

**PA10-184**

**HB5407**

House	3989-4001	13
Judiciary	1499-1505, (1506-1513), 1533-1537, 1538, 1551-1554, 1615-1620	31
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**CONNECTICUT  
GENERAL ASSEMBLY  
HOUSE**

**PROCEEDINGS  
2010**

**VOL.53  
PART 13  
3923 – 4245**

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The bill as amended is passed.

Mr. Clerk, please call Calendar 297.

THE CLERK:

On page 41, Calendar 297, Substitute for House Bill 5407, AN ACT CONCERNING PROBATE FEES, favorable report of the Committee on Finance, Revenue and Bonding.

DEPUTY SPEAKER O'ROURKE:

The Chair recognizes Representative Godfrey.

REP. GODFREY (110th):

Thank you, Mr. Speaker.

I move acceptance of the joint committee's favorable report and passage of the bill.

DEPUTY SPEAKER O'ROURKE:

Motion is on acceptance and passage.

Will you remark?

REP. GODFREY (110th):

Thank you, Mr. Speaker.

This bill does a bunch of little things but it does two rather large and important things and they are -- under current law, when -- when an estate goes to probate, we currently assess our fees not only on in-state but out-of-state property. That was an inadvertent consequence of our paralleling the federal

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-- and using the federal estate form returns. We want to eliminate that.

There are some good cause for that. It might be unconstitutional under our current fee. There is a question of our current schedule. There's a real question of whether or not that is fair. There's certainly a question about whether or not the State of Connecticut has jurisdiction over real property that exists in other states. So this would eliminate that and bring us back to the way that we actually did the assessments in Connecticut for centuries before it was changed when we piggybacked on the federal forms.

And, at the request of the Probate Court Administrator, we would be creating a series of interest on late filing of -- paperwork that has to be filed on certain estates. The file copy has this interest being levied on all estates. We'll be offering an amendment in a couple of minutes that will change that.

The bill will also eliminate the \$50 charge for filing a motion to appeal the decision of a probate court to a probate court. For the simple reason that appeals don't go to the probate courts anymore, they go to the superior court so we're pulling that out.

We'll be making a number of technical changes in some of our statutes dealing with having -- having -- to reflect some of the changes that we made in the big reform bill that we did last year. And to make a friendly court system even friendlier, we will authorize probate courts to accept credit card payments, as we do in the superior court and in many other parts of government.

And we'll also eliminate a \$50 charge to file a motion to appeal of fiduciary accounting, again, because we now go to the superior court and we don't internally appeal bills -- appeal neither accounting or other probate matters to a probate court. We go directly from the probate courts to the superior court.

Let's concentrate for a moment on the -- the new request dealing with interests on costs and to do that, Mr. Speaker, the Clerk is in possession of LCO Number 5051. If he could please call that and if I would be given leave of the chamber to summarize.

DEPUTY SPEAKER O'ROURKE:

Mr. Clerk, please call LCO 5051 designated House Amendment "A."

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LCO Number 5051, House "A" offered by  
Representatives Godfrey, O'Neill and Senators Doyle  
and Roraback.

DEPUTY SPEAKER O'ROURKE:

The gentlemen has been granted leave of the  
chamber to summarize.

Representative Godfrey.

REP. GODFREY (110th):

Thank you, Mr. Speaker.

The provision in the underlying bill would allow  
for interest of one half of 1 percent per month on --  
on money owed to the courts of probate that have been  
invoiced by the court of probate. This amendment  
makes two significant changes to that. It says that  
estates that do not exceed \$40,000 in value will be  
exempt from having to pay interest on this. That  
number was chosen because that's how, in other  
statutes, we define small estates in Connecticut. And  
then we will exempt from the interest payments on  
these costs of estates that do not exceed \$500,000,  
where the property is passing from a spouse to a  
surviving spouse.

I move adoption.

DEPUTY SPEAKER O'ROURKE:

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Motion is on adoption.

Will you remark?

REP: GODFREY (110th):

Yes, Mr. Speaker.

This was a request -- the interest -- the adoption of interest on costs was at the request of the Probate Court Administration. Hopefully, to be an incentive to get the attorneys that are working on estates to file their paperwork and pay their fees on time. A very small one, it's only one half of 1 percent a month.

And clearly, we're making these two very important exemptions, one for very small estates, one for estates where the -- the estate is passing from one spouse to the surviving spouse. This was brought to our attention by the Bar Association and a number of members here in this chamber and in the other chamber and this particular compromise was worked out among all of the parties including Judge Knierim. There had been some concerns about estates that are passing between siblings. I just need to note that in those cases unlike the two exemptions that we're -- we're creating in this amendment, that there's still going to have to be an estate proceeding -- probate

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proceeding so that any title to real property isn't clouded.

And then there was some concern about property passing to a disabled child. And, of course, in those cases, there will be either a guardian or a conservator appointed who will be doing this for the -- for the recipient of the estate and that would no change from current law. The court continues to have the power to defer these costs and in which case one -- since the cost is not being invoiced, obviously, there would be no interest that would be -- be accruing on them.

So we think that we pretty covered all of the bases on putting together this particular amendment and, with that, I would urge my colleagues to adopt House Amendment Schedule "A." Thank you, Mr. Speaker.

DEPUTY SPEAKER O'ROURKE:

Thank you.

The motion is on adoption.

Will you remark on adoption of House "A." Will you remark?

Representative O'Neill of the 69th.

REP. O'NEILL (69th):

Thank you, Mr. Speaker.

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Just a couple of quick points with respect to the -- the change on the estates that exceed \$500,000, the amount of the estate that we're talking about is -- let's if there were a house and that were the only asset, if the house were worth, let's say \$700,000, it would fall below if the deceased -- that was only they had then the estate would be -- their estate would be \$350,000 if they owned one half of the house and, therefore, this would not be subject to the interest payment. Through you, Mr. Speaker, is that correct.

DEPUTY SPEAKER O'ROURKE:

Representative Godfrey.

REP. GODFREY (110th):

Through you, Mr. Speaker, yes.

DEPUTY SPEAKER O'ROURKE:

Representative O'Neill.

REP. O'NEILL (69th):

Thank you, Mr. Speaker.

And, in fact, if the estate were worth -- if the house were worth \$900,000, then it would not be subject to the interest payment because half of \$900,000, assuming it was jointly owned, would be 450 and it would be below this \$500,000 threshold. Is that correct? Through you, Mr. Speaker.

