

JAN 24 2005
HUMAN RESOURCES

HOUSE FILE 120
BY SMITH

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to substitute decision making and guardians and
2 conservators, providing for the collection and appropriation
3 of fees, and making an appropriation.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 120

1 Section 1. NEW SECTION. 231E.1 TITLE.

2 This chapter shall be known and may be cited as the "Iowa
3 Substitute Decision Maker Act".

4 Sec. 2. NEW SECTION. 231E.2 OFFICE OF SUBSTITUTE
5 DECISION MAKER -- FINDINGS AND INTENT.

6 1. a. The general assembly finds that many adults in this
7 state are unable to meet essential requirements to maintain
8 their physical health or to manage essential aspects of their
9 financial resources and are in need of substitute decision-
10 making services. However, a willing and responsible person
11 may not be available to serve as a private substitute decision
12 maker or the adult may not have adequate income or resources
13 to compensate a private substitute decision maker.

14 b. The general assembly further finds that a process
15 should exist to assist individuals in finding alternatives to
16 substitute decision-making services and less intrusive means
17 of assistance before an individual's independence or rights
18 are limited.

19 c. The general assembly further finds that a substitute
20 decision maker may be necessary to finalize a person's affairs
21 after death when there is no willing and appropriate person
22 available to serve as the person's personal representative.

23 2. a. It is, therefore, the intent of the general
24 assembly to establish a state office of substitute decision
25 maker and authorize the establishment of local offices of
26 substitute decision maker to provide substitute decision-
27 making services to adults and their estates after their
28 deaths, when no private substitute decision maker is
29 available.

30 b. It is also the intent of the general assembly that the
31 office of substitute decision maker provide assistance to both
32 public and private substitute decision makers throughout the
33 state in securing necessary services for their wards,
34 principals, clients, and decedents and to assist substitute
35 decision makers, wards, principals, clients, courts, and

1 attorneys in the orderly and expeditious handling of
2 substitute decision-making proceedings.

3 Sec. 3. NEW SECTION. 231E.3 DEFINITIONS.

4 As used in this chapter, unless the context otherwise
5 requires:

6 1. "Advisory council" means the substitute decision maker
7 advisory council.

8 2. "Client" means an individual for whom a representative
9 payee is appointed.

10 3. "Commission" means the commission of elder affairs.

11 4. "Conservator" means conservator as defined in section
12 633.3.

13 5. "Court" means court as defined in section 633.3.

14 6. "Decedent" means the individual for whom an estate is
15 administered or executed.

16 7. "Department" means the department of elder affairs
17 established in section 231.21.

18 8. "Director" means the director of the department of
19 elder affairs.

20 9. "Estate" means estate as defined in section 633.3.

21 10. "Guardian" means guardian as defined in section 633.3.

22 11. "Incompetent" means incompetent as defined in section
23 633.3.

24 12. "Local office" means a local office of substitute
25 decision maker.

26 13. "Local substitute decision maker" means an individual
27 under contract with the department to act as a substitute
28 decision maker.

29 14. "Personal representative" means personal
30 representative as defined in section 633.3.

31 15. "Planning and service area" means a geographic area of
32 the state designated by the commission for the purpose of
33 planning, developing, delivering, and administering services
34 for elders.

35 16. "Power of attorney" means a durable power of attorney

1 for health care as defined in section 144B.1 or a power of
2 attorney that becomes effective upon the disability of the
3 principal as described in section 633.705.

4 17. "Principal" means an individual for whom a power of
5 attorney is established.

6 18. "Representative payee" means an individual appointed
7 by a government entity to receive funds on behalf of a client
8 pursuant to federal regulation.

9 19. "State agency" means any executive department,
10 commission, board, institution, division, bureau, office,
11 agency, or other executive entity of state government.

12 20. "State office" means the state office of substitute
13 decision maker.

14 21. "State substitute decision maker" means the
15 administrator of the state office of substitute decision
16 maker.

17 22. "Substitute decision maker" means a guardian,
18 conservator, representative payee, attorney in fact under a
19 power of attorney, or personal representative.

