

By: Representatives Ishee, Barnett (116th),  
Creel, Dedeaux, Fredericks, Guice, Janus,  
Peranich, Simpson

To: Local and Private  
Legislation; Judiciary A

HOUSE BILL NO. 1485

1 AN ACT TO AUTHORIZE THE BOARD OF SUPERVISORS OF HARRISON  
2 COUNTY TO ESTABLISH AN OFFICE OF PUBLIC GUARDIAN FOR THE PURPOSES  
3 OF PROVIDING GUARDIANSHIP AND CONSERVATORSHIP SERVICES FOR  
4 INCAPACITATED AND VULNERABLE PERSONS, SERVING AS GUARDIAN AD LITEM  
5 IN CHANCERY COURT CASES WHENEVER THE APPOINTMENT OF A GUARDIAN AD  
6 LITEM IS REQUIRED BY LAW OR IS OTHERWISE NEEDED, AND INITIATING  
7 DRUG AND ALCOHOL COMMITMENTS ON BEHALF OF INDIGENT FAMILIES; TO  
8 PROVIDE THAT THE PUBLIC GUARDIAN SHALL BE SELECTED BY THE BOARD OF  
9 SUPERVISORS BASED UPON RECOMMENDATION FROM AN ADVISORY BOARD  
10 APPOINTED BY THE SENIOR CHANCELLOR OF THE EIGHTH CHANCERY COURT  
11 DISTRICT; TO AUTHORIZE THE BOARD OF SUPERVISORS TO LEVY A FEE UPON  
12 EACH COMPLAINT FILED IN THE CHANCERY COURT OF HARRISON COUNTY FOR  
13 THE PURPOSE OF DEFRAYING THE COSTS OF ESTABLISHING AND MAINTAINING  
14 THE OFFICE OF PUBLIC GUARDIAN; FOR RELATED PURPOSES.

15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

16 SECTION 1. (1) The Legislature recognizes that:

17 (a) In many instances, private guardianship fails or is  
18 inadequate whenever there is no willing, responsible family  
19 member, friend, bank, corporation or other person available to  
20 serve as guardian for an incapacitated person and whenever such  
21 person does not have adequate resources to compensate a private  
22 guardian;

23 (b) Whenever private attorneys are appointed by the  
24 court to serve as conservators, guardians or guardians ad litem,  
25 these attorneys are subject to the distractions of private  
26 practice, resulting in little consistency in the quality of  
27 representation they provide; and

28 (c) Initiating involuntary alcohol and drug commitments  
29 without the services of an attorney is difficult and that persons  
30 without financial resources to hire an attorney must go without  
31 assistance.

32 (2) By the passage of this act, the Legislature intends to  
33 authorize the Board of Supervisors of Harrison County to establish



34 an office of public guardian for the purposes of (a) providing  
35 guardianship and conservatorship services for the incapacitated  
36 and vulnerable persons of the county; (b) serving as guardian ad  
37 litem in chancery court cases whenever the appointment of a  
38 guardian ad litem is required by law or is otherwise needed; and  
39 (c) initiating drug and alcohol commitments on behalf of indigent  
40 families of the county.

41 **SECTION 2.** The Board of Supervisors of Harrison County, in  
42 its discretion, may create a board to be known as the Public  
43 Guardian Advisory Board. If a Public Guardian Advisory Board is  
44 created, the board shall consist of eight (8) members of the  
45 social services community who are knowledgeable of the needs of  
46 incapacitated and vulnerable persons. The members of the board  
47 shall be appointed for a term of four (4) years by the senior  
48 chancellor for the Eighth Chancery Court District. A member may  
49 be reappointed and may serve successive terms on the board.

50 **SECTION 3.** (1) If a Public Guardian Advisory Board is  
51 created under Section 2 of this act, the Board of Supervisors of  
52 Harrison County, upon recommendation of the senior chancellor for  
53 the Eighth Chancery Court District and the Public Guardian  
54 Advisory Board, shall appoint a person to serve as public guardian  
55 for the county. The person appointed to serve as public guardian  
56 must be an attorney in good standing with the Mississippi Bar who  
57 has been licensed to practice in this state for not less than five  
58 (5) years. The public guardian may not accept additional  
59 employment or hold additional offices that would constitute a  
60 conflict of interest with his services as public guardian. The  
61 term of office of the public guardian shall be four (4) years. A  
62 person may be reappointed by the board of supervisors and may  
63 serve successive terms as public guardian upon review and  
64 recommendation by the senior chancellor for the Eighth Chancery  
65 Court District and the Public Guardian Advisory Board. The public  
66 guardian, subject to the availability of funds made available by



67 the Board of Supervisors of Harrison County, may employ and  
68 maintain such staff as may be necessary to carry out the functions  
69 of the office.

70 (2) Upon taking office, the public guardian shall take the  
71 oath of office and shall give bond to the Harrison County Board of  
72 Supervisors, with sufficient sureties, to be payable conditioned  
73 and approved as provided by law, in a penalty equal to three  
74 percent (3%) of the sum of all the state and county taxes shown by  
75 the assessment rolls and the levies to have been collected in the  
76 county for the year immediately preceding the beginning of his  
77 term of office; however, the bond shall not exceed One Hundred  
78 Thousand Dollars (\$100,000.00). The bond premiums shall be paid  
79 from the Public Guardian Fund created in Section 5 of this act or  
80 from any other available funds of the county.