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REP. GODFREY (110th):

Through you, Mr. Speaker, yes.

REP. O'NEILL (69th):

Okay. So that -- this will probably cover even fairly large homes or expensive homes in places like lower Fairfield County and, presumably, anyone who has a home that's worth a million dollars or more has or will receive legal counsel from somebody regarding their obligations to go through the process of probating an estate.

So even though I had some reservations about this whole concept early on about imposing interests, which is brand new to our system. We've never done it. Anyone who has been through probate previously would have never had this experience. This, I think, provides a pretty substantial safeguard to make sure that very few, if any, people will ever be caught by this by accident. People who are relatively unsophisticated and all their dealing with is a home that they own jointly with their spouse and were unaware of the fact that they had some sort of obligation to go to the probate and begin the probate proceedings and that sort of thing.

So they will not be caught unaware years later

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when they perhaps go to sell the property to discover that they have filed for probate and now have a substantial amount of interest due on the estate that might run into the hundreds or thousands of dollars. Anyone, who has these kinds of assets, presumably, has the resources to obtain some measure of legal counsel and is aware of it.

And then for the very, very small estates, which are -- are people who don't likely have lawyers but they would be exempted as well. Again, not be caught unaware by the imposition of this new interest charge. So I think the amendment makes the bill better and I urge adoption.

Thank you, Mr. Speaker.

DEPUTY SPEAKER O'ROURKE:

Thank you.

The motion is on House "A."

Will you remark? Will you remark?

If not, I'll try your minds.

All those in favor of adoption of House "A," signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER O'ROURKE:

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Those opposed, nay.

The ayes have it. House "A" is adopted.

Will you remark?

Representative Godfrey.

REP. GODFREY (110th):

Mr. Speaker, I will yield the floor but I'd like to point out to the Chair that I believe Representative Spallone, I believe, has a friendly amendment.

DEPUTY SPEAKER O'ROURKE:

The Chair recognizes Representative Spallone.

REP. SPALLONE (36th):

Thank you, Mr. Speaker.

Mr. Speaker, the Clerk is in possession of an amendment designated as LCO 4279. I ask that the amendment be called and I be given permission to summarize.

DEPUTY SPEAKER O'ROURKE:

Mr. Clerk, please call LCO 4279, designated House "B." The gentleman has asked leave to summarize.

THE CLERK:

LCO Number 4279, House "B" offered by  
Representative Spallone.

DEPUTY SPEAKER O'ROURKE:

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Representative Spallone.

REP. SPALLONE (36th):

Thank you, Mr. Speaker.

Mr. Speaker, this is an amendment concerning the ability to request and take a record of a probate proceeding if that is deemed necessary by a party or counsel. Under current law, a party can request that a record be kept and the court has discretion to allow that record and discretion to require -- and will require the party requesting to pay for it.

What this amendment does is it makes it possible for a party to make a record of a probate proceeding regardless of the court's position so that if a counsel or a party feels it's necessary to keep -- to make a record of a proceeding in probate court they could do so and the cost would be charged to that party. I move adoption.

DEPUTY SPEAKER O'ROURKE:

Motion is on adoption of House Amendment "B."

Will you remark? Will you remark on House "B?"

If not -- oh, Representative O'Neill.

REP. O'NEILL (69th):

Thank you, Mr. Speaker.

And just for my own edification, is it the

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assumption or the intention rather of the proponent that this amendment, which would become Section 501 of the bill, would go --

Oh, I've already answered my question. Thank you, Mr. Speaker.

DEPUTY SPEAKER O'ROURKE:

I like when that happens.

Will you remark further on adoption of House "B?"  
Will you remark?

If not, I'll try your minds.

All those in favor of adoption of House Amendment "B," signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER O'ROURKE:

Those opposed, nay.

The ayes have it. House "B" is adopted.

Will you remark further on the bill as amended?  
Will you remark?

If not, staff and guests please come to the well of the House. Members take their seats. The machine will be open.

THE CLERK:

The House of Representatives is voting by roll

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

DEPUTY SPEAKER O'ROURKE:

Have all members voted? Please check the board to ensure your vote is properly recorded. If all members have voted, the machine will be locked and the Clerk will take a tally.

Mr. Clerk, please announce the tally.

THE CLERK:

House Bill Number 5407 as amended by House "A" and "B."

Total number voting	147
Necessary for adoption	74
Those voting Yea	147
Those voting Nay	0
Those absent and not voting	4

DEPUTY SPEAKER O'ROURKE:

The bill as amended passes.

The Chair recognizes Representative Olson.

REP. OLSON (46th):

Good after -- good evening, Mr. Speaker.

Mr. Speaker, I move for the immediate transmittal of all items acted upon that require further action in the Senate. Thank you, Mr. Speaker.

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SENATE

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Thank you, Mr. President.

Calendar page 21, Calendar 559, House Bill 5407,  
move to place on the consent calendar.

THE CHAIR:

Seeing no objection, so ordered.

SENATOR LOONEY:

Thank you, Mr. President.

Calendar page 21, Calendar 562, House Bill 5253,  
move to place on the consent calendar.

THE CHAIR:

Without objection, so ordered.

SENATOR LOONEY:

Thank you, Mr. President.

Calendar page 21, Calendar 563, House Bill 5340,  
move to place on the consent calendar.

THE CHAIR:

Without objection, so ordered.

SENATOR LOONEY:

Thank you, Mr. President.

Calendar page 22, Calendar 567, House Bill 5516,  
move to place on the consent calendar.

THE CHAIR:

Single-star item? Without -- without objection, so  
ordered.

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Calendar page 20, Calendar 556, House Bill 5498;  
Calendar 557, House Bill 5270; 559, House Bill 5407; 562,  
House Bill 5253; and House Bill -- Calendar 563, House  
Bill 5340; Calendar 567, House Bill 5371; and Calendar  
573, House Bill 5371.

Mr. President, I believe that completes the items

THE CHAIR:

Mr. Clerk, could you please give me on Calendar 567,  
do you have 5516, sir?

THE CLERK:

What -- what calendar?

THE CHAIR:

567 on page 22.

THE CLERK:

It's 5516.

THE CHAIR:

Yes, sir. Okay.

Machine's open.

