

Legislative Analysis



ESTATE ADMINISTRATION FEES

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House Bill 4752 as enacted
Public Act 33 of 2018
Sponsor: Rep. Klint Kesto
Committee: Law and Justice
Complete to 10-7-18

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY: The bill removed several sunsets¹ on provisions pertaining to probate court administration fees and made permanent a provision requiring the amount of indebtedness of real property included in an estate to be deducted from the value of the real property when calculating the estate administration fee.

FISCAL IMPACT: By eliminating the sunset on the existing distribution formula for estate administration fees, the bill would reduce future state revenues and increase future county revenues compared to the distribution that otherwise would go into effect beginning in FY 2018-19 under current law. However, anticipated revenues would continue in line with those being currently collected. According to the State Court Administrative Office (SCAO), the difference between the two distribution formulas was \$234,558 in 2015 and \$205,051 in 2016. Please note, the 2016 figure is slightly lower because SCAO is missing data from 13 counties.

THE APPARENT PROBLEM:

When an estate is settled after someone's death, certain probate fees are assessed on the estate's value. Legislation enacted in 2012 made some changes to the process, but those changes were due to expire at the end of 2017. One of the 2012 changes benefits heirs by allowing any outstanding mortgages or home equity loan balances to be deducted from the value of property before the estate administrator fee is determined. Another 2012 change helped local governments by earmarking a larger share of the fee to the county where the property is located and a smaller share to the state general fund. Some feel that these changes should be made permanent rather than be allowed to sunset.

THE CONTENT OF THE BILL:

The Revised Judicature Act (RJA) requires that, in all decedents' estates in which proceedings are instituted for probate, the probate court charge and collect administration fees based on the value of the estate's assets as of the date of the decedent's death. The fees equate to a dollar amount plus a percentage of an amount over a certain level and are rounded to the whole dollar. The fees are due and payable to the probate court before the filing of the final account or within one year after the beginning of probate proceedings, whichever occurs first.

Public Act 596 of 2012 revised the formula for distribution of the fees received by the probate court. Instead of 40% of each fee directed to a county's general fund and 60% to the state general fund, PA 596 increased the county share to 47.5% and decreased the state's share to 52.5%; this formula would have sunsetted December 31, 2017, and, beginning January 1, 2018,

¹ A "sunset" clause provides a date after which a specified provision of law will no longer have effect.

the distribution formula would have reset to the 40/60 split in place prior to enactment of PA 596.

House Bill 4752 amended the RJA to eliminate the sunset, and, by specifying that beginning March 28, 2013, 47.5% of each fee would go to the county and 52.5% to the state, the bill keeps the current formula in place.

Further, PA 596 amended the RJA so that, if real property included in the estate being probated is encumbered by or used as security for a debt, the amount of the indebtedness must be deducted from the value of the real property before the estate administration fee is calculated. This provision was also scheduled to expire on December 31, 2017. The bill removed the sunset and also specified that this fee structure began March 28, 2013, thus making the provision permanent.

In addition, PA 596 required the probate court, by March 31 in each of calendar years 2015-2018, to report to the State Court Administrative Office the value of all assets in each estate in the previous calendar year, the reduction in the asset values because real property included in the estate is encumbered by or used as security for an indebtedness, and the total amount of all administration fees collected in the previous calendar year. The bill eliminated these reporting requirements.

The bill took effect February 21, 2018.

MCL 600.871 and 600.877

ARGUMENTS:

For:

The State Court Administrative Office (SCAO) requested that the sunset provisions be removed so that the changes made by the 2012 legislation could become permanent. Further, according to SCAO, the annual report required by the 2012 legislation is time-consuming to prepare; the agency requested that it, too, be eliminated. If the current fee structure remains in place, there should no longer be a need to continue to collect the type of information required, such as how many estates had liens on the real property and the amount by which those liens lowered the value used to assess the administrator fee. The 2012 changes have been good for local governments and good for heirs and should be allowed to remain in place.

Against:

No arguments against the bill were advanced.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.