

Department of Legislative Services  
2012 Session

FISCAL AND POLICY NOTE

House Bill 1386  
Judiciary

(Delegates F. Turner and Luedtke)

Estates and Trusts - Registers of Wills - Fees

This bill generally increases fees charged and collected by the registers of wills, but reduces fees applicable to estates with a value of under \$5,000 and eliminates a portion of the fee applicable to estates with a value of over \$5 million. The bill specifies that, unless otherwise provided by law, a register of wills is not required to record a document filed with the register or provide a copy of a document to a person until the appropriate filing or copying fee is paid.

Fiscal Summary

**State Effect:** General fund revenues increase by \$2.4 million in FY 2013 and by \$3.2 million annually thereafter, due to additional overall excess revenue remitted by registers of wills to the Comptroller and deposited in the general fund. Expenditures are not affected.

(\$ in millions)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
GF Revenue	\$2.4	\$3.2	\$3.2	\$3.2	\$3.2
Expenditure	0	0	0	0	0
Net Effect	\$2.4	\$3.2	\$3.2	\$3.2	\$3.2

*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 Changes in Probate Fees under HB 1386**

<u>Value of Estate</u>	<u>Current Law</u>	<u>HB 1386</u>	<u>Percent Increase/(Decrease)</u>
Less than \$5,000	\$50	1%	(varying)
\$5,000-\$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	none	(100%)

**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.

Expenses of the register of wills offices have generally been increasing from year to year. Fiscal 2011 overall expenses of \$20.5 million among the 24 offices, for example, were 11% higher than expenses in fiscal 2008 (\$18.4 million). Revenues retained by the registers of wills to cover expenses (probate fees + 25% of inheritance tax collections) have fluctuated, but in recent years have been roughly between \$22 and \$25 million. The fees make up a relatively small portion of these revenues (\$6.4 million in fiscal 2011). In the past four fiscal years, the amounts remitted to the Comptroller after payment of expenses have varied from \$2.7 million to \$5.4 million, with \$4.6 million remitted in fiscal 2011. **Exhibit 2** shows fiscal 2011 revenue and expenditure information for the register of wills offices by county.

**State Fiscal Effect:** General fund revenues are expected to increase significantly due to additional overall excess revenue remitted by registers of wills to the Comptroller for deposit in the general fund due to the bill's fee increases. Assuming revenues increase by 50%, general fund revenues increase by approximately \$2.4 million in fiscal 2013 (accounting for the bill's October 1, 2012 effective date), based on fiscal 2011 revenues. Annual increases would total approximately \$3.2 million.

This assumption of a 50% increase in revenue is based on the fact that the majority of the probate fees are increased by 50% and that the probate fees represent a significant majority of overall fee revenue generated by the registers of wills. The actual increase in revenue may vary from the 50% assumption since (1) other administrative fees are

increased by more than 50% or newly established; (2) the probate fee for estates with a value of under \$5,000 is reduced; and (3) the percentage probate fee of 0.02% applicable to estates with a value of over \$5 million is eliminated. The actual revenue increase is not expected to vary significantly from the 50% assumption, however.

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### **Additional Information**

**Prior Introductions:** HB 800 of 2010 and HB 903 of 2009, similar bills, each received an unfavorable report from the House Judiciary Committee. SB 528 of 2009, also a similar bill, received an unfavorable report from the Senate Judicial Proceedings Committee.

**Cross File:** None.

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

**Fiscal Note History:** First Reader - March 14, 2012  
ncs/kdm

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**Exhibit 2**  
**Revenues and Expenses of the Registers of Wills**  
**Fiscal 2011**

<b>County</b>	<b>Probate Fees</b>	<b>Revenues Retained by Registers (Fees + 25% of Inheritance Tax)</b>	<b>Register Expenses</b>	<b>Excess Remitted to General Fund</b>
Allegany	\$108,658	\$368,813	\$448,223	(\$79,409)
Anne Arundel	598,087	1,887,920	1,766,070	121,850
Baltimore City	520,743	1,940,449	2,587,672	(647,223)
Baltimore	1,223,938	5,075,198	2,494,043	2,581,155
Calvert	100,341	343,787	448,184	(104,397)
Caroline	43,369	273,441	338,671	(65,230)
Carroll	234,757	774,981	468,141	306,839
Cecil	110,299	254,567	504,517	(249,949)
Charles	122,338	307,906	619,776	(311,870)
Dorchester	47,219	207,631	326,088	(118,457)
Frederick	238,010	815,210	619,255	195,954
Garrett	48,128	65,961	345,588	(279,626)
Harford	236,213	601,677	557,751	43,926
Howard	251,028	899,445	613,183	286,261
Kent	61,857	128,645	269,806	(141,162)
Montgomery	1,220,882	7,014,011	2,873,133	4,140,877
Prince George's	622,927	1,834,391	2,289,741	(455,351)
Queen Anne's	79,830	323,574	450,115	(126,541)
St. Mary's	96,114	197,107	448,007	(250,900)
Somerset	20,555	136,321	298,562	(162,240)
Talbot	94,896	426,916	510,835	(83,919)
Washington	173,606	639,625	521,534	118,092
Wicomico	86,299	270,158	374,137	(103,979)
Worcester	104,385	369,883	361,709	8,174
<b>Total</b>	<b>\$6,444,478</b>	<b>\$25,157,617</b>	<b>\$20,534,742</b>	<b>\$4,622,875</b>