THE CLERK:

An immediate roll call vote has been ordered in the  
Senate on the consent calendar. Will all Senators please  
return to the chamber. Immediate roll call has been ordered in the Senate on the  
consent calendar. Will all Senators please return to the chamber.

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THE CHAIR:

Have all Senators voted? Please check your vote. The machine will be locked. The Clerk will call the tally.

THE CLERK:

Motion is on adoption of Consent  
Calendar Number 2.

Total number voting	35
Necessary for Adoption	18
Those voting Yea	35
Those voting Nay	0
Those absent and not voting	1

THE CHAIR:

Consent Calendar Number 2 passes.

Senator Looney.

SENATOR LOONEY:

Yes, Mr. President.

Mr. President -- Mr. President, before moving to adjourn, I would like to ensure the entire chamber will wish Laura Stefon, Senator McDonald's aide, my former intern, a happy birthday.

And with that -- and with that, Mr. President, I would move the Senate stand adjourn

**JOINT  
STANDING  
COMMITTEE  
HEARINGS**

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I know that we have appointed each of our towns a justice of the peace to do so, and as well as clergy do this as a matter of course.

But I think that if there is anything standing in the way, a barrier to this, I hope we can find the proper legislative language to make this a part of our legislation, as flexible as possible, so that we can have that kind of liberty and flexibility with regard to couples getting married to have people closest to them that are official in other states, as we would recognize them here under our law.

And I think you raise a very good point, is that we want to make sure that they also would be deemed to be officially presiding so that that marriage would be covered under our law if they were to be married here.

Thank you.

SENATOR McDONALD: Thanks very much. We'll take a look at it. Any questions? Thanks very much.

Next is the Honorable Paul Knierim.

JUDGE PAUL KNIERIM: Good morning, Senator McDonald and members of the committee. I'm Paul Knierim, I'm probate court administrator and also judge of the [inaudible] probate court, and I very much appreciate the opportunity to speak with you this morning.

HB 5406  
HB 5407  
HB 5408  
SB 371  
SB 426

I think the probate stalwarts are assembled here this morning to have a look at these bills.

There are three bills that probate administration in collaboration with the probate assembly have asked this group to consider, and I'll spend a moment on those in

just a moment, but I thought it might be helpful to spend just a moment or two to describe for the committee where the probate system is in terms of the implementation of last year's legislation, since -- since that legislation was so significant for the probate courts.

It was Public Act 09-114, and the redistricting bill that followed it in September's special session, 091, that created a significant restructuring for the probate system.

And I really want to begin by saying thank you to the members of this committee and in particular Representative Fox and Representative Godfrey here now, and several other members of this committee who participated in a working group with us in the probate system that led to the legislation that is offering the probate system a great deal of stability on a going-forward basis, putting us on a much more solid financial footing and also enabling the system to strengthen the professionalism by which we operate.

And so we're very appreciative of all the energy and assistance that we've received from the General Assembly, in particular members of this committee and the working group, so thank you very much for that.

Where we stand at this point is a nearly frenzied pace in the probate system to get ready for next January 5th, which is when the restructured system will go live, and there is a great deal of energy and work being committed to that restructuring by all parts of the system.

The clerks of the courts are working very hard towards this, as are the judges, and things are naturally very, very busy in probate administration, also getting prepared.

Likewise, the towns are essential partners in this process, because they provide us with the facilities and office supports for the operation of our courts, and the consolidation of courts means that many municipalities are being asked to provide us with a bit larger facility to accommodate larger courts, and they are working very hard on that. And, as I say, that process is going extremely well among the municipalities of the state.

A couple of items that we're making very good headway on that I mentioned are court records. As you can imagine, we have huge volumes of probate records from the centuries past in the operation of the system, and we are working with the state library to preserve those records so that they're safe and sound for the centuries to come, but also to improve public access to them, and at the same time to avoid the need for municipalities to build larger vaults to accommodate all the records from consolidated courts.

So in a nutshell, we're working to digitize those records with adequate microfilm backup as well, and to use the state library as a central repository for the older, historical records that are of primary interest to historians and genealogists. So that's -- that's one area of significant advancement.

The financial restructuring of the system, a big part of Public Act 09-114, (inaudible) centralized accounting of the probate system. That means that probate administration itself is undertaking significant additional

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responsibilities for how the fees are -- are collected and how the -- the funds in the probate court administration fund are budgeted for the use of the courts.

So at probate administration, we're actively developing our systems, our internal controls, our audit protections, to make sure that all of that financial restructuring goes well.

We are also working with the probate court budget committee that was established by the legislation and is responsible for setting up a systemwide compensation of benefits plan for court staff. That's new.

Historically court staff has been paid and the benefits have been determined by and large individually by each court. It will now be on a systemwide basis.

And the budget committee, likewise, is working on determining the staffing levels for each of the courts and the office budgets under which they will operate.

So that committee has been -- been hard at work and has had very much helpful input from judges and court staff and should be completing its initial budget work for the coming fiscal year within the next several weeks.

Turning to the legislation that we have requested consideration of, I mentioned there are three bills. They are 5406, concerning the courts of probate, 5407, concerning probate fees, and 5408, probate court operations.

I will say that these are -- are very -- in large part technical bills that have to do

with implementation of last year's legislation. As we've been implementing with details, we've been discovering other parts of the statute that need attention to be consistent with the intent of 09-114.

And, as I mentioned, I've submitted written testimony on each of those, and I'll try to avoid boring you with the details of each of those fairly technical provisions, but I would like to point out that the probate fee bill, 5407, contains a couple of substantive components that -- that probably weren't mentioned, at least.

As we have in the past, we are asking consideration for a change in how we calculate probate fees to eliminate the fee on out-of-state property. That the fee is assessed on out-of-state property is a fairly recent thing.

It came about in 2005 when we switched from the succession tax to the estate tax, and I believe it was an inadvertent consequence. The difficulty is that the statute, as written, requires us to assess a fee on property over which the courts have no jurisdiction, and there's -- there are concerns also about the constitutionality of the practice in light of some older Supreme Court jurisprudence on the ability of states to impose a tax on property located out of state.

The revenue impact is -- is not large. OFA projects an impact of -- in the range of two hundred to four hundred thousand dollars, and so we would be able to -- to work within available resources even with this change, and so I would recommend that.

On the flipside, there are two components of that bill that are intended to facilitate our ability to collect revenue, keeping in mind that the probate system still operates principally from its own fee revenue. In this fiscal year, that represents about 85 percent of our total funding.