20 23. "Substitute decision making" or "substitute decision-
21 making services" means the provision of services of a
22 guardian, conservator, representative payee, attorney in fact
23 under a power of attorney, or personal representative.

24 24. "Ward" means the individual for whom a guardianship or
25 conservatorship is established.

26 Sec. 4. NEW SECTION. 231E.4 STATE OFFICE OF SUBSTITUTE
27 DECISION MAKER -- ESTABLISHED -- DUTIES -- DEPARTMENT RULES.

28 1. A state office of substitute decision maker is
29 established within the department to create and administer a
30 statewide network of substitute decision makers who provide
31 substitute decision-making services if other substitute
32 decision makers are not available to provide the services.

33 2. The director shall appoint an administrator of the
34 state office who shall serve as the state substitute decision
35 maker. The state substitute decision maker shall be qualified

1 for the position by training and expertise in substitute
2 decision-making law. The state substitute decision maker
3 shall also have knowledge of social services available to meet
4 the needs of persons adjudicated incompetent or in need of
5 substitute decision making.

6 3. The state office shall do all of the following:

7 a. Select persons through a request for proposals process
8 to establish local offices of substitute decision maker in
9 each of the planning and service areas. Local offices shall
10 be established statewide on or before July 1, 2015.

11 b. Monitor and terminate contracts with local offices
12 based on criteria established by rule of the department.

13 c. Retain oversight responsibilities for all local
14 substitute decision makers.

15 d. Act as substitute decision maker if a local office is
16 not available to so act.

17 e. Work with the department of human services, the Iowa
18 department of public health, the governor's developmental
19 disabilities council, and other agencies to establish a
20 referral system for the provision of substitute decision-
21 making services.

22 f. Develop and maintain a current listing of public and
23 private services and programs available to assist wards,
24 principals, clients, personal representatives, and their
25 families and establish and maintain relationships with public
26 and private entities to assure the availability of effective
27 substitute decision-making services for wards, principals,
28 clients, and estates.

29 g. Provide information and referrals to the public
30 regarding substitute decision-making services.

31 h. Provide personal representatives for estates where a
32 person is not available for that purpose.

33 i. Maintain statistical data on the local offices
34 including various methods of funding, the types of services
35 provided, and the demographics of the wards, principals,

1 clients, and decedents and report to the general assembly on
2 or before November 1, annually, regarding the local offices
3 and recommend any appropriate legislative action.

4 j. Develop, in cooperation with the judicial council as
5 established in section 602.1202, a substitute decision-maker
6 education and training program. The program may be offered to
7 both public and private substitute decision makers. The state
8 office shall establish a curriculum committee, which includes
9 but is not limited to probate judges, to develop the education
10 and training program.

11 4. The state office may do any of the following:

12 a. Accept and receive gifts, grants, or donations from any
13 public or private entity in support of the state office.

14 b. Accept the services of individual volunteers and
15 volunteer organizations.

16 c. Employ staff necessary to administer the state office
17 and enter into contracts as necessary.

18 5. The department shall provide administrative support to
19 the state office.

20 6. The department shall adopt rules in accordance with
21 chapter 17A necessary to create and administer the state and
22 local offices, relating to but not limited to all of the
23 following:

24 a. An application and intake process and standards for
25 receipt of substitute decision-making services from the state
26 or a local office.

27 b. A process for the removal or termination of the state
28 or a local substitute decision maker.

29 c. An ideal range of staff-to-client ratios for the state
30 and local substitute decision makers.

31 d. Minimum training and experience requirements for
32 professional staff and volunteers.

