



The Judiciary, State of Hawaii

Testimony to the House Committee on Finance

Representative Sylvia Luke, Chair

Representative Scott Y. Nishimoto, Vice Chair

Tuesday, March 22, 2016, 2:00 p.m.
State Capitol, Conference Room 308

by

Rodney A. Maile

Administrative Director of the Courts

Bill No. and Title: House Concurrent Resolution No. 154 / House Resolution No. 106, Requesting the Legislative Reference Bureau to Evaluate the Establishment of Separate Medical and Pension Benefit Plans for Justices and Judges.

Judiciary's Position:

The Judiciary strongly opposes House Concurrent Resolution No. 154 and House Resolution No. 106.

The resolutions seek to have an evaluation completed on the feasibility of establishing separate pension and health benefit plans for justices and judges. The basis for seeking a study is the perception that justices or judges may have to recuse themselves from cases involving the Employees' Retirement System (ERS) and the Hawai'i Employer-Union Health Benefits Trust Fund (EUTF) by virtue of their membership in the ERS and EUTF.

The resolutions cite the recusals in *Dannenberg v. State of Hawaii*, Supreme Court, No. SCAP-15-0000084, as evidence that the exclusion of justices and judges from the ERS and EUTF may allow them to impartially hear cases involving members of those pension and health benefit plans. Pursuant to the Code of Judicial Conduct, justices and judges are precluded from discussing their respective reasons for recusing themselves from the *Dannenberg* case. However, the process followed in that case—having the Chief Justice appoint a judge of the intermediate court of appeals or the circuit court in place of the recused justice—worked well, and is no different than the process followed in any other case where a notice of recusal is filed



by a justice or judge. This process is set forth in article VI, section 2 of the Hawai'i Constitution and Hawai'i Revised Statutes section 602-10. In the unlikely circumstance that conflicts of interest prevent a full panel, the "rule of necessity" allows interested justices that would otherwise be disqualified to participate in the case. See Schwab v. Ariyoshi, 57 Hawai'i 348, 555 P.2d 1329 (1976). Consequently, there would never be a case where an appellate panel could not be constituted.

To establish new pension and health benefit plans that are separate from the general population of State and County government employees is neither cost effective nor economically feasible:

1. To establish separate plans for such a small number of employees (approximately 82 justices and judges) would undoubtedly result in exorbitant costs to both employees and the State.

The State would have to negotiate medical, prescription drug, dental, and vision plans with different carriers for a very small group of employees which may not result in having plans of equal value. It is questionable whether services offered under the various carriers would be the same or comparable to what is currently available to all employees under current health benefit plans. For example, the current health benefit plans offer a multitude of services including but not limited to: Physician Services (e.g., primary care office visit, screening, immunizations, Emergency Room care, ambulance services); Inpatient Hospital Services (hospital room and board, physician service, surgery, anesthesia, ancillary services); Outpatient Services (e.g., chemotherapy, radiation therapy, surgery, diagnostic lab, ex-ray, anesthesia); Mental Health Services (e.g., inpatient and outpatient care); and other Services (e.g., medical equipment, home health care, Hospice care, skilled nursing facility care, Physical and Occupational Therapy).

Prescription drug, vision and dental plans will also have to be established separately from other general employees.

2. The ERS and EUTF are experienced administrators of the State's pension and health benefits plan. To assign a separate entity to administer pension and health benefits for approximately 82 employees is not an efficient use of the State's resources.
3. If the administration of separate pension and health benefits plans will remain with the ERS and EUTF, expenditures will be required to modify operations to accommodate this separate group of employees. As ERS previously testified on HB2006, HD1, the proposed amendments to judges' retirement benefits will require costly modifications to



House Concurrent Resolution No. 154 / House Resolution No. 106
House Committee on Finance
Tuesday, March 22, 2016
Page 3

its systems for such a small group of members. Similarly here, the proposed modifications would not be cost effective from a business perspective.

4. Having different groups of employees with different pension and health benefits plans is contrary to what EUTF has tried to accomplish, i.e., having all members in regular EUTF plans and not in separate health benefits plans. For EUTF, we surmise that having separate plans will not be cost effective for it to administer, similar to ERS' concerns.

Thank you for the opportunity to testify on House Concurrent Resolution No. 154 / House Resolution No. 106.