



Judicial Impact Statement

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House Bill 395 128th General Assembly

Sponsor

Representative Kevin Bacon

Representative Sandra
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Status

House Civil and Commercial
Law

Version

As Introduced

TITLE INFORMATION

To modernize existing statutory language throughout the probate code and to amend sections 2115.06 and 3313.85 of the Revised Code to allow an executor or administrator to accept a county auditor's valuation of real estate and require a probate court to promptly fill a vacancy on a board of education or governing board of an educational services center after 30 days of vacancy.

IMPACT SUMMARY

The Ohio Judicial Conference's Probate Law & Procedure Committee and the Ohio Association of Probate Judges worked with the bill sponsors to develop House Bill 395, a concept that is included in the Judicial Conference's 2009-2010 Legislative Platform. House Bill 395 would bring clarity to the law by modernizing language throughout the probate code, improve court efficiency by reducing unnecessary filings, and improve public confidence in the law by codifying current "best practices" trends.

BACKGROUND

House Bill 395 is the result of a joint effort between the Ohio Judicial Conference's Probate Law & Procedure Committee and the Ohio Association of Probate Judges to modernize Ohio's probate code.

What is a Judicial Impact Statement?

A Judicial Impact Statement describes as objectively and accurately as possible the probable, practical effects on Ohio's court system of the adoption of the particular bill. The court system includes people who use the courts (parties to suits, witnesses, attorneys and other deputies, probation officials, judges and others). The Ohio Judicial Conference prepares these statements pursuant to R.C. 105.911.

The Ohio Legislative Service Commission updates the currency of the language and introduces gender-neutral language to the Ohio Revised Code as substantive changes are made to particular code sections. However, the probate code changes relatively infrequently. As such, current probate code, which is found primarily in Title XXI of the Ohio Revised Code, contains numerous sections that have not changed since the inception of the Ohio Revised Code in 1953. As such, the probate code contains gender specific references, outdated terminology, obsolete

sections and some substantive provisions that do not reflect current practices or “best practices” in the field of probate law.

BILL DESCRIPTION

Technical Changes

House Bill 395 would make technical changes throughout the probate code by replacing outdated words and phrases with synonyms that are more current and that reflect gender neutrality. For example, the bill would change “his order” to “the judge’s order,” “jurymen” to “jurors,” “stenographer” to “court reporter,” and “referee” to “magistrate.” In this way, House Bill 395 would bring currency, relevancy, and contemporaneous meaning to Ohio’s probate code.

Substantive Changes

Amendment to Revised Code Section 2115.06 (Appraisers – Compensation - Fees May be Charged Against the Estate)

Current R.C. 2115.06 requires the executor or administrator of an estate to appoint an appraiser or appraisers to assess the value of the real property and personal property of an estate that has been inventoried pursuant to the Revised Code. Current law does not allow the executor or administrator of an estate to use a county auditor’s appraisal that has been conducted in accordance with R.C. 5713.01. The current statute also requires that the appraiser or appraisers be paid for their services and allows these fees to be charged against the estate. Both the appointment of the appraiser and the payment of his or her fees are subject to the approval of the court. This process can result in significant expense to the estate and a significant investment of time by the court.

House Bill 395 would amend R.C. 2115.06 to permit the executor or administrator of an estate to use a county auditor’s valuation of real property in lieu of appointing and paying a private appraiser. This change will result in significant cost savings to those estates choosing to use this valuation method. Additionally, the change will positively impact Ohio’s courts because it will reduce the amount of time that courts spend approving the appointment and payment of appraisers.

Amendment to Revised Code Section 3313.85 (Failure of Board of Education or Governing Board to Perform Duties or Fill Vacancy)

A plain reading of current R.C. 3313.85 appears to require a probate court to “act as...and perform all duties imposed upon” a board of education or governing board of an educational service center when that board fails to perform those duties or fails to fill a vacancy upon the board within 30 days. This statute has been interpreted by the Supreme Court of Ohio to, at a minimum, require a probate court to fill a vacancy on a board of education or governing board when that board has failed to do so for a period of 30 days. *State ex rel. Paul v. Russell*, 162 Ohio St. 254 (1954).

House Bill 395 would amend R.C. 3313.85 to remove the language requiring that a probate court perform the duties of a school board and clarify that the probate court is not responsible for operating a school board or performing other board responsibilities when a board fails to do so. The

amendment clarifies that a probate court is only responsible for filling vacancies when a board of education or governing board has failed to do so for 30 days. This change will improve the administration of justice by removing from the purview of the probate court the responsibility for overseeing the day-to-day operational, budgetary, and pedagogical responsibilities of a school board, responsibilities that a probate court is unequipped to handle. Additionally, this change will improve public confidence in the law by upholding the separation of powers and ensuring that executive branch functions do not fall upon the judiciary.

JUDICIAL IMPACT

Caseload and Workload: House Bill 395 will positively impact the courts by decreasing court workload associated with time spent on approving the appointment and payment of appraisers.

Clarity of the Law: House Bill 395 will increase the clarity of the law by replacing outdated terms and phrases with synonyms that are more commonly understood, thereby bringing contemporaneous meaning to the probate code.

Public Confidence in the Law: House Bill 395 will improve public confidence in the law in two important ways. First, it will bring Ohio's probate code into the 21st century by replacing outdated terms and gender specific references with synonyms that are more current and that reflect gender neutrality. Second, the bill will bring relevancy to the probate code by codifying a number of "best practices" that are currently in use in the field of probate law. By bringing currency and relevancy to the probate code, House Bill 395 will increase the perception that all are equal in the eyes of the law and that the law favors fairness. Accordingly, when the law favors equality and equity, public confidence in the law improves.

Administration of Justice: The provision of House Bill 395 related to the probate court's acceptance of a county auditor's valuation of real property will result in improvements in the administration of justice. This provision will make the current procedure in this area more efficient and user friendly and allow both the public and the courts to accomplish their goals through the use of a simplified process. The increased efficiency due to this simplified process will ultimately improve the administration of justice by saving the public a significant amount of time and money.

RECOMMENDATIONS

The Ohio Judicial Conference, the voice of Ohio's judges, encourages passage of House Bill 395. This bill will positively impact Ohio's courts by reducing court caseload and workload, bringing clarity to the probate code, and improving public confidence in the law and the administration of justice.