Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: Sub. S.B. 117 of the 129th G.A. **Date**: November 23, 2011

Status: As Passed by the House **Sponsor**: Sens. Seitz and Schiavoni

Local Impact Statement Procedure Required: Yes

Contents: Modifies the state's power of attorney, trust, and probate laws and provides a mechanism for a probate court, under certain conditions, to order involuntary drug and alcohol treatment

State Fiscal Highlights

- By replacing "nonresident" with "resident" in the trust income tax law, the state could lose a minimal amount in tax collections annually that would have been credited to the General Revenue Fund (GRF).

Local Fiscal Highlights

- Probate courts could experience an increase in caseload and administrative costs to hear and determine petitions for involuntary drug and alcohol treatment, to train staff, to manage contempt of court proceedings including incarceration, and to provide court appointed counsel if the respondent is indigent. The annual magnitude of those increased costs could exceed minimal for certain probate courts.

Detailed Fiscal Analysis

This fiscal analysis is organized around the following two topics: (1) trust and probate law changes and (2) court-ordered drug and alcohol treatment.

(1) Trust and probate law changes

The bill makes various changes to the state's trust and probate laws, most notably by enacting the Uniform Power of Attorney Act, modifying certain aspects of the Ohio Trust Code, modifying the anti-lapse statute regarding wills, and creating the anti-lapse statute for trusts. For the most part, these changes will not produce any significant direct fiscal effects for the state or any of its political subdivisions. To the extent that these changes produce any direct fiscal effects, they will be minimal and would likely consist of administrative costs for probate courts to apply and construe the Uniform Power of Attorney Act.

Changes to the trust income tax credit

Under the income tax law, some trusts are subject to the income tax on at least a portion of the trust's income. Trusts may claim a credit for taxes paid to another state on their accumulated qualifying nonbusiness income,[1] and the credit cannot exceed the amount of Ohio tax that would be imposed on that income. Am. Sub. H.B. 562 of the 127th General Assembly limited the income tax credit to "nonresident trusts," i.e., presumably a trust, or part of a trust, that is not a resident trust under applicable law defining "resident" trusts. The bill modifies the trust income tax law by replacing "nonresident" with "resident," thus providing this credit to resident trusts for income tax paid to other states or the District of Columbia. Based on current practice, and according to the Department of Taxation, this change to the trust income tax credit may result in a minimal annual decrease in tax revenues credited to the state's General Revenue Fund (GRF).

Tax formulas in wills and trusts

The bill allows the modification, following private agreement between parties, of the terms of a charitable trust (or a trust that has a charity as a beneficiary) on the disposition or division of property for trusts that do not refer to the repeal of the federal estate tax or the federal generation-skipping transfer tax and the potential effect of that

[1]"Nonbusiness income" includes compensation, rents and royalties from real or tangible personal property, capital gains, interest, dividends and distributions, patent or copyright royalties, or lottery winnings, prizes, and awards. The credit excludes "qualifying investment income" as defined in R.C. 5747.012.

repeal. (Ohio has a state estate tax but not a generation-skipping transfer tax.)[2] The bill specifies the rule of construction in wills and charitable trusts regarding the interpretation of the federal estate tax or generation-skipping transfer tax for distributions of benefits or allocation of charges (including transfer taxes) from estates or charitable trusts. Assuming that the modification of the terms of the trusts does not affect payment of state estate taxes where required and that, generally, charitable trusts have no or little state income tax liability, this provision is likely to have little state or local fiscal effects, if any.

(2) Court-ordered treatment for drug and alcohol abuse

Order for involuntary treatment

Probate courts could experience an increase in caseload and administrative costs to hear and determine petitions for involuntary drug and alcohol treatment, to train staff, and to manage contempt of court proceedings including incarceration. According to the Ohio Judicial Conference, costs incurred by probate courts to implement these provisions of the bill have the potential to be significant. Additionally, probate courts could incur costs to provide court-appointed counsel to indigent respondents. The bill does not address how a petition would be handled or who would pay for treatment and court costs in the case that the *petitioner* is indigent or otherwise unable to pay for treatment.

The bill provides a mechanism for probate courts, under certain conditions, to order involuntary drug and alcohol treatment by permitting a spouse, relative, or guardian of an individual experiencing alcohol or other drug abuse to file a verified petition with the court. The bill explicitly requires that any petition filed with the court contain a statement that the petitioner has arranged for treatment of the respondent and a statement from the treatment provider verifying the agreed upon arrangement in addition to the estimated cost. The bill further requires a security deposit for half of the estimated cost of treatment to be submitted with the petition along with a signed guarantee obligating the petitioner, or other authorized individual, to pay all costs of the respondent's treatment including related examination, court, and transportation costs.

The bill establishes a procedure for probate courts when determining whether an individual should be ordered to undergo drug and alcohol treatment including: (1) examining the petitioner under oath, (2) causing the respondent to undergo a physical evaluation and a drug and alcohol addiction assessment and diagnosis, (3) conducting a hearing, and (4) ordering treatment. If a *respondent* is indigent, the bill requires that court-appointed counsel be provided at the public's expense. The bill requires a probate court to dismiss the proceedings if the court determines that clear

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[2] Am. Sub. H.B. 153 of the 129th General Assembly (the operating budget act for FYs 2012-2013) repealed the state estate tax for individuals dying on or after January 1, 2013. Thus, this provision may affect solely estates with date of death prior to January 1, 2013.

and convincing evidence has not been presented or if the petition is withdrawn. If a respondent fails to undergo treatment as ordered, the respondent is in contempt of court, which could involve respondents spending time in jail.

Involuntary hospitalizations

The bill allows the probate court, under certain conditions resulting from alcohol or other drug use, to order the respondent to be hospitalized for up to 72 hours. The bill precludes the respondent from being held in jail unless the probate court has previously found the respondent to be in contempt of court for failure to undergo treatment or failure to appear at an evaluation ordered by a probate court. Current law provides a similar process for involuntary hospitalization for psychiatric medical emergencies. Costs incurred by the probate court for psychiatric hospitalizations, including fees or expenses for police, sheriffs, physicians, witnesses, transportation, conveyance assistants, attorneys, referees, reporters, and court costs, are reimbursed by the Department of Mental Health. The bill is unclear as to whether probate courts would be entitled to reimbursement for similar expenses resulting from hospitalizations for alcohol or other drug use. If the local courts are liable for the expenses, the costs to certain county probate courts could easily exceed minimal.

List of hospitals and treatment providers

The bill requires each county board of alcohol, drug addiction, and mental health services to submit to the clerk of the probate court in each county served by the board, on at least an annual basis, a list of all hospitals and treatment providers that are able and willing to provide alcohol and drug services ordered by the probate court. The annual cost to provide such a list will be minimal at most.

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