



Senate

General Assembly

File No. 667

January Session, 2007

Substitute Senate Bill No. 1272

Senate, May 1, 2007

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING ADMINISTRATION OF THE COURTS OF PROBATE AND THE DUTIES OF THE PROBATE COURT ADMINISTRATOR.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 45a-8 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2007*):

3 (a) The town or towns comprising each probate district shall
4 provide court facilities meeting the minimum standards required by
5 this section. If a probate district consists of more than one town, the
6 expense shall be allocated to the towns in proportion to their grand
7 lists last perfected. Such court facilities shall include: (1) Office space
8 appropriate for the conduct of judicial business, including (A) a room
9 for the judge of probate sufficient in size for ordinary matters in which
10 judicial proceedings may be conducted in private, (B) a separate room
11 for the court staff, and (C) on a prearranged basis, access to a larger
12 hearing room for the conduct of unusually large court hearings; (2)
13 furniture and furnishings appropriate to a court facility; (3) use and

14 maintenance of a copying machine and the necessary supplies; (4) use
15 and maintenance of [microfilming equipment and the necessary
16 supplies, including record books or the equipment to produce records]
17 court record systems and equipment, including such record books and
18 electronic, digital, microfilming or similar systems as determined by
19 the Probate Court Administrator, required to maintain, provide access
20 to and produce court records, and the necessary supplies for such
21 systems, equipment and records; (5) the necessary stationery, postage
22 and other related supplies in order that the court may properly carry
23 out its duties; (6) typing equipment with which to complete the
24 necessary records; (7) basic telephone service, which shall include all
25 local calls; (8) if a court is computerized, a dedicated telephone line
26 and maintenance of the computer equipment; and (9) adequate
27 liability, fire, loss, theft and replacement insurance on the furniture,
28 furnishings, equipment, court facilities and the records of the court.

29 (b) If a town or towns comprising a probate district and the
30 responsible municipal official or officials within such probate district
31 fail to provide the court facilities required by subsection (a) of this
32 section, the Probate Court Administrator shall offer in writing to meet
33 with the judge of probate of the district and the responsible official or
34 officials to discuss such court facilities. After discussion and
35 consideration of the circumstances of the court operations, the Probate
36 Court Administrator may waive or modify the application of a
37 particular requirement of subsection (a) of this section for court
38 facilities.

39 (c) If suitable court facilities are not provided in accordance with
40 subsection (a) or (b) of this section, [; (1) The Probate Court
41 Administrator shall submit a report to the joint standing committee of
42 the General Assembly having cognizance of matters relating to the
43 judiciary concerning the failure of the probate district to provide the
44 required court facilities, together with a recommendation that the
45 probate district be abolished as a separate district and be consolidated
46 with a contiguous district where suitable court facilities can be
47 provided; or (2) if, in the opinion of the Probate Court Administrator,

48 abolition of the district is not in the public interest and judicial action is
49 necessary to enforce the provision of suitable court facilities,] the
50 Probate Court Administrator shall (1) bring an action in the Superior
51 Court to enforce the requirements for the provision of suitable court
52 facilities, or (2) take action as authorized under section 3 of this act.

53 (d) Any town located in a probate district that desires to (1)
54 consolidate such probate district with one or more districts, (2) be
55 removed from such probate district to a separate district established
56 for any such town, or (3) be located in another probate district, may, by
57 resolution of its legislative body, petition the General Assembly for
58 such consolidation, separation and creation of a new probate district or
59 relocation. The Probate Court Administrator shall provide such
60 assistance in the preparation of the petition as the officials of the town
61 or towns may request. At the time of submission of a petition to the
62 General Assembly, a copy of the petition shall be sent to the judges of
63 probate in the probate districts to be affected. No probate district may
64 be consolidated with another district until the expiration of the term of
65 office of any probate judge in an affected probate district.

66 (e) Each judge of probate shall provide suitable records and
67 supplies, in accordance with subsection (a) of this section, for the court
68 in the judge's district. The judge of probate shall cause a complete
69 record to be made of all orders passed by such court and of all wills,
70 inventories, distributions, accounts, bonds and returns made to or
71 lodged with such court. The expense of records, microfilming or the
72 equipment to produce records, and of supplies which the judge deems
73 necessary, shall be paid, upon the order of the judge, by the town or
74 towns composing the district in proportion to their grand lists last
75 perfected.

76 (f) When the Probate Court Administrator, by regulation, requires
77 that the courts of probate use specified forms, education materials,
78 supplies or equipment not otherwise required by this section, they
79 shall be furnished by the Probate Court Administrator and the expense
80 paid from the [fund] Probate Court Administration Fund established

81 under section 45a-82, as amended by this act.

