

# 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 (proposed substitute H-1)**  
**Sponsor: Rep. Jim Runestad**

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

**House Bill 4822 (proposed substitute H-1)**  
**Sponsor: Jim Ellison**

**Committee: Judiciary**  
**Complete to 9-18-17**

### 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.

#### 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 93 days after the decedent's death, or between 42 and 93 days after the decedent's death if the court determines exigent circumstances exist. It would also change the first condition to reflect the 93 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 IMPACT:**

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.

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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.