



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: H.B. 395 of the 128th G.A.

Date: April 13, 2010

Status: As Introduced

Sponsor: Reps. Bacon and Harwood

Local Impact Statement Procedure Required: No — Minimal cost

Contents: Probate code changes

State Fiscal Highlights

- No direct fiscal effect on the state.

Local Fiscal Highlights

LOCAL GOVERNMENT

FY 2010

FY 2011 – FUTURE YEARS

Courts of Common Pleas – Probate Division

LOCAL GOVERNMENT	FY 2010	FY 2011 – FUTURE YEARS
Revenues	Factors increasing and decreasing fee revenue collection, likely annual impact less than minimal	
Expenditures	Possible short-term minimal increase in operating expenses due to one-time transitional costs	Potential decrease in operating expenses due to gains in court efficiency, annual magnitude uncertain

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- **Courts of common pleas – probate division.** The bill will increase the fee for depositing a will with the probate court, eliminate the fee for improper filing by a fiduciary, and make numerous procedural changes to the probate courts of Ohio. Many of these changes are designed to update the law to mirror current practice, streamline the operation of the probate court, and simplify the legal process. These changes are designed to allow the court to operate more efficiently and effectively than under current law.

Detailed Fiscal Analysis

Overview

For the purposes of this fiscal analysis, the bill most notably:

- Increases the fee for depositing a will with the court from \$1 to \$5;
- Eliminates the \$2.50 fee to the estate for an improper or incomplete filing by a fiduciary; and
- Makes numerous substantive changes to probate law (summarized in the Appendix).

Transitional costs

The bill provides for numerous changes to the detailed operation of a probate court. Court personnel contacted by LSC fiscal staff indicated that the cost of implementing the changes in the bill would vary by county depending on the level of automation already utilized by the court. Courts utilizing a high degree of automation would face lower transitional costs while courts with less automation would face slightly higher costs. The transitional costs are mostly comprised of existing IT staff time for reprogramming automated processes to allow a new or different action to occur in a probate court proceeding or the modification of existing staff procedures for probate court proceedings. Regardless of the level of automation a court may possess, the transitional costs from current law to the implementation of the procedures outlined in the bill are expected to be less than minimal. For the purposes of this fiscal analysis, with regard to the probate division of courts of common pleas, minimal means one-time costs estimated at less than \$5,000.

Fee changes

The bill increases the fee for depositing a will with the probate court and eliminates the fee for improper or incomplete filings by a fiduciary. According to court personnel contacted by LSC fiscal staff, the fee increase from \$1 to \$5 for depositing a will is needed to help defray the cost of safely storing the document. However, even at the increased rate it is not expected to fully cover the cost of providing the service for all probate courts around the state. Additionally, this service is not widely utilized across Ohio and in recent years has been declining as more individuals are able to safely store their documents through other providers, such as safety deposit boxes.

The elimination of the \$2.50 fee for an improper or incomplete filing by a fiduciary is also not expected to have a more than negligible fiscal impact. According to court personnel contacted by LSC fiscal staff, collecting this fee is difficult for a variety of reasons and therefore, though a court may be entitled to assess the fee, it often goes unassessed or uncollected. Together the increase in one fee and elimination of another

are expected to have no more than a minimal impact on probate courts. The precise direction and magnitude of these changes will vary accordingly by court.

Procedural and administrative changes to probate law

The bill addresses gender specific references and outdated terminology found throughout probate law. The more substantive changes in the bill are designed to update the law to mirror current practices or best practices, streamline the operation of the probate court, and simplify the legal process. These changes are designed to allow the court to operate more efficiently than under current law. LSC fiscal staff contacted court personnel including judges and clerks to discuss the numerous substantive changes contained in the bill. (See the Appendix for details.) None of the parties contacted by LSC commented on any provision having a fiscal impact on the operation of the court, except to say that the overall impact of these changes was to increase the efficiency and effectiveness of the probate court and allow it to function in a more cost-effective manner over time.

State fiscal effects

The bill will have no direct fiscal impact on state revenues or expenditures.

Appendix

The bill's numerous procedural and administrative changes to the operation of a probate court can be summarized as follows:

- Defines "testator" as any person who makes a will;
- Decreases from two months to one month the period of time in which a deposited will must be demanded by the person named in the endorsement before being publicly opened by the court;
- Changes the procedures for modifying a will that has previously been declared valid;
- Decreases from three years to one year the period of time before the beneficiary of a will, who knows of the will and has the power to control it, forfeits his or her right to inherit under the will for intentionally concealing the will without reasonable cause;
- Eliminates the provision that allows the clerk of the court of common pleas to certify a copy of an original will, or a copy of an original will and its probate, when the original will has been destroyed;
- Decreases from six months to three months the length of time after the death of a testator within which an oral will must be offered for probate;
- Enables a probate court to appoint a resident or nonresident of this state as guardian of the *person*; requires fiduciaries to register a permanent address with the probate court and notify the court of any change of address;
- Requires fiduciaries to file a written statement of resignation with the court after at least 15 days' notice to persons known to be interested in the estate; allows the probate court to set a hearing on the matter and notify interested parties; requires a court order for the resignation to become finalized;
- Requires a fiduciary's successor to file a final account if no estate is commenced for a deceased fiduciary;
- Creates a new right to notice of a hearing upon a fiduciary's account for creditors, as the court may direct; requires notice to be made by mail in addition to publication;
- Authorizes a fiduciary to invest trust funds in credit unions located in and organized under the laws of the state; authorizes a fiduciary to invest in corporate notes, bonds, debentures, and certain equipment trust certificates issued by corporations incorporated under the laws of a *foreign* government; requires the court to hold a hearing when a fiduciary files a petition to invest funds in a home for the ward;
- Authorizes a fiduciary to invest in securities of corporations of any *foreign* government or state; eliminates the "60-40" rule on investment portfolios;

