



**House
Legislative
Analysis
Section**

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PART-TIME PROBATE JUDGES

Senate Bill 298 (Substitute H-1)
First Analysis (12-5-90)

Sponsor: Senator Mitch Irwin
Senate Committee: Judiciary
House Committee: Judiciary

THE APPARENT PROBLEM:

Probate judges in counties with less than 15,000 population are not subject to the Revised Judicature Act's prohibition against practicing law other than as a judge. These individuals are compensated for what amounts to part-time work as a probate judge, and often practice law in other courts within the county in which they sit as a probate judge. This can result in situations that range from the awkward to the outright conflict of interest. For example, sometimes a probate judge, acting as an attorney, is an adversary against an attorney who has, or will have, a case in the probate judge's court. To ensure the professionalism of Michigan's judicial system and to avoid possible conflicts of interest, it has been suggested that part-time probate judges be elevated to full-time status.

THE CONTENT OF THE BILL:

The bill would amend the Revised Judicature Act to forbid judges in counties with less than 15,000 population from practicing law other than as a judge (this prohibition already applies to other probate judges). The bill also would apply the statutory minimum salary requirement to the small-county judges; this requirement sets the minimum annual salary for a probate judge at 90 percent of the annual salary payable by the state to a circuit judge. Six thousand dollars of the minimum salary must be paid by the county (or counties, if a multicounty probate district); the balance is paid by the state. The bill would take effect January 1, 1995.

MCL 600.821

FISCAL IMPLICATIONS:

According to the state court administrative office, the salaries received by part-time probate judges in the 17 counties where they exist now range from \$18,961 to \$32,000, of which the state pays \$4,500 or \$5,000, depending on the size of the county. Under the bill, the minimum salary for each would be \$52,770 (90 percent of circuit court salary payable by the state), of which the county would contribute \$6,000. The \$46,770 balance of each salary would be paid by the state. (12-5-90)

The 17 counties that now have part-time probate judges are Alcona, Arenac, Baraga, Benzie, Crawford, Iron, Kalkaska, Keweenaw, Lake, Leelanau, Luce, Mackinac, Missaukee, Montmorency, Ontonagon, Oscoda, and Presque Isle. When the 1990 census is made final, Arenac and Leelanau counties are expected to exceed 15,000 population.

ARGUMENTS:

For:

Since the ratification of the 1963 state constitution, part-time judicial positions gradually have been eliminated from Michigan's judicial system. The bill would complete this process, elevating the remaining part-time probate judges to full-time status, and eliminating the problems with conflict of interest that

arise when a judge may also practice law away from the bench. A reduction in the incidence of conflicts of interest will reduce the need for visiting judges; this economy will help to offset increased costs. With the ban on private practice, the appearance of impropriety would be removed; with full-time pay, judges would no longer need private practice to make a living. The bill would promote professionalism and ensure the impartiality of the judiciary.

Against:

Basically, small counties have part-time probate judges because the caseloads do not warrant full-time positions. If these judges are to receive full-time pay, with its concomitant cost for both state and county, then there should be some provisions to have the judges assume additional work, perhaps through a system of mandatory assignments to other courts in need of assistance.

Response: Assignment proposals raise questions of how and whether a judge is to serve on distant benches and still fulfill the duties for which he or she was elected. The bill would not take effect until 1995, thus granting ample time to resolve the assignment issue, as well as any others that may arise. This delay contains a second benefit: the supreme court's Twenty-first Century Commission on the Courts has been developing recommendations on the unification of the trial courts and the elimination of part-time positions. A pilot project is expected to be proposed for 1993. By delaying the bill's effect until 1995, there will be time to experience and evaluate the developments of the next few years.

POSITIONS:

The Michigan Probate Judges Association supports the conversion of part-time probate judges to full-time status. (12-5-90)