



Senate Fiscal Agency
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BILL ANALYSIS



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House Bill 4821 (Substitute S-1)
House Bill 4822 (Substitute S-1)
Sponsor: Representative Jim Runestad (H.B. 4821)
Representative Jim Ellison (H.B. 4822)
House Committee: Judiciary
Senate Committee: Judiciary

Date Completed: 11-28-17

CONTENT

House Bill 4821 (S-1) would amend the Estates and Protected Individuals Code to do the following:

- Extend the time an interested party has to petition for appointment as personal representative of a decedent's estate, before a State or county public administrator may be appointed as personal representative.
- Specify that a State or county public administrator could be appointed only in a formal proceeding.
- Require a State or county public administrator who was seeking appointment as personal representative and knew that the decedent's real property had delinquent property taxes or was subject to a mortgage foreclosure, to provide notice of hearing to the decedent's heirs, and require the notice to include certain information.
- Specify that a State or county public administrator who knowingly failed to provide a required notice would be guilty of a misdemeanor, and prescribe penalties for a violation.

House Bill 4822 (S-1) would amend the Estates and Protected Individual Code to do the following:

- Require a State or county public administrator appointed as personal representative to submit a notice (similar to that required to inform a decedent's heirs of an appointment) to the treasurer of the county in which real property subject to tax foreclosure was located.
- Prohibit the sale of a decedent's real property without the approval of the court if the personal representative were the State or county public administrator.
- Provide that the court could approve the sale of the decedent's real property only if, after a hearing, the court considered evidence of the value of the property and information submitted by the county treasurer, and otherwise determined that the sale was in the estate's best interest.
- Require the court to review the propriety of the employment of a person hired by a personal representative who was the State or county public administrator, if the decedent's estate included real property.
- Prohibit a personal representative from paying real estate fees or other fees related to identifying real property subject to foreclosure in excess of 10% of the net proceeds payable to the estate to a person employed by the personal representative, if he or she were the State or county public administrator.

- **Specify that if the decedent's estate included real property subject to tax or mortgage foreclosure, certain fees in excess of 10% of the net proceeds payable to the estate would be considered excessive compensation.**

The bills are tie-barred, and each bill would take effect 90 days after its enactment.

House Bill 4821 (S-1)

State or County Public Administrator; Personal Representative

Under the Code, for either a formal or informal testacy proceeding or a proceeding for the appointment of a personal representative after a decedent's death, individuals who are not disqualified have priority for appointment as personal representative in the following order:

- The individual with priority as determined by a probated will, including a person nominated by a power conferred in a will.
- The decedent's surviving spouse if he or she is a devisee (a person entitled to receive property by will) of the decedent.
- Other devisees of the decedent.
- The decedent's surviving spouse.
- Other heirs of the decedent.
- After 42 days after the decedent's death, the nominee of a creditor if the court finds the nominee suitable.

(A testacy proceeding is a proceeding to establish a will or determine intestacy, i.e., the absence of a valid will. A personal representative may be appointed for the administration of an estate under a will or in intestacy.)

The State or county public administrator has priority for appointment if any of the following apply: a) no interested party applied or petitioned for appointment of a personal representative within 42 days after the decedent's death; b) the decedent died apparently leaving no heirs; or c) there is no spouse, heir, or beneficiary under a will who is a United States resident and is entitled to a distributive share in the decedent's estate. Under the bill, instead, after 63 days after the decedent's death, or after 42 days but before 63 days after the decedent's death if the court determined exigent circumstances existed, a State or county public administrator would have priority for appointment if no interested person applied or petitioned for appointment within 63 days or the number of days determined by the court after the decedent's death, and if either of the other conditions currently specified by the Code were satisfied.

("Personal representative" includes an executor, administrator, successor personal representative, and special personal representative, and any other person, other than a trustee of a trust subject to Article VII (Michigan Trust Code), who performs substantially the same function under the law governing that person's status.)

Except as otherwise provided, a person who does not have priority, including priority resulting from renunciation or nomination, must be appointed only in a formal proceeding. The bill specifies that the State or county public administrator could be appointed only in a formal setting. Currently, before appointing a person without priority, the court must determine that individuals having priority have been notified of the proceedings and have failed to request appointment or to nominate another person for appointment, and that administration is necessary. Under the bill, this provision would apply before the appointment of the State or county public administrator or any other person without priority.

Appointment of State, County Public Administrator; Formal Proceedings

Generally, the Code allows an interested person or a person that has a right or cause of action that cannot be enforced without appointment to file a petition for a formal proceeding (a proceeding conducted before a judge with notice to interested parties) regarding the priority or qualification of a prospective or appointed personal representative.

Under the bill, if the State or county public administrator sought appointment as personal representative and he or she had knowledge that the decedent's real property had delinquent property taxes on it or was subject to a mortgage foreclosure, in addition to any other notice required under the Code, the petitioner would have to give notice of hearing to the decedent's heirs in the manner prescribed by Section 1401 (which establishes the requirements for giving notice of a hearing on a petition). The petitioner also would have to post the notice of hearing and the State Court Administrative Office form to challenge the petition on the decedent's real property. A notice of hearing would have to be in a form approved by the Supreme Court and include all of the following information:

- A statement describing why the heir was receiving the notice.
- That the heir could object to the petitioner's appointment.
- That the heir could petition the court for a 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.

