

**LEGISLATIVE SERVICES AGENCY  
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301  
Indianapolis, IN 46204  
(317) 233-0696  
<http://www.in.gov/legislative>

**FISCAL IMPACT STATEMENT**

**LS 6318**

**BILL NUMBER:** HB 1153

**NOTE PREPARED:** May 5, 2005

**BILL AMENDED:** Apr 29, 2005

**SUBJECT:** Will Depository, Probate, Trust, and Inheritance Tax Matters.

**FIRST AUTHOR:** Rep. Foley

**FIRST SPONSOR:** Sen. Zakas

**BILL STATUS:** Enrolled

**FUNDS AFFECTED:**  **GENERAL**  
**DEDICATED**  
**FEDERAL**

**IMPACT:** State

**Summary of Legislation:** *Uniform Transfers to Minors Act:* The bill allows custodial property to be transferred under the Uniform Transfers to Minors Act to a trust if the minor is the sole beneficiary and the trust terms meet Internal Revenue Code requirements for not treating the transfer as a gift of a future interest.

*Attorney In Fact Gift-making:* The bill changes the annual maximum value of gifts that an attorney in fact or a person the attorney in fact is legally obligated to support may receive under the attorney in fact's gift-making powers from \$10,000 to the amount allowed as an exclusion from gifts under the Internal Revenue Code.

*Retirement Plan Powers:* The bill allows an attorney in fact to exercise powers regarding retirement plans.

*Anatomical Gifts, Autopsy, & Burial:* The bill extends a power of attorney after the death of the principal as to the authority to donate organs, request an autopsy, and plan for the disposition of the principal's body.

*Probate Time Limitation:* The bill prohibits a will from admission for probate unless the will is presented for probate within three years after the testator dies.

*Incorporation by Reference in Wills & Trusts:* The bill allows a will or revocable trust to incorporate by reference a list of items for disposition that may be amended after incorporation.

*Beneficiaries of Insurance Contracts:* The bill removes limitations on naming an attorney in fact as a beneficiary of an insurance contract.

*Guardianship Transactions:* The bill validates, with court approval, a transaction that affects a protected person's property and the guardian's interest.

*Disclaimer & Intestacy:* It also provides that a disclaimed interest that arose under the law of intestate succession passes as if the disclaimant had died immediately before the intestate's death.

*Construction of Trusts:* The bill prohibits an abandoning or adulterous spouse from acquiring property from the deceased spouse's trust. The bill imposes a constructive trust to prevent a person convicted of an individual's death from acquiring trust property because of the individual's death.

*Sale Benefiting Personal Representative:* The bill voids a transaction in which a personal representative acquires an interest in an estate's real property, unless authorized by a will, a trust, the consent of all heirs, legatees, or beneficiaries, or an adjudicated compromise agreement. It also repeals a statute that requires a personal representative to file a report of sale.

*Request for Copy of Estate Inventory:* The bill allows a person who receives only a specific bequest to receive an estate inventory limited to the bequest.

*Petition for Probate:* The bill requires a petition for probate of a will or for the appointment of an administrator to state whether the decedent, heirs, legatees, and devisees are adults or minors.

*Deadline for Claiming Elective Share:* The bill requires, absent litigation, a spouse to elect against a will within three months after the will is admitted to probate.

*Trust Provisions:* The bill provides that a trust is presumed to be revocable. It allows an agent or attorney in fact to amend a trust if authorized in a power of attorney. It also authorizes the creation of a pet trust and a noncharitable trust with the beneficiary determined by the trustee. The bill gives a trustee additional powers and makes an exception to the cy pres doctrine. The bill requires a settlor of a trust to have the same capacity for making a will. The bill allows an uneconomic trust to be modified or terminated and limits actions to contest a revocable trust. The bill adds provisions concerning filling a trustee vacancy. It repeals and adds provisions about modifying and terminating trust terms. The bill provides that a transaction benefitting an attorney in fact is not presumptively valid or invalid if made by the principal and not by the attorney in fact acting for the principal. The bill allows a trustee or an interested person to petition the court to determine a trust's heirs and the heirs' interests. It also allows a court to determine the heirs and heirs' interests by evidence or by affidavit after a hearing. The bill provides that a trustee's good faith acts are valid if the trustee acts in accordance with the facts as determined by the court and the law. The bill also adds the trustee's duty to determine the trust beneficiaries, and makes a technical amendment.

*Reliance on Power of Attorney or Affidavit:* The bill provides immunity to a person who relies on a power of attorney or an affidavit concerning a power of attorney. It makes other changes to the trust law.

