

**SFA**

BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

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## MICHIGAN STATE LAW LIBRARY

Senate Bill 298 (as enrolled)  
Sponsor: Senator Mitch Irwin  
Senate Committee: Judiciary  
House Committee: Judiciary

PUBLIC ACT 343 of 1990

Date Completed: 1-13-91

RATIONALE

Probate judges in some of Michigan's smallest counties (less than 15,000 population) are not subject to the Revised Judicature Act's restriction against a judge's 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. Reportedly, such a situation can result in a probate judge's hearing a case that is contested by an attorney whom the judge, acting as an attorney, sometimes opposes in district or circuit court proceedings. Some people believe that, in order to ensure the professionalism of Michigan's judicial system and to avoid possible conflicts of interest, small-county probate judges should be elevated to full-time status and should receive appropriate compensation.

CONTENT

The bill would amend the Revised Judicature Act to require that a probate judge in a county with a population under 15,000 that was not part of a probate court district could not "engage in the practice of law other than as a judge" and would have to receive the minimum annual salary specified in the Act (i.e., 90% of the salary paid by the State to a circuit judge). Those provisions currently apply to probate judges in counties having a population of 15,000 or more. Currently, probate judges in counties of less than 10,000 earn a minimum salary of \$9,000, and those in counties of 10,000-14,999 earn a minimum salary of \$10,000. The maximum

total annual salary for both is \$29,000.

The bill also would repeal a section of the Act that provides for the annual salary of a probate judge in a county comprising part of a proposed probate court district in which the electors of one or more counties failed to approve the district (MCL 600.822).

The bill would take effect on January 1, 1995.

MCL 600.821

FISCAL IMPACT

Total increased costs to the State under the bill would be between \$1,325,300 and \$1,477,800. Increased costs to counties would total \$102,000.

Under the bill, the State would pay for the increased salaries of the 17 part-time probate judges. A probate judge salary in FY 1995 cannot be anticipated. (Judges' salaries are determined by the State Officers Compensation Commission, which meets every two years.) Assuming no salary increases between 1991 and 1995, the costs to the State would be \$77,960\* per judge or a total cost of \$1,325,300 in FY 1995. The cost to those counties would be \$6,000 per judge or a total cost of \$102,000.

Assuming a 10% increase in probate judges' salaries between 1991 and 1995, the costs to the State would be \$86,931\* per judge or a total cost of \$1,477,800 in FY 1995. The cost to these counties would be \$6,000 per judge or a total

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cost of \$102,000.

\* Estimates are based on the following:

	No Increase	10% Increase
Max. Salary .....	\$ 93,817	\$ 103,198
State's Contribution .....	83,710	92,681
Part-time Salary .....	- 5,750	- 5,750
	\$ 77,960	\$ 86,931

## **ARGUMENTS**

### **Supporting Argument**

Since the ratification of the 1963 State Constitution, part-time judicial positions gradually have been eliminated from Michigan's judicial system. Michigan still has 16 probate judges in counties with fewer than 15,000 people who are, in effect, part-time judges. These small-county probate judges should be elevated to full-time status in order to complete the transformation of Michigan's judicial system to a corps of full-time professionals, and to ensure the impartiality of the judiciary.

### **Supporting Argument**

Judges should be precluded from practicing law other than in their role on the bench. Currently, part-time probate judges are sometimes put in the questionable situation of having to rule on a probate case in the afternoon that is litigated by an attorney whom the judge opposed in another court that morning. In addition, it is necessary to balance the restriction against practicing law with full judicial compensation.

### **Opposing Argument**

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

**Response:** Proposals for mandatory assignments to other courts raise questions of how and whether a judge would adequately 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.

### **Opposing Argument**

The bill's effective date should not be delayed until 1995. The Twenty-First Century Commission on the Courts has recommended that part-time probate judge positions be eliminated by 1992. The Commission also has proposed two phases of pilot projects, beginning in 1992 and 1993, which would unify the trial courts and eliminate part-time judicial positions. Phase I of the pilot projects is expected to be completed in 1995 and phase II in 1996. By including an effective date of January 1, 1995, the bill would conflict with the schedule of eliminating part-time probate judges that has been recommended by the Commission.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.

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