A petition would have to include a statement that detailed the petitioner's reasonable search for the decedent's heirs. A search would have to include the use of an electronic searching service.

A State or county public administrator who knowingly failed to provide the prescribed notices would be guilty of a misdemeanor punishable by up to 90 days' imprisonment, or a maximum fine of \$1,000, or both.

House Bill 4822 (S-1)

Notice of Appointment

Under the Code, within 28 days after a personal representative's appointment or other time specified by court rule, the personal representative must notify the decedent's heirs and devisees of the appointment. The notice must include all of the following information:

- That the court will not supervise the personal representative.
- That, unless a person files an objection to the appointment of the person named as personal representative in the notice or files a demand that bond or higher bond be posted, the person named in the notice is the personal representative without bond or with bond in the amount shown in the notice.
- The name and address of the person appointed as the estate's personal representative.
- Unless waived, a copy of the account, including fiduciary and attorney fees charged to the estate.
- That an interested person may petition the court for a court hearing on any matter at any time during the estate's administration.
- That Federal and Michigan estate taxes, if any, must be paid within nine months of the decedent's death or another time period specified by law, to avoid penalties.
- That, if the estate is not settled within one year after the appointment, the personal representative must file with the court and send to each interested person a notice that

the estate remains under administration, including the reason for the continuation of settlement proceedings.

-- The identity and location of the court where papers relating to the estate are on file.

The notice also must include a statement that, during administration of the estate, the personal representative must provide all interested persons with a copy of the petition for his or her appointment and a copy of the will, if any; a copy of the inventory; and a copy of the settlement petition or the closing statement. Under the bill, if the personal representative were the State or county public administrator, the notice would have to include a copy of any settlement statements from the sale of real property.

Also, if the personal representative were the State or county public administrator, and if the decedent's real property had delinquent property taxes, the personal representative would have to provide written notice that included all of the information described above to the treasurer of the county in which the real property subject to the foreclosure was located. The county treasurer could submit to the court an affidavit regarding the status of the real property for the court to consider in making its determination whether to approve the sale of the decedent's real property.

State, County Public Administrator as Personal Representative; Authorized Transactions

Under the Code, except as restricted or otherwise provided by the will or by an order in a formal proceeding, and subject to certain priorities, a personal representative, acting reasonably for the benefit of interested persons, may properly perform a number of transactions related to the disposition of estate property.

Under the bill, if the personal representative were the State or county public administrator, he or she would not be permitted to sell the decedent's real property without approval of the court. The court could approve the sale only if, after a hearing with notice provided to interested persons as specified by Michigan Court Rules, the court considered evidence of the value of property and any information submitted by the county treasurer and otherwise determined that the sale was in the estate's best interest.

If the personal representative were the county public administrator, and if the decedent's real property were occupied by an heir of the decedent, 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 have to advance any of his or her court filing fees associated with the estate's administration.

Except as provided by the court, if the decedent's estate included real property subject to tax or mortgage foreclosure, the personal representative could not pay real estate fees or fees related to identifying real property subject to foreclosure, or both, in excess of 10% of the net proceeds payable to the estate to a person employed by the personal representative.

Excessive Compensation

After notice to all interested persons, upon petition or motion, the court may review the propriety of a person's employment by a personal representative, the reasonableness of that person's compensation, or the reasonableness of the compensation determined by the personal representative for his or her own services. If the court determines that a person received excessive compensation from an estate for services rendered, the court must order the person to pay an appropriate refund and may include in the refund amount interest and penalties as it considers just.

Under the bill, if the personal representative were the State or county public administrator, and if the decedent's estate included real property, both of the following would apply:

- The court would have to review the propriety of employment of a person by the personal representative, including an attorney, real estate agent, or asset recovery agent, and the reasonableness of the person's compensation.
- Except as otherwise provided by the court, if the estate included real property subject to tax or mortgage foreclosure, real estate fees or fees related to identifying real property subject to foreclosure of a person employed by the representative, or both, that exceeded 10% of the net proceeds payable to the estate would be considered excessive compensation.

MCL 700.3203 et al. (H.B. 4821)
700.3705 et al. (H.B. 4822)

BACKGROUND

Public Act 194 of 1947 governs the appointment of a State public administrator and county public administrators to administer estates of deceased individuals. The Act requires the Governor, upon the recommendation of the Attorney General, to appoint an Assistant Attorney General to the position of State public administrator. The person appointed may receive no salary for serving as State public administrator beyond his or her salary as Assistant Attorney General.

The Act permits the State public administrator to appoint, in any county, one or more individuals to serve as county public administrators. A person appointed as county public administrator must be suitable and competent to administer estates. In a county in which no one is suitable and willing to act as county public administrator, the State public administrator may appoint the county public administrator in an adjoining county to serve in that county. A county public administrator may not receive a salary for that service but may receive fees, compensation, and expenses as allowed by statute and by order of the court, payable from the estate administered.

Legislative Analyst: Jeff Mann

FISCAL IMPACT

House Bill 4821 (S-1)

The bill would have no fiscal impact on the State and could have a small negative fiscal impact on local government. Any increase in misdemeanor arrests and convictions could increase resource demands on law enforcement, court systems, and community supervision. Any associated increase in fine revenue would increase funding to public libraries.

House Bill 4822 (S-1)

The bill would have no fiscal impact on the State or local government.

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.