- Authorizes a fiduciary who is required to invest funds that belong to a trust to make a short-term investment of those funds in, among other things, the obligations of foreign governments or states;
- Provides authority for the removal of a fiduciary for the fiduciary's personal use or misuse of funds; provides authority for a fiduciary's personal use of trust property upon application, notice to interested persons, and a hearing;
- Creates a mechanism by which a fiduciary can engage in self-interested transactions with the estate;
- Provides that persons holding liens on real property need not be notified when a guardian files a complaint to mortgage that property if the liens will be extinguished;
- Deletes "three" as the number of disinterested persons required to investigate the necessity of repairs to real property when a guardian applies to the court for authority to mortgage that property;
- Provides for transfer of a cause of action commenced pursuant to R.C. 2109.59 to the court of common pleas upon motion of any party or *on the court's own motion*;
- Provides that notice of any action against a bonded fiduciary must be given to the surety;
- Clarifies that a guardian shall be appointed for a minor whose parents are unsuitable to provide for the education of the minor in addition to being unsuitable to have custody;
- Provides that persons appointed as guardians of minors have the obligation to provide for the education of the minor pursuant to R.C. 3321.01;
- Provides authority for a judge to appoint a public agency to serve as a guardian of an estate or of a person; provides authority for a judge to appoint a nonprofit corporation to serve as guardian of the person;
- Provides authority for a court-appointed commissioner to execute all necessary instruments of conveyance required for the transfer of title upon the sale of real property;
- Increases from \$2,500 to \$5,000 the amount that may be paid to certain survivors of a deceased employee without requiring an Ohio estate tax release;
- Requires a person applying for appointment as an executor or administrator to file an application containing the names and *usual residences* of the surviving spouse and next of kin; requires notice to be served to minors who would have been entitled to priority to administer the estate except for their minority;
- Allows a court to grant a special administrator *any other authority that the court considers appropriate* in addition to authority to collect and preserve the effects of the deceased; provides additional authority for the special administrator to *defend suits*;

- Requires a special administrator, upon termination of his or her special appointment, to file an account of the special administration within 30 days of the appointment of an executor or administrator;
- Eliminates the \$20 threshold for the appointment of a successor executor or administrator when a sole executor or administrator dies without having fully administered the estate;
- Decreases from 13 months after the date of appointment to six months after the date of appointment the time an executor or administrator has to complete administration; provides authority for an extension for good cause;
- Changes the information that must be included in an application for certification of transfer of real property (e.g., decedent's domicile, reason for transfer, spousal election, disclaimers or assignments, debts or insolvency); provides authority for an application for a certificate of transfer to be filed in, among other things, the probate court of the county in which the real property is located;
- Requires any notification of a determination of the apportionment of a tax to include the name and address of the probate court with jurisdiction over the apportionment and notice that any objection to the apportionment must be made within 30 days of receipt of the notice;
- Requires a fiduciary seeking to recover the amount of tax attributable to a person's interest, that is not satisfied by the withholding of property in possession of the fiduciary, to file a complaint to recover the deficiency in the probate court with jurisdiction over the administration of the estate;
- Authorizes an executor or administrator to accept the county auditor's valuation of real property in lieu of the appointment of an appraiser;
- Requires that a cause of action that accrues on a claim subsequent to a decedent's death to be presented to the executor or administrator within six months of the date of death of the decedent rather than within one year;
- Requires any potential creditors, who are given notice of the death of a decedent, to present any potential claims against the estate to the court within the earlier of 30 days after receipt of the notice or *six months* of the death of the decedent rather than within one year;
- Provides authority for the probate court to fill any vacancy on a board of education or governing board if that board fails to do so within a period of 30 days after the vacancy occurs;
- Provides authority for a creditor's claim to be presented to a special administrator;
- Provides authority for the court, upon application of any interested party, to authorize the examination of an executor or administrator under oath in open court on any matter relating to the administration of the estate; and

- Repeals sections regarding probate judge in lunacy proceedings, judge of court of common pleas to act as probate judge – compensation, limitations for granting original administration, special administrators not liable to creditors, contents of application, extensions of time limited, time allowed collecting assets not to defer account, new administrators, and distribution after settlement and fees.

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