82 Sec. 2. Section 45a-77 of the general statutes is repealed and the
83 following is substituted in lieu thereof (*Effective October 1, 2007*):

84 (a) The Probate Court Administrator may attend to any matters
85 [which] that the Probate Court Administrator [deems] considers
86 necessary for the efficient operation of the courts of probate and for the
87 expeditious dispatch and proper conduct of the business of [those]
88 such courts. The Probate Court Administrator shall administer and
89 enforce the provisions of this chapter, sections 3 to 6, inclusive, of this
90 act and the regulations issued under this section, and shall ensure
91 performance of the duties of judges of probate and clerks of the courts
92 of probate in accordance with the provisions of this chapter, said
93 sections and such regulations. The Probate Court Administrator may
94 make recommendations to the General Assembly for legislation for the
95 improvement of the administration of the courts of probate.

96 (b) [(1)] The Probate Court Administrator may issue and shall
97 enforce regulations, provided such regulations are approved in
98 accordance with [this] subsection (c) of this section. Such regulations
99 shall be binding on all courts of probate and shall concern [the
100 auditing,] matters for the administration of the probate court system,
101 including, but not limited to: (1) Auditing, accounting, statistical,
102 billing, recording, filing and other court procedures; [. (2) The Probate
103 Court Administrator may adopt regulations, in accordance with
104 chapter 54, provided such regulations are approved in accordance with
105 this subsection. Such regulations shall be binding on all courts of
106 probate and shall concern] (2) the availability of judges; [,] (3)
107 standards for court facilities, court personnel, salaries, court operations
108 and records; [, hours of court operation and telephone service. (3)] (4)
109 reassignment and transfer of cases; (5) budgets, income and
110 expenditures of the courts of probate; (6) training of court personnel
111 and continuing education programs for judges of probate and court
112 personnel; and (7) the enforcement of the provisions of this chapter,
113 sections 3 to 6, inclusive, of this act and the regulations issued

114 pursuant to this section, including, but not limited to, the recovery of
115 expenses from a judge of probate who is not in compliance with this
116 chapter, said sections or such regulations.

117 (c) Either the Probate Court Administrator or the executive
118 committee of the Connecticut Probate Assembly may propose [such]
119 regulations authorized under subsection (b) of this section. Any
120 regulation proposed by the Probate Court Administrator shall be
121 submitted to the executive committee of the Connecticut Probate
122 Assembly for approval. Any regulation proposed by the executive
123 committee of the Connecticut Probate Assembly shall be submitted to
124 the Probate Court Administrator for approval. If either the Probate
125 Court Administrator or the executive committee of the Connecticut
126 Probate Assembly fails to approve a proposed regulation, such
127 proposed regulation may be submitted to a panel of three Superior
128 Court judges appointed by the Chief Justice of the Supreme Court. The
129 panel of judges, after consideration of the positions of the Probate
130 Court Administrator and the executive committee of the Connecticut
131 Probate Assembly, shall either approve the proposed regulation or
132 reject the proposed regulation.

133 [(c)] (d) The Probate Court Administrator shall regularly review the
134 auditing, accounting, statistical, billing, recording, filing,
135 administrative and other procedures of the [several] courts of probate.

136 [(d)] (e) The Probate Court Administrator shall, personally, or by an
137 authorized designee of the Probate Court Administrator who has been
138 admitted to the practice of law in this state for at least five years, visit
139 each court of probate at least once during each two-year period to
140 examine the records and files of such court in the presence of the judge
141 of the court or the judge's authorized designee. The Probate Court
142 Administrator shall make [whatever] any additional inquiries [are
143 deemed] that the Probate Court Administrator considers appropriate
144 [.] to ascertain whether the business of the court, including the
145 charging of costs and payments to the State Treasurer, has been
146 conducted in accordance with law, rules of the courts of probate,

147 regulations issued under this section and the canons of judicial ethics,
148 and to obtain information concerning the business of the courts of
149 probate which is necessary for the [administrator] Probate Court
150 Administrator to perform properly the duties of the office.

151 Sec. 3. (NEW) (*Effective October 1, 2007*) (a) If the Probate Court
152 Administrator determines that the business of a court of probate has
153 not been conducted in accordance with law, the regulations issued
154 pursuant to section 45a-77 of the general statutes, as amended by this
155 act, or the canons of judicial ethics, or that the business of a court of
156 probate is not being conducted properly or with expeditious dispatch,
157 or that suitable court facilities are not being provided for a court of
158 probate in accordance with subsection (a) or (b) of section 45a-8 of the
159 general statutes, as amended by this act, the Probate Court
160 Administrator shall give written notice of such determination, and the
161 reasons therefor, to the judge of such court. The Probate Court
162 Administrator shall include with such notice the Probate Court
163 Administrator's proposed disposition of the matter, which may
164 include one or more of the following actions: (1) Reassignment of any
165 case pending before such court to a special assignment probate judge
166 or to another judge of probate by means of a citation in the manner
167 provided in section 45a-120 of the general statutes; (2) designation of a
168 special assignment probate judge to assist the judge of such court in
169 conducting the business of such court; or (3) recovery of expenses from
170 the judge of such court, as permitted by regulations issued pursuant to
171 section 45a-77 of the general statutes, as amended by this act.