One of those provisions would be to allow probate courts to accept payment by way of credit card. That is done in the superior court presently. It appears that the legislation under which they operate doesn't apply to us, and so we're asking for parallel provisions in our title statutes.

The second provision intended to facilitate the collection of probate fee revenue is a proposal to impose interest on the late payment -- probate fees -- on a decedent's estate.

At present -- bearing in mind the decedents' estate revenue is the engine of revenue for the probate system, it's in excess of 70 percent of our total fee revenue, and at present there is no consequence for failing to file the return on which it is based in order to pay that fee.

And the proposal that I am suggesting is a modest rate of interest that is not at all intended as a penalty. It is intended instead to create better fairness in the system by which we collect fees.

The interest rate proposed is six percent, which is only one half of what DRS charges for late payment on the estate tax. In fact, it's one-third of what municipal property tax collectors charge for late payment of property taxes.

And again, it's not intended as a penalty, but instead to represent the time value of money.

A person who opts against paying the probate fee has the benefit of the assets for whatever period they don't pay that fee, and we think in fairness, the state should have a reasonable interest recovery on that late payment.

I would note also as drafted, the bill provides for an ability of a probate judge to defer the due date for the probate fee, and that would also stop the accrual of interest during that period, so hardship cases can be addressed in that way.

I have had conversations with members of the bar on this topic who have varying views of it, but I will simply say we stand ready on this topic to discuss further possible amendments to the language that we've proposed to address hardship situations, as the committee might think is appropriate.

I also have submitted written testimony concerning Senate Bill 371, which deals with the service requirements for probate judges in the area of health insurance.

And our position is that we do oppose that legislation and also have submitted testimony in support of Senate Bill 426, concerning the Uniform Protective Proceedings Jurisdiction Act that deals with interstate situations in conservatorship matters.

We are (inaudible) in support with that. We would like the opportunity to offer some minor revision language to that to help it fit better within the framework of other overall

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conservatorship statutes, but we think that is a real positive.

One last note for the committee is to mention that we are revising in a comprehensive manner the regulations of the probate courts which deal mostly with the financial structure of the system; and under 45a-77, our regulations come before this committee for review, and also two of those regulations have come through that process.

(HB 5406)  
(HB 5407)  
(HB 5408)

And in the coming months, we would expect to be submitting a relatively large batch of additional regulations for your consideration.

So I thank the committee very much for your time and would welcome any questions.

REP. LAWLOR: Well, thank you to you, Judge.

Are there any questions from members of the committee? Representative Fox.

REP. FOX: Thank you. And good morning, your Honor, and it's good to see you here today.

JUDGE PAUL KNIERIM: Good morning.

REP. FOX: It's been a long year. I know you've done a lot to incorporate what we passed last year.

We have elections coming up in November, and then it's January that the new courts will take effect; is that --

JUDGE PAUL KNIERIM: That's correct.

REP. FOX: January 5th.

JUDGE PAUL KNIERIM: Yes.

REP. FOX: And just in terms of that process, is -- because I know that there are questions many of us legislators would have in our towns that we represent, is that -- do you anticipate that that process is going to go smoothly?

Are things where you would hope them to be at this point as we get ready for nominations in May and elections in November?

JUDGE PAUL KNIERIM: I do anticipate, with fingers crossed, that the process will go smoothly.

The -- all elements of the system are working hard in collaboration to try to have us go through this transition as smoothly as we possibly could.

With respect to the elections process and nominations, the first major step that the statute set for us was to determine the names of the districts by March 31st.

And, as suggested in the legislation, we had solicited input from towns and judges and legislators about that, and most of the districts have come back with an agreed name for the district. And we just sent out a reminder this week to those from whom we have not yet heard, but that obviously is important for the purposes of the ballot.

Another key element in the transition is determining the locations for the new courts. And mostly those discussions at the municipal level are happening at the same time that the naming-the-court discussions are going on, and most communities have made real headway on that. Many have made a final decision on that, although the question is open at this point in a number of districts still.

REP. FOX: So it's ongoing, but you're confident it will be ready to go in January with the new courts and the whole -- the new system?

JUDGE PAUL KNIERIM: I am confident that we'll be fully prepared in January to -- to go live with this.

It's -- as you said at the outset, it's a herculean effort on the part of the participants in the system, but the good news is how strongly committed the judges and the staffs of the court are to making this -- this go right.

REP. FOX: Now, I know -- I think we knew last year when we passed the legislation that we did that there would be some fixes that might be necessary as we get closer, and is what you're -- much of what we're doing here today, does that incorporate a lot of what you -- what we talked about last year?

We had anticipated this might happen.

JUDGE PAUL KNIERIM: It is.

These -- these bills are very much in the nature of closing loopholes or amending language to clarify what we perceive to be the intent of the original statutes that were passed last year.

REP. FOX: Thank you very much, and thanks for all your efforts in getting this underway.

JUDGE PAUL KNIERIM: Thank you very much.

REP. LAWLOR: Are there further questions?  
Representative Baram.

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10:00 A.M.

REP. BARAM: Thank you, Mr. Chairman.

And congratulations to you, Judge, and your capable staff.

I just recognized one of my old law colleagues, Tom Gaffey, who's here. He's a member of your office.

JUDGE PAUL KNIERIM: With whom we could not -- we could not operate without Tom.

REP. BARAM: I understand.

One question I have is with regard to this bill requiring health insurance be provided for working 40 hours, it's my understanding that your office is against that based upon the stream of income that has been calculated in the different tier system that was enacted.

SB371

JUDGE PAUL KNIERIM: That is correct.

I view that proposal as inconsistent with what the Legislature intended last year when it adopted a four-band compensation system.

So that -- that system pays judges different amounts, depending upon the workload and size of the districts, and recognizes that there are different time commitments associated with the work of a judge in a different size court; and to superimpose a full-time requirement on everyone, regardless of workloads, without also considering what would have to happen to compensation, seems to be, as I said, not consistent with last year's legislation.

REP. BARAM: And just one other question.

I'm just curious what will happen if the new district member towns cannot agree on a name

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jr/gbr JUDICIARY COMMITTEE

March 12, 2010  
10:00 A.M.

or, more importantly, let's say a location.

What the process is, if you could remind us, that has to take place to make some finality to that decision?

JUDGE PAUL KNIERIM: Yes.

