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FISCAL IMPACT REPORT

SPONSOR Ingle LAST UPDATED _____
ORIGINAL DATE 1/29/2023
SHORT TITLE Conservator Waiver Of Liability BILL NUMBER Senate Bill 183
ANALYST Gray

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	No fiscal impact	No fiscal impact			
Total						

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

New Mexico Attorney General (NMAG)

SUMMARY

Synopsis of Senate Bill 183

Senate Bill 183 amends the Uniform Probate Code. Currently, Section 45-5-429 NMSA 1978 subsection (E) prohibits any waivers of releases of liability of conservators. SB183 proposes to amend statute to allow releases and waivers of liability for a conservator or a conservator's agent, affiliate, or designees in cases where the protected person or a person interested in the conservatorship estate is represented by legal counsel.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

There are no fiscal implications.

SIGNIFICANT ISSUES

Section 45-5-429 NMSA 1978 was amended in 2019 to prohibit waivers of liability for conservators and to provide that any release or waiver of liability requested, procured, or received contrary to the provisions of this section is void. SB183 proposes to amend statute to allow releases and waivers of liability if the protected person or interested person is represented by legal counsel.

The Administrative Office of the Courts (AOC) notes that attorneys representing professional conservators indicated that the 2019 statutory changes would leave the issue of liability for professional conservators open with no ability to obtain final closure, and that it may discourage professional conservators from continuing to take these types of cases. In 2019, the Supreme Court’s Guardianship Reform Implementation Steering Committee considered making changes similar to the changes proposed in SB183. No consensus was reached by the appointed members over the course of several meetings.

According to AOC:

“SB183 does not require a full accounting or hearing to review the actions taken by a conservator. Although SB183 does require the appointment of “independent counsel” for a protected person or the conservatorship estate in order for a release or waiver of liability to be valid, it may prematurely close the liability of the conservator for actions that may not be discovered until a later date.”

BG/al