

Legislative History for Connecticut Act

<u>HB 7146</u>	<u>RA. 279</u>	<u>1993</u>
Senate:	3711-35	(25 p.)
House:	4887, 9240-9282, 11214-11218	(49)
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SENATE

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0 Absent

The bill passes.

Mr. Clerk, I believe that completes the third Go List.

SENATOR MUSTONE:

Madam President.

THE CHAIR:

Yes, Senator Mustone.

SENATOR MUSTONE:

Madam President, may I please request suspension of the rules in order to take up on Page 18, a single starred item, Calendar 602?

THE CHAIR:

On Page 18?

SENATOR MUSTONE:

Yes, Calendar 602, Substitute for House Bill 7146.

THE CHAIR:

Thank you very much. Senator Mustone has made a motion to suspend the rules for the purposes of taking up one single starred item. It's Calendar 62, Substitute for House Bill 7146. Is there any objection to her motion to suspend the rules for that purpose? Is there any objection? Hearing none, so ordered.

Mr. Clerk.

THE CLERK:

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Calendar Page 18, Calendar No. 602, File 1001,
Substitute for House Bill 7146, AN ACT CONCERNING
PROBATE MATTERS. (As amended by House Amendment
Schedules "A", "B", "C" and "F").

Favorable Report of the Committee on Finance,
Revenue and Bonding.

The Clerk is in possession of one amendment.

THE CHAIR:

Thank you very much. The Chair would recognize
Senator Jepsen.

SENATOR JEPSEN:

Thank you, Madam President. I move acceptance of
the Joint Committee's Favorable Report and passage of
the bill in concurrence with the House.

THE CHAIR:

Thank you very much. Mr. Clerk.

THE CLERK:

LC09202, which will be designated Senate Amendment
Schedule "A". It's offered by Senator Przybysz of the
19th District.

THE CHAIR:

The Chair would recognize Senator Przybysz.

SENATOR PRZYBYSZ:

Thank you, Madam President. I move acceptance of
the amendment and request permission to summarize.

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THE CHAIR:

Please proceed, Senator.

SENATOR PRZYBYSZ:

Thank you, Madam President. This makes a correction to Section 18 of the file. In particular, it states that if anyone is going to use this section for exhumation of a body, then go to a Probate judge, that the person request that either resides in the district or they can go to the Probate judge in the district in which the remains of such child are interred.

THE CHAIR:

Thank you very much. Would anybody else wish to remark on LCO No. 9202? Are there any further remarks? Any further remarks on Senate Amendment "A"? If not, then please let me know your mind. All those in favor of LCO No. 9202, designated by the Clerk as Senate Amendment "A", please signify by saying aye.

SENATORS:

Aye.

THE CHAIR:

Those opposed.

The ayes have it.

The amendment is adopted.

Are there any further amendments, Mr. Clerk.

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THE CLERK:

No further amendments, Madam President.

THE CHAIR:

Senator Jepsen, you have before you Substitute for House Bill 7146, as amended by Senate Amendment "A".

Do you wish to remark further on the bill, sir?

SENATOR JEPSEN:

I would. Thank you very much, Madam President. A year ago the General Assembly -- I'm sorry, not the General Assembly -- a commission was put together by the Probate Courts to look into a number of growth problems associated with the Probate Courts. The commission worked long and hard and submitted its recommendations most of which have been adopted by the Judiciary Committee in creating this bill.

I want to say that there's a lot of quiet work that goes on on legislation that affects people's lives on a day-to-day basis that is very high quality and I think this bill accurately reflects the excellent work of the commission. Representative Wollenberg from the House, in particular, deserves enormous credit for attending virtually every commission meeting and for working with the committee to craft this legislation.

What it does is to update our Probate Court so that they can better meet the needs of our society in

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the 1990s in a number of different ways, in particular, setting some minimum standards for courts especially smaller courts and adjusting fee schedules so that the courts can operate in the black.

On the whole, Connecticut's system of Probate is a highly successful system. It's popular with the people because of the very close relationship the public and a community feels with its Probate judge. This legislation does nothing to eliminate or reduce or cutback on that historical sense of access to the Probate Courts, but it brings them a little bit more into -- to meet the needs, as we know them particularly, as family structures change and the demands placed on our court system change.

So I strongly endorse this legislation and I hope it will receive the support of this Chamber.

THE CHAIR:

Thank you very much, Senator Jepsen. Would anybody else wish to remark on Senate Calendar 602? Are there any further remarks? Any further remarks? Senator Smith.

SENATOR SMITH:

Yes, Madam President. Through you, to the proponent of the bill, as you noted in there, there's a whole series of fee increases, and according to the

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fiscal impact, significant ones, significant revenue gains.

Can you explain to me why these are needed and why they're going up at such a significant amount?

THE CHAIR:

Senator Jepsen.

SENATOR JEPSEN:

This is really a pay as you go court system and the different courts have to run their own affairs and the different kinds of motions that are filed, particularly with the increase in the number of paternity type situations, adoption situations and the costs -- their activities especially with children in adoption situations for which a court might do an enormous amount of work but collect no or virtually no fees whatsoever.

It really reflects more than anything the evolving and changing nature of Probate work which imposes costs on those courts. So it's an attempt to continue to allow the courts to operate in the black and it's a fee schedule that was -- the different court administrators worked over quite intensely and there was a lot of discussion and this is what we feel is the fairest thing to ensure that our court systems operate in the black. It's really a pay as you go system and what's

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been in the past will be when we're done.

SENATOR SMITH:

I just notice that it seems to state in the impact statement here that the fund is running a surplus and would continue to do so. It appears even without these fee increases. I just -- you seem to be indicating that it's just perhaps time to increase fees and I just don't -- I don't see from this the driving need for the increase and I don't mean to --.

THE CHAIR:

(Gavel)

SENATOR SMITH:

Anybody's work on the task force.

THE CHAIR:

Could I interrupt this discussion for two seconds. The Chair would recognize Senator Looney, who has a very difficult problem with this whole issue. Senator Looney.

SENATOR LOONEY:

Yes, thank you, Madam President. I was unaware that this matter was going forward, Madam President, because of its single starred status. Because of that, I would like to exempt myself from the debate and vote on this as I did on Calendar 489, pursuant to Senate Rule 15.

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THE CHAIR:

Thank you very much. The Journal will note that Senator Looney is out of the Chamber under Senate Rule 15. Now, Senator Smith, I apologize for interrupting you, sir, but you could see that we had a slight difficulty there. Would you like to continue with your discussion with Senator Jepsen.

SENATOR SMITH:

I was on Page 23.

SENATOR JEPSEN:

Page 23 of the -- excuse me, I have a different file. The Central Fund has a surplus, but that doesn't mean that individual courts are able to operate under the fees that they receive, especially more urban courts are -- which carry an enormous workload of uncompensated or undercompensated clients have difficulty.

THE CHAIR:

Senator Smith.

SENATOR SMITH:

Okay, well, I know that the Probate system is pay as you go and I don't think that it's a bad system. It's a good system. I just don't see the justification here for these kinds of fee increases. They're just -- and then there may be justification. I just don't see

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it here and to just pass them without any reason other than somebody told us it's time to increase them, it just doesn't seem like a very good reason. Thank you, Madam President.

THE CHAIR:

Thank you very much, Senator Smith. Senator Gunther.

SENATOR GUNTHER:

Madam President, I'd like to take and continue the dialogue. I think that it's really a breath of fresh air to see a lawyer, even if he is a tax lawyer, to get up here and be critical of these things, but very frankly, I know it's a pay as you go, but somebody pays in the Probate system and those somebodies are that \$3 million people that out here in the State of Connecticut that have to go in there and get these services.

When I look at the details here that we are getting a surplus, and of course, they show a three percent decrease and that, but they show an expenditure increase of 99.7 percent and that's going from \$1 million to \$2,182,000. Now that comes from somebody and those expenses go somewhere and we just see a bill pass by here on health benefits and surgical benefits and that. I've been up here. We've gone to pensions

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for a part-time job and if you see some of the salaries in some of these Probate Courts, there are about six to ten hours a week, I'd say that's very sufficient type salary for a part-time job.

Now in addition to that, if you go to Page 25, the impact there says passage of the bill as amended would result in potential cost to the municipalities related to the minimum standards that towns must adhere to in the provision and operation of the Probate Court and while others will find it significant, now all you have to do is go to Page 27 and you'll find out there's a whole laundry list of things that have to be supplied, many of those, probably by the town, if not out of the fees, that they're operating in that town and as a non-partial analysis from our fiscal analysis people shows that it can be a substantial increase in some towns and even though they identify that there can be some agreement there not to do these, I say that when we pass this type of legislation this is another mandate on the town to take and come up with some bread in order to take and pay for this Probate Court.

I'll tell you, that's a sweet job and if any of us are in this Circle, you don't have to be a lawyer. You can be a Probate judge and maybe that's where ought to look for a retirement program for poor, old tired

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legislators. So that I say that this is something that definitely we should not support, and as far as I'm concerned, I'd like to have a roll call, Madam Chairman.

THE CHAIR:

I think we will, Senator Gunther, because Senator Looney has to be out of the Chamber. Senator Freedman. Oh, Senator Jepsen, I'm sorry.

SENATOR JEPSEN:

If I might respond very briefly to Senator Gunther on the two central points that he makes. I take great exception to the perspective that Probate judges are overpaid. It's been my experience that a great many of them, especially those in urban districts, make far less than they could in their law practice on an hourly basis.

Their income is capped and they cannot go above it and many of them spend a lot more than six to ten hours a week. It becomes in effect a full-time job leaving them virtually no time to practice law and the demands on them are quite extraordinary. So I don't think that they are -- can correctly be characterized as over-compensated.

The second point about the demands placed on municipalities to provide adequate space for courts,

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this gets to the core of provision of service in our state and it was found over the course of the study that in a number of municipalities the Probate Court would be in session in some towns for perhaps one morning a week and that the judge was providing wholly inadequate facilities to take care of the caseload. In one case it was found that the judge was operating as a judge out of his own law office and I don't think there's anything wrong with requesting that minimum standards be applied and be upheld if someone wishes to be a judge of Probate. So the demands that are being placed are really fairly minimal. They're there to protect the public and I think that this bill is a good bill.

THE CHAIR:

Thank you very much. Senator Freedman.

SENATOR FREEDMAN:

Thank you, Madam President. Just a comment and maybe Senator Jepsen could answer a question, through you. It's my understanding that the monies received by the Probate judges after they reach what it is that they're allowed to earn and spend on the expenses of running the office go into the Probate Fund, through you, to Senator Jepsen, are there any Probate Courts right now which are running in the red?

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THE CHAIR:

Senator Jepsen.

SENATOR JEPSEN:

There are. I don't have all the facts right at my fingertips, but there are Probate Courts that are, I know of one judge, for example, who has not been able to pay himself for a period of months although he has putting in workweeks in the 30 to 40 hour a week range because there is insufficient funds because of the enormous load before him of essentially uncompensated cases. They have to perform work. There's no fee structure and that's when you see a breakdown in the system and this legislation remedies these kinds of problems.

THE CHAIR:

Senator Freedman.

SENATOR FREEDMAN:

Yes, thank you, Madam President. Again, I guess my comment would be then if this money is going to make an unequalization between the various Probate Courts because we know we have some pretty lucrative ones that are also contributing to the fund, that this is probably the necessary route to go in order to provide for those Probate judges who live in areas where that is not happening and I would assume, and this is again,

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through you, Madam President, to Senator Jepsen, that the money would come out of this fund then to support those Probate Courts to make it an equalized situation.

THE CHAIR:

Senator Jepsen.

SENATOR JEPSEN:

In the future where local funds prove insufficient, that would be the case.

THE CHAIR:

Senator Freedman.

