

Department of Legislative Services
2010 Session

FISCAL AND POLICY NOTE

House Bill 800
Judiciary

(Delegate Dumais, *et al.*)

Estates and Trusts - Estates in Probate, Guardianship Proceedings, and Small Estates - Fees

This bill increases fees charged and collected by the registers of wills and specifies that, unless otherwise provided by law, a register of wills is not required to record any paper or provide a copy of a paper to a person until the applicable charge is paid.

Fiscal Summary

State Effect: General fund revenues are expected to increase significantly due to additional excess revenues remitted by registers of wills to the Comptroller and deposited in the general fund. Under one set of assumptions, general fund revenues may increase by \$1.3 million in FY 2011 and by \$1.7 million annually thereafter. Expenditures are not affected.

(\$ in millions)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
GF Revenue	\$1.3	\$1.7	\$1.7	\$1.7	\$1.7
Expenditure	0	0	0	0	0
Net Effect	\$1.3	\$1.7	\$1.7	\$1.7	\$1.7

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: Probate fees are increased as shown in **Exhibit 1**.

Various other fees are increased or established for generally administrative functions performed by registers of wills. Fees for administration of a small estate (generally having a value of \$50,000 or less) are also increased. Some nominal fees are eliminated.

Exhibit 1
Proposed Increases in Probate Fees under HB 800

Fee Amounts			
<u>Value of Estate</u>	<u>Current Law</u>	<u>HB 800</u>	<u>Percent Increase</u>
Less than \$10,000	\$50	\$75	50%
\$10,000-\$20,000	\$100	\$150	50%
\$20,000-\$50,000	\$150	\$225	50%
\$50,000-\$75,000	\$200	\$300	50%
\$75,000-\$100,000	\$300	\$450	50%
\$100,000-\$250,000	\$400	\$600	50%
\$250,000-\$500,000	\$500	\$750	50%
\$500,000-\$750,000	\$750	\$1,125	50%
\$750,000-\$1,000,000	\$1,000	\$1,500	50%
\$1,000,000-\$2,000,000	\$1,500	\$2,250	50%
\$2,000,000-\$5,000,000	\$2,500	\$3,750	50%
\$5,000,000 +	\$2,500*	\$3,750*	50%

*plus .02% of excess over \$5,000,000

Current Law: Registers of wills are entitled to charge and collect various fees for the performance of their duties, including probate fees for performing various actions in relation to the administration of a decedent's estate, and various other enumerated fees.

A register of wills is also allowed a 25% commission on inheritance tax collected, with the remainder paid into the State Treasury each month. Annually, every register must return to the Comptroller a full and accurate account of the fees and receipts of the register's office and incurred expenses. The excess of fees and receipts over expenses is delivered to the Comptroller with each report and deposited in the general fund.

Salaries of the registers are paid semimonthly from the fees and receipts of the office, after deducting the expenses of the office. If the fees and receipts of an office are insufficient in any fiscal year to pay all or a part of the expenses of the office and authorized salary of a register, the deficiency is funded from the taxes remitted to the Comptroller by the register during that fiscal year. If the tax collections for the

fiscal year are insufficient, the Comptroller makes up the deficit from excess fees remitted from all other registers.

The current probate fees and fees for administration of a small estate were established under Chapter 656 of 1989 (though the fees for administration of a small estate have been slightly modified since, under Chapter 118 of 2000). Other enumerated fees were last modified under Chapter 693 of 1997.

Background: In each jurisdiction, registers of wills are responsible for the administration of estates by providing proper forms and direction, assisting and advising any person who requests assistance in the preparation of a form for administrative probate, admitting wills to probate, issuing letters of administration, auditing accounts, and maintaining accurate records of all estate matters.

Total collections by registers of wills from taxes and fees declined by almost 3% annually from fiscal 1998-2008, but increased by 5% in fiscal 2009. Registers of wills' expenditures grew approximately 5.6% annually from fiscal 1998-2008 and in fiscal 2009 grew by 5.4%. In accordance with the overall decrease in collections and increase in expenditures in recent years, registers of wills are experiencing deficits at a greater rate. In fiscal 1998, four registers of wills posted a year-end deficit compared to 16 registers in fiscal 2009 as shown in **Exhibit 2**.

Despite an increase in the total number of year-end deficits, net revenues (including fees and taxes) collected from all registers of wills have been more than sufficient to mitigate any deficits. In fiscal 2009, net excess revenues were approximately \$5.0 million.

