

Legislative Analysis



STATE OR COUNTY PUBLIC ADMINISTRATOR AS PERSONAL REPRESENTATIVE

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

House Bill 4821 as enacted
Public Act 13 of 2018
Sponsor: Rep. Jim Runestad

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

House Bill 4822 as enacted
Public Act 14 of 2018
Sponsor: Rep. Jim Ellison

House Committee: Judiciary
Senate Committee: Judiciary
Complete to 6-18-18

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.

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 *Fiscal Information*, below, for further discussion.

THE APPARENT PROBLEM:

One hundred eight county public administrators in Michigan cover 60 of the 83 counties. Some counties 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 BILLS:

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 63 days after the decedent's death, or if the court determines exigent circumstances exist. It would also change the first condition to reflect the 63-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 would have to give notice of hearing to the decedent's heirs, and post the notice of hearing and the State Court Administrative Office (SCAO) form to challenge the petition on the decedent's real property. That notice would have to be in the form approved by the Michigan Supreme Court and do all of the following:
 - Describe why the heir is receiving the notice.
 - Advise that the heir could petition the court to object to the petitioner's appointment.
 - Advise that the heir could 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, or a petition for the heir to be appointed personal representative.
- The petition would have to include a statement that details the petitioner's reasonable search for the decedent's heirs, which must include an internet search.

If the state or county public administrator intentionally 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 has delinquent property taxes. In that case, the public administrator would also have to give notice to the treasurer of the county in which the real property subject to tax foreclosure is located.

The notice would have to 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. The notice would have to include a provision that, if the personal representative is the state or county public administrator, he or she would need to provide all interested parties with a copy of any settlement statements from the sale of real property.

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, all of the following would apply:

- The personal representative could not sell the decedent's real property without approval of the court. The court could only approve the sale if, after a noticed hearing with interested persons, the court considered specified information and otherwise determined that the sale was in the estate's best interest.
- If a county public administrator was acting as personal representative and the decedent's heir was occupying the real property, the county public administrator would have to provide the state public administrator with all pleadings filed in the case.
- Unless waived by the court, the personal representative would advance any of his or her court filing fees associated with administration of the estate.
- If the decedent's estate included real property subject to tax or mortgage foreclosure, real estate fees or fees related to identifying that property would be capped (at 10% if the net proceeds exceeded \$30,000, unless otherwise provided by the court, and as determined reasonable if less than \$30,000).

MCL 700.3705 and 700.3715

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.

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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.