

Department of Legislative Services
Maryland General Assembly
2001 Session

FISCAL NOTE

Senate Bill 105 (Senator Kelley, *et al.*)
Judicial Proceedings

Powers of Attorney

The bill requires that a durable power of attorney be notarized and that preprinted durable power of attorney forms contain a notice of warnings to the individual and a statement of duties of the agent or attorney in fact. The bill also adds attorneys in fact and agents under a power of attorney to those representatives who, if they fraudulently and willfully misappropriate money under his or her trust, are guilty of embezzlement and subject to prison terms.

Fiscal Summary

State Effect: Minimal increase in general fund expenditures due to the bill's penalty provision.

Local Effect: Minimal increase in revenues and expenditures due to the bill's penalty provision.

Small Business Effect: None.

Analysis

Bill Summary: Attorneys in fact and agents under a power of attorney to those representatives who fraudulently and willfully misappropriate money under his or her trust would be subject to the existing embezzlement criminal provisions that provide for imprisonment for not less than one year nor more than five years.

A durable power of attorney must be acknowledged before a notary public. Each preprinted durable power of attorney form sold or distributed in the State would be required to contain a notice explaining the implications of the designation of a durable power of attorney. The form must also state the duties of the agent or attorney in fact under a durable power of attorney. An exception from the notice and statement of duties requirements is given to a durable power of attorney prepared by a lawyer, financial institution, broker-dealer, agent, or federal covered financial adviser.

The bill also provides that a third party may act in reliance on the authority granted in a durable power of attorney until the third party has received written notice of revocation, suspension, or termination of the power of attorney. A third party who acts in reliance on the authority granted to the attorney in fact or agent under a durable power of attorney and in accordance with the instructions of the attorney in fact or agent would be held harmless by the principal from any loss suffered or liability incurred as a result of actions taken prior to receipt of written notice of revocation, suspension, or termination of the power of attorney. A person who acts in good faith on any representation, direction, decision, or act of the attorney in fact or agent is not liable to the principal or the principal's estate, beneficiaries, or joint owners for the acts. A durable power of attorney may provide that the attorney in fact or agent is not liable for any acts or decisions made by the attorney in fact or agent in good faith and under the terms of the durable power of attorney.

Current Law: Attorneys in fact or agents under a power of attorney are currently not included in the embezzlement criminal provision. A durable power of attorney need not be acknowledged before a notary public and no notice of rights and duties is required.

State Expenditures: General fund expenditures could increase minimally as a result of the bill's incarceration penalty due to more people being committed to Division of Correction (DOC) facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime is expected to be minimal.

Persons serving a sentence longer than one year are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$1,700 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. The average variable cost of housing a new DOC inmate (food, medical care, etc.), excluding overhead, is \$288 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem

reimbursements for fiscal 2002 are estimated to range from \$9 to \$52 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Fiscal Effect: Expenditures could increase minimally as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$17 to \$77 per inmate in fiscal 2002.

Additional Information

Prior Introductions: SB 780 of 2000, a similar bill, was withdrawn. HB 795 of 2000, a similar bill, was also withdrawn.

Cross File: None.

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

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