



**House  
Legislative  
Analysis  
Section**

Olds Plaza Building, 10th Floor  
Lansing, Michigan 48909  
Phone: 517/373-6486

**PROBATE COURT FEES**

**House Bill 5346 (Substitute H-2)  
Revised First Analysis (2-4-92)**

**Sponsor: Rep. Perry Bullard  
Committee: Judiciary**

***THE APPARENT PROBLEM:***

In response to continuing criticisms over the shortcomings of the law on guardianships for legally incapacitated adults, the legislature in 1988 enacted reforms that required guardianship petitions to include specific facts on why a guardianship was thought necessary, limited creation of guardianships to instances when it was demonstrated to be necessary, clarified the duties of a guardian ad litem, and extended certain aspects of due process of law, such as the right to be present and the right to have an attorney, to adults alleged to be in need of a guardian. Parallel reforms for the law on conservatorships were left for another time. (Basically, a guardian makes decisions affecting the person of the ward, while a conservator makes decisions regarding the ward's financial affairs. Both guardians and conservators are appointed by the probate court; a guardian may make certain financial decisions in cases where the court has not appointed a separate conservator.)

The law on conservatorships is subject to many of the same criticisms directed against the law on guardianships in 1988. As a result, the legislature has before it House Bill 5345, which proposes to reform the law on conservatorships in much the way the law on guardianships was reformed in 1988. However, the proposal has brought fresh attention to a long-simmering issue in the courts: that of increasing responsibilities and costs for the courts without increasing funding. Through requirements to appoint guardians ad litem and legal counsel, to provide various notices and hold hearings, and to conduct regular reviews, the 1988 reforms are reported to have worsened the already heavy burdens on some courts. If similar burdens are to be imposed with regard to conservatorships, there should be some means of funding the reforms, according to many. Legislation to provide such funding has been proposed.

***THE CONTENT OF THE BILL:***

House Bill 5346 would amend the Revised Judicature Act to establish a \$30 filing fee in the probate court for any of several types of proceedings, including certain matters regarding guardianship and conservatorship. (These fees would replace the \$15 filing fee that is now paid upon the initial application for creation of a conservatorship.) The court would waive the fee if the moving party was unable to pay; also excused from the fee would be certain state and federal agencies. The bill also would explicitly allow the probate court to charge the estates of such persons for the costs of the following services: guardian ad litem, court-appointed counsel, court-ordered or independent examination by a physical or mental health professional, or periodic review.

Each month, the probate court registrar would send all fees collected to the county treasurer for deposit in a county guardianship and conservatorship fund. The county board of commissioners would appropriate the money in the fund to cover costs of the above-mentioned guardianship and conservatorship services that were not recovered from the estates of the people receiving the services.

Starting in 1993, any excess balance in a county fund from the previous calendar year would be transferred to a state guardianship and conservatorship fund. That fund would be used by the state court administrator to improve the administration of guardianship and conservatorship, including: educating judges, developing standards for guardians and conservators, collecting and analyzing demographic and other data on guardianships and conservatorships, and developing model projects on alternatives to adult guardianship and conservatorship.

The bill would take effect June 1, 1992. It is not tie-barred to House Bill 5345.

House Bill 5346 (2-4-92)

***FISCAL IMPLICATIONS:***

The State Court Administrative Office estimates that the bill would generate approximately \$1.26 million per year. (1-29-92)

***ARGUMENTS:***

***For:***

The bill would provide a means of at least partially funding the expensive but needed reforms in the law on adult guardianships and conservatorships. The costs of those reforms have been estimated to be on the order of \$2 million, so the \$1.26 million or so that the bill would generate would provide substantial assistance with those costs. While this assistance would be provided through the creation of guardianship and conservatorship fees, the fees themselves are modest and should pose no hardship on individuals, particularly as the court could waive the fees when someone was unable to pay. Under the bill, those who could afford it would have to start shouldering their share of the cost of services provided through the probate court, while those who could not afford the fees would still be able to benefit from the guardianship reforms of 1988 and the conservatorship reforms yet to come under House Bill 5345. Those reforms will help to ensure that no rights will be lost unnecessarily, that opportunities for self-determination will be preserved, that the least restrictive alternative will be favored, and that there will be maximum flexibility to meet individual needs.

***Against:***

The due process of law protections that are part of the guardianship and conservatorship reforms make the process more time-consuming and deliberative, and consequently more expensive for the wards and their estates, who must pay for the additional time spent by attorneys and others on their cases. With the proposed fees, which easily could have to be paid many times during the course of a guardianship or conservatorship, the process becomes even more expensive, thus making the creation of guardianships or conservatorships less accessible and attractive for those who might otherwise want or need them. The danger arises that rather than go through the complicated process of court-supervised conservatorship, a person might just sign over a durable power of attorney, which is not subject to the same procedural safeguards.

***POSITIONS:***

The Michigan Probate Judges Association supports the establishment of fees to offset the costs of statutorily-mandated responsibilities. (1-28-92)

The Michigan Association of Counties supports the bill. (1-30-92)