

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 2227-01
Bill No.: HB 1097
Subject: County Officials; Counties; State Departments; Estates, Wills and Trusts;
Guardians
Type: Original
Date: March 28, 2017

Bill Summary: This proposal changes the laws regarding public administrators so that the state must reimburse a county for fees if a state agency petitions for the appointment of a county public administrator.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
General Revenue Fund	(Could exceed \$1,456,243)	(Could exceed \$1,624,243)	(Could exceed \$1,792,243)
Total Estimated Net Effect on General Revenue	(Could exceed \$1,456,243)	(Could exceed \$1,624,243)	(Could exceed \$1,792,243)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 8 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
Total Estimated Net Effect on FTE	0	0	0

☒ Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
Local Government	Unknown	Unknown	Unknown

FISCAL ANALYSIS

ASSUMPTION

Officials at the **Department of Health and Senior Services (DHSS)** regularly file petitions to appoint public administrators as guardians pursuant to Section 192.2460, RSMo. Within the past two years, DHSS attorneys have filed 289 such petitions. Costs associated with such petitions generally include fees for the attorney that the court assigns to represent the ward; fees for the public administrator's attorney; sheriff service fees; and filing fees. All the fees vary by county. The attorney fees have ranged from \$150 to \$2,500 per petition; service fees can range from \$26 to \$50; and filing fees vary (in St. Louis County, for example, they are over \$600).

Section 475.085, RSMo, requires the ward's estate to pay the costs of guardianship proceedings, and if the estate has insufficient assets, the county must pay. Generally, estates' assets are insufficient to pay. The proposed legislation would require the state to pay the costs associated with the guardianship, including cases where the estate has sufficient assets to pay the costs.

For fiscal note purposes DHSS estimated there would be 145 cases per year (two year average). Since attorney fees are between \$150 and \$2,500, annual attorney cost could range from \$21,750 to \$362,500. These estimates do not include filing fees or service fees. DHSS is unsure what the definition of "related fees" includes and what other fees might also be required to be paid by the state. DHSS assumes the cost of this fiscal note to be from \$21,750 to \$362,500 for attorney fees and unknown for "related fees".

Officials at the **Department of Social Services (DSS)** assume this bill would amend Chapter 473 RSMo of the Probate Code by adding thereto a new section 473.749 RSMo. which provides that if a state agency files a petition to appoint a county public administrator as a guardian or conservator, the state shall reimburse the county for any related fees including, but not limited to, those arising from a jury trial.

Family Services Division (FSD):

The provisions of this bill do not affect any provisions relating to eligibility for any programs FSD administers. Therefore, there is no fiscal impact to FSD.

Children's Division (CD) and the Division of Legal Services (DLS):

The DLS files petitions for the appointment of a guardian/conservatorship throughout the state on the behalf of the CD for youth aging out of foster care and who, due to a variety of circumstances, cannot manage their own affairs upon release. In SFY16, DLS handled 84 such cases. In the vast majority of such cases, DLS requests that the county public administrator be appointed by the court as the youth's guardian and/or conservator due to the absence of relatives appropriate for the duties.

ASSUMPTION (continued)

It is unclear what is meant by the phrase "any related fees" in the bill. It is assumed that the intended meaning of this phrase is any fees related to the division filing a petition to have the public administrator appointed as the youth's guardian or conservator such as attorney's fees, expert witness fees, filing fees, etc. It is anticipated that these costs could range from as little as \$1,000 to as much as \$10,000 per case depending upon the complexity of the case. Therefore, if this is the correct interpretation of the bill, the potential fiscal impact to the DSS could be between \$84,000 and \$840,000 annually.