The statute doesn't provide any specific process for resolution of disagreements among towns. I have found that in most cases, they've been working through disagreements as they get into the details of the discussion and consider the financial implications of the different options in front of them.

And the one recommendation that I've made to communities that feel that they maybe at an impasse is that they agree on their own process and agree to be bound by the outcome of that process.

So if that means at the end of the discussion that the towns agree, they'll take a vote and be bound by majority rule. That seems to have worked in -- in cases where the -- where the issues have seemed intractable.

I've been on the road a fair amount visiting with communities as they have had discussions about the issues, and I was -- offered to be available to the extent that helps, just -- just to be able to answer the questions about how the basics of the statute work, what are the requirements of municipalities vis-a-vis their probate courts.

So I'm happy to have that role, but ultimately it seems that agreeing on a process where communities are not in agreement about the outcome seems to be the best approach.

REP. BARAM: Thank you very much. And again, congratulations on a great job.

JUDGE PAUL KNIERIM: Thank you very much. I appreciate your help.

REP. LAWLOR: Representative Godfrey.

REP. GODFREY: Just a couple of -- of updates on this -- this process.

Are there still a lot of new districts who haven't come up with a decision on where the courthouse is going to be? How successful has this process been so far kind of as a percentage?

JUDGE PAUL KNIERIM: In percentage terms, going on recollection, I would say it's probably in the nature of under 15 percent don't have a resolution.

REP. GODFREY: Oh, so over 85, okay. Over 85.

JUDGE PAUL KNIERIM: Bearing in mind that a significant number of courts were not affected. Some 22 courts --

REP. GODFREY: Right, right --

JUDGE PAUL KNIERIM: -- were not subject to consolidation.

REP. GODFREY: Okay.

We still have District 23, so we've got kind of this precedent that if you can't decide, we'll use the number that just happens to be in the statute we passed.

JUDGE PAUL KNIERIM: True enough.

In fact, to that point, in our reminder to communities this week that if we hadn't heard from them we were still hoping to have a response before the end of this month, I indicated that so far as the name goes, that the list we would publish at the end of the month would be -- would insert a number for a district using the statutory list, with the notion that perhaps after the -- the disruption of consolidation was over and the new court is operational, that perhaps the court, working with the communities, might have a name that would be appropriate at that time.

REP. GODFREY: I'm a little reluctant to make some big changes that have been floating around simply because the election process has already begun and towns are choosing delegates to conventions in the multi-town districts.

And there -- this is obviously a major change in the way elected officials act, and I'm concerned that we not -- I'm concerned that we not make a process that's already begun more difficult or more confusing as we move forward, and some of these non-agency proposals could disrupt that opinion.

So keep us apprised of what's going on back in the districts so we can work to prevent that, if you don't mind.

JUDGE PAUL KNIERIM: Certainly, yes.

The system obviously has an awful lot to digest in order to make this restructuring go right, and we have the benefit of people being strongly committed to that, as I said before.

But that approach makes sense. We certainly will keep you advised about that.

REP. GODFREY: Actually, one other -- one of the most amazing things is how good the probate judges themselves have behaved through this whole -- this whole process, very civic-minded and spirited, which is not a surprise to me, who has followed this, but they have been so extraordinarily helpful in processing this change, so my congratulations to you and to them.

Thank you.

JUDGE PAUL KNIERIM: Oh, thank you.

REP. LAWLOR: Representative Conway.

REP. CONWAY: Thank you, Mr. Chairman. Just a quick question on 371.

Have you done any calculations on -- my understanding from speaking to the probate judge in my district, who actually represents -- he represents two of the three towns that I represent, he's the probate judge in, and he feels that with the new redistricting, in the district that he would possibly preside over, there would not -- he would not reach 40 hours a week in looking at the current caseload.

With that, how many other districts -- what percent of districts do you think are in the same boat in terms of the probate judges not having a caseload that would reach 40 hours a week, yet we would then be paying them anyway on a 40-hour-a-week schedule so that they met the eligibility for the benefits?

And have we done a cost analysis on what that increased cost would be versus the way the system is now?

and I wasn't filling that role as an attorney. I was doing it as a lay family member in that situation, but it applies to everyone there, and I think we've greatly improved things with some of those measures as well.

REP. O'NEILL: And those all sound much better than taking away someone's health insurance benefits as an incentive. You know, I mean, I can think of other ways to incent people. You know, we can take away their car -- you know, if we want to put pressure on people --

THOMAS BEHRENDT: Again, we didn't draft this -- this bill.

REP. O'NEILL: No, I'm looking at your testimony that -- okay. All right. You're right. Thank you.

THOMAS BEHRENDT: I mean, we're dealing with the bill that's -- that's on your agenda.

REP. LAWLOR: Are there further questions? If not, thanks again.

THOMAS BEHRENDT: Thank you very much.

REP. LAWLOR: Next is Judith Hoberman, and Attorney Hoberman will be followed by Ann Follacchio.

JUDITH HOBERMAN: Good morning, Representative Lawlor, and members of the Judiciary Committee.

My name is Judith Hoberman. I am chair of the Connecticut Bar Association's elder law section, and I practice law in Hamden and reside in New Haven in Representative Dillon's (inaudible) district.

I am here today to testify on behalf of the

HB5407  
SB426

Elder Law section in general support of House Bill 5407, An Act Concerning Probate Fees, as Judge Knierim had described, but ask that you consider it an amendment to provide for hardship exceptions to the interest provisions of that bill.

The elder law section does support the provisions of the bill that Judge Knierim described that prohibit -- that would prohibit probate courts from assessing fees with respect to a decedent's estate based on the value of real estate not situated in Connecticut, and to prohibit courts from assessing fees against ancillary estates based on estate assets not located in this state.

Our specific concern is that portion of this bill that seeks to amend the Connecticut General Statutes 45a-107, new subsection (1) of the statute.

That provision has language that will impose interest at the rate of half a percent a month, six percent a year, as Judge Knierim described, on unpaid probate costs for decedents who die on or after January 1st in 2011.

Our specific concerns are with an across-the-board implementation of this interest that may have harsh consequences that are not intended. While subsection (1)(3) of the raised bill provides for an extension for payment of costs at the discretion of the probate court, including interest, for reasonable cause shown, the bill fails to provide language that addresses a hardship exception of the interest all together.

