



Senate Fiscal Agency
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BILL



ANALYSIS

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House Bill 4752 (as passed by the House)
Sponsor: Representative Klint Kesto
House Committee: Judiciary
Senate Committee: Judiciary

Date Completed: 11-27-17

CONTENT

The bill would amend the Revised Judicature Act to do the following:

- **Eliminate a December 31, 2017, sunset on a provision that allows the amount of indebtedness on real estate in a probate estate to be deducted when the administration fee is calculated.**
- **Eliminate a requirement for a probate court to calculate the value of estates, amounts of indebtedness, and fees collected, and submit the results to the State Court Administrative Office (SCAO).**
- **Eliminate a sunset on a provision that increases the portion of probate court fee revenue allocated to the county, rather than the State.**

Estate Administration Fee

Under the Act, for decedents' estates in which probate proceedings are instituted, the probate court must collect a fee on the value of all assets as an expense of administration, as of the date of death. (The administration fee also is referred to as an inventory fee.) The Act establishes a range of 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.

Until December 31, 2017, in calculating an administration fee, if real property that is included in the estate is encumbered by or used as security for an indebtedness, the amount of the indebtedness must be deducted from the value of the property. The bill would eliminate the December 31, 2017, sunset.

Each March 31 until March 31, 2018, the probate court must do all of the following: a) calculate the value of all assets in each estate in the previous calendar year; b) 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 results of the first calculation; c) calculate the total amount of all administration fees collected in the previous calendar year; and d) submit to the SCAO the results of these calculations. The bill would eliminate this requirement.

Allocation of Fee Revenue

In addition to the estate 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.

The court must submit all of these fees (including the estate administration fee) on a monthly basis as follows:

- Until December 31, 2017, 47.5% to the county treasurer for credit to the county general fund, and 52.5% to the State Treasurer for credit to the State General Fund.
- Beginning January 1, 2018, 40% of the fees to the county treasurer for credit to the county general fund, and 60% to the State Treasurer for credit to the General Fund.

The bill would retain the fee distribution that applies until December 31, 2017, and eliminate the shift in distribution that is scheduled to begin on January 1, 2018.

MCL 600.871 & 600.877

BACKGROUND

Public Act 596 of 2012 amended the Revised Judicature Act to allow the amount of indebtedness on real property in a probate estate to be deducted when the administration fee, or inventory fee, is calculated. The amendment in effect reversed the impact of a 2006 Michigan Court of Appeals decision, *Estate of Wolfe-Haddad v. Oakland County* (272 Mich App 323). In that case, the Court addressed the statutory requirement that the probate court collect a fee on the "value of all assets". Since the Act did not define "value" to exclude security interests or otherwise provide for deductions based on security interests held in an estate's assets, the Court held that, when an estate included real property, the fair market value of the property had to be included without regard to whether the property was subject to a mortgage or otherwise encumbered by an indebtedness.

As noted above, Public Act 596 of 2012 essentially reversed this decision, subject to a sunset of December 31, 2017.

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bill would have a negative fiscal impact on the State and a positive fiscal impact on counties. Although removal of the sunset would continue current practice, this analysis compares the removal to current law, where the fee calculation method will sunset. Making the current inventory fee calculation method permanent would reduce the total revenue collected, since liens against the real property could continue to be deducted before the calculation. Since counties would continue to receive 47.5% of the fee instead of 40%, their total fee revenue would increase, while the total revenue going to the State would decrease.

Comparing the two fee calculation methods for calendar year 2015 (the most recent year of complete data) shows that the current method raised \$322,203 less than would have been raised under the old method (under which the amount of indebtedness on real property was not deducted), but counties received \$234,558 more while the State revenue was \$556,761 less.

Fiscal Analyst: Ryan Bergan

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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.