

1987 Assembly Bill 444

Date of enactment: March 10, 1988
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1987 Wisconsin Act 143

AN ACT to amend 753.075 (3) (a) and 753.075 (3) (b) of the statutes, relating to salaries for reserve judges.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

LAW REVISION COMMITTEE PREFATORY NOTE: The law revision committee receives a periodic report from the revisor of statutes which identifies "those reported opinions of the attorney general, and those reported decisions of any federal district court, or any state or federal appellate court, in which Wisconsin statutes or session laws are stated to be in conflict, ambiguous, anachronistic, unconstitutional or otherwise in need of revision". The law revision committee considers these decisions and opinions "to determine whether revisions are needed in the statutes or session laws". Accordingly, the law revision committee has prepared this bill and introduced it under s. 13.83 (1) (c), stats.

This bill relates to the U.S. court of appeals decision in *Raskin v. Moran*, 684 F. 2d 472 (7th Cir. 1982). The court noted that the social security act [42 USC 403 (f) (3)] prohibited the reduction in social security benefits to persons over the age of 70 who continue to earn income. The court concluded that this prohibition also applied to indirect reductions in income, such as the setoff of social security benefits against state compensation for temporary or permanent reserve judges under s. 753.075 (3), stats. Based on the supremacy clause of the U.S. constitution [art. VI, cl. 2], the court held that s. 753.075 (3) (a) and (b), stats., may not affect the social security benefits of temporary or permanent reserve judges.

This bill amends the statutes to be consistent with the U.S. court of appeals' decision. The law revision committee found that the statute is clearly and directly in conflict with the social security act, and that the U.S. court of appeals' decision was appropriate.

SECTION 1. 753.075 (3) (a) of the statutes, as affected by 1987 Wisconsin Act 27, is amended to read:

753.075 (3) (a) Temporary reserve judges shall receive a per diem of \$175 and while serving outside the county in which they reside shall also receive actual and necessary expenses incurred in the discharge of judicial duties. This per diem compensation

is not subject to s. 40.26 but the combined amount of this compensation and any other judicial compensation together with retirement annuities under the Wisconsin retirement system, the Milwaukee county retirement fund and other state, county, municipal, or other Wisconsin governmental retirement funds ~~or social security~~ received by him or her during any one calendar year shall not exceed the yearly compensation of a circuit judge. The per diem compensation and actual and necessary expenses shall be paid from the appropriation under s. 20.625 (1) (a) when the judge is assigned to a circuit court and from the appropriation under s. 20.660 (1) (a) when the judge is assigned to the court of appeals.

SECTION 1m. 753.075 (3) (b) of the statutes is amended to read:

753.075 (3) (b) Permanent reserve judges shall receive compensation equal to the compensation for the 6-month period of a judge of the court to which they are assigned. This compensation is not subject to s. 40.26 but the combined amount of this compensation and any other judicial compensation together with retirement annuities under the Wisconsin retirement system, the Milwaukee county retirement fund or other state, county, municipal or other Wisconsin governmental retirement funds ~~or social security~~ received by him or her during any one calendar month shall not exceed one-twelfth of the yearly compensation of a circuit judge. Permanent reserve judges shall receive health insurance calculated under ss. 40.05 (4) and 40.52 (1) or (2) and vacation benefits calculated under s. 230.35 (1). Compensation for permanent reserve judges shall be paid from the appropriation under s. 20.625 (1) (b).