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FISCAL IMPACT REPORT

ORIGINAL DATE 1/30/17
 LAST UPDATED 2/28/17

SPONSOR Cook HB 181/aHJC

SHORT TITLE Uniform Partition of Heirs Property Act SB _____

ANALYST Downs

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Attorney General’s Office (AGO)

SUMMARY

Synopsis of House Judiciary Amendment to House Bill 181

The House Judiciary Committee amendment to House Bill 181 limited the definition of “heirs’ property” to exclude undivided mineral interests. In the section of the bill that lists items courts should consider when deciding a partition, the amendment added that the court should consider the partition’s effect on the size, access, and legal rights for the intended purpose of the property. In the same section, the amendment added language stating the court cannot partition property in a manner that would not otherwise be allowable under applicable laws.

Synopsis of Bill

House Bill 181 creates the Uniform Partition of Heirs Property Act, requiring the court to establish whether a property is “heirs’ property” in an action to partition real property. If a property is determined to be “heirs’ property,” it is required to be partitioned under the Uniform Partition of Heirs Property Act unless all of the co-tenants otherwise agree. House Bill 181 amends other statutes to conform to the Uniform Partition of Heirs Property Act, and provides a definition for “heirs’ property” that, if met, will provide the following protections when a co-tenant files for a partition order:

1. The co-tenant seeking the partition is required to give notice to all other co-tenants.
2. Unless all co-tenants agree to the value of the property, the court must order an independent appraisal. If any co-tenant objects to the appraised value, the court must hold a hearing to consider other evidence.
3. The court must provide co-tenants with the right to buy all interests of the co-tenant requesting the partition. If more than one co-tenant elects to purchase the property of the co-tenant seeking the partition, the court is required to pro-rate the seller's share among the buyer according to fractional ownership percentages.
4. In the event no co-tenant wants to purchase the interest of the co-tenant seeking the partition, the court is required to order a partition in kind. If the court does not order partition in kind, it is required to order partition by sale. If no co-tenant requested partition by sale, the court is required to dismiss the action.
5. If the court orders a partition by sale, the property is required to be advertised on the open market in a commercially reasonable manner and at a price no lower than the court-determined value. If an open market sale is unsuccessful or the court determines that a sale by sealed bids or by auction would be more economically advantageous for the co-tenants as a group, the court may order a sale by one of those methods.

FISCAL IMPLICATIONS

There is no reported fiscal impact as a result of the passage of House Bill 181. AOC stated there will be a small cost for updating and distributing new statute, but that all other costs would be proportional to the enforcement of the new law and hearings associated with the enforcement. AOC writes, "New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase."

However, House Bill 181 does add additional responsibility to the courts, such as holding additional hearings, making additional findings and determinations, issuing additional orders and appointments, and as AOC states, "in general, [the court must] take a hands-on, continuous role and approach when it is determined that property is heirs' property and the partition action is governed by the Uniform Partition of Heirs Property Act."

SIGNIFICANT ISSUES

House Bill 181, according to AOC, which quoted the Uniform Law Commissioners, will preserve the right of a co-tenant to sell his or her portion of an inherited property but still ensures the other co-tenants are not cheated and have a voice throughout the process. This law will apply in instances where a property owner has died without specifying who will receive the property and thus all descendants inherit it. AOC quoted the Uniform Law Commissioners, stating, "[Currently] A tenant-in-common may sell his or her interest without the consent of the co-tenants, making it easy for non-family members to acquire an interest in the property. This condition has allowed many real estate speculators to acquire heirs' property at a price below its fair market value, depleting a family's wealth in the process."