SENATOR FREEDMAN:

Yes, thank you. I intend to support this bill. I believe what -- the way Senator Jepsen has answered the questions is encouraging and I know, having dealt with Probate Courts I'm sure other people in this Chamber have too, that they are necessary. They are quite different from our Superior Courts. They do handle a lot of other things besides wills and estates and probating that part of it. They deal with guardianship and other areas which are very important. Thank you.

THE CHAIR:

Thank you very much, Senator Freedman. Senator Upson.

SENATOR UPSON:

Yes, I also want to rise in support. I realize it

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is -- there are increases, but I remember talking. I had a hearing done in Bridgeport. I don't know if it was six years ago. I'm not sure if it's the same Judge of Probate, but his court was not breaking even. In the large cities, there are many pro-bono or indigent hearings, and for example, any time someone needs a conservator, poor or otherwise, they have to go through the Probate Court.

We're always talking about wills and trusts and yet we forget of guardianships. We forget if a child gets some money that's under 18 years old, obviously a minor, the judge of Probate has to set up and review an account for children.

So obviously anything having to do with a minor, the affairs of a minor, obviously the Probate Court is involved. Guardianships, and we're talking about indigent people too. Conservatorships, construing wills and trusts. Everyone thinks that the trust work is probably -- the trust work in Hartford and Bridgeport is probably minimal compared to the indigent work that's being done right now and I have an associate who works for me and does indigent work in Waterbury. I think the state pays \$25 an hour for that, but -- and that's just for a lawyer, and of course, the Probate judge isn't being paid anything at

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all.

So not that I agree with fee increases. I did have a person who was on this committee, and yes, it does increase and I think some people are not pleased with the increases, but basically it will keep the system solvent. Obviously when we took away the tax on Probate estates between husband and wife and wife to husband, that gutted out a lot of the fees and now we are coming back a little with costs, increasing the costs somewhat.

Not to belabor it, it was a comprehensive group made up of large Probate staff people as well as small Probate judges so that the whole system was properly reviewed, I feel, but I agree with -- I mean there is mixed emotions with it. There is the question of fee increases, but once again, the act of death, unfortunately, is a taxable matter and so are the other matters that the Probate Court deals with and this means that some people -- in a way, Senator Gunther, it's like the hospitals. It's uncompensated care, unfortunately, and that's what we're taking care of. There's many things that a Probate judge does he's not -- he or she is not compensated for. So in a way, this is an analogy, when the hospital -- you're charging others for those who aren't paying their fair share.

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So I do support this. Thank you.

THE CHAIR:

Thank you very much, Senator Upson. Senator
Gunther.

SENATOR GUNTHER:

Madam President, just very, very mercifully brief
because I could talk an awful lot about this, but my
heart really bleeds when I hear about all this freebie
and all the work and all the things that are done in
the Probate Court, although by admission right here
that are only open one day a week sometimes maybe
several hours and that type of thing, even in the Town
of Stratford.

You know, the employees that are working in the
Probate Court, now there, if you take and tell me
you're going to get more benefits for them, I've seen
them work their butt off and spend the five days a week
from 8:00 in the morning until 5:00 and 6:00 at night
and that type of thing. Yes, I believe these are hard
working employees and they're the ones that are doing
the yeoman's part of the work in Probate Court.

Now we see these poorly paid jobs that these people
during those elections times, have you ever seen them
out there, crawling all over each other, beating each
other's brains, spending a hell of a lot more than some

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of the legislators do to get reelected and that's for that poorly paid job. It's a great job. All I have to say is somebody has to pay these fees and knows somebody or else people that are out there who go through a Probate process and I've seen it where I run in, I've been a conservator. I've been an executor on several of them and I went in there and passed in a report. I had to pay something like \$285 or something and it took me a hell of a long time. It took them about three minutes to sign it and put me back out the door.

So I have great sympathy, but mostly for the employees, not for the judges.

THE CHAIR:

Thank you very much, Senator Gunther. Yes, Senator Smith.

SENATOR SMITH:

Thank you, Madam President. I have a couple of other things here that unfortunately have just come to light that I'd like to ask Senator Jepsen about, but first, it's too bad Senator Daily is not here. She made a comment earlier and I know that a lot of people who ran in this last election talked a whole lot about the unfunded mandates and I thank Senator Gunther. I hadn't noticed those over there and there was a whole

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page full of them and when you make statements during campaigns like we're not going to subject municipalities and other entities to any more unfunded mandates. There are going to be tough bills like this one where you get some good parts of the bills and maybe some things that are worth supporting where there are significant municipal unfunded mandates and a lot of people said they wouldn't do it and here's a bill where the acid test is going to come.

There's a decent bill here. It's got unfunded mandates. It's got fee increases and now's the time. Think back to when you were out there. What did you mean when you said it?

One of the other things I'd like to note here. Senator Jepsen, what's this \$5 million transfer that went out of the Probate Court Fund into the General Fund during 1992 and is that ever going to come back or is that just kind of a raid that they want on here?

THE CHAIR:

Senator Upson.

SENATOR SMITH:

Can I yield the floor to the Senator from Waterbury?

SENATOR UPSON:

Isn't it my understanding that there are

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\$5 million in 1991 or 1992 that was taken out of that fund, it was surplus, and used for the General Fund to balance the budget?

SENATOR JEPSEN:

That is correct.

SENATOR SMITH:

Okay, let me just get this right then.

THE CHAIR:

Senator Smith.

SENATOR SMITH:

There was some kind of deficiency in the General Fund and this fund was raised by \$5 million and now we're increasing fees on everybody to fund that raid back? That's what's going on here?

THE CHAIR:

Senator Jepsen.

SENATOR JEPSEN:

We're increasing fees that will allow -- certain fees that will allow courts to proceed and to survive. One thing I want to clarify. There is a net increase in revenues that will take place, but it's a shift -- it's not exclusively through fee increases. There are a large number of fees that are actually reduced or eliminated. In fact, for the largest kind of estate, which is a spouse dies and property goes to the

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surviving spouse, we eliminate that fee, so most people who are paying fees are going to end up paying less. It's a shift within the fee structure, not exclusively a fee increase.

THE CHAIR:

Senator Smith.

SENATOR SMITH:

Thank you, Madam President. Boy, that significant revenue gain comes from somewhere, shifting fee increases is shifty language, if you ask me. I understand this \$5 million now was somehow wrapped into the whole income tax deal and that \$5 million was pulled out of that fund to try to make up for whatever was going on up here. Back then I wasn't here. There's something wrong here.

We're increasing fees here again to make up for a \$5 million plunder we ran on the State of Connecticut a year or two ago. This is -- this part of it's really, this is bad. This is a bad legislation and I hope everybody is going to think real hard before they increase everybody's fees because we needed \$5 million in a deficit situation a few years ago. Thank you, Madam President.

THE CHAIR:

Thank you very much, Senator Smith. Senator

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Freedman, for the second time.

SENATOR FREEDMAN:

Thank you, Madam President. I believe there is still money in the Probate Fund, that that has not been totally tapped out. I also believe that any fees that come in through the Probate Courts go to maintain those courts and that any excess then goes into the Probate Fund and I believe also that Senator Jepsen has mentioned it is a shift in those fees so that those people who can ill afford the expenses or the higher expenses of the Probate Court will not be paying as much money. That being the case, I think my colleagues should reconsider their votes and vote to support the bill. We are not raiding the fund. We are not doing anything to hurt the fund. The money that was taken by the General Fund when it was needed has not impeded this fund at all and certainly in the course of time and in the history of the Probate Courts, what we're doing today is only going to make it a better, more efficient system.

THE CHAIR:

Thank you very much. Senator Jepsen.

SENATOR JEPSEN:

Just a quick comment. I think later today we're going to vote on the division of the Pequot money.

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Twenty-three percent of our state budget is checks that we cut to municipalities. I hear a lot of people complain about unfunded mandates to municipalities. I don't hear them complain very much or raise issue when we just cut checks to their cities and towns and don't tell them how to spend it.

There's an intricate, delicate relationship that exists between our cities and towns and our state government. The mandates cut a lot of different ways. Teacher contracts are negotiated locally which the state has no control over and the municipalities impose a liability on the state government to pay the retirement of their teachers. This is a two-way street and I think that if you, you know, if you look at it in the larger framework, in a a balanced framework, you can agree or disagree about how that balance ought to be shifted; but to pretend that all we're doing up in this legislature is to place mandates on municipalities, without looking at the other side of the coin where the state provides a lot of direct cash simply misrepresents the picture.

Just to stress, the fees that are collected are used first to pay the cost of local Probate Courts. It's only if there is a surplus that they can go to the Probate Fund. It's, you know, Senator Smith can

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characterize it as he pleases, but it's a system that's worked pretty well and the file copy or the copy as amended hopefully will make it a little bit better.

THE CHAIR:

Thank you very much. Would anybody else wish to remark on Senate Calendar 602? Are there any further remarks? If not, Madam Clerk, would you make the necessary announcement for a roll call vote.

THE CLERK:

An immediate roll call has been ordered in the Senate. Will all Senators please return to the Chamber. An immediate roll call has been ordered in the Senate. Will all Senators please return to the Chamber.

THE CHAIR:

Thank you very much, Madam Clerk. The issue before the Chamber is Senate Calendar 602, Substitute for House Bill No. 7146, as amended by Senate Amendment "A". The machine is on and you may record your vote.

Is Senator Fleming here? Is Senator Fleming here? He out on legislative business? Have all Senators voted and are your votes properly recorded? Have all Senators voted and are your vote properly recorded? The Chair will note that Senator Looney is absent from the Chamber on a Rule 15. The machine is closed.

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The result of the vote:

28 Yea

6 Nay

2 Absent

The bill passes.

Senator DiBella.

SENATOR DIBELLA:

Thank you, Madam President. I'd move we suspend the rules on all the activity that we've done for this day, the last six or seven bills, so they could be transmitted to the House.

THE CHAIR:

Thank you very much. Is there any objection to suspend the rules for the immediate transmittal of the House of all items of which we have done business, so that they may take it up? Is there any objection? Hearing none, it is so ordered. Senator DiBella.

SENATOR DIBELLA:

Thank you, Madam President. I would ask that we stand in recess until 8:00 p.m. There will be a Democratic Caucus and dinner immediately following this session.

THE CHAIR:

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House of Representatives

Wednesday, May 12, 1993

Representative Luby.

REP. LUBY: (82nd)

I move that that matter be referred to the
Committee on General Law.

DEPUTY SPEAKER COLEMAN:

Motion is for referral to General Law. Is there
objection? Seeing none, so ordered.

CLERK:

Calendar 525, Substitute for House Bill 7146, AN
ACT CONCERNING PROBATE MATTERS.

DEPUTY SPEAKER COLEMAN:

Representative Luby.

REP. LUBY: (82nd)

I move that that matter be referred to the
Committee on Planning and Development.

DEPUTY SPEAKER COLEMAN:

The motion is for referral to Planning and
Development. Is there objection? Without objection,
so ordered.

CLERK:

Calendar 132, Substitute for House Bill 5275, AN
ACT PROHIBITING SMOKING IN PUBLIC BUILDINGS.

DEPUTY SPEAKER COLEMAN:

Representative Luby.

REP. LUBY: (82nd)

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House of Representatives

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and with that I would move that we recess the Chamber until 3:30.

DEPUTY SPEAKER COLEMAN:

The motion is for recess. Is there objection? Is there objection? Seeing none, the House stands in recess.

The House recessed at 2:40 o'clock p.m., to reconvene at the Call of the Chair.

The House reconvened at 5:25 o'clock p.m., Deputy Speaker Lyons in the Chair.

DEPUTY SPEAKER LYONS:

The House will reconvene. Would the Clerk please return to the Call of the Calendar.

CLERK:

On Page 29, at the bottom, Calendar 525, Substitute for House Bill 7146, AN ACT CONCERNING PROBATE MATTERS. Favorable Report of the Committee on Finance, Revenue and Bonding.

REP. TULISANO: (29th)

Madam Speaker.

DEPUTY SPEAKER LYONS:

Representative Tulisano.