81 **SECTION 4.** (1) (a) The public guardian may be appointed to  
82 serve as conservator of a person, or his or her estate, who has  
83 been adjudicated incapacitated under Section 93-13-251,  
84 Mississippi Code of 1972, if:

85 (i) There is no family member, friend, bank,  
86 corporation or other person willing and qualified to serve as  
87 conservator.

88 (ii) The assets of the ward do not exceed the  
89 assets level for Medicaid eligibility, and the ward's income, from  
90 all sources, is less than Four Thousand Dollars (\$4,000.00) per  
91 year. Income from public welfare programs, supplemental security  
92 income, disability pensions or other social security pension shall  
93 be excluded in such computations. However, a ward whose total  
94 income, counting excludable income, exceeds Thirty Thousand  
95 Dollars (\$30,000.00) a year may not be served; and

96 (iii) The public guardian finds that assets or  
97 income of the ward exceeds the amount set forth in subparagraph  
98 (a)(ii) of this subsection, the guardian shall submit a  
99 resignation and petition for the appointment of a successor



100 conservator. The public guardian shall not be dismissed until  
101 such time as a private conservator is appointed. If a qualified  
102 successor is not available, the public guardian may remain as  
103 conservator if the guardian makes reasonable efforts to obtain a  
104 successor.

105 (b) The public guardian, when appointed conservator of  
106 an incapacitated person, shall seek a family member, friend, bank,  
107 corporation or other person who is qualified and willing to serve  
108 as conservator. Upon determining that there is someone qualified  
109 and willing to serve as a conservator, either the public guardian  
110 or the qualified person shall petition the court for appointment  
111 of a successor conservator.

112 (c) When a person is appointed successor conservator,  
113 he or she immediately succeeds to all rights, duties,  
114 responsibilities and powers of the preceding public guardian.

115 (d) While serving as conservator for a person or estate  
116 pursuant to this act, the public guardian shall be vested with the  
117 same duties, powers and responsibilities as a guardian of a minor,  
118 and all laws relative to the guardianship of a minor shall be  
119 applicable to a conservator, including the provisions of Chapter  
120 13, Title 93, Mississippi Code of 1972.

121 (e) No fees shall be recovered from the assets or  
122 income of the ward for conservatorship services provided by the  
123 public guardian. However, in cases where the assets or income of  
124 the ward exceeds the amount set forth in subparagraph (1)(a)(ii)  
125 of this section, and a qualified successor conservator is not  
126 available, a reasonable fee may be collected for the services of  
127 the public guardian, which fee shall be deposited into the Public  
128 Guardian Fund. All fees collected under this section shall be  
129 approved in advance by order of the Harrison County Chancery  
130 Court.

131 (2) (a) The public guardian may be appointed to serve as  
132 guardian ad litem in chancery court cases where the appointment of



133 a guardian ad litem is required by law or where otherwise needed  
134 in chancery court matters. In such cases, the public guardian  
135 shall have the same powers, duties and responsibilities as that of  
136 private guardians ad litem.

137 (b) No fees shall be collected for guardian ad litem  
138 services provided by the public guardian.

139 However, upon a finding by the court that one (1) or both  
140 parties has sufficient assets to pay for the services of the  
141 public guardian, a reasonable fee may be collected, and same shall  
142 be deposited in the Public Guardian Fund. All fees collected  
143 pursuant to this section shall be approved in advance by order of  
144 the Harrison County Chancery Court.

145 (3) The public guardian may initiate alcohol and drug  
146 commitment proceedings on behalf of indigent families.

147 (4) The public guardian may be appointed in any chancery  
148 court matter wherein the court determines such services are  
149 needed.

150 (5) In any proceeding for appointment of a public guardian,  
151 or in any proceeding involving the estate of a ward for whom a  
152 public guardian has been appointed guardian, the court costs or  
153 filing fees may be waived at the request of the public guardian.

154 (6) No later than January 31 of each year, the public  
155 guardian shall file an annual report with the Clerk of the  
156 Harrison County Chancery Court, indicating, with respect to the  
157 period covered by the report, the number of cases handled, the  
158 date on which each case was assigned, the date of termination of  
159 each case which has been closed during the period, the disposition  
160 of each terminated case, and the total amount of fees collected  
161 during the period.

162 **SECTION 5.** The Board of Supervisors of Harrison County, in  
163 its discretion, by resolution duly adopted and entered on its  
164 minutes, may levy a fee in the amount of Ten Dollars (\$10.00) upon  
165 each complaint filed in the Chancery Court of Harrison County.



166 This fee shall be in addition to the fees required to be collected  
167 under Section 25-7-9, Mississippi Code of 1972, and shall be  
168 deposited into a special fund that is created in the county  
169 treasury to be known as the Public Guardian Fund. Monies in the  
170 fund may be expended, upon appropriation by the board of  
171 supervisors, to defray the costs of establishing and maintaining  
172 the office of public guardian as authorized under Sections 1  
173 through 4 of House Bill No. 1485, 2003 Regular Session.

174       **SECTION 6.** Section 5 of this act shall take effect and be in  
175 force from and after its passage. Sections 1 through 4 of this  
176 act shall take effect and be in force from and after January 1,  
177 2005.