33 e. A fee schedule. The department may establish by rule a
34 schedule of reasonable fees for the costs of substitute
35 decision-making services provided under this chapter. The fee

1 schedule established may be based upon the ability of the
2 ward, principal, client, or estate to pay for the services but
3 shall not exceed the actual cost of providing the services.
4 The state office or a local office may waive collection of a
5 fee upon a finding that collection is not economically
6 feasible. The rules may provide that the state office or a
7 local office may investigate the financial status of a ward,
8 principal, or client who, or an estate that requests
9 substitute decision-making services or for whom or which the
10 state or a local substitute decision maker has been appointed
11 for the purpose of determining the fee to be charged by
12 requiring the ward, principal, client, or estate to provide
13 any written authorizations necessary to provide access to
14 records of public or private sources, otherwise confidential,
15 needed to evaluate the individual's or estate's financial
16 eligibility. The rules may also provide that the state or a
17 local substitute decision maker may, upon request and without
18 payment of fees otherwise required by law, obtain information
19 necessary to evaluate the individual's or estate's financial
20 eligibility from any office of the state or of a political
21 subdivision or agency of the state that possesses public
22 records. In estate proceedings, the state or local decision
23 maker shall be compensated pursuant to chapter 633, division
24 III, part 8.

25 f. Standards and performance measures for evaluation of
26 local offices.

27 g. Recordkeeping and accounting procedures to ensure that
28 each local office maintains confidential, accurate, and up-to-
29 date records, and files with the state office an account of
30 all public and private funds received.

31 Sec. 5. NEW SECTION. 231E.5 LOCAL OFFICE OF SUBSTITUTE
32 DECISION MAKER.

33 1. The state substitute decision maker shall select
34 persons to provide local substitute decision-making services
35 in each of the planning and service areas, based upon a

1 request for proposals process developed by the department.

2 2. The local office shall comply with all requirements
3 established for the local office by the department and shall
4 do all of the following:

5 a. Maintain a staff of professionally qualified
6 individuals to carry out the substitute decision-making
7 functions.

8 b. Identify client needs and local resources to provide
9 necessary support services to recipients of substitute
10 decision-making services.

11 c. Collect program data as required by the state office.

12 d. Meet standards established for the local office.

13 e. Comply with minimum staffing requirements and caseload
14 restrictions.

15 f. Conduct background checks on employees and volunteers.

16 g. With regard to a proposed ward, the local office shall
17 do all of the following:

18 (1) Determine the most appropriate form of substitute
19 decision making needed, if any, giving preference to the least
20 restrictive alternative.

21 (2) Determine whether the needs of the proposed ward
22 require the appointment of guardian or conservator.

23 (3) Assess the financial resources of the proposed ward
24 based on the information supplied to the local office at the
25 time of the determination.

26 (4) Inquire and, if appropriate, search to determine
27 whether any other person may be willing and able to serve as
28 the proposed ward's guardian or conservator.

29 (5) Determine the form of guardianship or conservatorship
30 to request of a court, if any, giving preference to the least
31 restrictive form.

32 (6) If determined necessary, file a petition for the
33 appointment of a guardian or conservator pursuant to chapter
34 633.

35 h. With regard to an estate, the local office may appoint

1 a personal representative to file a petition to open an estate
2 who shall do all of the following:

3 (1) Retain legal counsel as described in section 231E.12
4 to be compensated from the proceeds of the estate pursuant to
5 chapter 633, division III, part 8.

6 (2) Liquidate all assets of the estate.

7 (3) Distribute the assets of the estate pursuant to
8 chapter 633, division VII, parts 7 and 8, and other applicable
9 provisions of law.

10 4. A local office may do any of the following:

11 a. Contract for or arrange for provision of services
12 necessary to carry out the duties of a local substitute
13 decision maker.

14 b. Accept the services of volunteers or consultants and
15 reimburse them for necessary expenses.

16 c. Employ staff and delegate to members of the staff the
17 powers and duties of the local substitute decision maker.
18 However, the local office shall retain responsibility for the
19 proper performance of the delegated powers and duties. All
20 delegations shall be to persons who meet the eligibility
21 requirements of the specific type of substitute decision
22 maker.

23 5. An individual acting as the state or a local substitute
24 decision maker shall comply with applicable requirements for
25 guardians, conservators, or personal representatives pursuant
26 to chapter 633, attorneys in fact under a power of attorney
27 pursuant to chapter 633 or a durable power of attorney for
28 health care pursuant to chapter 144B, or representative payees
29 pursuant to federal law and regulations.

