

PA10-034

HB5406

House	1124-1133	10
Judiciary	1499-1503, (1506-1513), 1613-1614	15
Senate	1625-1640, 1780-1781	18
		43

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**CONNECTICUT
GENERAL ASSEMBLY
HOUSE**

**PROCEEDINGS
2010**

**VOL.53
PART 4
895– 1168**

Total Number voting	143
Necessary for passage	72
Those voting Yea	143
Those voting Nay	0
Those absent and not voting	8

SPEAKER DONOVAN:

The bill as amended passes.

Will the Clerk please call Calendar Nine --

Calendar Number 296?

THE CLERK:

On page 21, Calendar 296, Substitute for House Bill Number 5406, AN ACT CONCERNING THE COURTS OF PROBATE, favorable report of the Committee on Judiciary.

SPEAKER DONOVAN:

Deputy Speaker Robert Godfrey, you have the floor, sir.

REP. GODFREY (110th):

Thank you, Mr. Speaker.

Mr. Speaker, I move acceptance of the Joint Committee's favorable report and passage of the bill.

SPEAKER DONOVAN:

The question is on acceptance of the Joint Committee's favorable report and passage of the bill.

Will you remark, sir?

REP. GODFREY (110th):

Thank you, Mr. Speaker.

This bill is a follow-up to the major court -- probate court reform that we did last year, and many of these sections are technical, some of them are conforming. The three big substantive issues, in section one, there is the elimination of a requirement that the probate court create regulations and have them submitted through the UAPA, the Uniform Administrative Procedures Act, and instead says regulations will be approved by the Judiciary Committee. Well the reason for that is that list of things that previously had to go through the UAPA, has now been determined, finally, by statute. All of those sections were taken care of in the major -- in -- in Public Act 09-114, which was the major probate court reform bill last year.

So there's no need for a regulatory process anymore. Interestingly, the regulations of the entire judicial -- of the probate courts have, in the past, gone through the Judiciary Committee; that will not be changed in the least.

In section two, and this is -- this is an

important substantive one, it allows the judge -- a probate judge to hold hearings anywhere in the state, so long as it's a matter that's properly before the probate court. We've long been enjoying the civil service of the probate judges in that, where appropriate, they don't drag all of the parties to a particular case into the courtroom.

For example, when there's a conservator of the person and the person is mentally competent but not physically able to come into the courthouse, the judge and the clerk will go to a nursing home, will go to a hospital. This is a very user friendly court and is something that we've been trying to keep going as we've done the court reforms. Well, with the larger districts and with the changes in -- and the distribution of nursing homes and hospitals, this gives the probate judge the power to actually have that hearing out of the new district.

And the example that Judge Knierim actually -- actually gave was if someone from Simsbury was in Hartford Hospital, he could move his court to Hartford Hospital and have the hearing there, rather than try and -- and have to go through any other kind of -- of setup, so we want to keep that going.

And section three allows municipalities to enter agreements to pay for facilities other than the proportion of their Grand List. That's current law and, as far as we know, has been current law for as far back as anyone can possibly remember. But we wanted to empower municipalities that are members of these new districts to collectively come up with a different agreement, empower them to do that, let them do that with the proviso, of course, that if they can't come up with a different agreement, the current requirement that division of payments defaults to the Grand List formula will -- will continue.

And the rest of the bill are technical changes to conform most of the sections impacted here, and so they'll be codified correctly.

That's pretty much the explanation. I urge all of my colleagues to support this bill.

Thank you, Mr. Speaker.

SPEAKER DONOVAN:

Thank you, Representative.

Would you care to remark further on the bill?

Would you care to remark further on the bill?

Representative Art O'Neill, you have the floor,
sir.

REP. O'NEILL (69th):

Thank -- thank you, Mr. Speaker.

If I might, just a couple of quick questions, particularly with respect to the agreement to find a different allocation method besides the Grand List. The Legislation says that if the towns cannot agree, I believe, I -- I don't actually have the specific language in the bill. I was looking at the LLR report and listening to the summary. What constitutes agreement, so that the towns -- that the district has reached an agreement to do it? Does it have to be a unanimous agreement?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Godfrey.

