

**CHAPTER 177****LEGALIZATION OF VENTURA CONSTRUCTION PROJECT***S.F. 526*

**AN ACT** to legalize proceedings of the city council of the City of Ventura relating to the method of payment for a construction project and providing an effective date.

WHEREAS, the City of Ventura is undertaking the construction of certain improvements to Lake Street and McIntosh Road; and

WHEREAS, the City of Ventura applied for and received a rise grant pursuant to Iowa Code chapter 315 for a portion of the construction costs of the project; and

WHEREAS, after receiving the rise grant, the project was subsequently expanded; and

WHEREAS, the city council published a notice to bidders, pursuant to Iowa Code section 384.97, on September 21 and 28, 1988, received sealed bids from prospective contractors, and subsequently awarded a contract on October 10, 1988, to the lowest responsible bidder, Allied Construction Co.; and

WHEREAS, the City of Ventura did not satisfy the requirements of Iowa Code chapter 384 with respect to procedures required of a city in fixing amounts to be assessed against private property prior to entering into the contract; and

WHEREAS, it was the intent of the city council that these procedures be followed in order that special assessments may be levied to pay for the cost of construction under the contract; now therefore,

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. That the city of Ventura is authorized to undertake actions necessary to satisfy the requirements of Iowa Code chapter 384 relating to special assessments to pay a portion of the costs of certain improvements to Lake Street and McIntosh Road for which a contract was awarded by the city to Allied Construction Company, and that upon satisfaction of these requirements and proper determination of the amount of the assessments, the contract for the construction of such improvements shall be deemed to have been entered into as required by Iowa Code chapter 384 for the purpose of using special assessments to pay for the construction, and shall be hereby legalized, validated, and confirmed.

Sec. 2. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved May 18, 1989

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**CHAPTER 178****GUARDIANS, CONSERVATORS, MEDICAL DECISION MAKERS,  
AND REPRESENTATIVE PAYEES***H.F. 585*

**AN ACT** relating to guardians and conservators, by providing for notice to proposed wards, formation of state and local emergency medical boards, immunity from liability, waiver of filing fees and costs, training of guardians and conservators, and implementation of a representative payee project.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. NEW SECTION. 135.39A STATE EMERGENCY MEDICAL BOARD.

A state emergency medical board is established to formulate policy and guidelines for the operations of local emergency medical boards, and to act if a local board does not exist.

The state board is comprised of medical professionals and lay persons appointed by the director and the council on human services according to rules adopted by the department. The state board and its members are not liable, jointly or severally, for actions or omissions taken or made in the official discharge of their duties, except those acts or omissions constituting willful or wanton misconduct.

Sec. 2. NEW SECTION. 217.40 TRAINING FOR GUARDIANS AND CONSERVATORS.

The department of human services, or a person designated by the director, shall establish training programs designed to assist all duly appointed guardians and conservators in understanding their fiduciary duties and liabilities, the special needs of the ward, and how to best serve the ward and the ward's interests.

Sec. 3. NEW SECTION. 217.43 LOCAL EMERGENCY MEDICAL BOARD.

1. Each county in this state may establish and fund a local emergency medical board. The local board shall be comprised of medical professionals and lay persons appointed pursuant to the guidelines established by the state emergency medical board.

2. The local board may act as a surrogate decision maker for patients incapable of making their own medical care decisions if no other surrogate decision maker is available to act. The local board may exercise decision-making authority in situations where there is sufficient time to review the patient's condition, and a reasonably prudent person would consider a decision to be medically necessary. Such medically necessary decisions shall constitute good cause for subsequently filing a petition in the district court for appointment of a guardian pursuant to chapter 633, but the local board shall continue to act in the patient's best interests until a guardian is appointed.

3. The local board and its members shall not be held liable, jointly or severally, for any actions or omissions taken or made in the official discharge of their duties, except those acts or omissions constituting willful or wanton misconduct. A physician or other health care provider who acts on a decision or directive of the local board or state board shall not be held liable for any damages resulting from that act, unless such physician's or other health care provider's actions or omissions constitute negligence in the practice of the profession or occupation, or willful or wanton misconduct.

Sec. 4. Section 237.13, subsection 5, Code 1989, is amended to read as follows:

5. Except as provided in this section, the fund shall pay, on behalf of a guardian or conservator, the reasonable and necessary legal costs incurred in defending against a suit filed by a ward or the ward's representative and the damages awarded as a result of the suit, so long as it is determined that the guardian or conservator acted in good faith in the performance of their duties. A payment shall not be made if there is evidence of intentional misconduct or a knowing violation of the law by the guardian or conservator, including, but not limited to, failure to carry out the responsibilities required under sections 633.633 through 633.635 and 633.641 through ~~633.651~~ 633.650.