30 6. Notwithstanding any provision to the contrary, an
31 individual acting as the state or a local substitute decision
32 maker shall not be subject to the posting of a bond pursuant
33 to chapter 633. An individual acting as the state or a local
34 substitute decision maker shall complete at least eight hours
35 of training annually as certified by the department.

1 Sec. 6. NEW SECTION. 231E.6 COURT-INITIATED OR PETITION-
2 INITIATED APPOINTMENT OF STATE OR LOCAL SUBSTITUTE DECISION
3 MAKER -- GUARDIANSHIP OR CONSERVATORSHIP -- DISCHARGE.

4 The court may appoint on its own motion or upon petition of
5 any person, the state office or local office of substitute
6 decision maker, to serve as guardian or conservator for any
7 proposed ward in cases in which the court determines that the
8 proceeding will establish the least restrictive form of
9 substitute decision making suitable for the proposed ward and
10 if the proposed ward meets all of the following criteria:

11 1. Is a resident of the planning and service area in which
12 the local office is located from which services would be
13 provided or is a resident of the state, if the state office
14 would provide the services.

15 2. Is eighteen years of age or older.

16 3. Does not have suitable family or another appropriate
17 entity willing and able to serve as guardian or conservator.

18 4. Is incompetent as defined in section 633.3.

19 5. Is an individual for whom guardianship or
20 conservatorship services are the least restrictive means of
21 meeting the individual's needs.

22 Sec. 7. NEW SECTION. 231E.7 SUBSTITUTE DECISION MAKER-
23 INITIATED APPOINTMENT.

24 The state office or local office may on its own motion or
25 at the request of the court intervene in a guardianship or
26 conservatorship proceeding if the state office or local office
27 or the court considers the intervention to be justified
28 because of any of the following:

29 1. An appointed guardian or conservator is not fulfilling
30 prescribed duties or is subject to removal under section
31 633.65.

32 2. A willing and qualified guardian or conservator is not
33 available.

34 3. The best interests of the ward require the
35 intervention.

1 Sec. 8. NEW SECTION. 231E.8 PROVISIONS APPLICABLE TO ALL
2 APPOINTMENTS AND DESIGNATIONS -- DISCHARGE.

3 1. The court shall only appoint or intervene on its own
4 motion or act upon the petition of any person under section
5 231E.6 or 231E.7 if such appointment or intervention would
6 comply with staffing ratios established by the department and
7 if sufficient resources are available to the state office or
8 local office. Notice of the proposed appointment shall be
9 provided to the state office or local office prior to the
10 granting of such appointment.

11 2. The state office or local office shall maintain
12 reasonable personal contact with each ward, principal, or
13 client for whom the state office or local office is appointed
14 or designated in order to monitor the ward's, principal's, or
15 client's care and progress. For any estates in which the
16 state office or local office is involved, the state office or
17 local office shall move estate proceedings forward in a
18 reasonable and expeditious manner and shall monitor the
19 progress of any legal counsel retained on a regular basis.

20 3. Notwithstanding any provision of law to the contrary,
21 the state office or local office appointed by the court or
22 designated under a power of attorney document may access all
23 confidential records concerning the ward or principal for whom
24 the state office or local office is appointed or designated,
25 including medical records and abuse reports.

26 4. In any proceeding in which the state or local office is
27 appointed or is acting as guardian or conservator, the court
28 shall waive court costs or filing fees. In any estate
29 proceeding, the court costs shall be paid in accordance with
30 chapter 633, division VII, part 7.

31 5. The state or a local substitute decision maker shall be
32 subject to discharge or removal, by the court, on the grounds
33 and in the manner in which other guardians, conservators, or
34 personal representatives are discharged or removed pursuant to
35 chapter 633.

1 Sec. 9. NEW SECTION. 231E.9 FEES -- APPROPRIATED.

2 Fees received by the state office and by local offices for
3 services provided as state or local substitute decision maker
4 shall be deposited in the general fund of the state and the
5 amounts received are appropriated to the department for the
6 purposes of administering this chapter.