*Will Depository:* The bill allows a person to deposit a will with the circuit court clerk of the county in which the testator resided when the will was executed. It requires the circuit court clerk to collect a \$25 fee for depositing the will, unless the circuit court waives the fee. The bill makes a fee waiver mandatory if the depositor is participating in a Supreme Court Program, and permits a fee waiver if the depositor is an attorney who will no longer practice law.

*Extension for Filing Inheritance Tax Return:* The bill automatically extends the due date for the Indiana Inheritance Tax return if the Internal Revenue Service allows an extension for a federal Estate Tax return.

*Inheritance Tax Exemption Changes:* The bill provides that an individual adopted as an adult is to be treated as the natural child of the adopting parent for purposes of the Inheritance Tax if the adoption was finalized before July 1, 2004. (Current law requires an individual to be adopted before being emancipated in order to be treated as the natural child of the adopting parent.) It specifies that a stepchild of the transferor is a Class A beneficiary for purposes of the Inheritance Tax, whether or not the stepchild is adopted by the transferor. It also provides that a lineal descendant of a stepchild of a transferor, whether or not the stepchild is adopted by the transferor, is a Class A transferee for purposes of the Inheritance Tax.

*Foreign Judgements:* The bill provides that defenses raised by a foreign judgment debtor must be ruled upon before the foreign judgment: (1) may be enforced by execution; or (2) constitutes a lien. It provides that a foreign judgment creditor is entitled to the same prejudgment remedies as an Indiana judgment creditor. It also authorizes an Indiana court in which a foreign judgment is filed to preliminarily litigate certain postjudgment motions.

*Sheriff's Sale Fee:* The bill allows a sheriff to charge a person enforcing a mortgage foreclosure judgment a fee of not more than \$200 for sheriff's sale costs.

**Effective Date:** July 1, 2004 (retroactive); July 1, 2005; January 1, 2006.

**Explanation of State Expenditures:** *Extension for Filing Inheritance Tax Return:* The bill provides for an automatic filing extension for the Inheritance Tax return provided the filer also has received an extension from the Internal Revenue Service for filing the federal Estate Tax return. The current federal filing extension is 6 months. However, the bill does not change the deadlines for payment of the Inheritance Tax. As a result, the additional filing extension would not delay payment of Inheritance Tax, but could potentially lead to additional filings for Inheritance Tax refunds. Currently, the federal Estate Tax return is due within 9 months of a decedent's date of death. However, a 6-month filing extension is available. Under current statute, the Inheritance Tax does not have to be paid until a maximum of 12 months after the decedent's death (within 9 months of the date of death to receive the 5% early payment discount).

*Inheritance Tax Exemption Changes:* The bill could potentially increase expenditures from the state General Fund for county Inheritance Tax replacement to the extent that the exemption changes cause county Inheritance Tax collections to fall below the current guarantee level. Currently, most counties retain more in Inheritance Tax revenues than is guaranteed under the replacement procedure. (See *Explanation of Local Revenues*, below, for an explanation of county replacement procedures.)

**Explanation of State Revenues:** *Construction of Trusts:* The bill would prevent property transfers from a decedent's trust to his or her surviving spouse, if the surviving spouse abandoned the decedent or lived in adultery before the decedent's death. This could potentially result in a minimal increase in Inheritance Tax collections by the state if, as a result, such property interests are transferred to other taxable beneficiaries of the decedent. Under current statute property interest transfers to a surviving spouse are exempt from Inheritance Tax. The bill also would prevent property transfers from a decedent's trust to any person otherwise entitled to the property under the trust, if that person is charged with or convicted of murder, causing the suicide, or voluntary manslaughter of the decedent. The fiscal impact of this change is indeterminable.

*Inheritance Tax Exemption Changes:* The bill extends Class A beneficiary status to: (1) a lineal descendant of a stepchild of a decedent; and (2) a person adopted by a decedent after that person was emancipated, provided the adoption was finalized before July 1, 2004. The change would increase the Inheritance Tax exemption for these people from \$100 to \$100,000. These two changes could potentially reduce revenue from the Inheritance Tax beginning in FY 2006. However, Inheritance Tax return data on Class C transferees does not indicate the precise relationship of the transferee to the decedent. Thus, the frequency of transfers to persons described in (1) and (2) above, and the potential fiscal impact of these transfers, is indeterminable. From July 1997 to September 2003, an average of 6,900 Class C transferees paid Inheritance Tax each year. The median value of property transfers to Class C transferees during this period was about \$8,600, with the median tax totaling about \$853.

The bill also clarifies current statute by specifying that stepchildren are Class A beneficiaries whether or not they are adopted by the decedent.