REP. GODFREY (110th):

Thank you, Mr. Speaker.

Yes, it would have to be a unanimous agreement. All of the towns would have to agree to do something that we've never done before. So that's -- that's the status. They'd all have to agree. If they don't, the current process stays in place.

Thank you, Mr. Speaker.

SPEAKER DONOVAN:

Representative O'Neill.

REP. O'NEILL (69th):

Thank you, Mr. Speaker.

And with respect to the towns agreeing, who or what entity within the town is going to act on behalf of the town? Is it the chief elected official, is it the legislative body, is it the finance board or it is unspecified?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Godfrey.

REP. GODFREY (110th):

Thank you, Mr. Speaker.

It's unspecified here in the statute, having come out of local government. Each municipality seems to have a different way of doing this. Sometimes there's general ordinances allowing mayors to do this kind of thing without having to consult with the legislative body. In smaller towns, where the legislative body is the board of selectmen, they have another way of doing it. So it leaves to local decision as to exactly how and who would do the negotiation.

It's very similar to the process that we -- we enacted to choose the sites of courthouses and the

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names of districts.

Thank you, Mr. Speaker.

SPEAKER DONOVAN:

Representative O'Neill.

REP. O'NEILL (69th):

Thank you, Mr. Speaker.

So this is, in -- in effect, in keeping with the methodology that was employed for that site selection and -- and name selection process that we've just gone through in the last few months. Is that -- that true?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Godfrey.

REP. GODFREY (110th):

Thank you, Mr. Speaker.

In the sense that, yes, it leaves the decision making to the municipalities. They can make that -- they're empowered to make those decisions, not only as to changing, but making the agreement for the process by which an agreement could be reached.

Thank you, Mr. Speaker.

SPEAKER DONOVAN:

Representative O'Neill.

REP. O'NEILL (69th):

And thank you, Mr. Speaker.

I would urge passage of the bill. I do agree that it is really a clean up of some matters left unresolved by the legislation we did last year or where we have now reached a point where we can fine tune that legislation now that we've had some opportunity to have some experience with it. And I think it's a -- a necessary part of going forward with the massive overhaul and downsizing of the number of probate courts and restructuring of the system of the probate courts within the State of Connecticut. And I don't recall if I had the opportunity to speak much about this, but I would like to look at what we've accomplished here at the probate court system as -- I take some comfort and encouragement from the fact that we were able to resolve these difficulties that we had in the probate court system. They've been of long-standing and they have been growing more and more severe and, yet, we were able to accomplish a great deal in restructuring and reforming the probate court system. And I hope that this serves as a -- a bit of a template for the kind of change and reform that we will be going through in the next few years throughout the state government.

Through you, thank you, Mr. Speaker.

SPEAKER DONOVAN:

Thank you, Representative.

Would you care to remark further on the bill?

Would you care to remark further on the
bill?

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

SPEAKER DONOVAN:

Have all the members voted? Have all the members
voted? Please check the roll call board to make sure
your vote has been properly cast.

If all the members have voted, the machine will
be locked and the Clerk will please take a tally.
Would the Clerk please announce the tally?

THE CLERK:

House Bill 5406.

Total Number voting 144

Necessary for passage 73

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Those voting Yea	144
Those voting Nay	0
Those absent and not voting	7

SPEAKER DONOVAN:

The bill passes.

Will the Clerk please call Calendar Number 77?

THE CLERK:

On page six, Calendar 77, House Bill Number 5295,
AN ACT CONCERNING MUNICIPALITIES AND PRESCRIPTION DRUG
PLANS, favorable report of the Committee on Insurance
and Real Estate.

SPEAKER DONOVAN:

Distinguished chair of Insurance and Real Estate,
Representative Fontana, you have the floor, sir.

REP. FONTANA (87th):

Thank you, Mr. Speaker.