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House of Representatives

Monday, June 1, 1993

REP. TULISANO: (29th)

I move acceptance of the Joint Committee's Favorable Report and passage of the bill.

DEPUTY SPEAKER LYONS:

The question before the Chamber is on acceptance and passage. Will you remark?

REP. TULISANO: (29th)

Yes, Madam Speaker. Madam Speaker, the bill before us represents the culmination of a lot of work by the task force to study the probate court system which was filed with the General Assembly earlier this year. This task force which lasted I think over a year was on the heels of other studies that were also done by the probate court itself.

It makes a number of changes in the probate court system, and makes modifications to the fee schedule in order to help support the system, and as a result thereof, Madam Speaker, the Clerk has an amendment LCO7324.

DEPUTY SPEAKER LYONS:

The Clerk has in his possession LCO7324, which will be designated House "A". Would the Clerk please call, and the Representative has asked leave to summarize.

CLERK:

LCO No. 7324, designated House "A", offered by

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House of Representatives

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Representatives Belden and Chase.

DEPUTY SPEAKER LYONS:

Representative Tulisano.

REP. TULISANO: (29th)

Yes, Madam Speaker. Madam Speaker, this just takes out the word satisfactory from the section of the bill that gives probate judges to right to take some courses. I move its adoption.

DEPUTY SPEAKER LYONS:

The question before the Chamber is on adoption. Will you remark? Representative Chase.

REP. CHASE: (120th)

We consider this a friendly amendment and would urge its adoption.

DEPUTY SPEAKER LYONS:

Thank you, sir. Will you remark further?

REP. TULISANO: (29th)

It can't be any friendlier. It's their amendment, Madam Speaker.

DEPUTY SPEAKER LYONS:

I'm glad we're all friendly today. Will you remark further on the amendment that is before us? If not let me try your minds. All those in favor please signify by saying aye.

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Aye.

DEPUTY SPEAKER LYONS:

Those opposed, nay. The ayes have it. The
amendment is adopted and ruled technical.

REP. TULISANO: (29th)

Madam Speaker.

DEPUTY SPEAKER LYONS:

Representative Tulisano.

REP. TULISANO: (29th)

The Clerk has another amendment LCO8767.

DEPUTY SPEAKER LYONS:

The Clerk has in his possession LCO8767, which will
be designated House "B". Would the Clerk please call
and the Representative has asked leave to summarize?

CLERK:

LCO No. 8767, designated House "B", offered by
Representatives Tulisano and Scalletar.

DEPUTY SPEAKER LYONS:

Representative Tulisano, please proceed.

REP. TULISANO: (29th)

Madam Speaker, this amendment allows additional
time for people to buy back, until October 1, 1994,
credit for services as a members of General Assembly or
military service. I move its adoption.

DEPUTY SPEAKER LYONS:

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The question before the Chamber is on adoption. Will you remark? Will you remark on the amendment that is before us? If not, let me try your minds. All those in favor - Representative Belden.

REP. BELDEN: (113th)

Thank you, Madam Speaker. I wonder if the gentleman could, through you, Madam Speaker, enlighten the Chamber on whether or not the filing required here within one year, whether or not has any idea how many people might be involved in this particular requirement. Through you, Madam Speaker.

DEPUTY SPEAKER LYONS:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Madam Speaker, obviously I don't know if there are others, but I have been able to identify one.

DEPUTY SPEAKER LYONS:

Representative Belden.

REP. BELDEN: (113th)

Through you, Madam Speaker, is it anybody we know?

DEPUTY SPEAKER LYONS:

Representative Tulisano.

REP. TULISANO: (29th)

I don't. Maybe you do, Madam Speaker. Yes, I

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guess we know whoever it is. Yes, we know.

DEPUTY SPEAKER LYONS:

Representative Belden.

REP. BELDEN: (113th)

If I might just have a moment, Madam Speaker, I'd like to see if I could figure out.

REP. TULISANO: (29th)

Through you, Madam Speaker, can I give a hint?

DEPUTY SPEAKER LYONS:

Representative Belden, would you like a.

REP. BELDEN: (113th)

Madam Speaker, if we could just stand at ease for just a second.

DEPUTY SPEAKER LYONS:

Hang on.

REP. BELDEN: (113th)

Madam Speaker.

DEPUTY SPEAKER LYONS:

Representative Belden.

REP. BELDEN: (113th)

Thank you, Madam Speaker, for allowing me that moment. I think I understand what we're doing here, and I think it may be not the best approach, but maybe the only one at this time in the session. Thank you.

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Thank you, sir. Will you remark further on the amendment that is before us? If not, let me try your minds. All those in favor, please signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER LYONS:

Those opposed, nay. The ayes have it. The amendment is adopted and ruled technical.

REP. TULISANO: (29th)

Madam Speaker.

DEPUTY SPEAKER LYONS:

Representative Tulisano.

REP. TULISANO: (29th)

Madam Speaker, the Clerk has an amendment LCO6575.

DEPUTY SPEAKER LYONS:

The Clerk has in his possession LCO6575, which will be designated House "C". Would the Clerk please call and the Representative has asked leave to summarize.

CLERK:

LCO NO. 6575, designated House "C", offered by Representative Tulisano.

DEPUTY SPEAKER LYONS:

Representative Tulisano.

REP. TULISANO: (29th)

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Yes, Madam Speaker. Madam Speaker, this amendment deals with going to probate court to determine whether or not a disinterment of remains of a deceased child be disinterred getting approval from the probate court, particularly when that was done in a multiple interment. The court would have a hearing, and in conjunction with the sexton, etc. would make a determination whether the remains are identifiable and if so able to do it, and it would also make sure that multiple interments, when the birth certificate was granted could no longer be done.

This follows some language that got lost in another bill earlier. It was recommitted. It was going to be an amendment to it. I move its adoption.

DEPUTY SPEAKER LYONS:

The question before the Chamber is on adoption. Will you remark further? Representative Radcliffe.

REP. RADCLIFFE: (123rd)

Thank you, Madam Speaker. This amendment looks very similar to a bill that we considered in the Judiciary Committee, and decided not to recommend for what I think were some very compelling reasons, but to see if the amendment does mirror that bill, through you, Madam Speaker, in Section 18, it talks about multiple interments, through you, Madam Speaker.

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Is there any time limit within which an individual might assert the right to retrieve remains based on multiple interment. Through you, Madam Speaker.

REP. TULISANO: (29th)

Through you, Madam Speaker.

DEPUTY SPEAKER LYONS:

Representative Tulisano.

REP. TULISANO: (29th)

Yes, Madam Speaker. It's limited in line 19. June 1, 1981 through June 30, 1981. The interment occurred there.

DEPUTY SPEAKER LYONS:

Representative Radcliffe.

REP. RADCLIFFE: (123rd)

Thank you, Madam Speaker. Then I take it since we're limiting it to one month 12 years ago that this involves one particular instance. Through you, Madam Speaker, has this particular problem if in fact it is a problem arisen any time other than that one instance. Through you, Madam Speaker.

DEPUTY SPEAKER LYONS:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Madam Speaker, not to my knowledge or belief.

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DEPUTY SPEAKER LYONS:

Representative Radcliffe.

REP. RADCLIFFE: (123rd)

So, through you, Madam Speaker, this amendment is offered to address a situation that occurred one time in one place 12 years ago for one person. Is that correct, through you, Madam Speaker?

DEPUTY SPEAKER LYONS:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Madam Speaker, two thirds of the bill does that. The last part obviously prohibits things like that from happening again in the future if a birth certificate were issued.

DEPUTY SPEAKER LYONS:

Representative Radcliffe.

REP. RADCLIFFE: (123rd)

Through you, Madam Speaker, do cemeteries use multiple interment on a regular basis? How would the gentleman define multiple interment? Would that mean one crypt upon another? What is a multiple interment? It's not defined in this bill. Through you, Madam Speaker.

REP. TULISANO: (29th)

Through you, Madam Speaker, it is in one container.

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Through you, Madam Speaker, the remains of more than one individual commonly disposed of in one container. That's what I mean.

DEPUTY SPEAKER LYONS:

Representative Radcliffe.

REP. RADCLIFFE: (123rd)

Well, through you, Madam Speaker, as I read line 18, it would prohibit multiple interments in the future. Would that mean there could not be the remains of two individuals in the same grave? Through you, Madam Speaker.

DEPUTY SPEAKER LYONS:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Madam Speaker, I don't think the same grave is the right word. I think they would be in the same container in the same grave.

DEPUTY SPEAKER LYONS:

Representative Radcliffe.

REP. RADCLIFFE: (123rd)

Through you, Madam Speaker, could multiple containers be buried in the same place?

REP. TULISANO: (29th)

Through you, Madam Speaker, yes, they could.

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Representative Radcliffe.

REP. RADCLIFFE: (123rd)

Thank you, Madam Speaker. As I expected this amendment does look like something that we had to address one particular incident that occurred some time ago, and as I understand it and I would ask this, through you, Madam Speaker, that particular incident, was this a situation where the request for disinterment was made more than a decade after the death? Through you, Madam Speaker.

DEPUTY SPEAKER LYONS:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Madam Speaker, I understand that it was.

DEPUTY SPEAKER LYONS:

Representative Radcliffe.

REP. RADCLIFFE: (123rd)

So in this particular situation, there was a birth certificate issued, there was an interment, a multiple interment upon death, and because the individual wished to exhume the remains more than a decade later, this amendment is before us this afternoon? Is that what the Chairman of the Judiciary Committee is indicating? Through you, Madam Speaker.

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DEPUTY SPEAKER LYONS:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Madam Speaker, a little more than that. A simpler language, but not as finally crafted, through you, Madam Speaker, did pass the Senate, but sent down here on another bill was recommitted and we've tried to recraft it in this sense, to a little more than that only that it did pass the Senate, and it reflects some interest in the other Chamber.

DEPUTY SPEAKER LYONS:

Representative Radcliffe.

REP. RADCLIFFE: (123rd)

Through you, Madam Speaker, I see a disclaimer beginning on line 43 regarding an interment. Through you, Madam Speaker, if remains were interred in violation of this section, and there is no sanction or no liability for that, through you, Madam Speaker, what is the incentive to comply with the procedure outlined in Section 18?

DEPUTY SPEAKER LYONS:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Madam Speaker, I think the Representative is relying on subsection D of Section

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17, and I think that represents claims of other survivors of other persons who are buried who might have some claim because of the actual disinterment for possible mental distress. I think that's designed to address that issue, not the issue outlined in Section 18.

DEPUTY SPEAKER LYONS:

Representative Radcliffe.

REP. RADCLIFFE: (123rd)

Thank you. Through you, Madam Speaker, does the probate court under our current law have the ability to exhume remains in a given situation? Through you, Madam Speaker.

DEPUTY SPEAKER LYONS:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Madam Speaker, I'm given to understand that you go to the Superior Court for those purposes now, but I really don't personally of my own knowledge know.

REP. RADCLIFFE: (123rd)

So if that's my understanding, Madam Speaker. Through you, that being the case are we creating another situation here of concurrent jurisdiction with the Superior Court and if so, why? Through you, Madam

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Speaker.

DEPUTY SPEAKER LYONS:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Madam Speaker, I gather one, we are creating concurrent jurisdiction for one month. Why? It just happened to be the way we drafted it, Madam Speaker. In the prior bill, the probate court was mentioned also as I recall.

DEPUTY SPEAKER LYONS:

Representative Radcliffe.

REP. RADCLIFFE: (123rd)

Yes, I appreciate that answer, and in fact, the probate court was mentioned in the prior bill, and it was one of the reasons why I think that bill was dealt with in the appropriate fashion. Through you, Madam Speaker, in Section B on lines 27 through 31, the Probate Court is asked to make a finding of the likelihood that the remains of the child may be sufficiently identifiable. Ten years later with no first hand knowledge of the interment, through you, Madam Speaker, what criteria is a probate judge to apply in making this decision?

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Representative Tulisano.

