

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Fiscal Note

BILL NUMBER: House Bill 687 (First Edition)

SHORT TITLE: Funds Held for Minors and Incompetents/Fee.

SPONSOR(S): Representative Moore

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>
REVENUES:	Some foregone revenue expected; however, the exact amount cannot be determined.				
EXPENDITURES:					
Judicial					
Recurring	\$39,552	\$37,480	\$37,480	\$37,480	\$37,480
POSITIONS					
(cumulative):	1	1	1	1	1
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Judicial Branch.					
EFFECTIVE DATE: July 1, 2007.					

BILL SUMMARY: G.S. 7A-308.1 provides for the assessment of a fee equal to five percent (5%) of each fund that may be invested by the clerk under G.S. 7A-112 (Investment of funds in clerk’s hands). This fee is charged and deducted from each fund before investment, and may not exceed the investment earnings on the account or \$1,000, whichever is less. Fees collected are remitted to the State Treasurer for support of the General Court of Justice. *Section 1 of H.B. 687 rewrites G.S. 7A-308.1(2) to reduce the assessed fee from 5% to 2.5%.*

Section 2 enacts new G.S. 7A-114 to provide for the private management of funds held for minors and incompetent adults. The bill directs that: 1) if a general guardian or guardian of the estate has been appointed to represent the minor or incompetent adult, the court must direct that guardian to receive and manage the funds, and 2) if no guardian has been appointed and the parties involved consent, the clerk must appoint a general guardian or guardian of estate under Chapter 35A. If receipt of the funds by the clerk is necessary, the clerk must hold the funds until appointment of a guardian – the clerk may not invest the funds or assess a fee under G.S. 7A-308.1(2).

The bill becomes effective July 1, 2007

Source: *Bill Digest H.B. 687 (03/14/0200)*.

ASSUMPTIONS AND METHODOLOGY:

Section 1: Proposed fee reduction for funds invested by the clerk, from 5% to 2.5%.

According to the Administrative Office of the Courts, fees collected (G.S. 7A-308.1) on funds invested by the clerk under G.S. 7A-112 are combined with all other miscellaneous fees collected in the AOC Financial Management System. Therefore, the AOC cannot readily distinguish the amount of fees collected on such funds, or project the amount of foregone revenue that might be assumed from the proposed fee reduction.

However, the AOC Financial Services Division indicates that the amount collected on invested funds constitutes a very small percentage of miscellaneous fee collection. Given this observation, *Fiscal Research does not anticipate a significant revenue reduction for the Courts*. The various fees and commissions collected by the clerk are remitted to the State for support of the General Court of Justice, but do not go directly to the court system.

Section 2: Private management of funds held for minors and incompetent adults.

The AOC anticipates that the required appointment of a guardian to manage the funds held for minors or incompetent adults, in the case where no guardian has yet been appointed, may increase clerk workload. Appointment of a guardian is a time-consuming process that involves: review of applications for guardianship; hearings to determine guardianship; issuance of the order to appoint a guardian; the processing of bond payments; issuance of letters of administration; and annual audits of accounts.

Cases involving payments to the clerk on behalf of a minor would, in part, comprise the pool of cases for which a guardian might be appointed under this bill. Each time a payment is made to the clerk on behalf of a minor, an estate file is created for that minor. AOC data for 2006 indicate there were 289 civil cases involving estate guardianship of a minor, and 10,975 civil cases involving payment to a clerk. However, it is not known how many of these 10,975 cases involve payments made on behalf of a minor.

For illustration, assuming that 300 of these cases (approximately the current number of cases involving estate guardianship of a minor) would require appointment of a guardian under this bill, and that clerks spend an average of 4 hours on each case, these 1,200 additional hours would cost approximately \$34,500 in clerk time for case-related work. This increased workload is assumed to generate the need for one additional deputy clerk at an estimated recurring cost of \$37,480 for the FY 2008-09 biennium (FY08 costs include nonrecurring costs). However, based on the available data, it is not known exactly how many cases (i.e. without designated guardian) would be affected by this bill.

SOURCES OF DATA: Administrative Office of the Courts

TECHNICAL CONSIDERATIONS: None

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