However, if this phrase were to be interpreted to mean any fees related to the public administrator's appointment as the youth's guardian or conservator, e.g., the aforementioned fees arising from litigation plus any fees associated with the public administrator's management of the youth's affairs, that would result in an even more significant fiscal impact to the department that would vary from case-to-case and could last for decades in some cases - far beyond the CD's statutory authority to provide services to the former foster youth. In addition to the aforementioned litigation costs, it is anticipated that each public administrator would accrue between \$1,000 and \$2,000 annually in case management fees resulting in an additional fiscal impact to the DSS of \$84,000 to \$168,000 each year. This amount would compound in each year starting in the second year because the public administrator could continue on representing the same conservator in future years. It is assumed that additional public administrators would, therefore, be appointed to handle any new additional caseloads in future years.

In summary, the DSS assumes the following impacts for this proposal:

The total impact for the first year is from \$84,000 to \$1,008,000 all General Revenue.

The total impact for the second year is from \$84,000 to \$1,176,000 all General Revenue.

The total impact for the third year is from \$84,000 to \$1,344,000 all General Revenue.

Officials at the **Department of Mental Health (DMH)** assume in 2016, DMH counsel handled approximately 83 guardianships and the Attorney General's Office handled approximately 44 guardianships on behalf of DMH, for a total annual number of 127 guardianships. Of these 127 guardianships, approximately 84 were petitions for the appointment of a public administrator. For purposes of this proposal, the DMH estimates that 84 petitions per year for appointment of a public administrator would require the DMH to reimburse the county for any related fees.

The term "any related fees" is not defined in this proposal. Specifically, whether the fees captured under this proposal only relate directly to the cost incurred up until the court makes a final determination, or whether the relevant fees would extend to any cost incurred by the public administrator while serving as guardian of a DMH consumer. Additional costs beyond the court issuing a decision haven't been included in the estimate for this fiscal note response.

ASSUMPTION (continued)

It is assumed that the proposal means to capture those fees that are incurred from the time the petition is filed until the court issues an order. The DMH would anticipate at a minimum the following fees to be captured: filing fees, service fees, fees for the ward's court appointed attorney (referred to as GAL), publication fees, and jury trial fees. These fees will vary from case to case depending on several factors including, the county petitioned, whether the petition is contested or uncontested, cost of service, whether a jury trial is requested, hours earned by the GAL, and whether publication is required. However, for purposes of determining an average fiscal impact for this proposal, the DMH will look at average cost of fees incurred in Boone County, Missouri for the petition of a guardianship and/or conservatorship.
(<http://www.courts.mo.gov/hosted/circuit13/other/fees.htm>)

A mandatory fee of \$30.75 is required for records check and fingerprinting before a petition will be heard by the Boone County Circuit Court. Additionally, an application fee of \$490 is required if requesting a Guardianship and/or Conservatorship for an incapacitated and disabled adult. The \$490 fee includes the clerk fee, court automation fund fee, sheriff's retirement fund fee, basic civil legal services fund fee, law library surcharge fee, GAL deposit fee, sheriff's service fee, sheriff's surcharge fee, and publication fee. See website above with Boone County fee schedule. The court appointed attorney will also earn an hourly fee, which the DMH averages to be about \$500 per case, in addition to the \$250 deposit fee included in the application fee.

Currently, DMH does not pay any of the above fees. Therefore, it is assumed under this proposal that the DMH would at a minimum be responsible for a total of \$1,020.75 (\$30.75 + \$490 + \$500) for each petition filed requesting a public administrator. This would equal a total cost of \$85,743 (84 total number of petitions filed for PA x \$1,020.75 average cost) that DMH could potentially incur per year under this proposal. This average cost could be higher or lower as factors with filing vary greatly among counties, and these numbers do not account for the additional costs associated with jury trials. Including jury trials in the DMH's potential cost seemed inappropriate as very few of these cases currently require a jury trial.

