



Senate Fiscal Agency
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BILL



ANALYSIS

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Senate Bill 192 (as enacted)
Sponsor: Senator Bruce Caswell
Senate Committee: Judiciary
House Committee: Judiciary

PUBLIC ACT 596 of 2012

Date Completed: 2-27-13

RATIONALE

The Revised Judicature Act requires the probate court to collect an administration fee, also called an inventory fee, on the value of assets in decedents' estates submitted to probate. The amount of the fee is calculated according to a schedule of fees in the Act, based on the value of an estate at the time of death. When an estate includes real property, the fair market value of that property is included without regard to whether the property is subject to a mortgage or otherwise encumbered by an indebtedness. This was confirmed in 2006 by the Michigan Court of Appeals in *Estate of Wolfe-Haddad v Oakland County* (272 Mich App 323).

It was suggested that, in such a situation, the amount of the indebtedness should be deducted from the value of the estate for purposes of calculating the administration fee.

CONTENT

The bill amends the Revised Judicature Act to do the following:

- **Provide for the amount of indebtedness on real estate in a probate estate to be deducted when the administration fee is calculated, until December 31, 2017.**
- **Require the probate court to calculate the value of estates, amounts of indebtedness, and fees collected, and submit the results to the State Court Administrative Office.**
- **Increase the portion of probate court fee revenue allocated to the**

county, rather than the State, until December 31, 2017.

The bill will take effect on March 28, 2013.

Administration Fee

The Act contains a range of probate court administration fees based on the value of an estate. At the low end, in an estate worth less than \$1,000, the fee is \$5 plus 1% of the amount over \$500. At the high end, in an estate worth \$100,000 to \$500,000, the fee is \$362.50 plus one-eighth of 1% of the amount over \$100,000. For each additional \$100,000 value over \$500,000, the Act requires a fee of \$62.50. For each additional \$100,000 value over \$1.0 million, the Act requires a fee of \$31.25.

The bill provides that, until December 31, 2017, if real property included in an estate is encumbered by or used as security for an indebtedness, the amount of the indebtedness must be deducted from the value of the real property, in the calculation of the probate court administration fee.

The bill requires the probate court, by March 31 in 2015, 2016, 2017, and 2018, to do the following:

- Calculate the value of all assets in each estate in the previous calendar year.
- If real property included in the estate is encumbered by or used as security for an indebtedness, subtract the total amount of the indebtedness from the result of the first calculation.

- Calculate the total amount of all administration fees collected in the previous calendar year.
- Submit the results of these calculations to the State Court Administrative Office.

Allocation of Fee Revenue

In addition to the administration fee, the Act requires the probate court to collect the following fees:

- \$10 for performing a marriage.
- \$7 for issuing a commission to take testimony.
- \$5, plus 10 cents per page, for taking, certifying, sealing, and forwarding depositions; and 3 cents per page for each copy of the deposition furnished.

On a monthly basis, the court must submit all of these fees and the administration fees as follows:

- 40% of each fee to the county treasurer for credit to the county general fund.
- 60% of each fee to the State Treasurer for credit to the State General Fund.

The bill requires the court, until December 31, 2017, to submit the fees as follows:

- 47.5% to the county treasurer for credit to the county general fund.
- 52.5% to the State Treasurer for credit to the State General Fund.

Beginning January 1, 2018, the county and State allocations will revert to 40% and 60%, respectively.

MCL 600.871 & 600.877

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Real property can represent a significant portion of the value of an estate, accounting for a large part of the probate court administration fee. In an estate with total assets worth \$600,000, for example, \$450,000 of that amount might be attributable to the value of a residence. Under current law, the inventory fee will be based on the full \$600,000, even if the real

property is subject to a mortgage loan on which \$350,000 is owed. If that amount is deducted from the value of the estate, however, the fee will be calculated on an estate worth \$250,000. Providing for this deduction is simply a matter of fairness, especially in today's world where mortgagors often have little equity in their property.

In *Estate of Wolfe-Haddad*, the Michigan Court of Appeals made it clear that the Revised Judicature Act requires probate courts to collect a fee based on the value of all assets held by an estate. The Act does not define the term "value" to exclude security interests and does not otherwise provide for deductions based on security interests held in an estate's assets (except as now required by the bill). Because the statute is unambiguous, according to the Court, it must be enforced as written. The Court also addressed a Michigan Court Rule that, at the time, required deductions to be allowed for secured loans on property in an estate, when the inventory fee was calculated (MCR 5.307(A)). The Court found that the statute prevailed over the court rule, and the rule subsequently was amended to conform to the Court's decision.

The bill, in effect, reverses the outcome of *Wolfe-Haddad* by amending the statute to require an inventory fee deduction for security interests in real property, until December 31, 2017.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

During the approximately four-year period before the status quo is reinstated, the bill will have an indeterminate fiscal impact on both State and local governments.

The bill requires the probate fee to be assessed on the net value of the estate rather than the gross value of the estate. The net value is either lower than the gross value or equal to the gross value but cannot be higher than the gross value; therefore, the fees paid when assessed upon the net value will be unambiguously lower. However, the State and most local courts do not retain data regarding the existence of encumbrances (such as a mortgage) against estate values, so the true value of the reduction in fee revenue cannot

be known with certainty at this time. The bill requires reporting over a three-year period with the goal of obtaining data demonstrating the difference between net and gross values of estates. With the limited data that are available at this time, the Senate Fiscal Agency estimates that the reduction in probate fee revenue could range from 7% to 29%, or a reduction in overall revenue of between \$350,000 and \$1.45 million.

Currently, the statewide annual proceeds from probate fees are approximately \$5.0 million, of which 60% (or approximately \$3.0 million) is directed to the State General Fund and the remaining 40% (or approximately \$2.0 million) is directed to the county general fund in the counties where those fees originate. Until December 31, 2017, the bill alters the distribution formula to drop the State share to 52.5% and raise the counties' share to 47.5%. As

a result of this shift, the State revenue stream will bear a greater share of the reduction caused by the new method of fee calculation.

If the bill results in a revenue drop of 16%, then the new sharing formula of 52.5% for the State and 47.5% for the counties will hold the counties harmless, meaning they will receive an amount of revenue very similar to what they receive under the status quo, by getting a larger share of the smaller revenue stream. If the drop is 16%, then the State General Fund will see a reduction in revenue of approximately \$800,000. If the drop in revenue is less than 16%, then the counties will receive increased revenue relative to the status quo; while if the drop in revenue is greater than 16%, then the counties will receive a reduction in revenue relative to the status quo. For examples of fiscal impact under different revenue loss scenarios, please see [Table 1](#).

Table 1

Percentage Reduction in Probate Fee Revenue	10%	16%	20%
Fiscal Impact on State General Fund Share	(\$637,500)	(\$795,000)	(\$900,000)
Fiscal Impact on Counties Share	\$137,500	(\$5,000)*	(\$100,000)

*This is the hold-harmless scenario for the counties as this number is negligible considering it is spread across all counties in the State.

Fiscal Analyst: Dan O'Connor

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.