Mr. Speaker, I move for acceptance of the Joint
Committee's favorable report and passage the bill.

SPEAKER DONOVAN:

The question is on acceptance of the Joint
Committee's favorable report and passage of the bill.

Will you remark?

REP. FONTANA (87th):

Thank you, Mr. Speaker.

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SENATOR KISSEL:

Thank you very much.

That -- that answers my questions and my concerns. Thank you, Mr. President.

THE CHAIR:

Thank you, sir.

Are there further remarks? Will you remark further?

Senator McDonald.

SENATOR MCDONALD:

Thank you, Mr. President.

If there's no objection, might this item be placed on the consent calendar?

THE CHAIR:

Is there objection? Is there objection?
Seeing none. This item may be placed on the consent calendar.

Mr. Clerk.

THE CLERK:

Calendar Number 457, File Number 494,
Substitute for House Bill 5406, AN ACT CONCERNING
THE COURTS OF PROBATE, favorable report of the
Committee on Judiciary.

THE CHAIR:

Senator McDonald.

SENATOR MCDONALD:

Thank you, Mr. President.

Mr. President, I move acceptance of the joint committee's favorable report and passage of this bill in concurrence with the House.

THE CHAIR:

The question is acceptance and passage in concurrence. Will you remark further?

SENATOR MCDONALD:

Thank you, Mr. President.

Mr. President, this legislation is what I would consider to be a corollary to some of the issues we adopted last year in our Probate Court Reform system. In essence, Mr. President, this would eliminate the requirement that certain probate court regulations be adopted and approved by the Judiciary Committee of the General Assembly. There are in -- there are already procedural safeguards in place that under current law that we believe are sufficient under these circumstances.

It also allows a judge of probate to hold hearings anywhere in the state so long as the

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matter that is the principle focus of the probate court judge's attention is a matter that originated in his or her district. Whether the judge is required to travel to a hospital or other institution outside of his or her district, shouldn't affect the jurisdiction of the judge's ability to do so.

There are other minor technical changes included in the bill before the chamber, and I believe that they are the result of some hard work by the Probate Court Administrator and his staff, and -- and I -- I'm looking...for the tally sheet, but I believe that this legislation went through the House on a unanimous vote prior to coming up to this chamber. Through you, Mr. President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you, Mr. President.

I'm actually surprised that in our major Probate Court Reform Bill that passed last year that we didn't have any provisions in there to let towns reach agreements on multitown court costs -- cost sharing. Is it -- is it my understanding

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that we did not have any provisions regarding that, and, now with our major probate court consolidation efforts, we want to make it very clear that as towns negotiate where the courts are going to be located and how the business is going to be conducted that they have wide latitude as to negotiating costs amongst themselves regarding all aspects of this? Through you, Mr. President.

THE CHAIR:

Senator McDonald.

SENATOR MCDONALD:

Thank you, Mr. President.

Through you, as much as we tried to contemplate all aspects of the substantial reforms we were undertaking last year, we inevitably fell short of the mark on some of those areas. The cost-sharing aspects of it were -- were certainly among the issues that were left undone. So, yes, Senator Kissel, under this legislation, it would allow the towns who share a probate district to mutually agree on how those expenses would be paid.

In the absence of that agreement, those costs would be allocated on a proportional basis to the

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towns within that district base on -- upon their most recent grand lists. Through you, Mr. President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much.

And I think that's an important change from what we have heretofore. And let me explain why, is that one of the points of contention and amazingly for whatever reason the consolidated probate districts in my neck of the woods and nearly everyone in my town is affected. They haven't really finalized how they want to work this out. It seems like there's a -- the strain of independence north of Hartford. And I think that's a healthy thing. Maybe sometimes that explains my concerns regarding various legislation in this chamber and my approach to legislation, but I think it's good that we give our municipalities wide latitude to hammer out financial arrangements amongst themselves. I can see how a straight population analysis wouldn't be fruitful if, indeed, certain municipalities say

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that they would take on the added cost of having a probate court in their town and all the costs associated therewith, perhaps they should get a credit somehow for taking on other responsibilities.