172 (b) (1) Not later than seven business days after receiving notice as
173 provided in subsection (a) of this section, a judge of probate who is the
174 subject of an action of the Probate Court Administrator under this
175 section may file with the Probate Court Administrator a request for a
176 hearing before a review panel. The review panel shall consist of (A) a
177 judge of probate selected by the Probate Court Administrator, (B) a
178 judge of probate selected by the judge who is the subject of the action,
179 and (C) a judge of probate jointly selected by the judges who have
180 been selected pursuant to subparagraphs (A) and (B) of this

181 subdivision.

182 (2) Not later than seven business days after the filing of a request for
183 a hearing under subdivision (1) of this subsection, the review panel
184 shall hold a hearing on the Probate Court Administrator's
185 determination and proposed disposition of the matter. The Probate
186 Court Administrator and the judge who is the subject of the action
187 shall have a right to be heard and present evidence at the hearing.
188 After the hearing, a majority of the members of the review panel may
189 affirm, dismiss or modify the Probate Court Administrator's
190 determination and proposed disposition of the matter under
191 subsection (a) of this section. The decision of the review panel under
192 this subsection shall be final and not subject to appeal.

193 (c) (1) Except as provided in subdivision (2) of this subsection, if a
194 timely request for a hearing is not filed under subdivision (1) of
195 subsection (b) of this section by the judge who is the subject of the
196 action, the Probate Court Administrator's proposed disposition of the
197 matter under subsection (a) of this section shall take effect immediately
198 upon the expiration of the seven-day period set forth in subdivision (1)
199 of subsection (b) of this section. Such disposition shall be final and not
200 subject to appeal.

201 (2) If the Probate Court Administrator determines that an
202 emergency exists, the Probate Court Administrator's proposed
203 disposition of the matter under subsection (a) of this section shall take
204 effect when the judge who is the subject of the action receives notice as
205 provided in subsection (a) of this section. Such proposed disposition
206 shall be subject to such judge's right to a hearing and the decision of
207 the review panel under subsection (b) of this section, provided the
208 validity of any order or decree made, proceeding held or other action
209 taken by a special assignment probate judge or another judge of
210 probate pursuant to such proposed disposition when an emergency
211 exists shall not be affected by any subsequent decision of the review
212 panel under subsection (b) of this section.

213 (d) The Probate Court Administrator shall issue regulations

214 pursuant to section 45a-77 of the general statutes, as amended by this
215 act, concerning rules of procedure for the conduct of any hearing
216 before a review panel under this section. Such rules of procedure shall
217 address matters including, but not limited to, the notice of the Probate
218 Court Administrator's determination and reasons therefor under
219 subsection (a) of this section, the content of a request for a hearing and
220 any notice of hearing, hearing procedures, evidence, subpoenas, the
221 production of documents, continuances, intervenors, the hearing
222 record and the right to cross-examine, present arguments and inspect
223 and copy relevant materials.

224 Sec. 4. (NEW) (*Effective October 1, 2007*) (a) There shall be special
225 assignment probate judges appointed by the Chief Justice of the
226 Supreme Court, on nomination by the Probate Court Administrator,
227 from among judges of probate elected as provided in section 45a-18 of
228 the general statutes and from among former judges of probate. A
229 nominee of the Probate Court Administrator shall have demonstrated
230 the special skill, experience or expertise necessary to serve as a special
231 assignment probate judge. A special assignment probate judge shall
232 serve at the pleasure of the Chief Justice.

233 (b) Special assignment probate judges (1) shall have all of the
234 powers of, and may hear and decide any matter that may be heard and
235 decided by, an elected judge of probate, (2) may preside over such
236 matters as shall be assigned by the Probate Court Administrator,
237 including matters assigned as the result of any action of a review panel
238 under section 3 of this act, and (3) may assist the Probate Court
239 Administrator in carrying out the duties of the office, including, but
240 not limited to, adjudicating matters before a court of probate that
241 require special skill, experience or expertise or in which the presiding
242 judge of probate is disqualified.

243 Sec. 5. (NEW) (*Effective October 1, 2007*) Subject to the approval of
244 the Chief Court Administrator, the Probate Court Administrator shall
245 fix the compensation of special assignment probate judges appointed
246 pursuant to section 4 of this act. Such compensation shall, on the order

247 of the Probate Court Administrator, be paid from the Probate Court
248 Administration Fund established under section 45a-82 of the general
249 statutes, as amended by this act. Such compensation, including
250 compensation that a special assignment probate judge receives as a
251 judge of probate of the district to which he or she was elected, shall not
252 exceed the compensation provided under subsection (k) of section 45a-
253 92 of the general statutes. A special assignment probate judge shall
254 have such benefits as may inure to him or her as a judge of probate
255 and shall receive no additional benefits, except compensation provided
256 under this section.