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REP. TULISANO: (29th)

Through you, Madam Speaker, it is my understanding that the remains of the deceased are often in this type of situation, are often wrapped in a material which is not easily degradable and labeled, and they would more often than not, that you would know that the remains in there would be, therefore, the individuals. Let me also note, through you, Madam Speaker, that is why the language of Section C is written as such so that in fact if it's in fact found those representations are not be true, then the disinterment does not continue.

REP. RADCLIFFE: (123rd)

Through you, Madam Speaker, in the situation where there were multiple interments in the same grave, which I guess is not an uncommon situation and a situation that we're not intending to prohibit here. Through you, Madam Speaker, other relatives of deceased persons whose remains might be disturbed through disinterment in the case of a multiple interment, are they given notice of the probate hearing so they might object if they did not want the remains of a deceased member of their family disturbed? Through you, Madam Speaker.

DEPUTY SPEAKER LYONS:

Representative Tulisano.

REP. TULISANO: (29th)

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Through you, Madam Speaker, that is not required by the terms of this bill.

DEPUTY SPEAKER LYONS:

Representative Radcliffe.

REP. RADCLIFFE: (123rd)

Thank you, Madam Speaker, and that I think is a glaring omission in this particular bill, where we're dealing I think by everyone's admission with a situation that occurred once. We're only creating a window. I don't know if it's fair to call it a window. It's probably a hole in the wall between June 1, a very small hole between June 1, 1981 and June 30, 1981, where one situation occurred, and yet other individuals other than the family of the individual whose remains are being disinterred could be affected by this, could be dramatically affected. We can't know 12 year later what other remains might be interred in the same location. There would be no way to give notification to relatives of that family member even if we did know and were able to make that type of determination.

I just think that this is the type of situation which if carried to its logical conclusion to prevent multiple interment of any kind could be a severe hardship upon most of the cemeteries in this state, and

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frankly to do this at one time for one particular incident, I think represents bad public policy even if there may have been an unfortunate result in a situation where remains were interred and it was more than a decade later before any requests concerning those remains were made.

I think this basically says that when you haven't got a remedy someplace else where the cemetery association can't help you, where the hospital can't help you, you go to the General Assembly, and create a very small hole in the wall for one month 12 years ago, 13 years ago, so that the situation can be dealt with. I don't think this is good policy.

DEPUTY SPEAKER PUDLIN:

Will you remark further? Will you remark further on House "C"? If not, let me try your minds. Those in favor of House "C", signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER PUDLIN:

Those opposed, nay.

REPRESENTATIVES:

No.

DEPUTY SPEAKER PUDLIN:

The ayes have it. The amendment is adopted and

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ruled technical. Will you remark further on the bill as amended? Will you remark further? Representative Tulisano.

REP. TULISANO: (29th)

Back to the bill, Mr. Speaker. Mr. Speaker, in addition to my original comments, as I indicated, the bill is also designed to give greater flexibility to the probate courts, and as I said, implements many of the recommendations by the probate task force. I'm going to urge passage as amended.

DEPUTY SPEAKER PUDLIN:

The question is on passage. Will you remark? Will you remark further on the bill as amended?

Representative Ward.

REP. WARD: (86th)

Thank you, Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

You're welcome, sir.

REP. WARD: (86th)

Mr. Speaker, through you a couple of questions to Representative Tulisano.

DEPUTY SPEAKER PUDLIN:

Please frame your question, sir.

REP. WARD: (86th)

Thank you, Mr. Speaker. Representative Tulisano,

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just to be sure, and I believe I am understanding this correctly. When we get into Section 1 and 3 of the bill, specifically in Section 1 where it says the probate court administrator may set forth certain equipment and I believe hours or reparation, basically what they think are minimum things necessary to operate a probate court, is it fair to say that in that process, they might be able to prohibit a shared facility within a town.

For example, I'll be very specific. In North Branford, the Probate Court shares an office. Some days it's used by the welfare administrators part time. Some days it's used by the probate judge. Is it fair to assume that that might be prohibited in the future under this act? Through you, Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker, I would not assume such a thing. I think it would take into consideration the facts of each place. The only reason that might be prohibited if it were not be giving the minimal service to the constituency. If it still provides the minimal services to the constituency, then I would consider it, I don't anticipate it being changed, but in the event

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that it really does a detriment to the service of the public that it's designed to do, then it could be. I don't know if that answers it properly.

DEPUTY SPEAKER PUDLIN:

Representative Ward.

REP. WARD: (86th)

Mr. Speaker, I won't go through a long colloquium. One of the concerns I have about the bill. I understand it's the desire of the proponents of the bill and the study committee to be sure that all consumers of the probate court have a reasonable access to it. It does seem to me to be, if you will a certain bias against a very small probate which, at least it's my experience, provide very good service.

However, they do it in a little different manner. In my community if you call a town hall for the probate judge, he's probably not there. He's probably at his law office, and you'll be given that phone number and you can reach him there, or you might be able to reach the Clerk at home when there are certain hours scheduled. There's an office that's available.

There's a meeting room that's available, but it's not exclusive as to the probate court, and my concern is that by giving all this regulatory power to the probate court administrator that if their desire is to

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have the hours very much regulated, that you won't be able to have the same kind of small local probate court and probably what will happen is little towns like North Branford would get merged into neighboring courts, or at least could be forced to do that, and I know I shared these concerns and sent this bill on the original form down to the probate judge, and he had the same concerns.

For that reason, Mr. Speaker, I have prepared an amendment and I would ask the Clerk to please call LCO9104, and I be permitted to summarize.

DEPUTY SPEAKER PUDLIN:

Will the Clerk please call LCO9104, House Schedule "D"?

CLERK:

LCO9104, House "D", offered by Representative Ward.

DEPUTY SPEAKER PUDLIN:

Question's on summarization. Hearing no objection, proceed, sir.

REP. WARD: (86th)

Thank you. Mr. Speaker, what the amendment does is provide that notwithstanding the provisions with regard to the probate court administrator, the town could provide those facilities and require that they be shared with another municipal department, and I move

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adoption of the amendment.

DEPUTY SPEAKER PUDLIN:

Question is on the adoption. Will you remark?

REP. WARD: (86th)

Mr. Speaker, the amendment is just as I said. It's an indication that the town in deciding what are available facilities could require that they be shared facilities. I will indicate frankly, these are things that I should probably have shown to the Chairman ahead of time, and in the rush of doing things, it never got there, but I think that it does make sense from the point of view of the small probate court and does not do any harm to the underlying bill.

DEPUTY SPEAKER PUDLIN:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker, I think I oppose. I oppose this amendment, and I understand Representative Ward's desire. What this says is a town may require probate court to share facilities with another municipal department, and I guess that presumes it's a single town probate district, but if there were multiple town probate district, and all of the sudden one of the towns in part of its deal, and I don't know how it would work, and effectively which would make it

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an ineffective probate court, I think that this could act to a disadvantage not only to the consumers, the customers or the court clients, but also the court itself.

It would seem to me, and I would be prepared to accept an amendment, that would have said something like the probate court on its volition might, they were the ones that makes those choices, not the municipality. I don't know if I'm getting through, Mr. Speaker. I think there's a real problem, and for that reason I oppose the amendment.

DEPUTY SPEAKER PUDLIN:

The question is on the adoption of "D". Will you remark? Will you remark further? If not, let me try your minds. Those in favor of "D", signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER PUDLIN:

Those opposed, nay.

REPRESENTATIVES:

No.

DEPUTY SPEAKER PUDLIN:

The nays clearly have it. The amendment is not adopted. Representative Radcliffe. Representative

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Ward.

REP. WARD: (86th)

Thank you, Mr. Speaker. At least I can keep these in sequence. I appreciate the courtesy.

DEPUTY SPEAKER PUDLIN:

Sure.

REP. WARD: (86th)

Mr. Speaker, the Clerk also has an amendment LCO No. 9106. I would ask the Clerk to please call and I be given permission to summarize.

DEPUTY SPEAKER PUDLIN:

Nearly sequential, sir. Would the Clerk please call LCO No. 9106, House Schedule "E".

CLERK:

LCO9106, House "E", offered by Representative Ward.

DEPUTY SPEAKER PUDLIN:

Question's on summarization. Hearing no objection, proceed, Representative Ward.

REP. WARD: (86th)

Thank you. Mr. Speaker, what this amendment does is essentially deletes lines 150 and 151 of the bill which are those new things that the probate court can administrate and adopt regulations with regard to, such as hours or operation of the court and the like. It leaves in effect those things under current law that he

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could adopt regulations for such as the forms and the auditing procedures, and I move adoption of the amendment.

DEPUTY SPEAKER PUDLIN:

Question is on adoption. Will you remark?

REP. WARD: (86th)

Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

Proceed, sir.

REP. WARD: (86th)

Thank you. One of the concerns that I have with the file again from the point of view of a small probate court, is that there are not regular hours of operation. It's my experience that that doesn't mean that the public isn't well served, and in fact it's been related to me at least in my own community is that the consumer that goes in without an attorney on a small matter would much rather go to a hearing at 5:30 than insist that the office be open say from 8:30 to 4:30, because oftentimes, those people are working at those hours.

The local attorneys frankly are also happy to go into meetings at 5 or 5:30 after their usual day. Sometimes there are some objections, some from financial institution trust officers and the like that

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like to keep banking hours, but I think that the small probate court can operate efficiently and appropriately for the small consumer in a small town that when we set what are potentially, I think there is a bias and I'm not saying inappropriate. I think they think it's right to have full hours set forward, but I think it's better that this not be in the regulatory power, and I urge the Chamber to accept this amendment.

DEPUTY SPEAKER PUDLIN:

Question is on the acceptance of "E". Will you remark? Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker, it's another one that I wish we could have time to redraft some of this stuff. We're talking about again the small probate court, but I think it applies to all probate courts, and if we have a district that requires really a full time service, and for some reason refuses to do so, we have no way of requiring it, and we have something called high volume courts, that we had invented something called small little courts, and allowed exemptions for that. I can understand doing that, and if we stall long enough, Mr. Ward, maybe we can draft it, a couple of amendments.

I appreciate what Mr. Ward is indicating. There is

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another probate bill, and I'm going to oppose this amendment this time, but I'm going to specifically stay on both of these. There is room to talk about an amendment on the next bill that clarifies these issues, and I'm prepared to stand ready to work with Mr. Ward on that. Thank you, Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

Thank you, sir. Will you remark further on "E"?
2Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

Representative Ward.

REP. WARD: (86th)

Thank you. Perhaps the way to move this most expeditiously if I may through you, ask a question of Representative Tulisano.

DEPUTY SPEAKER PUDLIN:

Frame the question, sir.

REP. WARD: (86th)

And this may be a little out of order. I had an additional amendment which would have required that, and it may also resolve this issue, that the regulations go through the regulation review process, and I do have that filed, and I wonder if I might through you, whether the Chairman thinks that would be helpful to this bill.

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REP. TULISANO: (29th)

Through you, Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

Representative Tulisano.

REP. TULISANO: (29th)

You might recall something that happened last week. I think that's an appropriate amendment.

DEPUTY SPEAKER PUDLIN:

Representative Ward.

REP. WARD: (86th)

Mr. Speaker, with that I would seek permission of the Chamber to withdraw what has been previously designated as House Amendment Schedule "E".

DEPUTY SPEAKER PUDLIN:

The gentleman has requested permission to withdraw House Schedule "E". Hearing no objection, it's withdrawn.

REP. WARD: (86th)

Mr. Speaker, the Clerk has an amendment LCO No. 7798, which I hope is well drafted, and I'd ask the Clerk to please call and I be given permission to summarize.

DEPUTY SPEAKER PUDLIN:

Will the Clerk please call LCO7798, House "F".

CLERK:

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LC07798, House "F", offered by Representative Ward.

DEPUTY SPEAKER PUDLIN:

Please summarize, sir.