7 Sec. 10. NEW SECTION. 231E.10 CONFLICTS OF INTEREST --
8 LIMITATIONS.

9 Notwithstanding section 633.63 or any other provision to
10 the contrary, a local substitute decision maker shall not
11 provide direct services to or have an actual or the appearance
12 of any conflict of interest relating to any individual for
13 whom the local substitute decision maker acts in a substitute
14 decision-making capacity unless such provision of direct
15 services or the appearance of a conflict of interest is
16 approved and monitored by the state office in accordance with
17 rules adopted by the department.

18 Sec. 11. NEW SECTION. 231E.11 SUBSTITUTE DECISION-MAKER
19 ADVISORY COUNCIL -- ESTABLISHED -- DUTIES.

20 1. The director shall designate a substitute decision-
21 maker advisory council. The director shall determine the
22 membership and representation of the advisory council, and
23 members shall serve at the pleasure of the director.

24 2. The advisory council may include but is not limited to
25 inclusion of members who are or who represent any of the
26 following:

27 a. The legal services developer for the department.

28 b. The dependent adult abuse program of the department of
29 human services.

30 c. The state substitute medical decision-making board
31 established pursuant to section 135.28.

32 d. The chief justice of the supreme court.

33 e. The governor's developmental disabilities council.

34 f. The area agencies on aging.

35 g. The office of the attorney general.

1 h. A volunteer guardianship program of an office of county
2 attorney.

3 i. A local office of the United States social security
4 administration.

5 j. The Iowa medical society.

6 k. The Iowa hospital association.

7 l. The Iowa state association of counties.

8 m. The Iowa state bar association, probate section.

9 n. The long-term care industry.

10 o. Community services organizations.

11 p. The Iowa protection and advocacy agency.

12 q. The department of veterans affairs.

13 r. The Iowa department of public health.

14 3. The advisory council shall do all of the following:

15 a. Recommend policy for the state and local offices.

16 b. Establish a mechanism for systematic and regular review
17 of existing policy and for consideration of policy changes.

18 c. Review alternatives for funding.

19 d. Serve as a resource to the state and local offices.

20 e. Assist the department in developing the request for
21 proposals process for selection of local offices.

22 Sec. 12. NEW SECTION. 231E.12 DUTY OF ATTORNEY GENERAL,
23 COUNTY ATTORNEY, OR OTHER COUNSEL.

24 1. The attorney general shall advise the state office on
25 legal matters and represent the state office in legal
26 proceedings.

27 2. Upon the request of the attorney general, a county
28 attorney may represent the state office or a local office in
29 connection with the filing of a petition for appointment as
30 guardian or conservator and with routine, subsequent
31 appearances.

32 3. A local attorney experienced in probate matters may
33 represent the personal representative for all routine matters
34 associated with probating an estate.

35 Sec. 13. NEW SECTION. 231E.13 LIABILITY.

1 All employees and volunteers of the state office and local
2 offices operating under this chapter and other applicable
3 chapters and pursuant to rules adopted under this and other
4 applicable chapters are considered employees of the state and
5 state volunteers for the purposes of chapter 669 and shall be
6 afforded protection under section 669.21 or 669.24, as
7 applicable. This section does not relieve a guardian or
8 conservator from performing duties prescribed under chapter
9 633.

10 Sec. 14. NEW SECTION. 231E.14 REPORTS -- INFORMATION
11 SHARING.

12 1. The state office and local offices shall keep and
13 maintain proper financial, case, and statistical records as
14 prescribed by rule.

15 2. A local office shall file, in writing, by September 1,
16 with the state office an annual report regarding the
17 operations of the local office for the preceding fiscal year.

18 3. Notwithstanding any other provision of law to the
19 contrary, any medical, financial, or mental health records
20 held by a state agency or the court, which are necessary to
21 evaluate the state office or local offices, to assess the need
22 for additional local substitute decision makers, or to develop
23 required reports, shall be provided to the state office upon
24 the state office's request. Any confidential information
25 provided to the state office shall continue to be held
26 confidential as otherwise provided by law.