257 Sec. 6. (NEW) (*Effective October 1, 2007*) (a) A court of probate shall
258 be open to the public for the conduct of court business not less than
259 twenty hours each week, Monday through Friday, excluding holidays,
260 on a regular schedule between the hours of eight o'clock a.m. and five
261 o'clock p.m. The judge of probate of a probate district may close a
262 court temporarily owing to inclement weather, an emergency or other
263 good cause. Such judge shall immediately give notice of a temporary
264 closing to the Probate Court Administrator, together with the reason
265 for such closing and the date and time when the court will reopen.

266 (b) The Probate Court Administrator may, for good cause shown,
267 modify the requirements of this section.

268 Sec. 7. Subsection (l) of section 45a-82 of the general statutes is
269 repealed and the following is substituted in lieu thereof (*Effective*
270 *October 1, 2007*):

271 (l) The Probate Court Administrator may issue regulations pursuant
272 to [subdivision (1) of subsection (b) of] section 45a-77, as amended by
273 this act, in order to carry out the intent of subsections (j) and (k) of this
274 section.

275 Sec. 8. Subsection (c) of section 45a-92 of the general statutes is
276 repealed and the following is substituted in lieu thereof (*Effective*
277 *October 1, 2007*):

278 (c) Each judge of probate or personal representative, except a judge
 279 of probate who is the Probate Court Administrator, shall at the time of
 280 filing such returns pay to the State Treasurer to be credited to the fund
 281 established by section 45a-82, as amended by this act, a percentage of
 282 the annual net income from such office based on the following table in
 283 which the percentage appearing in the left column shall first be
 284 multiplied by the minimum annual compensation of a high volume
 285 court as provided in subsection (k) of this section, as in effect on the
 286 first day of July of the calendar year for which an assessment is due
 287 pursuant to this section, the product of which shall then be multiplied
 288 by the applicable percentage appearing in the right column:

T1	First 20% of the compensation assessment rate	
T2	of a high volume court	\$1 nominal
T3	Next 6.67%	5%
T4	Next 6.66%	10%
T5	Next 6.67%	15%
T6	Next 6.67%	25%
T7	Next 6.66%	35%
T8	Next 13.34%	50%
T9	Next 33.33%	75%
T10	Next 33.67%	80%
T11	Next 66.67%	85%
T12	Next 133.33%	95%
T13		
T14	Excess over 333.67%, up to the maximum amount computed at 97.5%	
T15	by the Probate Court Administrator	
T16		
T17	All over the maximum amount computed at 100% by the Probate	
T18	Court Administrator.	

289 As used [herein] in this subsection, "maximum amount" [shall mean]
 290 means the amount of annual net income from such office which, when
 291 applying the percentage payments set forth above, shall result in the
 292 judge of probate retaining as net compensation, after the payment of
 293 the above amounts, no more than the product resulting from the

294 multiplication of seventy-two dollars by the annual weighted-
295 workload of the court, as defined [by regulations to be adopted] in
296 regulations issued by the Probate Court Administrator pursuant to
297 [subdivision (3) of subsection (b) of] section 45a-77, as amended by this
298 act, but not to exceed the compensation of a high volume court as set
299 forth in subsection (k) of this section, provided this limitation shall not
300 apply to those courts described in subsection (k) of this section. Such
301 payment shall be deemed to be a necessary expense of such office, but
302 shall not be deductible from the gross income for the purpose of
303 determining net income of such office under this section.
304 Notwithstanding the provisions of this subsection, the annual
305 minimum compensation of a judge of probate shall be no less than the
306 product resulting from the multiplication of fifteen dollars by the
307 annual weighted-workload of the court, as defined [by regulations to
308 be adopted] in regulations issued by the Probate Court Administrator
309 pursuant to [subdivision (3) of subsection (b) of] section 45a-77, as
310 amended by this act, or no less than the judge's average compensation
311 for the three-year period from January 1, 1996, to December 31, 1998,
312 but, in no event shall that minimum compensation exceed that
313 provided pursuant to subsection (k) of this section.

