



SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE
STATEMENT OF ESTIMATED FISCAL IMPACT
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Bill Number: S. 0415 Introduced on February 14, 2017
Author: Malloy
Subject: Probate Court
Requestor: Senate Judiciary
RFA Analyst(s): Gardner, Heineman and Kokolis
Impact Date: March 20, 2017

Estimate of Fiscal Impact

	FY 2017-18	FY 2018-19
State Expenditure		
General Fund	\$0	\$0
Other and Federal	\$0	\$0
Full-Time Equivalent Position(s)	0.00	0.00
State Revenue		
General Fund	\$0	\$0
Other and Federal	\$0	\$0
Local Expenditure	Undetermined	\$0
Local Revenue	Undetermined	\$0

Fiscal Impact Summary

This bill will not have an expenditure or revenue impact on the General Fund, Other Funds, or Federal Funds. The expenditure and revenue impact on local government is undetermined because data is not available to make an estimate.

Explanation of Fiscal Impact

Introduced on February 14, 2017

State Expenditure

This bill clarifies the probate court’s authority to impose penalties for contempt and to grant a motion for a party to proceed in forma pauperis, which allows an indigent person to receive a waiver for normal costs associated with a court case. These costs include filing fees and notary public fees but do not include court costs associated with the value of an estate or conservatorship except in cases when an item or copy is requested by a county officer or the United States Veterans Administration. The bill also specifically provides for the court’s exclusive original jurisdiction in matters involving the establishment, administration, or termination of special needs trusts and the procedures for their creation. Additionally, the bill authorizes giving notice of probate court hearings using a qualifying commercial delivery service, as well as certified, registered, and ordinary first class mail. The bill also amends provisions of the probate code regarding guardianships for incapacitated persons and conservatorships and other protective arrangements for minors and adults. These amendments are designed to promote uniformity among the state’s probate courts, ensure adequate due process protections for alleged incapacitated individuals, eliminate over-reliance upon restrictive full or plenary guardianships, reduce the costs of proceedings for litigants, establish consistency

between guardianship and conservatorship proceedings, and create an adequate system for monitoring guardians and conservators. In addition, the bill amends provisions of the probate code to address problems with determining jurisdiction over adult guardianships, conservatorships, and other protective proceedings when multiple states may be involved.

Judicial Department. The department indicates the majority, if not all, court forms related to guardianship and conservatorship must be revised or new ones created. Through Court Administration, the department would provide staff support to assist the probate courts with revision and development of forms. Once finalized, the interactive forms would be posted on the department's website. The department indicates it can manage these activities within its existing resources. Therefore, this bill will not have an expenditure impact on the department.

Department of Mental Health. The department indicates this bill will have no expenditure impact on the General Fund, Other Funds, or Federal Funds. This bill repeals a code section which gives the department authority to act as a conservator for its patients and accept up to \$10,000 on their behalf. However, the bill adds a new section that gives the agency the same authority and increases the amount that the agency could accept on behalf of a patient to \$15,000.

State Revenue

N/A

Local Expenditure

The Judicial Department contacted the Probate Court Judges Advisory Committee (committee) for input regarding the expenditure and revenue impact of this bill. The committee, established by order of the Chief Justice of the Supreme Court, is composed of ten probate court judges. Five are chosen at large and the other five are officers of the South Carolina Association of Probate Judges. Four of these judges provided the Judicial Department feedback. They indicated the bill would require the revision of most, if not all, court forms related to guardianship and conservatorship or the creation of new ones. However, the four responding indicated that any additional cost associated with revising or developing forms most likely would be managed within the probate courts' existing resources. Those responding also indicated that the bill would likely affect the courts as a result of more contested hearings, additional future hearings for incapacitated persons, and possibly lengthier hearings because examiners may need to be present and testify, but the courts may be able to manage the additional work within existing resources. The Revenue and Fiscal Affairs Office contacted twenty-three county governments regarding the impact of the bill. One county responded about the expenditure impact. Clarendon County's probate judge indicated she did not anticipate a fiscal impact for her county. Because the nature and extent of the effect of this bill is not fully known, and responses are limited, the expenditure impact on local governments is undetermined.

Local Revenue

The Judicial Department contacted the Probate Court Judges Advisory Committee for input regarding the expenditure and revenue impact of this bill. The four judges responding to the Judicial Department indicated the bill might reduce the amount of fees collected by the court and retained by local government because of the fee waivers allowed for indigent persons. The

Revenue and Fiscal Affairs Office contacted 23 county governments regarding the bill's impact and received revenue input from one county, Lancaster County. Consistent with the responses of the four Probate Court Judges Advisory Committee, Lancaster County reported the revenue impact of the bill depends upon the amount of fees waived in guardianship actions for litigants showing indigency. Lancaster County anticipated these cases would be rare. However, because data is not available to estimate the rate of indigency waivers, the revenue impact of this bill on local governments is undetermined.

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Frank A. Rainwater, Executive Director