REP. WARD: (86th)

Mr. Speaker, what this amendment does, it simply leaves in place the essential regulation making power that's with the probate court administrator, but adds the final step of those regulations be submitted in accordance with Chapter 54 and be submitted to the Regulation Review Committee. I move adoption of the amendment.

DEPUTY SPEAKER PUDLIN:

Question's on adoption of "F". Will you remark?

REP. WARD: (86th)

Through you, Mr. Speaker, very simply I think it's useful in this court which is clearly a statutory court for the General Assembly to have a final say on these regulations because it could affect so many things such as hours of operation and not merely legal procedural matters, and I urge the Chamber to support the amendment.

DEPUTY SPEAKER PUDLIN:

Thank you, sir. Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker, just to make it

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clarified. We're not talking about the forms or anything. We're talking about the essential elements of which may be substantive in nature, through you, Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

Representative Ward.

REP. WARD: (86th)

Through you, Mr. Speaker, that's absolutely my intent, and not those sorts of things are usually in this probate practice book or probate form book, but those matters such as hours of operation, size of facility, those sorts of matters that might be put into regulation that we have a chance to review those. Through you, Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

Representative Tulisano.

REP. TULISANO: (29th)

Mr. Speaker, I believe in the regulation review process. I support the amendment.

DEPUTY SPEAKER PUDLIN:

Question is on the adoption of House "F". Will you remark? Will you remark? If not, Representative Luby.

REP. LUBY: (82nd)

Thank you. Mr. Speaker. Question or two for the proponent of the amendment.

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DEPUTY SPEAKER PUDLIN:

Stand ready, Representative Ward. Proceed, sir.

REP. LUBY: (82nd)

Representative Ward, can you give me a list of the kinds of matters that will be subject to regulation that are not now subject to the regulation process?

DEPUTY SPEAKER PUDLIN:

Representative Ward.

REP. WARD: (86th)

Through you, Mr. Speaker, I don't believe that anything that the probate court now adopts regulations for are presently subject to the regulation review process. What I intend to do by this amendment is to make most of those new items such as listed in lines 151 and 150, the amount of court personnel, the hours of court operation, the kinds of telephone service that they have to have and the like.

Those are the kinds of items I would anticipate when they go to adopt these new regulations that ought to be through our regulation review process. Through you, Mr. Speaker.

REP. LUBY: (82nd)

Through you, Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

Yes, sir. Proceed.

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REP. LUBY: (82nd)

If I may, another question to the proponent of the amendment. Are we talking about hours of courts established by the local judge, or are we talking about hours of court established by the chief court administrator or his office alone?

DEPUTY SPEAKER PUDLIN:

Representative Ward.

REP. WARD: (86th)

Mr. Speaker, I believe that the file copy addressed the chief court administrator setting hours of operation for the local probate courts and those are the kinds of matters that I think our regulation review committee ought to look at, not when the probate court administrator sets his own individual office hours.

Through you, Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

Representative Luby.

REP. LUBY: (82nd)

Through you, Mr. Speaker, is it your understanding that the file copy requires a regulation process?

DEPUTY SPEAKER PUDLIN:

Representative Ward.

REP. WARD: (86th)

Through you, Mr. Speaker, it requires a regulation

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process although it is not a Chapter 54 regulation process.

REP. LUBY: (82nd)

And, Mr. Speaker, once again through you, would you distinguish between the two processes please.

DEPUTY SPEAKER PUDLIN:

Representative Ward.

REP. WARD: (86th)

The file copy as I read it and I understand it is that the probate court administrator through his own advisory committee comes up with the rules that that administrator wants to have applied to all his probate courts, and when he finishes with this process, he issues those rules.

In addition, there is an executive committee that can request rules and if he doesn't do them, they have their own appeal process to try to put those rules in place through the Superior Court. What that would be distinguished from our Chapter 54 method where they have to publish those regulations before they go into effect, allow public comment, they then are submitted to the Regulation Review Committee to see if they meet the general intent of our legislation, and if they meet the intent, they are to be approved by regulation review. If they do not, they can be rejected with or

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without prejudice.

DEPUTY SPEAKER PUDLIN:

Representative Luby.

REP. LUBY: (82nd)

Mr. Speaker, through you, again a question to the proponent of the amendment. Can you identify for me a situation in which the adoption of regulations, the adoption of procedures administratively by the probate court system in the past would have better been done through the regulatory process that you're proposing which is more formal and lengthier?

DEPUTY SPEAKER PUDLIN:

Representative Ward.

REP. WARD: (86th)

Through you, Mr. Speaker, no, in the past, because in the past the probate court was limited to auditing, accounting, statistical billing, recording, filing and other basic probate court procedures. The new things that the probate court administrator is asking to be given power over are things like the size of office space the town provides them, the numbers of hours that court must remain in operation.

For example, we have town clerks that aren't even open five days a week from 8:30 to 4:30 or 9 to 5, but he might require that the probate court do that. I'm

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loathed to give that much power to one administrator over what might really be more appropriately a matter of local control.

I'm willing to see that power if at least we have the regulation review aspect to it, so our people can be protected. Through you, Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

Representative Luby.

REP. LUBY: (82nd)

Thank you. Mr. Speaker, if I may on the amendment.

DEPUTY SPEAKER PUDLIN:

Repeat that, Representative Luby?

REP. LUBY: (82nd)

I'd like to comment on the amendment, Mr. Speaker. My questioning is over.

DEPUTY SPEAKER PUDLIN:

Please, sir.

REP. LUBY: (82nd)

Thank you. Ladies and gentlemen of the Chamber, we are taking sort of two steps in standard governmental operation here, steps which tend to quantify, organize, create the administrative barriers or requirements and legal additional steps. What the file copy does as I understand it, it establishes a somewhat more coherent set of standards or manners of operation and authorizes

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the probate administrator to engage in those systems.

However, what this amendment does is it takes it one further step that makes it more like the kind of government that is slow, that is bureaucratic, that is subject to more political interference, and can tend in my view at times to not serve the people well. The probate court system has in fact, I think, served people well because it is largely decentralized. It is not reliant as much as many other systems on the regulation process, and as a result, I would urge rejection of this amendment because it provides too much government in an area where probably we'd be better off with less. Thank you.

DEPUTY SPEAKER PUDLIN:

Thank you, sir. Will you remark further on House "F"? Representative Ward.

REP. WARD: (86th)

Mr. Speaker, for the second time. Indicate that it's the very nature of probate courts and serving on the local level that this amendment seeks to preserve. It says that if the probate court administrator is going to take sort of a big court outlook and apply that to even the small courts, that this Legislature's going to have to approve it through its regulation review process.

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I don't believe that the regulation review process serves the public poorly. As somebody who sat on the committee in the past for I believe six years, I think it serves the public very well. If an administrator who we have delegated authority to goes beyond what we had in mind, it gives us the opportunity to say, stop Commissioner, or in this case, stop probate court administrator, you've gone farther than the General Assembly had in mind.

That's a protection for the people of Connecticut that we of elected officials thought was so important that when they passed it, I believe in the 70s and it was stricken by a court, we asked the General Assembly at that point to ask the public to amend our state constitution to be sure that that power could be retained by the General Assembly. I think it was appropriate. I think it serves the public well, whether we're talking about the regulation review process to environmental regulations, to motor vehicle regulations or in this case, to probate court regulations.

If the probate court administrator only wanted jurisdiction over matters that were uniquely procedural, the kinds of forms, the matters that were uniquely legal and technical, I wouldn't see a need for

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this either. I've never filed a bill requesting this, but when the probate court administrator thinks that he ought to be able to say in your community what hours the probate court has to be open, or he may throw out your probate court. Understand the file copy says if you meet these things, he has a process to force the closing of your probate court or the merging of it with another court.

Now I understand if you're really not meeting people's needs having that power. It's why I'm not overwhelmingly trying to change every aspect of this bill, but I think it is a mistake not to retain that little bit of control. If any of you represent small communities, I hope you don't have to go back home and explain to your probate judge a year or two from now why somebody may be stepping on their toes, and even though the people in your towns say they're getting good service that they're stuck with a situation of a probate court that's not responsive because now you're merged into a big district, so I think if you want government that's responsive to the people, I must take issue with the Majority Leader as to what the effect of this amendment would be, and I urge the Chamber not to view this as a party issue, but view it in my sense on the merits and to support the amendment, as I think the

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Chairman of the Judiciary Committee indicated he did.

DEPUTY SPEAKER PUDLIN:

Will you remark further on "F"? For the second time, Representative Luby.

REP. LUBY: (82nd)

Thank you, Mr. Speaker. I would again rise to oppose this amendment just because I believe it creates another layer of review, another layer in a government system that works well as it works today. Thank you.

DEPUTY SPEAKER PUDLIN:

Representative Caruso.

REP. CARUSO: (134th)

Thank you, Mr. Speaker. Mr. Speaker, I rise in support of this amendment, and as strange that it seems it's for the very reasons that the distinguished Majority Leader raises. The reason we want that review is because the probate court is one of our most cost effective down to earth helpful courts that we have in this state. The opportunity to provide some checks and for us to do our job, through these regulations to make sure that the court is responsive, and it stays the way it is now without being changed radically by some other power than ours, is a good enough reason to support this amendment. Thank you very much, Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

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Thank you, sir. Will you remark further on House "F"? Will you remark further? If not, let me try your minds. All those in favor of House "F", signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER PUDLIN:

All those opposed, nay.

REPRESENTATIVES:

No.

DEPUTY SPEAKER PUDLIN:

The Chair is in doubt. There will be a roll call vote. Staff and guests to the Well of the House. Members, to your seats. The machine will be opened.

CLERK:

The House of Representatives is voting by roll.

Members, to the Chamber please. Members, please report to the Chamber. The House is voting by roll call.

DEPUTY SPEAKER PUDLIN:

If all the members have voted, and if your vote is properly recorded, the machine will be locked. The Clerk will take the tally.

The Clerk will announce the tally.

CLERK:

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House of Representatives

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House "F", to House Bill 7146.

Total Number Voting	143
Necessary for Adoption	72
Those Voting Yea	74
Those Voting Nay	69
Those absent and not Voting	8

DEPUTY SPEAKER PUDLIN:

House "F" is adopted and ruled technical. Will you remark further? Will you remark further on the bill as amended? Will you remark? If not, staff and guests to the Well of the House. Members, please be seated. The machine will be opened.

CLERK:

The House of Representatives is voting by roll. Members, please report to the Chamber. The House of Representatives is voting by roll. Members, to the Chamber please.

DEPUTY SPEAKER PUDLIN:

If all the members have voted, and if your votes are properly recorded, the machine will be locked, and the Clerk will take a tally.

The Clerk will announce that tally.

CLERK:

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House Bill 7146, as amended by House Amendments
"A", "B", "C" and "F".

Total Number Voting	143
Necessary for Passage	72
Those Voting Yea	143
Those Voting Nay	0
Those absent and not Voting	8

DEPUTY SPEAKER PUDLIN:

The bill, as amended, passes. At this time are there any announcements or Points of Personal Privilege? Representative O'Neill.

REP. O'NEILL: (69th)

Yes, thank you, Mr. Speaker. For purposes of an announcement.

DEPUTY SPEAKER PUDLIN:

Proceed, sir.

REP. O'NEILL: (69th)

I'd like to announce that the meeting of the Regulations Review Committee that I had previously announced earlier today has been cancelled. There will be no meeting of the Regulations Review Committee in the Hall of the House tomorrow morning. Thank you.

DEPUTY SPEAKER PUDLIN:

Thank you, sir. Are there other announcements or Points? Representative Mulready of the 20th.

H-680

CONNECTICUT
GEN. ASSEMBLY
HOUSE

PROCEEDINGS

1993

VOL. 36

PART 31

10,940-11,268

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affirmative from the negative.

Representative Courtney.

REP. COURTNEY: (56th)

Affirmative.

SPEAKER RITTER:

In the affirmative.

Clerk, please announce the tally.