27 Sec. 15. NEW SECTION. 9J.1 SUBSTITUTE DECISION MAKERS --
28 REGISTRATION.

29 1. For the purposes of this chapter, "substitute decision
30 makers" means all of the following:

- 31 a. A guardian or conservator as defined in section 633.3.
- 32 b. A representative payee as defined in section 231E.3.
- 33 c. An attorney in fact under a durable power of attorney
34 for health care as defined in section 144B.1 or a power of
35 attorney that becomes effective upon the disability of the

1 principal as described in section 633.705.

2 2. The secretary of state shall develop and distribute a
3 form for the registration and revocation of registration of
4 substitute decision makers in accordance with this chapter.
5 The secretary of state shall adopt rules necessary for the
6 implementation and administration of this chapter.

7 3. a. A person appointed by the court as a guardian or
8 conservator, a person appointed by a government entity as a
9 representative payee, and a person designated as an attorney
10 in fact shall file a copy of the completed substitute decision
11 maker form with the secretary of state within fifteen business
12 days of the appointment or designation as a substitute
13 decision maker.

14 b. The person filing the form shall pay a fee of twenty-
15 five dollars at the time of registration. Five dollars of
16 each fee shall be retained by the secretary of state. Twenty
17 dollars of each fee shall be deposited in the general fund of
18 the state and that amount is appropriated to the Iowa
19 department of elder affairs for administering a substitute
20 decision-makers education and training program.

21 4. A registrant under this chapter whose powers or duties
22 as a substitute decision maker are terminated or revoked shall
23 file a revocation of registration form with the secretary of
24 state within fifteen business days of the termination or
25 revocation.

26 5. A person acting as a substitute decision maker through
27 the state office or local office of substitute decision maker
28 pursuant to chapter 231E is not subject to the registration or
29 fee payment requirements of this chapter.

30 Sec. 16. Section 144B.3, subsection 1, Code 2005, is
31 amended by adding the following new paragraph:

32 NEW PARAGRAPH. c. The attorney in fact registers with the
33 secretary of state in accordance with chapter 9J.

34 Sec. 17. Section 235B.6, subsection 2, paragraph e, Code
35 2005, is amended by adding the following new subparagraph:

1 NEW SUBPARAGRAPH. (11) The state office or a local office
2 of substitute decision maker as defined in section 231E.3,
3 appointed by the court as a guardian or conservator of the
4 adult named in a report as the victim of abuse or the person
5 designated to be responsible for performing or obtaining
6 protective services on behalf of a dependent adult pursuant to
7 section 235B.18.

8 Sec. 18. Section 633.63, subsection 3, Code 2005, is
9 amended to read as follows:

10 3. A private nonprofit corporation organized under chapter
11 504, Code 1989, or current chapter 504 or 504A is qualified to
12 act as a guardian, as defined in section 633.3, ~~subsection-20,~~
13 or a conservator, as defined in section 633.3, ~~subsection-7,~~
14 ~~where-the-assets-subject-to-the-conservatorship-at-the-time~~
15 ~~when-such-corporation-is-appointed-conservator-are-less-than~~
16 ~~or-equal-to-seventy-five-thousand-dollars-and~~ if the
17 corporation does not possess a proprietary or legal interest
18 in an organization which provides direct services to the
19 individual.

20 Sec. 19. Section 633.63, Code 2005, is amended by adding
21 the following new subsection:

22 NEW SUBSECTION. 4. The state or a local substitute
23 decision maker as defined in section 231E.3 is authorized to
24 act in a fiduciary capacity in this state in accordance with
25 chapter 231E.

26 Sec. 20. NEW SECTION. 633.636A REGISTRATION -- GUARDIANS
27 AND CONSERVATORS.

28 A person appointed as a guardian or conservator shall
29 register such appointment with the secretary of state within
30 fifteen days of the appointment pursuant to section 9J.1.

31 Sec. 21. NEW SECTION. 633.706A REGISTRATION.

32 A person designated as attorney in fact by a power of
33 attorney that becomes effective upon the disability of the
34 principal as described in section 633.705 and a person
35 designated as attorney in fact by a durable power of attorney

1 for health care pursuant to chapter 144B shall register with
2 the secretary of state pursuant to chapter 9J.