State Fiscal Effect: General fund revenues are expected to increase significantly due to additional excess revenue remitted by registers of wills to the Comptroller for deposit in the general fund due to the fee increases. Under the set of assumptions employed by the Department of Legislative Services (DLS), general fund revenues increase by \$1.3 million in fiscal 2011, accounting for the bill's October 1, 2010 effective date. Annualized revenue decreases would total \$1.7 million. DLS advises, however, that due to the varying rate increases proposed by the bill and any fluctuations that may occur in the number of individuals requesting services or the expenses of registers of wills' offices, the total amount of increased general fund revenues may vary from this estimate.

In fiscal 2009, \$6.8 million in fees were collected by registers of wills; \$24.4 million was retained by registers of wills to account for salaries and expenses (accounting for both the fees collected and 25% of taxes collected). Of the retained revenues, about \$5.0 million was not needed for salaries and expenses and was deposited in the State's general fund.

The increases in probate fees (generally the largest amount of fees collected by registers of wills) under the bill are 50% for the value of estates up to \$5 million. The fee amount charged for the value of estates over \$5 million (.02% of excess over \$5 million), however, does not increase and other fees are established or increased by varying amounts. Assuming fee revenues increase by 25% as a result of the fee increases, general fund revenues may increase by \$1.3 million in fiscal 2011 and by \$1.7 million annually thereafter. This assumes:

- expenses of the registers of wills remain constant and fee revenues otherwise remain constant;
- the number of individuals paying probate and other fees and the number of occurrences of fees being paid remain constant; and
- an increase in fee revenue results in a direct increase in excess revenues deposited in the general fund.

The projection of a 25% increase in revenue is intended to be a conservative estimate of the potential general fund revenue increase, accounting for the possibility that a significant portion of probate fee revenue may be generated from the fee on the value of estates over \$5 million (.02% of excess over \$5 million), which is not being increased. Presumably, however, the projection of a 25% increase could also be an overestimate, depending on the percentage of overall fee revenue that is generated from the value of estates over \$5 million.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of the Comptroller, Register of Wills, Department of Legislative Services

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mlm/kdm

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Exhibit 2
Revenues and Expenses at the Registers of Wills
Fiscal 2009

County	Probate Fees	Total Revenues Collected	Taxes Remitted to the State	Revenues Retained by Registers	Excess Fees to General Fund
Allegany	\$101,639	\$677,694	\$432,112	\$245,582	(\$185,196)
Anne Arundel	581,150	6,405,361	4,360,596	2,044,764	390,398
Baltimore City	568,318	5,556,306	3,730,665	1,825,640	(393,383)
Baltimore	1,290,472	16,385,027	11,303,456	5,081,570	2,652,233
Calvert	120,559	841,383	540,339	301,044	(114,826)
Caroline	47,442	488,580	330,730	157,851	(153,468)
Carroll	220,335	3,377,292	2,364,421	1,012,871	605,190
Cecil	111,848	1,030,883	686,316	344,567	(135,825)
Charles	110,255	656,910	408,503	248,407	(349,656)
Dorchester	52,221	434,728	286,376	148,351	(162,224)
Frederick	231,825	2,746,042	1,885,040	861,002	263,726
Garrett	39,083	439,053	299,698	139,354	(192,944)
Harford	251,385	2,103,804	1,386,407	717,397	221,616
Howard	222,706	1,867,672	1,230,144	637,529	90,160
Kent	93,187	664,038	426,230	237,808	(28,176)
Montgomery	1,341,360	20,276,902	14,165,006	6,111,895	3,265,987
Prince George's	629,840	5,855,426	3,912,677	1,942,749	(300,942)
Queen Anne's	73,050	302,174	171,654	130,520	(277,364)
St. Mary's	111,597	1,054,128	701,313	352,815	(86,514)
Somerset	33,666	754,546	540,354	214,192	(76,803)
Talbot	125,186	1,214,608	815,490	399,118	(84,452)
Washington	189,113	1,971,717	1,333,948	637,768	134,206
Wicomico	164,957	867,208	523,339	343,869	(28,748)
Worcester	110,141	811,115	523,001	288,115	(71,951)
Total	\$6,821,336	\$76,782,596	\$52,357,817	\$24,424,780	\$4,981,046