We respectfully submit that the bill should contain additional language that provides

that, for reasonable cause shown, interest may be waived entirely by the probate court from its due date.

The bill seeks to impose interest from the time that a Connecticut estate tax return would have to be filed, which is nine months from the date of death, until payment of the assessed fee.

Probate courts in Connecticut assess their fees based on the gross taxable estate reported on the estate tax return and filed with the probate court, regardless of whether an estate is actually probated to pass assets.

When couples or siblings own property jointly and one dies, it is generally believed by the public that there is no need for probate court involvement. Therefore, nothing is filed with the probate court at the time of death.

However, Connecticut law requires the filing of an estate tax return even if there's no tax due. Those are called the CT-706 NT, no taxes due, and that return must be filed with the probate court.

Often, many years later when jointly owned real estate is being sold or mortgaged, a return must be filed to make that property marketable. And this results in a substantial -- section of the proposed bill would result in a substantial amount of interest being imposed.

And we see with our clientele, who may be coming to us those many years later, some significant hardship situations. I'll give two illustrative examples.

One may be an unrepresented widow. All of her

assets were joint at the time of the death of her spouse, and when her spouse may have died, she does not file anything with the probate court. There's no decedent's estate necessary. There may be nothing that would have walked her to the door of the probate court.

Fifteen years later when the marital home is sold, to pay -- she's going into assisted living and her home is finally being sold, she requires a certificate releasing Connecticut estate tax lien, which is issued by the probate court, and that would be necessary to file on the land records to complete the sale.

So then 15 years later, this surviving spouse, who would need her assets to support herself in assisted living, would be required to pay interest at the rate of six percent a year for the 15 years on the costs assessed by the statutory probate fee.

Another example, similar facts above, let's imagine that that surviving spouse dies 20 years after her husband and has left her home that may be her only estate to her adult disabled child who has always lived in the home with her.

If that adult disabled child is of sufficient age and lacks sufficient income, he or she may apply for a reverse mortgage to be able to remain in the home and now finds that years after his parents' death, they had owned the property jointly, it may have left to the disabled child, again, by a right of survivorship, now would require the filing of certificates releasing the Connecticut estate tax lien in order to get a reverse mortgage to support himself in that home, and many years have gone by and the Connecticut tax return

has to be filed and interest has accumulated over the many years since the first parent died, the second parent died, and now he needs those tax releases from the probate court.

Again, these are not probate estates. These are what we call tax purposes only where the certificate of -- of estate tax -- releasing the estate tax lien has to be obtained.

So these are situations where we would see hardship for individuals of moderate means who have not had to use the probate courts to actually probate a decedent's estate and yet find themselves years later filing a tax return that unbeknownst to them at the time of the death had to be filed:

And so we would hope that the bill -- as Judge Knierim said, we hope we'd be able to work towards adding language that would provide for a hardship waiver of the interest. That hardship waiver could include lack of counsel, lack of knowledge at the time of the death.

It could include a showing of financial hardship that the interest that has accumulated could be as much or half or equal to the probate fee itself on moderate -- on a moderate piece of real estate, but that might be the sole -- the only thing that's showing up on that CT-706.

So we ask your consideration of that, of that hardship waiver as you go forward with this bill.

I submitted written testimony in support of Senate Bill 426, which is -- you've heard testimony already, An Act Concerning the Connecticut Uniform Adult Protective Proceedings Jurisdiction Act. The elder law

section supports that bill, and I have no further comment, other than -- other than my testimony -- and the speaker who preceded me, Tom Behrendt, explained the importance of that bill and the consensus that was reached by a considerable -- considerable -- very hardworking group last year. Thank you.

REP. LAWLOR: Thank you. And are there any questions? If not --

REP. O'NEILL: Mr. Chairman?

REP. LAWLOR: Next is -- oh, I'm sorry.

REP. O'NEILL: May I be recognized?

No, this is not a question for you, although you're free to sit there if you want to.

SB371

I need to correct the record. In an earlier discussion with the previous witness to the one who just left, we had talked about a probate judge who had been a subject of an impeachment inquiry back in the mid-1980s, and we incorrectly identified that individual -- as Judge Killian. It was not Judge Killian or -- anyone with that name. It was Judge Kinsella who was that judge who was previously subject to an impeachment investigation.

And, you know, these Irish names are a little confusing, and it could have been Kennedy, it could have been, you know, Kerrigan, something beginning with a K. Turned out it was Judge Kinsella.

So I apologize to Judge Killian, and hopefully the record will now be corrected, and maybe we can even go back and edit the videotape as well.

talking about a probate judgeship, you're talking about an elected official in the state, but you're also talking about someone who is much more than an elected official.

A probate court judge has the -- in his other her (inaudible) the opportunity to absolutely ruin a life or lives. They have a much higher burden of responsibility (inaudible) than some of the other elected officials because of the -- what the direct result of what they say or what they deem in that probate court, how that could affect someone's life.

I just think that I -- your comparison is well taken, but I think there is also a distinction there because of the responsibility that they hold (inaudible).

I -- your point is well taken, but I think there's a difference.

REP. FOX: Thank you. Any other questions from members of the committee? Seeing none, thank you very much.

ANN FOLLACCHIO: Thank you.

REP. FOX: Next is Al Casella. Good afternoon.

ALBERT CASELLA: Good afternoon, Representative Fox and other members of the Judiciary Committee.

My name is Albert Casella. I'm a member of the Connecticut Bar Association's Estate and Probate Section, and on behalf of that section, I'm here to testify in support of House Bill 5407, An Act Concerning Probate Fees. Written testimony has been submitted by the CBA on this.

Current law assesses a probate fee against a

decedent's assets whether those assets are located in Connecticut or not. This subjects the State of Connecticut decedents to a probate fee in Connecticut, as well as probate fees in other states on the same assets. Thus, a decedent's estate may pay multiple probate fees on the same assets.

In addition, current law also assesses a Connecticut probate fee on out-of-state assets of non-resident decedents who own tangible or real property in Connecticut at the time of their deaths.

House Bill 5407 will change this to assess a Connecticut probate fee only on assets located in Connecticut at the time of death. This will prevent the imposition of probate fees on the same assets by multiple jurisdictions.

As such, the Estates and Probate Section of the Connecticut Bar Association supports House Bill 5407.

Thank you very much for the opportunity to speak to you this afternoon.

REP. FOX: Thank you.

