who shall have responsibility for supervision of the operations of the office of public guardian.

(4) Within 6 months of his or her appointment as guardian of a ward, the public guardian shall submit to the clerk of the court for placement in the ward's guardianship file and to the executive director of the Statewide Public Guardianship Office ~~the chief judge of the circuit~~ a report on his or her efforts to locate a family member or friend, other person, bank, or corpora-

tion to act as guardian of the ward and a report on the ward's potential to be restored to capacity.

(5) An independent audit by a qualified certified public accountant shall be performed at least every 2 years. The audit should include an investigation into the practices of the office for managing the person and property of the wards. A copy of the report shall be submitted to the Statewide Public Guardianship Office. In addition, the office of public guardian shall be subject to audits by the Auditor General pursuant to s. 11.45.

(7) The ratio for professional staff to wards shall be 1 professional to 40 wards. ~~The Statewide Public Guardianship Office chief judge of the circuit upon application of the public guardian, or upon the court's own motion, may increase or decrease enlarge or recede from the ratio after consultation with the local public guardian and the chief judge of the circuit court for good cause. The basis of the decision to increase or decrease the prescribed ratio shall be reported in the annual report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court.~~

(8) The term "professional," for purposes of this part, shall not include the public guardian ~~nor the executive director of the Statewide Public Guardianship Office.~~ The term "professional" shall be limited to those persons who exercise direct supervision of individual wards under the direction of the public guardian.

Section 9. Subsection (3) of section 744.1085, Florida Statutes, is amended to read:

744.1085 Regulation of professional guardians; application; bond required; educational requirements; audits.—

(3) Each professional guardian defined in s. 744.102(15), on October 1, 1997, must receive a minimum of 40 hours of instruction and training by October 1, 1998, or within 1 year after becoming a professional guardian, whichever occurs later. Each professional guardian must receive a minimum of 16 hours of continuing education every 2 calendar years after the year in which the initial 40-hour educational requirement is met. The instruction and education must be completed through a course approved or offered by the Statewide Public Guardianship Office chief judge of the circuit court and taught by a court-approved organization. The expenses incurred to satisfy the educational requirements prescribed in this section may not be paid with the assets of any ward. This subsection does not apply to any attorney who is licensed to practice law in this state.

Section 10. Section 744.3135, Florida Statutes, is amended to read:

744.3135 Credit and criminal investigation.—The court may require a nonprofessional prospective guardian and shall require a professional or public guardian, to submit, at his or her own expense, to an investigation of the ~~prospective~~ guardian's credit history and an investigatory check by the National Crime Information Center and the Florida Crime Information Center systems by means of fingerprint checks by the Department of Law

Enforcement and the Federal Bureau of Investigation. The clerk of the court shall obtain fingerprint cards from the Federal Bureau of Investigation and make them available to guardians. Any guardian who is so required shall have his or her fingerprints taken and forward the proper fingerprint card along with the necessary fee to the Florida Department of Law Enforcement for processing. The professional guardian shall pay to the clerk of the court a fee of \$5 for handling and processing professional guardian files. The results of the fingerprint checks shall be forwarded to the clerk of court who shall maintain the results in a guardian file and shall make the results available to the court. If credit or criminal investigations are required, the court must consider the results of the investigations in appointing a guardian. The court shall waive the credit and criminal investigation for a guardian who is the spouse or child of the ward.

Section 11. Subsection 744.709, Florida Statutes, is amended to read:

744.709 Surety bond.—Upon taking office, a public guardian shall file a bond with surety as prescribed in s. 45.011 to be approved by the clerk. The bond shall be payable to the Governor and the Governor's successors in office, in the penal sum of not less than \$5,000 nor more than \$25,000, conditioned on the faithful performance of all duties by the guardian. The amount of the bond shall be fixed by the majority of the judges within the judicial circuit. In form the bond shall be joint and several. The bond shall be purchased from ~~with funding provided in the funds of appropriated to the local judicial circuit for the office of public guardian.~~

Section 12. Subsection (1) of section 28.241, Florida Statutes, is amended to read:

28.241 Filing charges for trial and appellate proceedings.—

(1) The party instituting any civil action, suit, or proceeding in the circuit court shall pay to the clerk of that court a service charge of \$40 in all cases in which there are not more than five defendants and an additional service charge of \$2 for each defendant in excess of five. An additional service charge of \$10 shall be paid by the party seeking each severance that is granted. An additional service charge of \$35 shall be paid to the clerk for all proceedings of garnishment, attachment, replevin, and distress. An additional service charge of \$8 shall be paid to the clerk for each civil action filed, \$7 of such charge to be remitted by the clerk to the State Treasurer for deposit into the General Revenue Fund unallocated. An additional charge of \$2.50 shall be paid to the clerk for each civil action brought in circuit or county court, to be deposited into the Court Education Trust Fund; the moneys collected shall be forwarded by the clerk to the Supreme Court monthly for deposit in the fund. Service charges in excess of those herein fixed may be imposed by the governing authority of the county by ordinance or by special or local law; and such excess shall be expended as provided by such ordinance or any special or local law, now or hereafter in force, to provide and maintain facilities, including a law library, for the use of the courts of the county wherein the service charges are collected; to provide and maintain equipment; or for a legal aid program in such county. In addition, the county is authorized to impose, by ordinance or by special or local law, a fee of up to

\$15 ~~\$10~~ for each civil action filed, for the establishment, maintenance, or supplementation of a public guardian pursuant to ss. 744.701-744.708, inclusive. Postal charges incurred by the clerk of the circuit court in making service by certified or registered mail on defendants or other parties shall be paid by the party at whose instance service is made. That part of the within fixed or allowable service charges which is not by local or special law applied to the special purposes shall constitute the total service charges of the clerk of such court for all services performed by him or her in civil actions, suits, or proceedings. The sum of all service charges and fees permitted under this subsection may not exceed \$200; however, the \$200 cap may be increased to \$210 in order to provide for the establishment, maintenance, or supplementation of a public guardian as indicated in this subsection.

Section 13. All powers, duties and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds relating to the public guardianship program under chapter 744, Florida Statutes, are transferred by a type two transfer, as defined in s. 20.06(2), Florida Statutes, from the Circuit Court budget entity within the Judicial Branch to the Department of Elderly Affairs.

Section 14. Except as otherwise provided herein, this act shall take effect October 1, 1999.

Approved by the Governor June 8, 1999.

Filed in Office Secretary of State June 8, 1999.