The payment of any fees by the DMH appears to be conflict with Section 475.085, RSMo. This section provides that the "costs of proceedings as to incapacity or disability of any person shall be paid from his estate if he is found incapacitated or disabled or, if his estate is insufficient, costs shall be paid by the county; but if the person is found not to be incapacitated or disabled the costs shall be paid by the person filing the petition, unless he is a public employee acting in his official capacity, in which case the costs shall be paid by the county". Under current law, the DMH, a state agency acting under its official capacity, is never responsible for any costs associated with the petition for guardianships. These costs are either paid by the individual's estate, petitioner whom is not a public employee, or the county. It is unknown how this conflict between Section 475.085 and proposed Section 473.749 would be interpreted, or what DMH's ultimate obligations would be.

ASSUMPTION (continued)

Officials at the **Office of the State Courts Administrator** assume the proposed legislation changes the laws regarding public administrators so that the state must reimburse a county for fees if a state agency petitions for the appointment of a county public administrator. There may be some impact but there is no way to quantify that currently. Any significant changes will be reflected in future budget requests.

Officials at the **Callaway County Commission (CCC)** assume from 2011 through 2016, the CCC was appointed to serve 35 times. The State of MO was the petitioner in 20 of those cases and this bill would require the State of Mo to pay the costs of those cases. The Circuit Court Clerk could still waive the filing fee for the State of Mo (since both are state entities); but having the State pay the cost of the Respondent's attorney would save the county some money.

Oversight assumes there would be a savings to counties for reimbursement of fees under an appointed county public administrator. According to §475.085, the costs of proceedings as to incapacity or disability of any person shall be paid from his estate if he is found incapacitated or disabled or, if his estate is insufficient, costs shall be paid by the county; but if the person is found not to be incapacitated or disabled the costs shall be paid by the person filing the petition, unless he is a public employee acting in his official capacity, in which case the costs shall be paid by the county. Oversight is unclear from §475.085 of how much of the reimbursement of fees will be paid to the counties from the state. Therefore, Oversight will reflect a fiscal impact of an unknown savings to counties for this proposal.

Officials at the **Office of Administration**, the **Office of the State Public Defender** and the **Office of Prosecution Services** each assume no fiscal impact to their respective agencies from this proposal.

<u>FISCAL IMPACT - State Government</u>	FY 2018 (10 Mo.)	FY 2019	FY 2020
GENERAL REVENUE FUND			
<u>Cost</u> - DHSS - fees reimbursed to counties for the appointment of a county public administrator	(Could exceed \$362,500)	(Could exceed \$362,500)	(Could exceed \$362,500)
<u>Cost</u> - DSS - fees reimbursed to counties for the appointment of a county public administrator	(Could exceed \$84,000 to \$1,008,000)	(Could exceed \$84,000 to \$1,176,000)	(Could exceed \$84,000 to \$1,344,000)
<u>Cost</u> - DMH - fees reimbursed to counties for the appointment of a county public administrator	(Greater than \$85,743)	(Greater than \$85,743)	(Greater than \$85,743)
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	(Could exceed <u>\$1,456,243</u>)	(Could exceed <u>\$1,624,243</u>)	(Could exceed <u>\$1,792,243</u>)
<u>FISCAL IMPACT - Local Government</u>	FY 2018 (10 Mo.)	FY 2019	FY 2020
COUNTY FUNDS			
<u>Savings</u> - reimbursement of fees associated with the appointment of a county public administrator	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
ESTIMATED NET EFFECT ON COUNTY FUNDS	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
<u>FISCAL IMPACT - Small Business</u>			

No direct fiscal impact to small businesses would be expected as a result of this proposal.

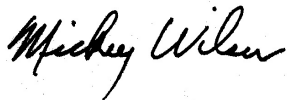
FISCAL DESCRIPTION

This bill requires the state to reimburse a county for any fees, including those arising from a jury trial, related to the appointment of a county public administrator as a guardian or conservator upon the petition of a state agency.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Health and Senior Services
Department of Social Services
Department of Mental Health
Office of the State Courts Administrator
Office of Administration
Office of the State Public Defender
Office of Prosecution Services
Callaway County Commission



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March 28, 2017

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