CLERK:

House 7183, as amended by House Amendments "A"
and "B"

Total number Voting	141
Necessary for Passage	71
Those voting Yea	101
Those voting Nay	40
Those absent and not Voting	10

SPEAKER RITTER:

Bill, as amended passes.

Just once again, caution to members. The roll call machine is not going to be open for a great length of time. You stay further from right outside and you run the peril of missing a vote.

Clerk, please continue the call of the Calendar.

CLERK:

Page 26, Calendar 525, substitute for House Bill
7146, AN ACT CONCERNING PROBATE MATTERS, as amended by

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House of Representatives

Saturday, June 5, 1993

House Amendments "A", "B", "C" and "F" and Senate Amendment "A". Favorable report of the committee on Finance.

SPEAKER RITTER:

Representative Tulisano.

REP. TULISANO: (29th)

Mr. Speaker, I move for acceptance of the Joint Committee's favorable report in concurrence with the Senate.

SPEAKER RITTER:

The motion is on acceptance and passage in concurrence with the Senate.

Please proceed.

REP. TULISANO: (29th)

Yes, Mr. Speaker. The Clerk has amendment LCO9202.

SPEAKER RITTER:

Clerk has amendment LCO9202, previously designated Senate Amendment "A". Clerk, please call and I am sorry, Representative Tulisano, do you want him to read it or do want to summarize?

REP. TULISANO: (29th)

Summarize, Mr. Speaker.

SPEAKER RITTER:

Summarize.

CLERK:

gmh

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LCO9202, Senate "A".

SPEAKER RITTER:

Representative Tulisano.

REP. TULISANO: (29th)

Mr. Speaker, this amendment just clarifies one of the House amendments by inserting a line which seemed to have been dropped and I move its adoption.

SPEAKER RITTER:

The question is on adoption. Will you remark further? If not, I will try your minds. All those in favor, signify by saying Aye.

REPRESENTATIVES:

Aye.

SPEAKER RITTER:

Opposed, nay. Senate "A" is adopted and ruled technical.

Will you comment further on this bill?

Representative Tulisano.

REP. TULISANO: (29th)

We have already passed three House amendments. With the Senate amendment we adopted, this bill is already done. I move passage, as amended.

SPEAKER RITTER:

Will you comment further on this bill? If not, staff and guests come to the well of the House. The

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machine will be opened.

THE CLERK:

The House of Representatives is voting by roll. Members to the Chamber, please. Members to the Chamber, please. The House is voting by roll. Members to the Chamber, please.

SPEAKER RITTER:

Have all the members voted? Hey, I am sorry. Have all the members voted? Please check the roll call machine.

THE CLERK:

The House is voting by roll call. Members, to the Chamber. The House is voting by roll. Members to the Chamber, please.

SPEAKER RITTER:

I am saying. If it takes five minutes to do a roll call and we do thirty bills, that means close to three hours of taking roll calls. That means three hours that we stay later.

The machine will be locked. The Clerk will take the tally. Clerk, please announce the tally.

THE CLERK:

House of Representatives

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House Bill 7146, as amended by House Amendments
"A", "B", "C" and "F" and Senate "A", in concurrence.

Total number Voting	142
Necessary for Passage	72
Those voting Yea	142
Those voting Nay	0
Those absent and not Voting	9

SPEAKER RITTER:

Bill, as amended, passes.

Clerk, please return to the call of the Calendar.

CLERK:

Please turn to page 4, calendar 573. Excuse me,
537. Calendar 537, substitute for House Bill 7329, AN
ACT CONCERNING PREJUDGMENT REMEDIES. Favorable report
of Judiciary.

SPEAKER RITTER:

Representative Tulisano.

REP. TULISANO: (29th)

Mr. Speaker.

SPEAKER RITTER:

Oh, I am sorry. Wait just one second, Sir.

We have to type it in today because of a
malfunction with the machine. We will try our best to.
Please proceed, Sir.

REP. TULISANO: (29th)

JOINT
STANDING
COMMITTEE
HEARINGS

JUDICIARY
PART 5
1420-1839

1993

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JUDICIARY

March 12, 1993
1:00 p.m.

PRESIDING CHAIRMEN:

Senator Jepsen
Representative Tulisano

COMMITTEE MEMBERS PRESENT:

SENATORS:

Harp, Looney

REPRESENTATIVES:

Radcliffe, Amann, Caruso,
Bysiewicz, Garcia,
Godfrey, Graziani, Jarjura,
Knierim, Lawlor, Nystrom,
McCavanagh, O'Neill,
Rennie, Staples, Thorp,
Tavegia, Thompson, Varese,
Wollenberg

SENATOR JEPSEN: (Tape begins at this point) -- of the
Probate Administration to be followed Andrew Ocif.

LINDA DOW: Good afternoon, Senator Jepsen and members
of the committee. My name is Linda Dow and I am
counsel for the Probate Courts for the State of
Connecticut.

I am here today to testify on HB7143, AN ACT
CONCERNING THE NORMAL RETIREMENT AGE FOR PROBATE
COURT EMPLOYEES and HB7145, AN ACT CONCERNING
PATERNITY.

I acknowledge with gratitude to the willingness of
this committee to allow our testimony to be heard
next week with respect to HB7146, AN ACT CONCERNING
PROBATE MATTERS. Judge Lukins, the Chair of that
task force committee had planned to testify on
HB7146 and unfortunately due to unforeseen
circumstance, he is unable to be present.
Judge Killian, the Probate Judge from the District
of Hartford and a member of the task force will be
available to testify on that bill next week.

The first bill I would like to testify on is
HB7143, AN ACT CONCERNING THE NORAL RETIREMENT AGE
FOR PROBATE COURT EMPLOYEES. This proposal would
permit employees of the courts of probate, that is
our probate court clerks to retire at age 62 rather
than the current statute which does not permit

The second bill I would like to comment on is a an act concerning longevity benefits under the judge's retirement system. Last session, the General Assembly made provision for state's attorneys and public defenders to take their state service as state's attorney and public defenders and add it to their time as judges in order to determine their longevity payment.

REP. TULISANO: What number was that?

JUDGE FRANCIS X. HENNESSY: The bill itself?

REP. TULISANO: Yeah.

JUDGE FRANCIS X. HENNESSY: That bill is HB7141. It is an addition, actually to section 51-47 of the statutes. Last year it was state's attorneys and public defenders. The bill, this year, wants to add the people who served as assistant attorneys general or attorney general prior to going on to the bench. That would be - the Judicial Department takes no position on this other than to suggest to you that if you do it for assistants attorneys general or attorney general, you should consider doing it for all of those who were in state service and would have given similar service in the past.

The third bill is HB7146, which has to do with disagreements between the Probate Court Administrator and the Executive Committee of the Probate Assembly. As it stands now, that bill HB7146 is written so that any of those debates or problems would go to the Rules Committee of Superior Court for resolution.

We don't find that to be beneficial. We would rather it go to the Chief Court Administrator if it is going to go to any place at this time. Our understanding is that Judge Killian will be speaking to you later on next week about that and we will have been discussing it with Judge Killian.

JUDGE WILLIAM LAVERY: Good afternoon. My name is William Lavery. I am President of the Connecticut Judges' Association.

State of Connecticut
JUDICIAL DEPARTMENT
OFFICE OF THE CHIEF COURT ADMINISTRATOR
Drawer N, Station A
Hartford, Connecticut 06106

Testimony of Faith P. Arkin
Judiciary Committee Public Hearing
Friday, March 12, 1993

H.B. 7146, An Act Concerning Probate Matters

I would like to address briefly House Bill 7146, An Act Concerning Probate Matters, specifically Section 3, which amends Section 45a-77 to provide, in part, that proposed regulations may be submitted to the Rules Committee of the Superior Court for approval or rejection if there is disagreement between the Probate Court Administrator and the Executive Committee of the Probate Assembly. We do not believe that the Rules Committee of the Superior Court is the proper body which should decide whether such proposed regulations should be adopted or rejected.

It is our understanding that Judge Killian will be testifying on this bill next week. Therefore, we would like to work with the Probate Court Administrator's Office to recommend a more appropriate body after we have had additional time to consider this issue.

Thank you for giving me the opportunity to testify and for your consideration of our position.

JOINT
STANDING
COMMITTEE
HEARINGS

JUDICIARY
PART 6
1840-2226

1993

JOE PANDOLFE, JR.: If they knowingly had a vehicle with three stolen parts, so knowingly would make more sense.

REP. TULISANO: What?

JOE PANDOLFE, JR.: Knowingly would make a lot more sense, yes. The fact of the matter is there are many vehicles on our highways and parked in garages or places of business at this time that can contain and do contain parts from other vehicles that may at some time have been a vehicle that may have been stolen at some time.

The way the process works at this time, no one, including state agencies at the inspection lane or emissions station checks every major component part of a car for its identification number. In other sections of this bill, they go on to define what the major component parts of a vehicle are and those are the parts -- those particular parts are not checked at the time a car changes hands and we do not feel that -- we feel that it would place a burden on businesses and make it too easy for them to be thrown in the category of chop shop unwarrantedly. Thank you. Are there any questions?

SEN. JEPSEN: Any questions at this time? Thank you for your comments. We'll take a look at what you said. Linda Dow and Robert Killian together. You will not be limited to three minutes because Judge Killian is here because of a sickness of the head of the Probate Court system and he would have been here last week so take a reasonable amount of time.

JUDGE ROBERT KILLIAN: Thank you. I'll try to be as brief as possible and hopefully respond to any questions. My name is Robert K. Killian, Jr. I'm a Judge of Probate for the District of Hartford and I am appearing today for Ralph Lukens who continues his convalescence and hopefully I won't have to pitch hit for him too many more weeks.

I'm here to specifically address HB7146, AN ACT CONCERNING PROBATE MATTERS. That was on your schedule for last week and due to a sudden illness we were unable to testify. It is a bill of major importance to the probate system, Mr. Chairman.

Frankly, without some relief in the courts of the next -- this session or certainly the next session, the probate system is going to be in serious difficulty.

HB7146 was a response to this committee and legislature's mandate that there be an introspection, a look at the probate system and a review to determine what improvements and changes need to be made to keep pace with the desire of people to have efficient, effective courts.

We resisted at one point the committee, the commission. I think in retrospect it was a very valuable exercise. I have submitted testimony and won't try to reiterate all that's said therein. If I may just point out that the basic philosophical thrust of the commission appointed by the legislature was that the system has a lot to commend it. It also has some problems and the problems appear most regularly at the two ends of the spectrum, the largest courts and the smallest courts.

The largest courts find themselves in an economic bind as their caseloads go up precipitously and the ability of the fees in the larger districts that are earned to pay for the service is starting to be challenged. The smaller courts find that they are increasingly reliant on the fees from decedent's estates, which while they comprise only 50 percent of the business of the system, it currently comprises 65 percent of the income and in some of the small districts are pushing 100 percent of that court's income.

Basically the commission recommended to the legislature that there not be any legislatively mandated elimination of any of the 133 districts. Instead, it proposes a system for encouraging the voluntarily regionalization of courts among those towns and districts that feel they would be better served by a consolidated court.

It also establishes a procedure for new mandates on all the courts to ensure that every district is adequately accessible to the public, that the personnel are available and the records are

available and any court that fails to meet those standards would be subject to recommendation to the legislature for forced consolidation.

A major component of the bill addresses the issue of fees. It was originally the issue of probate fees that prompted the demand for a study and a major focus of the recommendation was to attempt to keep the Probate Court Connecticut's most affordable court while ensuring its financial stability.

It also addressed a concern which Chairman Tulisano charged us with several years ago and that's that we try to make sure that we're not funding our court system exclusively on the advalorem fees, as he put it so delicately, on widows and orphans.

The fact is that 11 percent of our total income is generated by tax purpose only estates. These are estates in which the Probate Court takes no action except to receive a fee and it is the recommendation of this commission, as I might point out, it has been of the probate judges in previous years, that that be significantly modified to reduce by 50 percent the fees in those tax purpose only estates.

