

SB 362-FN – AS INTRODUCED

2012 SESSION

12-2951

10/09

SENATE BILL **362-FN**

AN ACT relative to benefits related to service of certain part-time judges of probate retiring because of permanent disability.

SPONSORS: Sen. Kelly, Dist 10; Sen. Houde, Dist 5; Sen. D'Allesandro, Dist 20; Sen. Merrill, Dist 21

COMMITTEE: Finance

ANALYSIS

The bill adds a benefit to a surviving spouse of certain retired part-time judges of probate.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struck through.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twelve

AN ACT relative to benefits related to service of certain part-time judges of probate retiring because of permanent disability.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Judges of Probate; Retirement Due to Disability; Surviving Spouse. Amend RSA 547:19-a to
2 read as follows:

3 547:19-a Retirement Due to Disability; ***Surviving Spouse***. Notwithstanding any other
4 provisions of law, any judge of probate ***who is not a full-time judge covered by RSA 100-C and***
5 ***who shall become unable to perform his or her duties because of permanent disability shall be***
6 ***retired from regular active service on the bench for the remainder of his or her term to age 70.*** Any
7 such judge who desires to retire because of inability to perform his ***or her*** duties shall certify to the
8 governor and council his ***or her*** disability to perform ~~his~~ ***those*** duties. If they find him ***or her***
9 unable to perform ~~his~~ ***those*** duties because of permanent disability, the governor and council shall
10 order ~~his~~ ***the judge's*** retirement from regular active service. If a judge of probate ***who is not a***
11 ***full-time judge covered by RSA 100-C and*** who is permanently disabled to perform his ***or her***
12 duties shall be unable or unwilling to certify his ***or her*** disability, any 3 justices of the probate court
13 shall certify in writing ~~his~~ ***such judge's*** disability to the governor and council, who shall, if they
14 find ~~him~~ ***the judge*** after due notice and hearing, unable to perform his ***or her*** duties because of
15 permanent disability, order his ***or her*** retirement from regular active service. The governor and
16 council upon retirement of any such judge of probate as provided herein ~~shall~~ ***may*** appoint a
17 successor ~~[to serve out the remainder of the term]~~. Any judge of probate ***who is not a full-time***
18 ***judge covered by RSA 100-C and*** who has served in such capacity for a period of at least 10 years
19 in said office, ***and*** retired from regular active service because of permanent disability, shall receive
20 during the remainder of his ***or her*** term a salary equal to one-half the salary being paid to ~~him~~ ***the***
21 ***judge*** at the time of ~~his~~ retirement, except in case of ~~his~~ ***such judge's*** election to take other
22 retirement benefits as hereinafter provided. ***If a judge of probate who is not a full-time judge***
23 ***covered by RSA 100-C dies while serving in such capacity or while on disability retirement***
24 ***from such capacity as provided in this section, his or her surviving spouse shall receive***
25 ***during the remainder of said probate judge's term a payment equal to one-half the salary***
26 ***of said probate judge at the time of death or such disability retirement, except in case of***
27 ***the probate judge electing to take other retirement benefits as hereinafter provided.*** Any
28 judge retired from active regular service under the provisions hereof who is also a member of the
29 state employees' retirement system or the New Hampshire retirement system shall be entitled to
30 retire with disability benefits under either of said systems, upon notification to the retirement board.

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1 If, however, said judge elects to take payments under the provisions of this section he *or she* shall
2 thereby forfeit all rights to any benefits provided under said employees' or New Hampshire
3 retirement system.

4 2 Application. The amendment to RSA 547:19-a by section 1 of this act shall apply prospectively
5 to anyone who would be entitled to benefits under RSA 547:19-a as amended, on or after the effective
6 date of this act.

7 3 Effective Date. This act shall take effect upon its passage.

LBAO
12-2951
12/21/11

SB 362-FN - FISCAL NOTE

AN ACT relative to benefits related to service of certain part-time judges of probate retiring because of permanent disability.

FISCAL IMPACT:

The Judicial Branch and New Hampshire Retirement System state this bill may increase state expenditures by an indeterminable amount in FY 2014 and each year thereafter. There will be no fiscal impact on state, county, and local revenue, or county and local expenditures.

METHODOLOGY:

The Judicial Branch states this bill would amend RSA 547:19-a to provide that a surviving spouse of a part-time probate court judge who had retired with a disability or who died in office would receive a pension equal to one-half of the salary the judge was receiving when the judge became disabled or died. This pension would be paid from the judicial branch's appropriation and would end at the end of the part-time probate judge's term, i.e. when the part time probate judge would have turned seventy years old. Currently, three of the ten probate court judges are part-time whose spouses could be covered by this amendment. The salaries for those three judges are based on the weighted caseload in accordance with RSA 491-A:4. Those salaries, as of January 1, 2012, are \$51,264, \$41,344, and \$20,558. Thus, the potential spousal benefits are \$25,632, \$20,672, and \$10,279. The problem with determining fiscal impact is that these are just potential benefits; it is not possible to determine with any certainty the exact impact since it is unknown when or if a sitting part-time probate court judge will either die in office or die after becoming disabled such that the benefit provided by the amendment would need to be paid. This contingent liability is not unlike what the judicial branch, or any other part of government, faces with respect to items such as retirement payouts – it is unknown when budgets are drafted just how many employees will retire in a given year. The judicial branch does its best to estimate these contingent liabilities. This amendment merely adds an additional contingency, and a relatively small one. The judicial branch believes that it can absorb this contingent liability within its current budget. Of course, if the contingency comes to pass, the future liability can be budgeted with certainty for future fiscal years.

The New Hampshire Retirement System (NHRS) states this bill provides disability benefits to probate judges who are neither full-time judges nor covered by RSA 100-C, the Judicial

Retirement Plan (JRP). Under this bill survivorship disability benefits would be payable to the surviving spouse of any disabled part-time probate judge. Under current law if a part-time probate judge is eligible for disability benefits under both RSA 547:19-a and RSA 100-A, the affected judge may choose to have either, but not both, disability benefits paid to him or her. The bill does not propose any change to the choice provisions of current law. At the present, there are 9 probate judges, 6 of whom are full-time and covered by the JRP and 3 of whom are part-time. None of the part-time probate judges are members of the NHRS. Further, based on total NHRS active membership in excess of 50,000, even if the 3 part-time probate judges became NHRS members and then became disabled, any fiscal impact would be de minimus.