Current law provides a \$100,000 exemption under the Inheritance Tax for Class A beneficiaries - lineal descendants, lineal ancestors, stepchildren, and legally adopted children of a decedent. In the case of an adopted child, the adoption must have occurred before the individual was totally emancipated. Class A beneficiary status also applies to children of a decedent who have been part of a *loco parentis* relationship for at least 10 years where the relationship began before the child's 15th birthday. The bill expands the definition of a Class A beneficiary to include a lineal descendant of a stepchild and an adopted child where the adoption occurred after the individual was totally emancipated, provided the adoption was finalized before July 1, 2004. These individuals are Class C beneficiaries under current law, entitled to a \$100 exemption. The bill also clarifies current law status of stepchildren by specifying that stepchildren are Class A beneficiaries whether or not they are adopted. These changes apply to estates of decedents who die after June 30, 2004. Since the Inheritance Tax does not have to be paid until a maximum of 12 months after the decedent's death (within 9 months of the date of death to receive the 5% early payment discount), the potential impact of these changes is not expected to begin until FY 2006. The nonresident Inheritance Tax and 92% of the resident Inheritance Tax is deposited in the state General Fund.

**Explanation of Local Expenditures:** *Will Depository:* The bill allows a person to deposit a will with the circuit court clerk of the county in which the testator resided when the will was executed. The bill specifies requirements for the circuit court clerk with regard to receiving and maintaining the will. Under the bill, the will must be maintained by the circuit court clerk for not less than 100 years.

**Explanation of Local Revenues:** *Construction of Trusts:* This bill could potentially result in a minimal increase in Inheritance Tax collections by counties, as they retain 8% of the Inheritance Tax collected on transfers made by Indiana residents.

*Will Depository:* The bill requires the circuit court clerk to collect a \$25 fee for the deposit of a will with the clerk's office. However, the bill requires the circuit court clerk to waive the fee if the probate court certifies that the depositor deposits the will as a participant, or for a participant, in a program of the Indiana Supreme Court, including the Judges and Lawyers Assistance Program. The fee for depositing a will would also be required to be waived if the depositor no longer practices law. The bill requires the circuit court clerk to deposit the fees in the clerk's Records Perpetuation Fund established under current statute. Under current statute this fund contains money to be used by the circuit court clerk for the preservation of records and the improvement of record keeping systems and equipment. The potential number of wills that might be deposited with circuit court clerks, and the amount of fees that could potentially be generated is indeterminable.

*Inheritance Tax Exemption Changes:* The bill could potentially reduce Inheritance Tax revenue flowing to counties. However, the precise impact of the bill is indeterminable. The counties retain 8% of the Inheritance Tax collected on transfers made by Indiana residents. Counties are guaranteed a statutorily determined amount as determined by the replacement provision established by P.L. 254-1997. The replacement provision was established to replace county Inheritance Tax revenue lost when the Class A exemption was increased on July 1, 1997. The replacement provision guarantees that each county receives Inheritance Tax revenue equal to the five-year annual average amount of Inheritance Tax received by that county from FY 1991 to FY 1997 excluding the highest and lowest years.

Currently, most counties retain more in Inheritance Tax revenues than is guaranteed under the replacement procedure. From FY 2000 to FY 2003, counties exceeded their guarantee amounts by an average of \$4.7 M annually with shortages subject to replacement averaging about \$200,000 per year. The total annual guarantee to counties is \$7.4 M. As a result, some reductions in county revenue exceeding the guarantee amount will not be replaced by the state.

A copy of the spreadsheet showing the amount of Inheritance Tax replacement guaranteed to each county under P.L. 254-1997 is available from the Office of Fiscal and Management Analysis.

*Sheriff's Sale Fee:* Under the bill, county sheriffs would have the option to impose an administrative fee of up to \$200 to cover the cost of a sheriff's sale of property. The number of mortgage foreclosures in which a final judgment was issued during CY 2003 are included in the *Indiana Judicial Report*. In CY 2003, 28,362 mortgage foreclosures were reportedly disposed in Indiana's trial courts. In CY 2002 the number of foreclosures disposed was 15,740. Assuming the reported foreclosures all resulted in a sale of property, the maximum amount of revenue collected from the proposed fee could range from \$3.2 M to \$5.6 M based on the number of disposed foreclosures in CY 2002 and CY 2003. Revenue generated by the proposed fee would be used for actual costs associated with the sale of mortgaged premises that have been foreclosed.

Under current law, sheriffs are required to charge a fee of \$10 to a sole owner of property for the service of a written notice of a sheriff's sale. The \$10 fee is currently deposited into the county general fund.

**State Agencies Affected:** Department of State Revenue.

**Local Agencies Affected:** Counties, Circuit Court Clerk, Probate Court.

**Information Sources:** OFMA Inheritance Tax database.

**Fiscal Analyst:** Jim Landers, 317-232-9869.