We also have recommended that in certain other matters, particularly that growing caseload of non-estate related matters, that there be some increase of fees and costs to try to ensure that our system is paying as it goes. We are the only court system in Connecticut that gets no General Fund contribution and we suspect the legislature wants to keep it that way.

The net result, we believe, of these changes would be to have a modest increase in the 50 percent of our cases, for example, we propose an increase from \$90 to \$100 for an entry fee. That should generate approximately \$180,000 a year. We've suggested that fees for copies be increased slightly so it bears at least some resemblance to the cost of providing those copies to the public. Notice and other fees go up, recording fees, to keep pace with the cost of doing those things.

In total, we believe that if you were to enact these, that we could ensure that in spite of economic downturn in the state, that the Probate Court system will remain a viable entity into the 21st Century.

I should also note I believe that we had in the past year a 30 percent decrease in the assessments that are going to probate administration. That's the entity which supervises us all. We have had a significant decrease in total receipts to the courts, almost 10.5 percent and even though we have maintained an overall increase of salaries, actually we have a negative salary, we're paying less this year than we were last year by almost 7.5 percent overall that we are at the point that without some relief in this area, we'd be in serious difficulties.

I also would like to just briefly comment on two other bills that are on your agenda today. You have SB644, AN ACT CONCERNING GUARDIANSHIPS OF A MINOR CHILD. There are approximately 800 removal cases handled in the Probate Courts each year. All those cases we believe are afforded ample opportunity for de novo review in the Superior Court and we oppose this bill. We think it's unnecessary and would just lead to some judge and jurisdiction shopping that would be not appropriate.

The second proposal which we support is HB7244, AN ACT CONCERNING HEALTH CARE INSTRUCTIONS. We believe that this bill isn't deserving of a Favorable Report. That's HB7244, the bill concerning health care instructions. And if you have any questions, I've raced through it because I want to be courteous to the other 97 people that are going to testify, but I would welcome any questions.

SEN. JEPSEN: Representative Radcliffe.

REP. RADCLIFFE: Mr. Chairman, just quickly, Judge Killian, a couple of questions on the task force report.

JUDGE ROBERT KILLIAN: Yes, sir.

REP. RADCLIFFE: You mentioned the idea or the proposal HB 7146 for consolidating which was considered by the task force and I believe the task force said that they determined that there should be no changes at this time, but you did recommend some changes to the statute and those changes would not only allow consolidation, but would allow individual districts to divide into additional courts.

Doesn't your proposal in some cases encourage a proliferation of courts?

JUDGE ROBERT KILLIAN: What our proposal allows is for local option to be preserved. It imposes dramatically greater responsibility on districts that are formed to adequately fund their court. Economics would drive I think most of these decisions, Representative Radcliffe and the fact of the matter is if the small courts, and we have 133 courts in 169 towns and so one might speculate that there are 64 towns that feel they haven't gotten their -- or 34 towns or 35, if I put it in math, that haven't gotten their due from us yet and from the legislature.

I can report to you that I can't conceive of any town that doesn't have a Probate Court that could support a Probate Court. The reality is that many of the smaller courts currently are barely economically viable and if we impose, as seems to be the desire of the commission, some of these additional constraints as to hours and availability of personnel, some of those courts are going to find it very difficult to survive and we felt that it was better to let economics dictate this than to have the legislature or certainly the commission which had the honor -- on which I had the honor of serving, mandate the elimination of courts.

REP. RADCLIFFE: But it seems that your proposal actually extends local option and would give a legislative body in a multi-town probate district the option of basically saying we want our own court and then if the Probate Court administrator could find no compelling reason not to allow that, basically it would happen at local option. Is that right?

JUDGE ROBERT KILLIAN: No, no, no, the creation of the courts under the Constitution would have to come to the legislature for approval. There is no ability for the Probate Court administrator to approve a local district. He can only recommend to the legislature either the creation or the elimination of a district as a municipality can only recommend.

This clears up a procedure for allowing two or three towns to either decide to get together or I suppose you are correct, to disunite, although that would seem to fly in the face of an awful lot of the compelling effort on the part of municipalities to share responsibility.

REP. RADCLIFFE: How about a town that says why can't we have our own Probate Court? Towns as small as Ashford have their own court, you know, and yet towns many times the size of Ashford, just to take one example, are in multi-town districts. I mean what's the basis on which the Probate Court administrator would refuse to recommend a splintering of a district?

JUDGE ROBERT KILLIAN: Economics. The small districts are finding it increasingly difficult to meet the responsibilities and are requiring increased assistance. Ironically, large districts like Hartford, which is a single town district and New Haven, which is a single town district, are also finding it increasingly --

(Cass 2) (cassettes 1 and 2 don't connect, small gap)

You've also recommended and this probably requires a good deal more refinement, the the probate courts be given, under certain circumstances, the ability to try title to property concurrently with the superior court. How would that work? I did read through the report some months ago when it came in and I saw that and how would that work? Would someone have a trial de novo in superior court in a situation like that? Would you be faced in the probate court with actually trying an action to quiet title under those cases?

JUDGE ROBERT KILLIAN: It has two protections. It retains the traditional protection of the right of a de novo review in superior court and it adds the right of anybody who is involved in the title dispute, to advise the probate court that it chooses to have that matter heard in the superior court, in which case the probate court would be statutorily obliged to defer from hearing the matter for a period of 60 days and if the matter was lodged in the superior court, would then be totally out of the matter.

The reality of this jurisdictional request is that there are many matters, particularly concerning jointly held small bank accounts which currently are left unadjudicated because it just does not sustain the burdens of the superior court costs. This is to afford people, when generally by agreement they're willing to avail themselves of it. The opportunity to have that as a free component of the administration of the estate. We don't charge anything extra when we handle an estate, for handling these ancillary matters.

REP. RADCLIFFE: But your proposal would say that individuals must consent to the jurisdiction of the probate court, if in fact an adverse decision were rendered or a decision adverse to one party at that point, would that party then have the right of a trial de novo.

JUDGE ROBERT KILLIAN: Absolute right of a trial de novo. In terms of the consent it may be an overstatement. If the matter is statutorily within the new jurisdiction of the probate court, they would have to opt out of having the probate court hearing. The consent is presumed if the matter meets the jurisdictional criteria, to wit, it is already part of an estate or a conservatorship or a matter that is before the probate court.

REP. RADCLIFFE: But it would be appealable as any other probate matter.

JUDGE ROBERT KILLIAN: It would be appealable as any other matter.

REP. RADCLIFFE: Thank you.

JUDGE ROBERT KILLIAN: Thank you, Sir.

SEN. JEPSEN: Representative Wollenberg.

REP. WOLLENBERG: Judge Killian --

SEN. JEPSEN: Followed by Representative Knierim.

REP. WOLLENBERG: Do you mean to tell us then we've turned the corner now and the days of enough money to run these courts are ahead of us and all the fears that we had are behind us about running out of money to run the courts.

JUDGE ROBERT KILLIAN: To running the probate court?

REP. WOLLENBERG: Yes.

JUDGE ROBERT KILLIAN: We have problems in the probate court. I don't want to say that forevermore this system is going to be available as one of the few fee sustained courts in the United States of America. But I think that this is an important step toward preserving the fiscal integrity of the courts, certainly for the next 10 or 20 years.

I think that if the courts and the districts that comprise the courts are willing to accept the realities of fiscal constraints, we will not have the money to subsidize some particularly of these very small courts.

REP. WOLLENBERG: So you will admonish the Legislature then, I will admonish the Legislature for you, that they should not be passing laws and saying the probate court will take care of that custody issue, or this issue, or that issue, because eventually you're not going to have the time, or certainly the funds to do those things as we have in the past.

We've dictated, we've mandated to you to do these things in the past and never sent you any money. And this was the concern six or eight years ago, Representative Tulisano and I, when we took a look down the road a ways and said, where's the money going to come from. And this is what prompted the committee, the ad hoc committee that worked on this and has submitted the report.

I just don't want to let you get away without letting this Committee and having the record say, we're not out of the words. This will help us get to 2000.

(Tape goes off and on)

-- that New Haven has. Isn't that true?

JUDGE ROBERT KILLIAN: Woodridge, yes, Sir.

REP. WOLLENBERG: Woodridge, I'm sorry. Woodridge.

JUDGE ROBERT KILLIAN: We can't make it up. If we're losing money on an adjudication, we're no different than Walmart, we can't make it up on volume. And the fact of the matter is, in my district for example, it cost about \$147 for each of the some 5400 matters that I hear a year.

If the entry fee for that matter is \$90, I'm losing \$63, not personally, but the court and the system is losing that. And if we double our jurisdiction, we're going to double the deficit. That doesn't mean we still might not be the bargain basement adjudicator of rights in the State of Connecticut. I think we always will retain that because I think there are some advantages to our type of adjudication, but I think we have to be cautious in saying that we can wholesale, accept new responsibilities unless there is also the non-concomitant knowledge in the part of the Committee that we are faced with some fiscal constraints and you admonish. I warn. I would never admonish the Legislature.

REP. WOLLENBERG: Thank you, Bob.

SEN. JEPSEN: Representative Knierim.

REP. KNIERIM: Thank you, Mr. Chairman. Good afternoon, Judge.

JUDGE ROBERT KILLIAN: Representative Knierim.

REP. KNIERIM: The recommendations of the task force with respect to financing and fees. I guess my question is that I'm curious about whether you think that these recommendations are consistent

with the possibility that at some point in the not too distant future, the succession tax may not be part of our lives and therefore the succession tax return and its free structure may not be available as is, to the probate courts.

You made some reference to a reduction in reliance on fees coming from tax purposes only estates and I think that's part of the picture. But broadly speaking, do you think we're moving in a direction that's consistent with possible elimination of the succession tax as we know it?

JUDGE ROBERT KILLIAN: It's a half way measure that moves toward the day which I think probably is inevitable, when the succession tax will be abolished. If the succession tax were abolished, we would automatically lose the need to adjudicate or be involved at all in those tax purpose only estates, and I think there would be other significant decline in the business of the courts.

Decedent's estates have not been the growth industry in probate courts, Representative Knierim for many years. It's gone from about 80% of our business to 50% of the business in certainly your father's lifetime as a probate judge, almost in my lifetime as a probate judge, about 9 years tenure.

We are not going to be an ad vellum fee driven court. We get, in decedent's estates, sometimes a significant amount of fee for very little work. The things that I think most of us labor the hardest on are those matters which often don't generate any fees. They are matters concerning custody of minors which are usually fee waiver matters to begin with, and the fact of the matter is that there will be a day of reckoning when we are going to have to take a look again at this system and say, can it exist in this format? Can it exist with whatever the then existing number of courts are, or is there a better way to do it.

The ad velorum fee is out of favor, as a means of raising revenues for a court system in the United States of America. It is felt that it is somehow a denial of justice.

One of the things that we were careful to do in adjusting ad velorum fees in this plan is to reduce them by 50% where we are really not earning a dime. So now we're only gouging those estates by a little bit, or lesser amount, and to make sure that we have an increase in terms of estates of approximately a quarter of a million dollars or less, which is less than the rate of inflation since last we adjusted fees.

There is, in this proposal, a significant increase in those ad velorum fees as they relate to conservatorships, trust, and estates which are at the other end of the spectrum. And the reason why I think the Commission could stomach that was in those circumstances those fees will also be a deduction from an even more gouging federal tax.

As you know, on the very large estates, the federal tax quickly hits more than 50% of the dollars. The federal government rapidly becomes a partner in this matter.

But there is a Robin Hood concept here that may be inconsistent with the long-term funding of a court system and I wouldn't argue with that, except to say that we have tried to be sensitive to it in keeping what is, preserving the local nature of our courts and starting the movement toward that day when we may not have those ad velorum estate fees to fund 50% of the system.

REP. KNIERIM: Just to sort of follow up and summarize, would it be fair to say that in adopting these fee revisions, we're not moving in a direction that would be inconsistent with revisiting the whole thing if the succession tax is eliminated.