3 DIVISION XVIIIIA

4 REGISTRATION OF REPRESENTATIVE PAYEE

5 Sec. 22. NEW SECTION. 633.712 REGISTRATION OF
6 REPRESENTATIVE PAYEE.

7 A person acting as a representative payee pursuant to
8 federal law and regulations shall register with the secretary
9 of state pursuant to chapter 9J within thirty days of the
10 person's appointment.

11 Sec. 23. STATE AND LOCAL OFFICES OF SUBSTITUTE DECISION
12 MAKER -- INITIAL SITES -- APPROPRIATION. There is
13 appropriated from the general fund of the state to the
14 department of elder affairs for the fiscal year beginning July
15 1, 2005, and ending June 30, 2006, the following amount, or so
16 much thereof as is necessary, for the purposes designated, and
17 for not more than the following full-time equivalent
18 positions:

19 For the state office of substitute decision maker and for
20 the establishment of two local offices of substitute decision
21 maker, pursuant to chapter 231E. One local office shall be
22 located in a rural area and one local office shall be located
23 in an urban area:

24	\$	689,600
25	FTEs	3.00

26 EXPLANATION

27 This bill establishes a state office of substitute decision
28 maker within the department of elder affairs and additionally
29 provides for the establishment of local offices within each of
30 the department planning and service areas by July 1, 2015.

31 The bill provides findings and intent and definitions. The
32 bill establishes the office of substitute decision maker to
33 provide substitute decision-making services, which include the
34 services of a guardian, conservator, representative payee,
35 attorney in fact under a power of attorney, and personal

1 representative for estates, to adults and estates for whom or
2 which no other substitute decision maker is available to
3 provide the services.

4 The bill specifies the duties of the state office, the
5 state substitute decision maker, and the local offices. The
6 bill specifies the requirements for the appointing of the
7 state or a local substitute decision maker as a guardian or
8 conservator and provides that the requirements for a guardian
9 or conservator established in Code chapter 633 (probate code)
10 apply to the state or a local substitute decision maker acting
11 in that capacity.

12 The bill provides for the establishment of fees for the
13 services of the state or a local substitute decision maker,
14 which may be based on income, and provides that the fees
15 collected are to be deposited in the general fund of the state
16 and are appropriated to the department of elder affairs for
17 the purposes of administering the chapter.

18 The bill provides limitations on the provision of direct
19 services by or the appearance of any conflict of interest on
20 the part of a local substitute decision maker to or toward an
21 individual for whom the local substitute decision maker is
22 acting in a substitute decision-making capacity.

23 The bill establishes a substitute decision-maker advisory
24 council to recommend policy and ensure that the purposes of
25 the offices are carried out.

26 The bill also includes provisions directing the attorney
27 general to advise the state office on legal matters and
28 represent the state office in legal proceedings and directing
29 that the county attorney may represent the state or local
30 offices in guardianship and conservatorship proceedings. The
31 bill also provides that a local attorney experienced in
32 probate matters may represent the personal representative for
33 matters associated with probating an estate. The bill
34 provides that employees and volunteers of the offices are
35 considered employees of the state and state volunteers under

1 the state tort claims Act, and provides that certain
2 information is to be collected in the form of reports and
3 allows certain information to be shared. The bill provides
4 for the sharing of information regarding founded cases of
5 dependent adult abuse with the state and local offices if
6 appointed as a guardian or conservator of the adult named in
7 the report as the victim of abuse or if designated as the
8 person responsible for obtaining protective services for the
9 adult named in the report as the victim of abuse.

10 The bill provides for the registering of guardians,
11 conservators, representative payees, and attorneys in fact
12 with the secretary of state and provides for collection of
13 fees and the retaining and appropriation of fees collected to
14 be used for a substitute decision-makers program.

15 The bill provides an appropriation for FY 2005-2006 for the
16 state office and for the establishment of two local offices.

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