Another question, through you, Mr. President, to the proponent of the bill. It has to do with the ability of judges to conduct business in any Connecticut location. And I know that Senator McDonald had pointed out the example of if a probate judge had to go to a hospital, nursing home or something else like that outside the four corners of the probate court district, the geographic boundaries of the district, and that makes an awful lot of sense. But I'm wondering if this would also if not explicitly implicitly allow -- and I'm not sure if any probate court district is thinking of this kind of situation, but my understanding historically is that we have circuit courts because historically judges would get on their horses and ride a circuit from place to place to conduct business. And, indeed, if we are affording probate judges this kind of latitude, would it also mean that if a probate district said

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we are going to sit for one day in this town and two days in this town and the other two days in this town that they would have the ability to do that. Through you, Mr. President.

THE CHAIR:

Senator McDonald.

SENATOR MCDONALD:

Thank you, Mr. President.

Through you, if Senator Kissel would be kind enough to restate the question, I would appreciate it.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much.

And -- and I just want you to know that my staff has brought me out the bottled water so don't let that mean anything one way or the other.

But -- my question was this, historically, I believe the appellation of circuit courts arose from the fact that in the early days of our judicial system judges would get on horses and ride from courthouse to courthouse to sit and hear cases. And they would essentially ride a circuit

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and, thus, arose the notion of a circuit court which has appellate jurisdiction over a wide geographical area.

And I'm wondering if some of our probate courts, as they are now newly consolidated and covering a wider geographic area, that by allowing a judge to sit in a nursing home or in a hospital outside his or her district, outside the geographic boundaries, which this bill does and which I think is a really good thing, that the notion that within the geographic boundaries of the probate court jurisdiction that there's nothing prohibiting those towns from saying a judge could sit in one town on Mondays, another town on Tuesdays and Wednesdays, and another town on Thursdays and Fridays.

And my question is does this -- are they already allowed to do that because it's all within the same geographical parameters of their district? Or would this make it clear that you don't need to have one probate court location that the location can -- can move around both within the district and out -- actually, outside a district? Through you, Mr. President.

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THE CHAIR:

Senator McDonald.

SENATOR MCDONALD:

Thank you, Mr. President.

Mr. President, through you, I believe the answer depends on how sturdy a horse there is riding in -- in the district.

But, Mr. President, to answer Senator Kissel's question, a probate judge can -- can hold hearings anywhere in his or her district regardless of where the physical courthouse is. This would allow the probate judge to hold hearings outside of his or her district if the circumstances of a particular case warrant it as long as the original jurisdiction, if you will, arose within the -- the primary district of -- or the towns within the probate district. Through you, Mr. President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much, Mr. President.

And regarding that, are there any reasonable limitations on that authority, and, by way of example, we just lost a wonderful woman from

Enfield, a member of our town committee and without mentioning her name or her love one, she lived in Enfield. She grew ill and for a number of years she was placed by her children in a nursing home at a location down in Fairfield County and then later on she reached a point in her life where she moved back to Enfield. So Fairfield County, the Greater Stamford area, is quite a long distance. It's all within the state of Connecticut.

I can -- can conceive of a case where a matter could arise in one part of the state and because of the -- of the frailty of an individual, their health, their children may live in a wholly different part of the state, so while the matter's pending in a probate court, let's say, in Enfield, and then all of a sudden the individual's down in a nursing home in Stamford, and let's say other parties to the -- to the matter are up in Enfield. I mean, would there ever be a grounds where someone could say, hey, that's just too far, we don't want to all go down that far? Or it's basically, anything within Connecticut, as we're essentially creating a legislative history here,

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would that be deemed to be reasonable and would a corollary consideration be, it's just once -- it's one day or if it's a protracted series of hearings that may extend for several days, then all of a sudden distance might be more of a consideration? Through you, Mr. President.

