Thank you for the opportunity to testify on HB 7410, An Act Concerning Certain Tax Recommendations of the Commission on Fiscal Stability and Economic Growth and Establishing a STEM Scholarship Program. This testimony will address three provisions of the bill: sections 15 to 17, which repeal the gift tax; sections 18 and 19, which repeal the estate tax; and section 20, which repeals the probate fee on decedents’ estates.

The Office of the Probate Court Administrator does not take a position on the proposed changes to estate and gift taxes or probate fees. Our sole purpose in offering testimony is to alert the committee to the significant financial impact of these proposals on the finances of the Probate Courts.

Repeal of Estate and Gift Taxes

If the estate tax is repealed, probate fee revenue will fall by $17 million annually. Repeal of the gift tax (independent of any adjustment to the estate tax) will cause a $0.5 million annual reduction in probate fee revenue.

Estate and gift taxes affect probate fees on decedents’ estates because the probate fees are calculated on the assets reported on decedents’ estate tax returns. The estate tax return lists all of the decedent’s assets, including both probate assets and assets that pass
outside of probate, such as jointly-owned property, life insurance, individual retirement accounts and property held in trust. The estate tax return also lists any taxable gifts the decedent made before death. If the obligation to file an estate tax return is eliminated, the asset base on which the probate fee is calculated shrinks dramatically, cutting probate fee revenue by 53%.

We expect the decline in probate fee revenue to worsen over time. If probate fees apply only to assets passing through probate, individuals will have an incentive to arrange their estates so that assets pass outside of probate. This, in turn, will cause further reduction in the asset base on which probate fees are calculated. The inevitable result is that the proportion of Probate Court operating expenses borne by the General Fund will need to increase in future years.

Repeal of Probate Fees on Decedents’ Estates

Section 20 presents an even larger challenge: by repealing the probate fee on decedents’ estates altogether, it causes a $32 million annual revenue loss for the Probate Courts.

The change would bring about a dramatic departure from the state’s current policy for financing the Probate Courts, which relies heavily on estates to subsidize vital safety net services for seniors, children and adults with mental illness and intellectual disability. In the current fiscal year, fees on decedents’ estates represent 80% of all revenue collected by the Probate Courts.

Budget Impact

To put the financial impact in perspective, the entire cost of running the Probate Court system in FY20 is $50.6 million. Our proposed General Fund Appropriation, assuming no change to the estate and gift taxes and probate fees, is $7.2 million. If the estate and gift taxes are repealed, the General Fund appropriation would need to increase to $24.2 million. The necessary appropriation jumps to $39.2 million if the probate fee on decedents’ estates is repealed.

Thank you for your consideration.