

# Legislative Analysis

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## STATE OR COUNTY PUBLIC ADMINISTRATOR AS PERSONAL REPRESENTATIVE

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

### House Bill 4821 (H-2) as reported from committee Sponsor: Rep. Jim Runestad

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

### House Bill 4822 (H-2) as reported from committee Sponsor: Rep. Jim Ellison

### Committee: Judiciary Complete to 10-2-17

**BRIEF SUMMARY:** House Bills 4821 and 4822 would amend the Estates and Protected Individuals Code (EPIC) to revise and add rules for instances in which a state or county public administrator may act as a personal representative of a protected individual's estate. A detailed summary of the bills follows.

**FISCAL IMPACT:** House Bill 4821 would have an indeterminate fiscal impact on the state and on local units of government and House Bill 4822 would have an indeterminate fiscal impact on the judiciary and local court funding units. See detailed fiscal information on page 3.

### **THE APPARENT PROBLEM:**

There are 108 county public administrators in Michigan who cover 60 of the 83 counties. Some counties can have more than one administrator while others can have none at all. These administrators are attorneys who are appointed by the Attorney General's Office, but are not state employees. Instead, they are paid by fees collected from the properties they open in probate. Currently, 42 days after a decedent dies, an administrator may open that decedent's estate in probate if no heir has come forward to open the estate. If an administrator opens the estate, he or she must give notice to any possible heirs.

The proposed legislation is a result of a workgroup recommendation to combat probate abuse and ensure that county public administrators are working for the benefit of heirs and not for themselves. A small number of administrators have been failing to notify possible heirs of an estate or have been charging exorbitant fees.

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

#### **House Bill 4821**

Currently, EPIC includes state or county public administrators in the order of priority for appointment as a personal representative following persons the decedent designated or devised land to, heirs of the decedent, and a court-approved nominee of a creditor. If none

of those other parties is appointed, the state or county administrator may be appointed if any of the following apply:

- No interested person applied or petitioned for appointment of a personal representative within 42 days after the decedent's death.
- The decedent died apparently leaving no known heirs.
- There is no spouse, heir, or beneficiary under a will who is a U.S. resident and is entitled to a distributive share in the decedent's estate.

The bill would amend those rules so that a public administrator could be appointed only after 91 days after the decedent's death, or between 42 and 91 days after the decedent's death if the court determines exigent circumstances exist. It would also change the first condition to reflect the 91-day window (or the number of days determined by the court) after which a public administrator is eligible.

EPIC currently requires that when the court appoints a person who does not have priority as personal representative, it do so at a formal proceeding. Likewise, if the court appoints such a person, it must determine (1) that persons with priority have been notified of the proceedings and have failed to request appointment or nominate another person for appointment, and (2) that administration is necessary. The bill would extend both of these requirements to apply before the court appoints a public administrator as personal representative.

Finally, the bill would add the following provisions if a public administrator is seeking appointment as personal representative, and the public administrator knows that the decedent's real property has delinquent property taxes on it or is subject to a mortgage foreclosure:

- In addition to other notice requirements under EPIC, the petitioner must give notice of hearing to the decedent's heirs, and post the notice of hearing on the decedent's real property. That notice must be in the form approved by the Michigan Supreme Court and must do all of the following:
  - Describe why the heir is receiving the notice,
  - Advise that the heir may petition the court to object to the petitioner's appointment, and
  - Advise that the heir may petition the court for a court hearing on any matter, including a petition for removal of a personal representative for cause, at any time during the estate's administration.
- The petition must include a statement that details the petitioner's reasonable search for the decedent's heirs, which must include an electronic searching service.

If the state or county public administrator knowingly fails to provide these notices, the bill would provide that he or she is guilty of a misdemeanor punishable by imprisonment for up to 90 days or a fine of up to \$1,000, or both.

MCL 700.3203, 700.3204, and 700.3414

## **House Bill 4822**

The bill would add notice requirements for a state or county public administrator acting as personal representative when the decedent's real property is subject to a tax foreclosure. In that case, the public administrator must also give notice to the treasurer of the county in which the real property subject to tax foreclosure is located. The notice must include certain information, including the name and address of the personal representative and information on the treasurer's ability to object to the appointment or petition the court.

Generally, a personal representative acting reasonably for the benefit of interested persons has fairly broad authorization to direct the administration of the estate. However, the bill would provide that, if the personal representative is the state or county public administrator, he or she may not sell the decedent's real property without approval of the court. In the case of a county public administrator acting as personal representative, a court may not approve a sale when the decedent's heir is occupying the real property, unless the court receives written notice that the state public administrator does not object to the sale. Unless waived by the court, the bill also would require the public administrator to advance any court filing fees associated with the administration of the estate.

Section 3721 of EPIC describes the instances in which the court may review the propriety of employment of a person by a personal representative, as well as the reasonableness of compensation for the personal representative and employee.

The bill would provide that if the personal representative is a state or county public administrator and the defendant's estate includes real property, the court must review the propriety of the employment of persons by the public administrator. It would also provide that, except as otherwise provided by the court, if the decedent's estate includes real property subject to tax or mortgage foreclosure, then real estate fees, fees related to identifying real property subject to foreclosure, or both in excess of 10% of the net proceeds payable to the estate are considered excessive compensation.

If the court determines that a person received excessive compensation, it will order the person to pay an appropriate refund and may include in the refund amount interest and penalties.

MCL 700.3705, 700.3715, and 700.3721

### ***FISCAL INFORMATION:***

House Bill 4821 would have an indeterminate fiscal impact on the state and on local units of government. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally designated recipients of those revenues. Also, the bill would have an indeterminate fiscal impact on the judiciary and local court funding units. The fiscal impact

would depend on how provisions of the bill affected court caseloads and related administrative costs.

House Bill 4822 would have an indeterminate fiscal impact on the judiciary and local court funding units. The fiscal impact would depend on how provisions of the bill affected court caseloads and related administrative costs.

***ARGUMENTS:***

***For:***

Supporters argue that the bill would streamline and formally regulate the process of opening a decedent's estate in probate. First, allowing more time for an heir to open the estate himself or herself in probate would help remedy the current lack of giving notice to heirs. Second, because the bill would require a county public administrator to open an estate under a formal proceeding, there would be more oversight by the probate court to ensure the proper steps are taken in working for the interests of possible heirs. The additional requirement of court approval of any sale of property would also further this interest. Finally, the cap on fees for realtor or asset recovery work sets a definitive number on the amount of fees an administrator may charge for handling the estate.

***Against:***

No opposing arguments were submitted for the bills.

***POSITIONS:***

The State Public Administrator submitted testimony on behalf of the Attorney General in support of the bills. (9-19-17)

A representative from Hainline Kramer Law, PLLC indicated neutrality on the bills. (9-19-17)

A representative from Woodside Legal testified, but remained neutral on the bills. (9-19-17)

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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.