314 Sec. 9. Subsection (f) of section 45a-92 of the general statutes is
315 repealed and the following is substituted in lieu thereof (*Effective*
316 *October 1, 2007*):

317 (f) If, based upon such estimate, the amount payable shall be less
318 than one hundred dollars, the payment thereof shall be made in one
319 payment on or before December thirty-first of the applicable year.
320 Otherwise, the amount payable shall be made in four substantially
321 equal installments payable on or before the last day of March, June,
322 September and December of the applicable year, except that in the case
323 of an estimate filed pursuant to subdivision (2) of subsection (e) of this
324 section, the amount payable under such estimate shall be made in
325 substantially equal installments on such installment payment dates
326 next following the timely filing of such estimate in such year. The
327 estimated payment may be amended and changed at any time during

328 the year in which it is payable by increasing or decreasing the amount.
329 The amount of such increase or decrease shall be paid for or adjusted
330 in the installment or payment due at the time the estimated assessment
331 is next payable after such amendment. The Probate Court
332 Administrator may [adopt] issue regulations pursuant to [subdivision
333 (1) of subsection (b) of] section 45a-77, as amended by this act, to carry
334 out the intent of this subsection.

335 Sec. 10. Subsection (i) of section 45a-92 of the general statutes is
336 repealed and the following is substituted in lieu thereof (*Effective*
337 *October 1, 2007*):

338 (i) (1) If any estimated quarterly payments required to be paid
339 pursuant to subsection (f) of this section [is] are less than one-fourth of
340 seventy per cent of the total assessment due for that year or less than
341 one-fourth of ninety-five per cent of the assessment paid for the prior
342 year, such person shall be obligated to pay to such fund a penalty of
343 ten per cent of the amount of the deficiency, except that the Probate
344 Court Administrator may waive such penalty for cause in accordance
345 with regulations [adopted] issued pursuant to [subdivision (1) of
346 subsection (b) of] section 45a-77, as amended by this act. Any such
347 penalty shall become payable upon demand by the Probate Court
348 Administrator, and be due within thirty days after such demand, in
349 accordance with regulations [promulgated] issued by the Probate
350 Court Administrator, and shall be subject to interest under subdivision
351 (2) of this subsection in the event of default in such payment. (2) Any
352 payments required under subsection (f) or (h) of this section which are
353 not paid at the applicable times prescribed in said subsections, and any
354 penalty payment required under subdivision (1) of this subsection
355 which is not timely paid, shall incur simple interest at the rate
356 applicable under section 12-376 for delinquent payment of succession
357 and transfer taxes where no extension has been granted, to be payable
358 to the State Treasurer and to be added to the fund established under
359 section 45a-82, as amended by this act. Any alleged delinquency of a
360 judge of probate in making payments as required under this section
361 shall be referred by the State Treasurer to the Attorney General for

362 such action as the Attorney General deems necessary.

363 Sec. 11. Subsection (g) of section 5-259 of the general statutes is
 364 repealed and the following is substituted in lieu thereof (*Effective*
 365 *October 1, 2007*):

366 (g) Notwithstanding the provisions of subsection (a) of this section,
 367 the Probate Court Administration Fund established in accordance with
 368 section 45a-82, as amended by this act, shall pay for each probate judge
 369 and Probate Court employee not more than one hundred per cent of
 370 the portion of the premium charged for his or her individual coverage
 371 and not more than fifty per cent of any additional cost for his or her
 372 form of coverage. The remainder of the premium for such coverage
 373 shall be paid by the probate judge or Probate Court employee to the
 374 State Treasurer. Payment shall be credited by the State Treasurer to the
 375 fund established by section 45a-82, as amended by this act. The total
 376 premiums payable shall be remitted by the Probate Court
 377 Administrator directly to the insurance company or companies or
 378 nonprofit organization or organizations providing the coverage. The
 379 Probate Court Administrator shall [establish] issue regulations
 380 governing group hospitalization and medical and surgical insurance
 381 [in accordance with subdivision (1) of subsection (b) of] pursuant to
 382 section 45a-77, as amended by this act.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2007</i>	45a-8
Sec. 2	<i>October 1, 2007</i>	45a-77
Sec. 3	<i>October 1, 2007</i>	New section
Sec. 4	<i>October 1, 2007</i>	New section
Sec. 5	<i>October 1, 2007</i>	New section
Sec. 6	<i>October 1, 2007</i>	New section
Sec. 7	<i>October 1, 2007</i>	45a-82(l)
Sec. 8	<i>October 1, 2007</i>	45a-92(c)
Sec. 9	<i>October 1, 2007</i>	45a-92(f)
Sec. 10	<i>October 1, 2007</i>	45a-92(i)
Sec. 11	<i>October 1, 2007</i>	5-259(g)

JUD *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 08 \$	FY 09 \$
Probate Court	PCAF - See Below	See Below	See Below

Note: PCAF=Probate Court Administration Fund

Municipal Impact:

Municipalities	Effect	FY 08 \$	FY 09 \$
Various Municipalities	Savings	120,000	160,000

Explanation

Explanation

The bill alters how changes in probate court operations may be imposed. The impact of this change on the Probate Court Administration Fund (PCAF) and on the probate system is indeterminate. Additionally, the bill mandates minimum standards on the operational hours of all probate courts and creates special probate judge assignments. These two provisions may result in a significant cost to the PCAF. Finally, the bill may result in a savings to municipalities, for reasons identified below. A section by section impact appears below.