Sec. 5. NEW SECTION. 249D.60 REPRESENTATIVE PAYEE PROJECT.

1. The department of elder affairs shall provide appropriate public and private organizations with written notice of the department's intent to serve as sponsor of the representative payee project in Iowa. The director shall designate a departmental staff person to serve as the project staff coordinator.

2. The department shall provide logistical support for the project including office space, telephone communications, office supplies, and postage.

3. The department shall provide for the training of representative payees.

4. The department shall establish and maintain an advisory council for the project which shall hold meetings quarterly. The department shall determine the council's membership by rule.

5. The department shall assist representative payees, and shall negotiate banking services for the project.

6. The department shall designate a volunteer, who may be a representative payee, as the public liaison to inform interested agencies and persons about the project, and to undertake to increase public awareness and referral of potential clients.

7. A person acting as a representative payee shall be considered acting in a fiduciary capacity, and shall be liable for acts or omissions of the representative payee constituting a breach of the fiduciary duty imposed by chapter 633.

8. For purposes of this section, "representative payee" means a person appointed by the social security administration to provide financial management services, without compensation, to individuals receiving social security administration or other government benefits, who are medically incapable of making responsible financial decisions.

Sec. 6. Section 602.8102, Code 1989, is amended by adding the following new subsection:  
**NEW SUBSECTION. 105A.** Provide written notice to all duly appointed guardians and conservators of their liability as provided in sections 633.633A and 633.633B.

Sec. 7. **NEW SECTION. 633.27A DOCKETING GUARDIANSHIP AND CONSERVATORSHIP PROCEEDINGS.**

When a petition is filed for a conservatorship or guardianship, or a combined petition as provided in section 633.627, the administration thereof shall be treated as a separate proceeding, with a separate docket number, from the date of the filing of the petition. The clerk shall clearly indicate on the docket whether the proceedings are voluntary or involuntary and whether a guardianship, a conservatorship, or combined.

Sec. 8. Section 633.63, subsection 3, Code 1989, is amended to read as follows:

3. A private nonprofit corporation organized under chapter 504 or 504A is qualified to act as a guardian, as defined in section 633.3, subsection 19, or a conservator, as defined in section 633.3, subsection 7, where the assets subject to the conservatorship are less than fifteen thousand dollars, ~~if the department of human services, under rules established by the department, finds the corporation a suitable agency to perform such duties and determines that the corporation does not possess a proprietary or legal interest in an organization which provides direct services to the individual.~~

Sec. 9. Section 633.557, Code 1989, is amended to read as follows:

**633.557 APPOINTMENT OF GUARDIAN ON VOLUNTARY PETITION.**

A guardian may also be appointed by the court upon the verified petition of the proposed ward, without further notice, if the proposed ward is other than a minor under the age of fourteen years, provided the court determines that such an appointment will inure to the best interest of the applicant. However, if an involuntary petition is pending, the court shall be governed by section 633.634. The petition shall provide the proposed ward notice of a guardian's powers as provided in section 633.562.

Sec. 10. Section 633.561, subsection 2, Code 1989, is amended to read as follows:

2. The court shall ensure that all proposed wards entitled to representation have been provided with notice of the right to representation and right to be personally present at all proceedings and shall make findings of fact in any order of disposition setting out the manner in which notification was provided.

Sec. 11. **NEW SECTION. 633.562 NOTIFICATION OF GUARDIANSHIP POWERS.**

In a proceeding for the appointment of a guardian, the proposed ward shall be given written notice which advises the proposed ward that if a guardian is appointed, the guardian may, without court approval, provide for the care of the ward, manage the ward's personal property and effects, assist the ward in developing self-reliance and receiving professional care, counseling, treatment or services as needed, and ensure that the ward receives necessary emergency medical services. The notice shall also advise the proposed ward that, upon the court's approval, the guardian may change the ward's permanent residence to a more restrictive

residence, and arrange for major elective surgery or any other nonemergency major medical procedure. The notice shall clearly advise the proposed ward in boldfaced type of a minimum size of ten points, of the right to counsel and the potential deprivation of the proposed ward's civil rights. In an involuntary guardianship proceeding, the notice shall be served upon the proposed ward with the notice of the filing of the petition as provided in section 633.554.

Sec. 12. Section 633.572, Code 1989, is amended to read as follows:

**633.572 APPOINTMENT OF CONSERVATOR ON VOLUNTARY PETITION.**

A conservator may also be appointed by the court upon the verified petition of the proposed ward, without further notice, if the proposed ward is other than a minor under the age of fourteen years, provided the court determines that such an appointment will inure to the best interest of the applicant. However, if an involuntary petition is pending, the court shall be governed by section 633.634. The petition shall provide the proposed ward notice of a conservator's powers as provided in section 633.576.

