

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1070 (3rd Edition)

SHORT TITLE: Removal/Resignation of Trustees

SPONSOR(S): Rep. Haire

FISCAL IMPACT

Yes () No (X) No Estimate Available ()

FY 2001-02 FY 2002-03 FY 2003-04 FY 2004-05 FY 2005-06

REVENUES:

General Fund

Ct of Justice Fees

No Significant Impact

EXPENDITURES:

POSITIONS:

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: Judicial Branch; General Court of Justice Fees to General Fund

EFFECTIVE DATE: Part I and sections 7 and 8 of Part VI are effective January 1, 2002 and applies to trustees administering covered trusts before or after that date. Parts II-IV are effective when they become law and apply to actions by personal representatives on or after that date. The remainder of the bill is effective January 1, 2002.

BILL SUMMARY: PART 1 makes numerous clarifying changes to GS 36A, Art. 3, relating to the administration of all trusts, however created. Provides that the Clerk of Superior Court has original jurisdiction over all proceedings concerning the internal affairs of trusts, except proceedings to modify or terminate the trust, including appointment and removal of trustees. Sets out procedure for initiating and hearing proceedings before the clerk and clarifies that a clerk can appoint a guardian ad litem to represent a minor, an incapacitated person, or an unknown person. Amends GS 7A-307(a) to provide that additional court costs for trust administration shall not be assessed against trusts that are subject to proceedings before the clerk if the trust instrument does not require accountings to be filed with the clerk. PARTS II-V change several laws affecting fiduciaries and decedents' estates. Part VI includes conforming changes to HB 1073 (Register of Deeds/Business Reinstatement) and SB 842 (Business Entity Changes), makes SB 842

(Business Entity Changes) effective when it becomes law and delays SB 815 (Mortgage Amortization Charts) and HB 385 (Consolidate Business Provisions) to July 1, 2002.

ASSUMPTIONS AND METHODOLOGY:

PART I House Bill 1070 rewrites Article 3 of Chapter 36A regarding the resignation and removal of trustees, expanding the original jurisdiction of the clerk of court to include all matters concerning the internal affairs of a trust except modification or termination of trusts. Under current law, matters regarding the resignation and removal of trustees are decided by the clerk with required approval by a superior court judge. HB 1070 would remove the requirement for approval by the judge but allows appeals of the clerk's order to superior court. It would also expand jurisdiction to include reviewing trustees' fees, reviewing and settling interim and final accounts, ascertaining beneficiaries, and questions regarding the administration, distribution and construction of the trust.

This bill is not expected to have any significant impact on either court workload or court fees.

IMPACT ON COURT WORKLOAD

This bill would result in some slight shifting of responsibility from superior court judges to clerks. Because some matters decided by a clerk would be subject to appeal to (rather than approval by) Superior Court, there is some potential for an increase in total court workload. However, these matters are relatively infrequent (in calendar year 2000, there were 277 requests statewide for resignation of fiduciaries and 4 requests for replacement of fiduciaries), so no significant impact is expected. More likely, there will also be some matters handled by clerks that had previously been handled *outside* of the court system. However, there is no expectation that the volume of these cases will be significant enough to affect court resources.

IMPACT ON COURT FEES

Section 2 of HB 1070 updates the statutes determining court fees to recognize the proposed new 36A-23.1. Under this bill, trusts are broadly defined (36A-22.1(5)) to include both trusts that do and do not require accounting to the clerk. The proposed 7A-307(a)(2c) clarifies that **if** the trustee is not required to account to the clerk, the 40 cents per \$100 value of the gross estate portion of the General Court of Justice fees does not apply. Since this fee is not currently collected on these kinds of trusts, there is no impact on court fees collected.

There is the potential for some increase in court fee revenues if some of these matters previously handled *outside* the court system are instead handled as special proceedings before the clerk, which requires a \$30 fee. However, there is no expectation that the volume of these new cases will be high enough to have a noticeable impact on court fees.

PART II allows a personal representative to petition for transactions involving real property as part of the same special proceeding already initiated. This is currently the practice in many counties and is not anticipated to have any impact on the Office of Clerks of Court.

PART III provides for distribution of assets of inoperative trusts.

PART IV provides that if a fiduciary is excluded from investment decisions, they cannot be held liable for decisions.

PARTS V and VI are technical and conforming changes to other legislation. None of these sections are expected to have any impact on state or local government workload or receipts.

TECHNICAL CONSIDERATIONS: None

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