Section 1 may result in a savings to municipalities in certain probate court districts, associated with increased use of digital document storage and a corresponding reduction in microfilm. It is estimated that the towns pay approximately \$250,000 annually for microfilming. The cost for digital scanning and electronic storage¹ is estimated to cost the towns approximately \$90,000 annually, resulting in a net savings of \$160,000 (\$120,000 in FY 08 due to the effective date of the bill).

¹ Recurring costs such as licenses and internet service will be paid for the towns.

Sections 2 and 8-11 expand the Probate Court Administrator's (PCA) authority to issue regulations. To the extent that the Probate Court Administrator promulgates regulations that impact budgetary items such as court personnel and salaries, a significant fiscal impact could occur, but cannot be estimated in advance.

Section 3 allows for the recovery of expenses from a judge whose non-compliance results in enforcement action. The extent to which this may occur is unknown at this time.

Sections 4 and 5 create special assignment probate judges. The creation of additional probate judges will result in a cost to the PCAF. Since the positions are new, and are appointed by the Supreme Court's Chief Justice, it is unknown how many additional positions and their associated costs will result.

Section 6 requires the probate courts to be open to the public at least 20 hours per week, and authorizes the PCA to modify the requirements. Currently, there are 30 courts open less than 20 hours per week. The cost of keeping the additional 30 courts in operation for at least 20 hours per week may result in a significant cost to the PCAF.

Section 7 makes technical changes that are not anticipated to result in a fiscal impact.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sSB 1272*****AN ACT CONCERNING ADMINISTRATION OF THE COURTS OF PROBATE AND THE DUTIES OF THE PROBATE COURT ADMINISTRATOR.*****SUMMARY:**

The bill gives the Probate Court Administrator additional powers over probate courts and probate court judges. Specifically it authorizes him to issue and enforce statutes dealing with probate court administration and with regulations he or she issues concerning such things as standards for court facilities, training, budgets, income, and expenditures. (§2) Also, under certain circumstances, it authorizes him to reassign pending cases to a special assignment probate judge or to another probate judge; designate a special assignment probate judge to assist the judge to conduct his or her business; or recover expenses from the judge, as permitted by regulation. These circumstances involve courts where (1) court facilities do not meet statutory minimum standards or (2) court business has not been conducted properly, with expeditious dispatch, or in accordance with law, the regulations issued pursuant to law, or the canons of judicial ethics.

The bill requires notice be given to the probate judge and establishes a procedure for him or her to challenge the Probate Court Administrator's determination and proposed actions concerning court facilities and business through a hearing before a review panel consisting of (1) a probate judge the Probate Court Administrator selects, (2) a probate judge selected by the judge who received the notice, and (3) a probate judge jointly selected by the judges already selected.

The bill establishes a procedure to nominate, appoint, and

compensate special assignment probate judges.

The bill establishes additional minimum standards for equipment and systems the Probate Court Administrator determines are required to maintain, provide access to, and produce court records.

EFFECTIVE DATE: October 1, 2007

RULE MAKING AND ENFORCEMENT AUTHORITY (§ 2)

Current law gives the Probate Court Administrator two types of regulation making authority. One way authorizes him to issue regulations for certain purposes following certain procedures. The other authorizes him to adopt regulations for other purposes following the procedures in the Uniform Administrative Procedures Act, which governs the adoption of regulations by all administrative agencies.

Current law authorizes the Probate Court Administrator to adopt regulations, in accordance with the Uniform Administrative Procedures Act (UAPA), concerning the availability of judges, court facilities, court personnel and records, hours of court operation, and telephone service. Among other things this process requires proposed regulations to be presented to the Legislative Regulation Review Committee for approval (see BACKGROUND). The bill eliminates the Probate Court Administrator's authority to adopt regulations under the UAPA, and instead authorizes him to issue regulations in this area.

By law the process to issue regulations allows either the Probate Court Administrator or the Probate Assembly's executive assembly to propose them. Any regulation proposed by the Probate Court Administrator must be submitted to the executive committee for approval. Any regulation proposed by the executive committee must be submitted to the Probate Court Administrator for approval. If either fails to approve a proposed regulation, it may be submitted to a panel of three Superior Court judges the Supreme Court's Chief Justice appoints. The panel may either approve or reject the proposed regulation.