I have a question, because we've addressed this in the past, at least in committee, and it has never made it all the way through to become law.

And as I understand it, there's also constitutional issues as to whether or not we can do -- the certain courts can do what they're doing.

ALBERT CASELLA: Correct.

REP. FOX: And also if I recall correctly, some

courts may handle this differently than other courts within Connecticut.

Has that been your experience or --

ALBERT CASELLA: I believe that initially that may have been the experience, and I think there was -- for court uniformity, the courts either -- and I don't know the inner workings of how the system works, but I think the courts were instructed to comply with the statute, even though certain judges may have thought that that may not have been the appropriate way to go, and a fee was assessed or is currently being assessed to be in compliance with the statute.

REP. FOX: Because I do think it's important that the courts be consistent throughout the state.

ALBERT CASELLA: Correct, correct.

And there are issues of whether it's constitutional to do it this way. And probate administration has supported this bill, as does the Connecticut Bar Association's Estate and Probate Section (inaudible).

REP. FOX: Okay. Any questions?

Representative O'Neill.

REP. O'NEILL: You mentioned out-of-state assets. I'm just curious, does -- does it ever come up that there are assets that are outside the country that are picked up by this -- I don't know why, it just crossed my mind when you were saying "out of state."

I'm just wondering, given that lots of people live in, you know, multiple places and have a

home in Connecticut and may have a home in Puerto Rico -- well, Puerto Rico is still in the United States, so they have a home in a Caribbean country, like the Dominican Republic or something that.

ALBERT CASELLA: I don't have personal experience with having an estate. That may be possible based on the way the Connecticut statute is linked to the definition of gross estate. And for federal and estate tax purposes, the gross estate would include out-of-state or out-of-country United States jurisdiction assets, then that may be the case.

But I -- to be candid, I have not had that personally. I wouldn't speak to that is 100 percent (inaudible).

REP. O'NEILL: Okay.

So you would have to look to federal practice to see how they treat assets that are outside the country?

ALBERT CASELLA: Correct.

REP. O'NEILL: Okay. Thank you.

ALBERT CASELLA: Thank you.

REP. FOX: If no other questions...

Kathleen Murphy. Good afternoon.

JUDGE KATHLEEN MURPHY: Good afternoon, Representative Fox, and honorable members of the Judiciary Committee.

My name is Kathleen Murphy, and I am the judge from Thompson, the probate court judge in the District of Thompson. And thank you for the

SB371

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Testimony of Judith Hoberman, Esq.  
Chair of the Elder Law Section  
Connecticut Bar Association

**House Bill No. 5407**  
**AN ACT CONCERNING PROBATE FEES**

Judiciary Committee Public Hearing

March 12, 2010

Representative Lawlor, Senator McDonald and members of the Judiciary Committee, my name is Judith Hoberman. I am Chair of the Connecticut Bar Association's Elder Law Section, and I practice law in Hamden. I am here today to testify in general support of House Bill No. 5407, An Act Concerning Probate Fees, but request an amendment to provide for hardship exceptions to the interest provisions of the bill.

**Background:** Probate Administration has proposed this bill to address some changes in the application of probate fees for decedent estates. We support legislation that prohibits probate courts from assessing fees with respect to a decedent's estate based on the value of real property not situated in Connecticut, and to prohibit courts from assessing fees against ancillary estates based on state assets not located in this state.

Our specific concern is that portion of this proposal that seeks to amend Conn. Gen. Stat. Sec. 45a-107 in NEW subsection (l) of the statute. That provision has language that will impose an interest at the rate of 0.5% per month on unpaid probate costs for decedents who die on or after January 1, 2011.

**Specific Concerns:** An across the board implementation of this interest penalty will have unintended consequences. While subsection (l) (3) of the raised bill provides for an extension for payment of costs, including interest, for reasonable cause shown, the bill fails to provide language that addresses a hardship exception. We respectfully submit that the bill should contain additional language that provides that, for reasonable cause shown, interest may be waived entirely by the probate court from its due date.

The bill seeks to impose interest from the time that a Connecticut Estate Tax Return would have had to be filed (nine months from date of death) until payment of the assessed fee. Probate courts in Connecticut assess their fees based on the gross taxable estate reported on the estate tax return and filed with the probate court, regardless of whether an estate is actually probated to pass assets.

When couples or siblings own property jointly and one dies, it is generally believed by the public that there is no need for probate court involvement. Therefore, nothing is filed in the probate court. However, Connecticut law requires the filing of an Estate Tax Return with the probate court. Often, many years later, when jointly owned real estate is being sold or mortgaged, a return must be filed to make that property marketable. This results in a substantial amount of interest being imposed. Two examples are illustrative.

**Example #1.** An unrepresented widow, with all estate assets joint, does not file anything at the probate court on the death of her spouse. However, 15 years later, when the marital home is sold to pay for the assisted living facility she now requires, a "Certificate Releasing Connecticut Estate Tax lien" for the deceased spouse will be necessary to record on the land records to complete the sale. The surviving spouse will then be required to pay interest @ 0.5% per month (6% per year) for 15 years on the costs assessed (probate fees).

**Example #2.** Same fact pattern as above, only this time the surviving spouse dies 20 years after her husband, leaving her entire interest in the home to her adult disabled child who has always lived in the home. Ten years later, lacking sufficient income, the adult disabled child applies for a reverse mortgage in order to remain in the home. He now requires two Certificates Releasing Connecticut Estate Tax Lien, one for the deceased mother and another for the deceased father. Both certificates must be recorded on the land records to qualify for the reverse mortgage. The adult disabled child will then be required to pay interest @ 0.5% per month (6% per year) for 20 years on the costs assessed (probate fees) for his father's estate and 10 years for his mother's estate.

**Enforcement Issues:** Under Connecticut's strict budgetary constraints, it is not realistic to believe there will be an "enforcement division" created to seek out all individuals that fail to file an Estate Tax Return. In practice, enforcement will only occur in estates with real property when that property is sold or mortgaged. This system is not fair or equitable. This proposal is likely to have a disproportionate impact on the vulnerable in our state, individuals such as widows and disabled who are of low income and modest means. It is unlikely that any enforcement will occur for those estates of wealthy individuals, who do not own real property at the time of their death, and never file an Estate Tax Return.

