



The Judiciary, State of Hawai'i

Testimony to the House Committee on Labor and Public Employment

Representative Mark M. Nakashima, Chair
Representative Jarrett Keohokalole, Vice Chair
Tuesday, March 15, 2016, 10:30 a.m.
State Capitol, Conference Room 309

by

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WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 2244, SD1 - Relating to Retirement.

Purpose: Senate Bill No. 2244, SD1 proposes to amend the provisions of Chapter 88, Hawai'i Revised Statutes, to: 1) establish different retirement requirements for current ERS members who become a judge after June 30, 2016 and for new ERS members who become a judge after June 30, 2016, and 2) reduce the service retirement allowance for credited service as a judge for new judicial appointments after June 30, 2016.

Judiciary's Position:

The Judiciary strongly opposes Senate Bill No. 2244, SD1. This bill singles out one group of employees—judges—from among several categories of employees (legislators, police, fire, and several others) who currently participate in the contributory retirement plan of the ERS. The bill would create a disparity between judges and other employee group/retirement classes by (1) establishing a more stringent years of service requirement for judges appointed after June 30, 2016, and (2) reducing the benefit “multiplier,” thus resulting in retirement benefits being earned at a lower rate for those appointed as a judge after June 30, 2016. In so doing, it would create a disincentive for current and new ERS members to serve as judges. It would also require ERS to make expensive modifications that ERS notes are out of proportion to the small number of members affected by this bill.



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The approach taken by this bill is in stark contrast to that taken in Act 163, Session Laws of Hawaii 2011, when changes were made across the board with respect to *all* of the categories of employees enrolled in the different plans including contributory and hybrid plans for employees who were hired after June 30, 2012. Act 163 in essence required that all new employees entering into the system after June 30, 2012 would be subject to more restrictive requirements and/or reduced benefits. In contrast, Senate Bill 2244, SD1 targets only judges.

Under current law, judges who are appointed after June 30, 2012 are subject to age and service requirements of 60 years with 10 years of service. Senate Bill No. 2244, SD1 would increase the service requirement to age 60 with 12 years of service for existing ERS members who become judges after June 30, 2016. This bill also impacts new ERS members upon appointment as judges after June 30, 2016. New ERS members who are appointed judges after June 30, 2016 will also be subject to the vesting requirements of age 60 with 12 years of service.

The proposed 12 years of service requirement is higher than *any* other employee group of *any* retirement class. Unlike past changes made to the retirement plans which were effectuated to all categories of employee groups on a prospective basis, this bill targets only one group—judges. Other contributory members, who were hired on or after July 1, 2012, such as elected and legislative officers, police officers, and fire fighters, are subject to 10 years of service. In short, this bill essentially moves judges out of line with other contributory members of the ERS.

There are many reasons that this bill will deter qualified and experienced persons from becoming judges:

1. Unlike other categories of employees, judges are subject to a constitutionally mandated retirement at age 70. Accordingly, new ERS members who are appointed judges at age 59 or older will not meet the more stringent vesting requirement of 12 years. If the same requirements were applied to another category of ERS membership, that employee hired at age 59 or older would have the choice of working past age 70 to meet the 12 years of service requirement. Judges will not have that option. This would deter many of the most qualified and experienced candidates from considering the bench.
2. Retirement benefits are tremendously important for judges. As noted by the 2013 Salary Commission, “Judges are constitutionally prohibited from practicing law, running for, or holding any other office or position of profit, including paid service on for-profit boards.” Reducing retirement benefits adversely affects the total compensation and benefits package for judges, impairing the ability to attract the most qualified and experienced persons to serve.



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3. The more stringent years of service requirement (12 years of service) serves as a disincentive for those current ERS members who wish to become judges, such as prosecutors, public defenders, deputies attorney general, etc. Adopting this legislation would thus dissuade qualified attorneys in the public sector from serving as judges, especially those who are in the latter part of their career.

Finally, we note that the ERS' prior testimony on this bill spoke to the creation of a new "tier" of benefits and requirements for a relatively small segment (82 judge positions) of the total ERS membership. ERS stated that this new tier will require computer modification and other resource costs that "from a business perspective, the ERS believes will be out of proportion to the members affected by this legislation." Thus, it appears that this bill may actually increase costs to the State.

For these reasons, the Judiciary respectfully opposes Senate Bill No. 2244, SD1.

Thank you for the opportunity to provide testimony on Senate Bill No. 2244, SD1.