THE CHAIR:

Senator McDonald.

SENATOR MCDONALD:

Thank you, Mr. President.

Through you, I believe any judge of probate would consider all of the relevant factors that are perhaps present in particular circumstance in making that decision. But under this legislation, the judge of probate could hold any type of hearing in any part of the state that was necessary to facilitate the attendance of a party. So it's -- it is specifically limited to parties, but it is not geographically limited in distance or in frequency.

So I think it would certainly be an issue that would have to be addressed, and I don't know of any judge of probate who wouldn't be sensitive to -- to the matter, but there would be no limitation

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to the frequency with which the accommodation of a party could be considered by the probate court.

Through you, Mr. President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much. So -- so it's really in the sound discretion of the probate judge. It's up to him or her to get as much information up front as possible, but once that decision's made there really is no grounds for an appeal in any way. Through you, Mr. President.

THE CHAIR:

Senator McDonald.

SENATOR MCDONALD:

Through you, Mr. President, I -- I believe that -- that's correct. You know, it -- it -- we are fortunate to live in a relatively small state. I've yet to been -- be fortunate enough to have a session of the Senate convene in Stamford, but -- but I certainly don't think it's too hard to get from Stamford to Hartford. And I don't think it would be too hard for somebody to get from Stamford to Hartford or Enfield if a probate

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matter required that. Through you, Mr. President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much.

And it wasn't that long ago I had a pleasure to visit at an event in Stamford, and it is a lovely city and not that far of a drive. And you're absolutely correct. And, indeed, occasionally this chamber has moved itself, although not too far, but we have in my recent recollection held a -- a session day at the Old State House, although still in the City of Hartford, but not in this chamber.

Are there any other -- other than the -- the things that I pointed out, Sen -- through you, Mr. President, the provision regarding -- okay, one more question, it allows the admin -- probate court administrator to enforce regulations regarding record maintenance, is my understanding is what's in the bill. Through you, Mr. President, are those regulations being promulgated as we speak, or are those already in existence? What kind of time frame are we looking for that --

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looking to have happen there? Through you, Mr. President.

THE CHAIR:

Senator McDonald.

SENATOR MCDONALD:

Thank you, Mr. President.

Through you, there are already regulations in place dealing with the records maintenance of -- of the probate court.

Under this legislation, the probate court administrator or the Executive Committee of the Probate Assembly could propose any additional regulations. And there a process set forth in the legislation by which those regulations would be -- would be considered and adopted. Notwithstanding the best efforts of -- of some folks, you may recall recently there was a example of some probate court records that were inadvertently disposed of by a -- by a clerk of a probate court so I don't think any of these regulations are static, just like our laws, but this would provide a more streamlined process by which the probate court administrator or the Probate Assembly could address issues on an ongoing basis. Through you,

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Mr. President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much, Mr. President.

I want to thank Senator McDonald for his cogent and thoughtful answers to my question. I know that his is an area that a lot of folks in my neck of the woods have concerns with. Indeed, there's still some jurisdictions that are sort of working out some of the bugs regarding the geographic boundaries that they have. It is a direction given our state's financial situation where I believe we're going to have to be moving regarding a variety of state agencies as well, but we have moved forward on consolidating the probate districts on -- in a different day in a different age having a probate court in every single municipality. We're going to look back and look at that as a -- a nice luxury but one that we could not sustain financially. But, hopefully, we're moving forward with the consolidated probated districts in a way that is sensitive to everyone concerned and most importantly to the

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citizens of the state Connecticut who avail themselves of their probate courts each and every day to help take care of those in need.

So with that I'm happy to support the bill.

Thank you, Mr. President.

THE CHAIR:

Thank you, Senator.

Do you care to remark further? Do you care to remark further? If not, Senator McDonald.

SENATOR MCDONALD:

Thank you, Mr. President.

Mr. President, if there's no objection, might this item be placed on the consent calendar?

THE CHAIR:

Without objection, so ordered.

Mr. Clerk.