The bill expands the Probate Court Administrator's authority to issue regulations to include:

1. standards for court facilities, court personnel, salaries, court operations, and records;
2. reassignment and transfer of cases;
3. budgets, income, and expenditures of the courts of probate;
4. training of court personnel and continuing education programs for judges of probate and court personnel; and
5. the enforcement of the statutes dealing with probate court administration, the bill's provisions, and the regulations the Probate Court Administrator issues, including the imposition of monetary sanctions against a judge who is not complying with the bill and state law or regulations, and remediation for noncompliance.

The bill gives the Probate Court Administrator the authority to administer and enforce the statutes dealing with probate court administration, the bill's provisions, and the regulations the Probate Court Administrator issues to ensure performance of the duties of probate judges and clerks.

But the bill eliminates his or her authority to adopt regulations concerning telephone service and does not give him or her authority to issue regulations in these areas.

The law gives the Probate Court Administrator the duty and authority to regularly review the auditing, accounting, statistical, billing, recording, filing, and other procedures of the courts of probate. The bill also requires him or her to review their administrative procedures.

The law requires the Probate Court Administrator, or his or her designee to visit each court of probate at least once during each two-

year period to examine their records and files. It also authorizes him or her to make any additional inquiries that he or she considers appropriate to ascertain whether the business of the court has been conducted in accordance with law, rules of the courts of probate, and the canons of judicial ethics. The bill also authorizes him or her to determine whether the courts are complying with regulations the administrator issued.

MINIMUM STANDARDS FOR PROBATE COURT FACILITIES (§ 1)

The law requires the town or towns comprising each probate district to provide court facilities meeting minimum standards specified by statute. Existing law requires them to provide the use and maintenance of microfilming equipment and the necessary supplies, including record books or the equipment to produce records. The bill expands the duty to include electronic, digital, microfilming, or similar systems the Probate Court Administrator determines are required to maintain, provide access to, and produce court records, and the necessary supplies for such systems, equipment, and records.

ADDITIONAL POWERS OF PROBATE COURT ADMINISTRATOR (§ 1)

By law, if a town does not provide the court facilities required by law, the Probate Court Administrator must offer in writing to meet with the judge and the responsible local officials. The Probate Court Administrator may subsequently waive or modify the application of a particular requirement for the court.

Under current law, if court facilities do not comply with the minimum standards, the Probate Court Administrator must either (1) submit a report to the judiciary committee together with a recommendation that the probate district be abolished as a separate district and be consolidated with a contiguous district where suitable court facilities can be provided; or (2) if, in the Probate Court Administrator's opinion, abolition is not in the public interest and judicial action is necessary to enforce the provision of suitable court facilities, bring an action in the Superior Court to enforce the

requirement to provide suitable court facilities.

The bill eliminates the option of reporting to the judiciary committee and recommending consolidation of the district. Instead it requires the probate court administrator to either go to court as specified in existing law or to follow the procedures the bill establishes for taking action to correct situations.

ENFORCEMENT OF LAWS AND COURT RULES (§ 3)

Notice

The bill requires the probate court administrator to give written notice to a probate court judge if he or she determines that:

1. the business of the judge's court has not been conducted properly, with expeditious dispatch, or in accordance with law, the regulations the administrator issued, or the canons of judicial ethics; or
2. suitable court facilities are not being provided for a court of probate in accordance with legal requirements.

The notice has to include the administrator's reasons and a proposed disposition, which may include one or more of the following actions:

1. reassignment of any case pending before such court to a special assignment probate judge or to another judge of probate by means of a citation in the manner provided in law,
2. designation of a special assignment probate judge to assist the judge to conduct its business, or
3. recovery of expenses from the judge of such court, as permitted by regulation.

Hearing

Under the bill, within seven business days after receiving this notice, the probate judge may file with the probate court administrator

a request for a hearing before a review panel. The review panel must consist of (1) a probate judge selected by the probate court administrator, (2) a probate judge selected by the judge who received the notice, and (3) a probate judge jointly selected by the judges already selected.

Within seven business days after the filing of a request for a hearing, the review panel must hold a hearing on the probate court administrator's determination and proposed disposition of the matter. The probate court administrator and the judge of probate who is the subject of the action have a right to be heard and present evidence at the hearing. After the hearing, a majority of the members of the review panel may affirm, dismiss, or modify the probate court administrator's determination and proposed disposition. The review panel's decision is final and not subject to appeal.

If the notified judge does not make a timely request for a hearing, the probate court administrator's proposed disposition takes effect immediately after the seven-day period expires. This disposition is final and not subject to appeal.

Emergency Action

If the probate court administrator determines that an emergency exists, the probate court administrator's proposed disposition takes effect when the probate judge receives notice. The proposed disposition is subject to such judge's right to a hearing and a decision of the review panel. But the validity of any order or decree made, proceeding held, or other action taken by a special assignment probate judge or another judge of probate pursuant to such proposed disposition when an emergency exists is not affected by any subsequent decision of the review panel.

