

Department of Fiscal Services
Maryland General Assembly

FISCAL NOTE

House Bill 1233 (Delegate Finifter)
Judiciary

Durable Power of Attorney - Registry

This bill requires each register of wills to establish and maintain a registry of the names of principals who choose to register a durable power of attorney and the names of their attorneys in fact or agents. “Durable power of attorney” means a power of attorney (1) that is established when a principal designates in writing another attorney in fact or agent; and (2) that is exercisable notwithstanding the principal’s subsequent disability or incapacity. A principal who seeks to register the durable power of attorney must (1) execute an enabling document that establishes the power of attorney upon disability or incompetence; and (2) submit a copy of the enabling document to the register of wills in which the principal or the principal’s attorney in fact or agent resides. The enabling document may provide for the revocation of the durable power of attorney, and the removal of the individual’s name from the registry. A register may charge a reasonable fee to each principal listed in the registry.

The bill’s provisions do not apply to an instrument or portion of an instrument that is an advance directive appointing a health care agent.

Fiscal Summary

State Effect: Potential minimal offsetting increases in registers of wills’ revenues and expenditures as discussed below.

Local Effect: None.

Small Business Effect: None. Although attorneys may assist in developing the enabling documents that may be filed with the registers of wills, it would not directly affect their practices.

Fiscal Analysis

State Effect: In fiscal 1996 the registers of wills collected \$25.3 million in commissions and fees, and had expenses of \$9.7 million. As a result, the registers remitted \$15.6 million in excess fees to the State's general fund.

The bill requires each register of wills to establish and maintain a registry of the names of principals who choose to register a durable power of attorney and the names of their attorneys in fact or agents. The registers would also store the enabling document that establishes the power of attorney. The size of the registries and the number of enabling documents to be filed is unknown. If the number of principals and enabling documents is significant, register of wills' expenditures could increase due to the need to hire part-time contractual staff and/or rent additional office space. The increase cannot be reliably estimated. However, any costs would be fully offset by the fees charged to principals.

Information Source(s): Register of Wills, Office of the Comptroller, Department of Fiscal Services

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