



*The Judiciary, State of Hawai'i*

**Testimony to the  
Senate Committee on Judiciary and Labor**

Senator Gilbert S.C. Keith-Agaran, Chair  
Senator Karl Rhoads, Vice Chair

Wednesday, February 8, 2017, 9:00 a.m.  
Conference Room 016

By  
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**WRITTEN TESTIMONY ONLY**

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**Bill No. and Title:** Senate Bill No. 249, Relating to Retirement.

**Purpose:** Senate Bill No. 249 proposes to amend the provisions of chapter 88, Hawai'i Revised Statutes, to: 1) establish a different service retirement requirement for current ERS members who subsequently become judges after June 30, 2017 and for new ERS members who become judges after June 30, 2017, and 2) reduce the service retirement allowance for credited service as a judge for new judicial appointments after June 30, 2017.

**Judiciary's Position:**

The Judiciary respectfully opposes Senate Bill No. 249 as it creates an additional and more stringent tier of service requirement and pension benefit for judges by: 1) establishing a lengthier service requirement (from 10 years to 12 years) for persons being appointed as judges after June 30, 2017, and 2) reducing the retirement allowance (from 3% to 2%) for credited service as a judge for new judicial appointments after June 30, 2017.

Prior to the passage of Act 163, Session Laws of Hawai'i 2011, the age and service retirement requirements for judges were the same as for other contributory plan members who became members of the ERS at the same time, i.e., age 55 with 5 years of service. With the passage of Act 163, the age and service requirements for current contributory plan members remained at age 55 with 5 years of service. However, for those existing ERS contributory



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plan members who became judges after June 30, 2012, their age and service requirements increased to age 60 with 10 years of service. Thus, while other contributory plan members remained at age 55 with 5 years of service, a disparity arose with those existing ERS contributory plan members who became judges after June 30, 2012.

Senate Bill No. 249 will result in further expansion of this disparity by increasing the service requirement to 12 years of service for existing ERS members who become judges after June 30, 2017. If these members retain their current ERS membership status and not become judges after June 30, 2017, i.e., stay in the contributory plan as a general employee, they would maintain the vesting requirements of age 55 with 5 years of service (or age 60 with 10 years of service if ERS contributory plan member after June 30, 2012) instead of being subject to the age 60 with 12 years of service vesting requirements.

Senate Bill No. 249 also impacts new ERS members upon appointment as judges after June 30, 2017. New ERS members who are appointed judges after June 30, 2017 will be subject to the more stringent vesting requirements of age 60 with 12 years of service. This new requirement will not be applicable to other members in the contributory class such as the fire or police officers, and elected officials.

Senate Bill No. 249 proposes to again decrease the service retirement allowance for credited service as a judge from 3.0% (already decreased from 3.5% under Act 163 for judges appointed after June 30, 2012) to 2.0% for new judicial appointments after June 30, 2017.

Further, no other category of employees is subject to a mandatory retirement age except for judges. The Hawaii State Constitution states: "justices and judges shall be retired upon attaining the age of seventy years. They shall be included in any retirement law of the state." As such, in certain situations, retirement benefits would not be attainable to those new ERS members appointed as judges who would "age out" after serving one 10-year term but before reaching 12 years of service due to the mandatory retirement age of 70. While being included in the retirement system during their tenure as judges, upon reaching age 70, those certain judges will not be vested and cannot "retire" or receive retirement benefits. Thus, the proposed increase in the service requirement further exacerbates the disparity for those who enter service at a certain age and do not have the option of working for 12 years in order to receive retirement benefits.

Although the proposed amendments affect only one small category of public employees, the impact is significant to existing ERS members such as prosecutors, public defenders, deputy attorneys general, and even many qualified elected officials, seeking a judgeship. Maintaining an equitable retirement package for judges as compared to other contributory members is reasonable and necessary to attract experienced public and private sector attorneys to serve as judges.

For these reasons, the Judiciary respectfully opposes Senate Bill No. 249.

Thank you for the opportunity to provide testimony on Senate Bill No. 249.