Regulations

The bill requires the probate court administrator to issue regulations concerning rules of procedure for review panel hearings. The rules must address:

1. the notice of the probate court administrator's determination and reasons for it;
2. the content of a request for a hearing and other notices; and
3. the conduct of the hearing, evidence, subpoenas, productions of documents, continuances, intervenors, the hearing record, the right to cross-examine, present arguments, and inspect and copy relevant materials.

SPECIAL ASSIGNMENT PROBATE JUDGES (§ 4)

Nomination and Appointment

The bill authorizes the Supreme Court's chief justice to appoint special assignment probate judges nominated by the probate court administrator, from among current and former probate judges. A nominee must have demonstrated the special skill, experience, or expertise necessary to serve as a special assignment probate judge. A special assignment probate judge shall serve at the chief justice's pleasure.

Powers

The bill gives special assignment probate judges all of the powers of probate judge and authorizes them to hear and decide any matter that an elected judge of probate may hear and decide. The bill authorizes them to be assigned by the probate court administrator to these probate matters including matters assigned as the result of any action of a review panel. It also authorizes them to assist the probate court administrator in carrying out the duties of the office, including, but not limited to, adjudicating matters before a court of probate that require special skill, experience, or expertise or in which the presiding judge of probate is disqualified.

Compensation (§ 5)

The bill authorizes the probate court administrator, subject to the chief court administrator's approval, to fix the compensation of special assignment probate judges. The compensation is paid from the Probate

Court Administration Fund on the probate court administrator's order. The bill specifies that the compensation, including compensation that a special assignment probate judge receives as a judge of probate of the district to which he or she was elected, may not exceed the maximum compensation for probate judges in a high volume court. (The maximum compensation for a high volume court is 75% of the salary of a Superior Court judge. Currently, a Superior Court judge is paid \$146,780. Thus, the maximum a probate judge can earn is \$110,085.)

The bill specifies that a special assignment probate judge is only entitled to benefits as may inure to him or her as a judge of probate and can not receive additional benefits, except compensation specified by the bill.

MINIMUM HOURS § 6

The bill eliminates the probate court administrator's authority to adopt regulations concerning the hours of operation of probate courts. Instead it requires that courts of probate be open to the public for the conduct of court business not less than 20 hours a week, Monday through Friday, excluding holidays, on a regular schedule between the hours of eight o'clock a.m. and five o'clock p.m. The judge may close a court temporarily for inclement weather, an emergency, or other good cause. The judge must immediately give notice of a temporary closing to the probate court administrator, together with the reason for such closing and the date and time when the court will reopen.

The bill authorizes the probate court administrator, for good cause shown, to modify these requirements.

BACKGROUND

Uniform Administrative Procedures Act (UAPA)

The UAPA requires agencies to publish a notice of intent to adopt a regulation. The notice must be printed in the Connecticut Law Journal at least 30 days before the regulation is adopted. These agencies must also give prior notice to each legislative committee of cognizance of the proposed regulation. Agencies must send these committees copies of

the regulations and their fiscal notes. The regulations are deemed valid as long as at least one committee is notified and receives copies of the regulation and fiscal note. An agency must also prepare information on the projected fiscal impact of the regulation and permit and consider public comment. It must keep the interested public fully informed at every stage of the process.

Two approvals are required before a regulation may become effective. The attorney general must approve it for “legal sufficiency,” meaning it does not conflict with the law and has been prepared in compliance with the UAPA requirements. Within 180 days of publishing the notice of intent, an agency must submit the regulation to the Legislative Regulation Review Committee. That bipartisan committee must review all proposed regulations.

The committee is authorized to take three possible actions: approve the whole regulation or a part of it, disapprove the whole or a part, or reject without prejudice the whole or a part. The General Assembly can reverse the committee’s disapproval. When the committee rejects a regulation, or a part of it, without prejudice, the agency must resubmit required regulations and may resubmit any other regulations.

After the committee approves a regulation, the agency files two certified copies with the Office of the Secretary of the State for publication.

Related Statutes

By law, if any judge of probate declines to act, or is disqualified from acting as judge of probate, or is absent or unable to discharge his duties, or if the office of judge of probate in any district becomes vacant, the Probate Court Administrator must cite any judge of probate to act as judge of probate in the district to which he has been cited during such inability, absence, or vacancy or in the matters in which the judge declines to act or is disqualified (CGS § 45a-120).

Any judge of probate who is cited and qualified to act in another

district may issue any order in his own district, as acting judge of the other district, as long as no prior hearing of adverse parties is required. Any such order shall be recorded in the records of the other district (CGS § 45a-121)

In the determination of any matter pending before a court of probate, the judge may call to his assistance any judge of the Superior Court, any other judge of probate or the probate court administrator who, personally or by his designee, shall assist the judge (CGS § 45a-119).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 39 Nay 1 (04/11/2007)