I think, it it fair to say that we're making progress with this proposal that doesn't create any other problems if the tax structure gets fundamentally changed.

JUDGE ROBERT KILLIAN: I think absolutely. If this proposal is passed, I believe you will see that what we will have achieved is that we will have put the non-decedent's estate, succession tax driven matters on much closer to a pay as they go basis.

We would have a situation where 50% of our fees representing 50% of our caseload would be coming from decedent's estates.

Fifty percent of our fees, representing 50% of our caseload would be coming from non-decedent's estate matters and technically and theoretically, you could, I suppose then, divorce the court, the part of the court that's involved in the transfer of property on death from the part of the court that's doing the other things that we do, and that would be self-sustaining.

The reality is, it would only work well in the larger districts, and by larger districts I'm talking probably the 45 or 50 largest courts that have enough of the volume of the non-decedent's estates matters to justify the continuation of the court. It would be a telling blow if we lost the succession tax to many of the smallest courts.

Also remember that when we say small courts, we are often talking about very small courts. You come from the Town of Simsbury which is in the upper third in terms of the size of the courts. My court in Hartford does the same volume of work as the 57 smallest courts in the State of Connecticut. Some courts only rarely are furnishing any business or furnished any business by their constituents and in those communities the availability of the judge is a tremendous convenience to the town and it is an honorific for the judge.

But the fact of the matter is that some of those courts aren't handling a very significant percentage of the caseload of the system.

REP. KNIERIM: Thank you very much.

JUDGE ROBERT KILLIAN: Thank you, Sir.

SEN. JEPSEN: Further questions at this time? Thank you very much, Your Honor.

JUDGE ROBERT KILLIAN: Thank you, Sir.

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2 TO: JUDICIARY COMMITTEE

3 FROM: HONORABLE ROBERT K. KILLIAN, JR., JUDGE OF THE
4 HARTFORD PROBATE COURT DISTRICT AND MEMBER OF
5 THE TASK FORCE TO STUDY THE PROBATE COURT SYSTEM6 RE: H.B. NO. 7146 - AAC PROBATE MATTERS

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8 As many of you are aware, Special Act 91-19 created a task force to
9 study the probate court system in this state. This report was presented to the
10 General Assembly on October 1, 1992. The Task Force worked diligently and
11 tirelessly to present to this Committee the proposals before you today. The Task
12 Force was composed of the co-chairs and ranking members of the House and Senate
13 Judiciary Committee, the Probate Court Administrator who served as Chairman,
14 the President Judge of the Connecticut Probate Assembly, three judges of probate
15 selected by population, two attorneys appointed by the Connecticut Bar
16 Association, six public members appointed by the leaders of the House and Senate
17 and a Law Revision Commission member. We wish to publicly thank the Task
18 Force members for all of their efforts.

19 If I may, I would like to summarize several philosophical consensus
20 conclusions reached by the Task Force, which may serve as an appropriate preamble
21 to the specific proposals it has submitted for your considerations:

22 1. When the complaints and problems in the system are quantified,
23 it is clear that, by and large, the system functions well and is usually preferable to

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3 the systems in other states where probate is treated as a division of the general
4 trial court or as a huge, county-wide court.

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2. The local flavor of the courts is worth preserving. While certain
very small, rural courts and very large, urban courts feel the greatest economic
strain, the "neighbor helping neighbor" characteristic of the court is worth
preserving so long as statewide quality control can be assured.

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3. Significant change may be required should the legislature
drastically change the laws governing decedents' estates. Specifically, the
elimination of the succession tax would almost inevitably mandate the
consolidation of some of the smaller courts. However, the Task Force felt it would
be premature to suggest the elimination of any courts and, instead, recommended
a procedure for localities to petition the legislature to merge courts to provide
economies of scale and regional cooperation.

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4. The overwhelming majority of the judges and personnel in the
courts are knowledgeable, helpful and readily accessible to the public. The
problems that do exist are resolvable with greater state judicial supervision and, are
no more extreme than problems that exists in any other judicial system or
governmental agency.

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The Connecticut Probate System is one of the oldest in the nation and
traces its origin back to 1666 with the establishment of four (4) county courts.
Today, we have 133 probate courts serving 169 cities and towns.

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3 I have omitted addressing several sections of this proposal, as those
4 sections are already existing law with minor technical changes.

5 One of the first issues addressed in the Task Force Report is the
6 probate court structure itself. The Task Force considered:

7 1. the possibility of integrating the probate court system into the
8 superior court system;

9 2. setting up a new probate court system similar to the old
10 municipal court system;

11 3. consolidating and regionalizing the courts to effect economies
12 of scale with or without also mandating full time, lawyer judges.

13 These proposals were all rejected in favor of establishing minimum
14 standards concerning court space, equipment and supplies, availability of records,
15 accessibility of staff and training.

16 Section 1 of this proposal permits each town/district to determine if
17 it wishes to maintain a probate court and provides a mechanism to consolidate
18 courts if the town/district cannot or chooses not to provide the minimum
19 requirements.

20 Section 3 of this proposal addresses the concerns of some Task Force
21 members about the non-availability of judges and clerks in smaller districts. This
22 section would enable the Probate Court Administrator, working in cooperation
23 with the Executive Committee of the Connecticut Probate Assembly to issue
24 regulations concerning minimum standards for the courts of probate, i.e., the

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2 availability of court personnel and court records, hours of court operation,
3 emergency coverage, telephone service and other measures necessary to improve
4 court administration. With these proposed regulations, it would be the intent of
5 the Probate Court Administrator and the Executive Committee of the Assembly
6 to increase the public's accessibility to the smaller courts.

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8 Lines 138-141 propose that if there is a disagreement between the
9 Probate Court Administrator and the Executive Committee, then the proposed
10 regulation should be submitted to the Rules Committee of the Superior Court. It
11 is our understanding that the Chief Justice and the Chief Court Administrator feel
12 that the Rules Committee is not the proper body to decide this. While the Task
13 Force has not considered this, it is the recommendation of the Probate Court
14 Administrator's office and the Probate Assembly that if there is a disagreement,
15 this matter be referred to a committee of three (3) Superior Court Judges appointed
16 by the Chief Justice. This suggested amendment has been approved by the Chief
17 Court Administrator.

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19 Section 5 of this proposal deals with the budget process for the office
20 of the Probate Court Administrator. Although no monies are received from the
21 General Fund, by statute (C.G.S. 45a-80), the budget of the Probate Court
22 Administrator is approved by the Chief Court Administrator. The Task Force
23 unanimously agreed that the Probate Court Administrator should have more
24 flexibility with respect to the budget process.

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This proposal permits the Probate Court Administrator to authorize emergency expenditures from the Probate Administration Fund in an aggregate amount not to exceed \$5,000.00 per year. A report of each expenditure shall be sent to the Chief Court Administrator and the President Judge of the Connecticut Probate Assembly.

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The Task Force further agreed that the budget process should involve the Connecticut Probate Assembly. Under Section 5, the Executive Committee of the Assembly will review the Probate Court Administrator's budget before it is forwarded to the Chief Court Administrator by May 15 of each year. On or before June 15, the Chief Court Administrator must act on the proposed budget or it shall be deemed approved.

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Section 6 deals with the substantive issue of increased jurisdiction for the courts of probate.

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Three areas of jurisdiction were proposed to the Task Force based on discussions that Judge Lukens had with Chief Justice Peters, Chief Court Administrator Aaron Ment and Deputy Court Administrator Francis X. Hennessey.

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The Task Force unanimously agreed that the probate courts should have concurrent jurisdiction with the Superior Court with respect to the following three matters:

1. trying title to real and personal property in which a claim is made that said property should be an asset of a trust, a decedent's estate, or any estate under the control of a conservator or guardian;

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2. construction of wills admitted to probate;
3. construction of testamentary or inter vivos trusts.

The members agreed that these matters could be heard more quickly in the probate courts. As a matter of routine, some trust and will constructions are heard as ancillary matters to other work the court is doing. Many probate judges have been hearing title matters for years on an informal basis, successfully acting as negotiators and mediators thus saving the parties time and legal costs and sparing the Superior Court the burden of these cases.

There are built in safeguards to this proposal.

1. A party to the action may appeal from the probate decree under Section 45a-186. There would then be a trial de novo in Superior Court.
2. Under Section 7 of this act, an interested person who intends to claim a civil trial by jury of the matter has 60 days within which to bring the action in Superior Court. The filing of the action in Superior Court will abate the action in the probate court.

One of the most critical issues addressed by the Task Force was the funding of the probate court system. As you are aware, the probate courts receive no general fund monies.

Although the Task Force took no position, a great deal of concern was expressed by members of the Task Force about the impact on court financing should the legislature eliminate the succession tax. Probate court fees for decedents' estates are based on the gross taxable estate for succession tax purposes. Sixty-five percent (65%) of the monies received by the probate court system are

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from fees in decedents' estates, even though non-decedent estate matters currently comprise about 50% of our caseload.

If the succession tax were eliminated, the probate court system as we know it would not be able to carry out its statutory functions without General Fund or other types of support.

We are working with the Legislature's Finance Revenue and Bonding Committee and the Connecticut Bar Association to address our concerns involving the possible elimination of the succession tax.

This proposal before you, however, addresses other areas involving fees in the probate courts and does make some inroads in ensuring the economic viability of the system. The Task Force sought to develop a financing package which would make all court consumers bear a fair share of the expense of running the court system.

The fee schedule, as presently structured, is inadequate to cover even direct court costs. This proposal increases the entry fee from \$90 to \$100. If more than one hearing is held, an additional \$25 can be charged. There is a \$50 charge for motions for appeal and a \$100 charge for creditors applying for consideration of a claim. If the total time of any one hearing exceeds one hour, the court can charge \$25 for each additional hour and no charge shall exceed \$300. This increase would make up for some of the multitude of hours that the court staff and judges spend on paperwork and contested matters that may take three to four days of hearing time. Even after these increases, probate courts would remain our state's

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best judicial bargain. Our fees would remain less than in the Superior Court and the fees and the system continues to carry the burden of notice, sheriff's service, and reimbursement for entry fees waived and for fees of attorneys appointed for indigents.

Section 9 addresses the basic costs for decedents' estates. One of the issues discussed by the Task Force was Tax Purposes Only (TPO) estates. Typically, in these estates, the court reviews and processes the tax returns. The Task Force recognized the high cost of processing TPO estates and in lines 384-385 proposes reducing the probate fee by 50 percent in TPO estates where the property is passing to a surviving spouse. This reflects the state and federal tax policy which eliminates taxation on spousal succession.

Subsection 2 of Section 9 increases the costs for decedents' estate matters. The fee schedule is not designed to increase court revenues. It is designed to require the consumer of services to bear the services' actual cost. The Task Force was particularly sensitive to maintaining the affordability of services rendered the small decedents' estates, conservatorships or trust accountings. Ad valorem accounting fees were adjusted only significantly in the largest estates where probate fees generally have been a deduction for federal estate tax purposes. In the estates under \$250,000, increases are significantly less than the cost of living increase since last the legislature addressed fees.

Section 15 addresses the issue of training programs for new judges. Although the Connecticut Probate Assembly has established a 15 hour per year

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3 minimum education requirement for judges, the Task Force strongly believes that
4 all jurists should receive significant training and continuing judicial education. .

5 The Task Force unanimously approved Section 15 which provides for
6 mandatory training for new judges.

7 In addition to the continuing education program already in place, the
8 Task Force recommended that each new judge, prior to taking office, be required
9 to attend a series of courses on rules of judicial conduct, ethics and the
10 fundamentals of court operation.

11 Within six months of assuming office, each new judge would be
12 required to take additional courses that provide basic review of civil procedures,
13 due process, evidence, property law, the laws of wills and trusts, and family law in
14 the context of the probate court system.

15 The Probate Court Administrator's Office and the Executive
16 Committee of the Connecticut Probate Assembly join with the Task Force in
17 urging your support of this bill.

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20 March 19, 1993

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