THE CLERK:

Calendar page 17, Calendar Number 464, Files Number 552 and 633, House Bill 5530, AN ACT CONCERNING THE CONNECTICUT BUSINESS CORPORATION ACT, as amended by House Amendment Schedule "A," favorable report of the Committee on Judiciary.

THE CHAIR:

Senator McDonald.

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5247, Calendar 457, Substitute for House Bill

5406.

Calendar page 17, Calendar 464, House Bill

5530.

Calendar page 23, Calendar 75, Substitute for
Senate Bill 229.

Calendar page 24, Calendar Number 98,
Substitute for Senate Bill 312.

Mr. President, that completes those items
placed on the first consent calendar.

THE CHAIR:

Thank you, Mr. Clerk.

If you would announce the vote again, the
machine will be opened.

THE CLERK:

The Senate is now voting by roll call on the
consent calendar. Will all Senators please return
to the chamber? The Senate is now voting by roll
on the consent calendar. Will all Senators please
return to the chamber?

THE CHAIR:

Have all the members voted? Have all the
members voted? The machine will be closed.

Mr. Clerk, please call the tally.

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THE CLERK:

Motion's on adoption of Consent Calendar
Number 1.

Total number of voting	35
Those voting Yea	35
Those voting Nay	0
Those absent and not voting	1

THE CHAIR:

The consent calendar passes.

Are there any points of personal privilege or
announcements?

Senator Gomes.

SENATOR GOMES:

I'd just like it -- thank you, Mr. President.

I'd just like it to be noted that I missed a
vote today on Senate Bill 168, and I was out of
the area. And if I'd been here, I would have
voted in the affirmative.

THE CHAIR:

Thank you, sir. The Journal is so noted.

SENATOR GOMES:

Thank you.

THE CHAIR:

Any further points?

**JOINT
STANDING
COMMITTEE
HEARINGS**

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PART 5
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2010

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.

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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

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.

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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.

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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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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

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?

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Honorable Members of the Judiciary Committee

From: Paul J. Knierim, Judge
Probate Court Administrator

Re: RB 5406 An Act Concerning the Courts of Probate

Date: March 12, 2010

Thank you for the opportunity to testify about Raised Bill 5406. The bill proposes changes to the statutes concerning probate courts in the following three areas:

Regulations

The probate system currently has two different methods for the adoption of regulations. Most regulations follow a process adopted in 2007 under which proposed regulations become effective only after the Judiciary Committee has had an opportunity for review. The committee has 90 days to act on any proposed regulations, and regulations are deemed effective if the committee does not act within that time. This procedure is set forth in C.G.S. § 45a-77(c). The second method, which is set forth in § 45a-77(b), provides that regulations on certain topics must follow the regulations review process.

Under this proposal, all probate court regulations would be reviewed by the Judiciary Committee. The change would simplify and streamline our procedures. More importantly, the change would ensure review all of our regulations by the Judiciary Committee, which has cognizance over legislation affecting the probate courts and oversees all aspects of the probate system.

Location of hearings

Probate judges often hold hearings at locations other than their courts to make it easier for interested parties to participate. Although current law authorizes this practice, it also restricts the location of hearings to the boundaries of each probate district.

This bill would permit a judge to hold a hearing at any location in the state for the convenience of parties, provided that jurisdiction lies in the judge's district. This flexibility would be particularly useful in matters in which a resident of one probate district is receiving care in a hospital or nursing home located in another district.

Allocation of probate court expenses among municipalities

Under C.G.S. § 45a-8, municipalities are required to provide probate courts with facilities, furniture and equipment, telephone service, supplies, and certain other office-related supports. The statute provides that those expenses should be allocated among the municipalities in a regional probate district on the basis of their respective grand lists.

This bill would allow municipalities more flexibility by authorizing alternate agreements to allocate expenses. The grand list method would remain the default rule in the absence of an agreement. This concept passed the House of Representatives last year unanimously but was not acted upon by the Senate.

Thank you for your consideration.