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Testimony of

John Ivimey, Vice Chair  
Estates and Probate Section  
Connecticut Bar Association

In SUPPORT of

House Bill 5407  
An Act Concerning Probate Fees

Judiciary Committee  
March 12, 2010

Senator McDonald, Representative Lawlor and members of the Judiciary Committee:

Thank you for the opportunity to appear before the committee to comment on certain revisions to the Connecticut probate court fees proposed in House Bill 5407, An Act Concerning Probate Fees.

My name is John R. Ivimey. I am a stockholder at Reid and Riege, P.C. and chairman of a special committee of the Estates and Probate Section of the Connecticut Bar Association tasked with challenging the imposition of a statutory probate court fee based on assets of decedents over which the court has no jurisdiction and that are not subject to the Connecticut estate tax.

Although there are a number of such assets, the categories of assets that we are most concerned about are real estate located outside Connecticut, in the estates of Connecticut residents, and assets other than Connecticut real estate and Connecticut tangible personal property in the ancillary estates of nonresidents. Over the past few years we have recommended a change in the law that would protect Connecticut residents from the imposition of a probate court fee on out-of-state real and tangible property.

We believe that House Bill 5407, An Act Concerning Probate Fees, in Section 1 (b) addresses these problems.

Thank you for allowing me the opportunity to comment on and express our support for House Bill 5407, An Act Concerning Probate Fees. I would be happy to answer any questions you may have.

PAGE 1  
LINE 9

## STATE OF CONNECTICUT

OFFICE OF THE  
PROBATE COURT ADMINISTRATORPAUL J. KNIERIM, JUDGE  
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To: Senate Co-Chair Andrew McDonald  
House Co-Chair Michael Lawlor  
Senate Ranking Member John Kissel  
House Ranking Member Arthur O'Neill  
Honorable Members of the Judiciary Committee

From: Paul J. Knierim, Judge  
Probate Court Administrator

Re: RB 5407 An Act Concerning Probate Fees

Date: March 12, 2010

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This proposal would correct problems with the current statutes governing the calculation of probate fees and repeal certain obsolete provisions. It would also provide the probate system with tools to assist in the collection of probate fees by authorizing credit card payments and by assessing interest on the late payment of fees for decedents' estates.

**Out-of-State Property**

Prior to July 1, 2005, probate fees for decedents' estates were generally calculated on the basis of the Connecticut succession tax. In 2005, the succession tax was replaced with the Connecticut estate tax. The probate fee statutes were amended at the same time to tie our fees to the new estate tax. An inadvertent consequence of the change was to require that probate courts include out-of-state property in the calculation of probate fees. This resulted from the reliance on the *federal* estate tax to define the terms used in the Connecticut estate tax. Since the federal gross estate includes all assets, wherever located within the United States, the Connecticut gross estate likewise includes all assets, including those located outside the borders of Connecticut.

The problem with assessing fees on out-of-state property is twofold. First, our courts have no jurisdiction over out-of-state property and hence no logical basis for a fee. Secondly, the statute may violate principles of constitutional law that limit the ability of states to impose taxes on property located outside state boundaries. The practice has drawn considerable and justifiable criticism from the public and the bar as well as threats of litigation against probate courts.

With respect to the estates of Connecticut residents, the bill would exclude from consideration any out-of-state real or tangible personal property. In the case of nonresidents owning property in this state, probate fees would be calculated only with reference to the Connecticut property over which a Connecticut probate court has jurisdiction. We would suggest changing the effective date of this provision to apply to estates initiated on or after January 1, 2011. This will allow our office sufficient time to reprogram the case management software.

#### **Repeal of additional fee on non-solely owned real property**

A second provision of the bill would repeal C.G.S. § 45a-107(b)(4), which imposes an additional 0.1% fee on joint real estate when an estate is not required to file a succession tax return. This provision was first enacted in 1997 in connection with the phase-out of the succession tax. At the time, it was anticipated that Connecticut would have no death tax after the elimination of the succession tax. The provision was intended to replace some of the probate fee revenue that would have been lost in the absence of a death tax. Given that the new estate tax has provided the probate courts with a substitute revenue source, this provision effectively operates to impose a double tax in the limited circumstances to which it applies.

#### **Repeal of fee for motion to appeal**

The bill would also repeal the now obsolete statutes that require parties to pay a \$50 fee when filing an appeal from a decision of a probate court. Since a 2007 change in the C.G.S. § 45a-186, appeals from probate are now filed directly with the Superior Court, and no motion is made to the probate courts. Because probate courts no longer receive appeal motions, the fee previously associated with the motion is no longer applicable.

#### **Credit card payments**

The bill would authorize probate courts to accept credit cards as a method of paying probate fees. This language is identical to the statute that permits the Superior Court to collect fees by credit card. It offers a convenience to court users and will facilitate timely collection of fees into the Probate Court Administration Fund.

#### **Interest on late payments**

A new concept included in the bill is the assessment of interest on late payment of probate fees for decedents' estates matters. Under the proposal, interest would begin accruing 30 days from the issuance of the probate bill or the due date of the estate tax return. Judges would have discretion to extend the due date of the bill, and thereby prevent the accrual of interest, if payment by the due date would cause a hardship.

Under current law, payment of the probate fee is mandatory, but there is no consequence for late payment or even for failure to pay the fee at all. This proposal is intended to provide a reasonable incentive to comply with the statute. Increasing compliance, in turn, improves the fairness of the system by which probate courts collect fees. The current system essentially penalizes those who voluntarily comply. On the other hand, a person who fails to pay the fee on time enjoys the benefit of the funds, including the opportunity to make investment income on the funds. The application of interest to late payments simply attempts to make the probate system whole from the delay in payment.

Please keep in mind that the fees on decedents' estates matters are the principal source of funding for the probate system. While the system now receives general fund support, fee revenue still represents approximately 85% of our total revenue in the current fiscal year. We recognize the state's desire to maximize the extent to which the probate system is self-sufficient, and this bill will help achieve that goal. Moreover, beginning in 2011, C.G.S. § 45a-82 provides that any surplus in the probate court administration fund is returned to the general fund, so the success of probate court collections has a direct effect on the finances of the state.

The proposed rate of interest is 6% annually (0.5% per month), which is significantly lower than the 12% interest rate on the estate tax and the 18% interest rate on municipal property taxes. It is intended not as a penalty, but instead as a reasonable approximation of the time value of funds that are not paid on time.

We thank you for your consideration and urge the committee to act favorably on the bill.