



The Judiciary, State of Hawai‘i

Testimony to the Committee on Judiciary and Labor

Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

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State Capitol, Conference Room 016

by

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Bill No. and Title: House Bill No. 2006, H.D. 1, Relating to the Employees’ Retirement System

Purpose: Reduces the benefit multiplier for judges who become judges, are reappointed, or promoted, after June 30, 2016.

Judiciary's Position:

The Judiciary strongly opposes the proposed amendments to Hawai‘i Revised Statutes, Chapter 88, pertaining to retirement of judges.

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 Employees Retirement System (ERS). The bill would create a disparity between judges and other employee group/retirement classes by, for the first time, reducing retirement benefits for *current* employees. We know of no other previous situation in which current employees have had their respective retirement benefits reduced by the Legislature in this manner. The bill creates 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. Finally, it undermines the constitutionally mandated work of the Salary Commission and, thereby, undermines judicial independence.



1. The Bill Singles out Judges for Disparate Treatment.

As noted above, this bill affects only judges. Retirement benefits have never previously been reduced for existing employees. In the past, changes in plans for existing members, (e.g., contributory to non-contributory or hybrid), have been initiated by presenting ERS members with a *choice* as to whether to stay with their existing plan or opt for the new plan on a prospective basis. Giving employees that choice is fundamentally fair because it protects the reasonable expectations of individuals who enter into government service.

The approach taken by this bill is in stark contrast to Act 163, Session Laws of Hawai'i 2011, wherein changes were made to *all* categories of employees enrolled in the different retirement plans. Act 163 subjected all new employees entering into the ERS after June 30, 2012 to more restrictive requirements and reduced benefits. In contrast, this bill targets only judges.

2. The Bill Undermines Judicial Independence.

The Hawai'i State Constitution, article XVI, section 3.5, states that "[a]ny salary established pursuant to this [Salary Commission] section shall not be decreased during a term of office unless by general law applying to all salaried officers of the State." The Proceedings of the Constitutional Convention of Hawai'i 1950, from which the 1959 Constitution is derived, reflect that this protection was patterned on Article III, Section 1 of the U.S. Constitution, which provides: "The Judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office." While Hawaii's constitutional provision is more specific as to "salary" diminishment, it is clear that the intention was identical to that of the federal constitutional framers: to ensure an independent judiciary.

The prohibition of diminishment of judicial salaries is not intended for the benefit of the judges, but serves to enhance the quality of justice for everyone. A legislative amendment that singles out judges undermines judicial independence and would erode the public's confidence in the Judiciary.

3. The Bill Will Not Result in Cost-Savings.

The ERS's March 1, 2016 testimony in the House Finance Committee makes clear that this bill would not achieve cost savings for the State. ERS testified that changing the benefit package for a relatively small segment of the total ERS membership will require computer programming modification and counseling resource costs which, from a business perspective, the ERS believes will be out of proportion to the members affected by this legislation. Thus, this bill will not save the State money.



4. The Bill Undermines the Role of the Salary Commission.

Article XVI, section 3.5 of the Hawai'i Constitution established a commission on salaries, which is charged with reviewing and making recommendations for the salaries of justices and judges of all State courts, members of the Legislature, and numerous executive officials. The Salary Commission has so far submitted recommendations to the Legislature in 2007 and 2013.

Enacting a law that singles out a particular class of employees is contrary to the very reason that the Salary Commission was created and undermines judicial independence. The Salary Commissions of 2007 and 2013 specifically reviewed salaries for judges and took into consideration retirement benefits in determining what was fair relative to salaries. The 2007 Salary Commission report included the statement "Commission also considered Judicial retirement benefits and the Judicial mandatory retirement age of 70." (2007 Salary Commission Report, page 17; attached as page 45 of 2013 Salary Commission Report). The 2013 Salary Commission report cites the 2007 report as material reviewed by the 2013 Salary Commission.

5. This Bill may Deter Qualified and Experienced Attorneys from Considering Judgeships.

The passage of this bill may deter qualified and experienced persons from becoming 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." Retirement benefits are tremendously important to attract judges because of the limits on earning additional income. Retirement benefits are also important because of the mandatory retirement age (70 years) applicable solely to judges.

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. It also creates a disincentive for judges to seek promotion and may lead to judges not seeking retention when their terms expire.

6. This Bill Creates Uncertainty and May Result in the Premature Retirement of Experienced Judges.

This bill reduces the retirement benefit multiplier to 2.0% for vested ERS members currently serving as judges. This change would create tremendous uncertainty, as it suggests (to judges and all other public employees alike) that critical retirement benefits may be cut at any time.



House Bill No. 2006, H.D. 1, Relating to The Employees' Retirement System
Senate Committee on Judiciary and Labor
Tuesday, March 22, 2016
Page 4

If judges leave the bench early based upon concern about future impacts to benefits, the Judiciary's ability to fulfill its constitutional mandate to provide due process and justice to all will be negatively impacted. The public will be deprived of the efficiency and wisdom that result from those judges' years of experience, including the strong mentoring provided to newer judges. Approximately *two-thirds* of Hawaii's judges are vested and eligible to retire. If some of those judges retire early because of this bill, it will adversely impact the community and the public we serve.

For these reasons, we must oppose this bill. Thank you for the opportunity to present this testimony.