Sec. 13. Section 633.575, subsection 2, Code 1989, is amended to read as follows:

2. The court shall ensure that all proposed wards entitled to representation have been provided with notice of the right to representation and right to be personally present at all proceedings and shall make findings of fact in any order of disposition setting out the manner in which notification was provided.

**Sec. 14. NEW SECTION. 633.576 NOTIFICATION OF CONSERVATORSHIP POWERS.**

In a proceeding for the appointment of a conservator, the proposed ward shall be given written notice which advises the proposed ward that if a conservator is appointed, the conservator may, without court approval, manage the proposed ward's principal, income, and investments, sue and defend any claim by or against the ward, sell and transfer personal property, and vote at corporate meetings. The notice shall also advise the proposed ward that, upon the court's approval, the conservator may invest the ward's funds, execute leases, make payments to or for the benefit of the ward, support the ward's legal dependents, compromise or settle any claim, and do any other thing that the court determines is in the ward's best interests. The notice shall clearly advise the proposed ward, in boldfaced type of a minimum size of ten points, of the right to counsel and the potential deprivation of the proposed ward's civil rights. In an involuntary conservatorship proceeding, the notice shall be served upon the proposed ward with the notice of the filing of the petition as provided in section 633.568.

Sec. 15. Section 633.591, Code 1989, is amended to read as follows:

**633.591 VOLUNTARY PETITION FOR APPOINTMENT OF CONSERVATOR – STANDBY BASIS.**

Any person of full age and sound mind may execute a verified petition for the voluntary appointment of a conservator of the person's property upon the express condition that such petition shall be acted upon by the court only upon the occurrence of an event specified or the existence of a described condition of the mental or physical health of the petitioner, the occurrence of which event, or the existence of which condition, shall be established in the manner directed in said petition. The petition shall advise the proposed ward of a conservator's powers as provided in section 633.576.

**Sec. 16. NEW SECTION. 633.633A LIABILITY OF GUARDIANS AND CONSERVATORS.**

Guardians and conservators shall not be held personally liable for actions or omissions taken or made in the official discharge of the guardian's or conservator's duties, except for any of the following:

1. A breach of fiduciary duty imposed by this Code.
2. Willful or wanton misconduct in the official discharge of the guardian's or conservator's duties.

Sec. 17. NEW SECTION. 633.633B TORT LIABILITY OF GUARDIANS AND CONSERVATORS.

The fact that a person is a guardian or conservator shall not in itself make the person personally liable for damages for the acts of the ward.

Sec. 18. Section 633.672, Code 1989, is amended to read as follows:

633.672 PAYMENT OF COURT COSTS IN CONSERVATORSHIPS.

No order shall be entered approving an annual report of a conservator until the court costs which have been docketed have been paid or provided for. The court may, upon application, enter an order waiving payment of the court costs in indigent cases. However, if the conservatorship subsequently becomes financially capable of paying any waived costs, the conservator shall immediately pay the costs.

Sec. 19. Section 633.673, Code 1989, is amended to read as follows:

633.673 COURT COSTS IN GUARDIANSHIPS.

The ward or the ward's estate shall be charged with the court costs of a ward's guardianship, including the guardian's fees and the fees of the attorney for the guardian. The court may, upon application, enter an order waiving payment of the court costs in indigent cases. However, if the ward or ward's estate becomes financially capable of paying any waived costs, the costs shall be paid immediately.

Sec. 20. Section 633.679, Code 1989, is amended to read as follows:

633.679 PETITION TO TERMINATE.

At any time, ~~not less than six months~~ after the appointment of a guardian or conservator, the person under guardianship or conservatorship may apply to the court by petition, alleging that the person is no longer a proper subject thereof, and asking that the guardianship or conservatorship be terminated.

Sec. 21. Section 633.651, Code 1989, is repealed.

Approved May 22, 1989

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## CHAPTER 179

### COURT PROCEEDINGS FOR SUPPORT OF DEPENDENT CHILDREN

*H.F. 662*

**AN ACT** relating to court proceedings involving child support orders where the dependent child resides in another state.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 252C.4, subsection 1, Code 1989, is amended to read as follows:

1. If a timely written request for a hearing is received, the administrator shall certify the matter to the district court in the county in which the order has been filed, or if no such order has been filed, then to a district court in the county where the dependent child resides or, where the dependent child resides in another state, to the district court where the absent parent resides.

Sec. 2. Section 252C.5, Code 1989, is amended to read as follows:

252C.5 FILING AND DOCKETING OF FINANCIAL RESPONSIBILITY ORDER — ORDER EFFECTIVE AS DISTRICT COURT DECREE.

A true copy of any order entered by the administrator pursuant to this chapter, along with a true copy of the return of service, if applicable, may be filed in the office of the clerk of the