



The Judiciary, State of Hawai'i

Testimony to the Twenty-Ninth State Legislature, 2017 Session

House Committee on Labor & Public Employment

Representative Aaron Ling Johanson, Chair

Representative Daniel Holt, Vice-Chair

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State Capitol, Conference Room 309

by

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Bill No. and Title: Senate Bill No. 249, SD2, Relating to Retirement.

Purpose: Senate Bill No. 249, SD2, proposes to amend the provisions of chapter 88, Hawai'i Revised Statutes, to 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, SD 2 because, for the second time in five years, it reduces pension benefits for judges, specifically the retirement allowance. (The retirement allowance was reduced from 3.5% to 3.0% under Act 163, Sessions Laws of Hawaii 2011, for judges appointed after June 30, 2012; this bill proposes another reduction from 3.0% to 2.0% for new judicial appointments after June 30, 2017.)

Unlike Act 163, which created a new benefit structure and impacted all new members with Employees Retirement System (ERS) membership status after June 30, 2012, Senate Bill No. 249, SD2, would impact only judges.

If contributory plan members with ERS membership status before July 1, 2012 choose not to become judges after June 30, 2017, i.e., they choose to stay in the contributory plan as general employees, they would already earn the same 2.0% retirement allowance and have less stringent vesting requirements of age 55 with 5 years of service. The proposed 2.0% retirement allowance for judges appointed after June 30, 2017, along with the more stringent vesting requirements of age 60 with 10 years of service, comparatively diminishes the attractiveness of a judgeship. The impact is significant to existing ERS members who may consider seeking a

judgeship, such as prosecutors, public defenders, deputy attorneys general, and elected officials.

Senate Bill No. 249, SD2, 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 retirement allowance of 2.0%, rather than the current 3.0%.

Maintaining a competitive retirement package for judges is reasonable and necessary to attract experienced public and private sector attorneys to serve as judges. Many experienced attorneys who might apply for judgeships seriously consider that as a judge they would be statutorily precluded from using their legal training to supplement their income, i.e., they must leave their prominent law practices, and that they would be subject to mandatory retirement from the bench at age 70.

Further, in testimony on the original measure before the Senate Committee on Judiciary and Labor, the Employees' Retirement System stated: "Creating this new 'tier' of benefits and requirements for a relatively small segment of the total ERS membership will require computer and administrative modifications and counseling resource costs which, from a business perspective, the ERS believes may be disproportionate to the small number of members affected by this legislation."

At the 1978 Constitutional Convention, the Judiciary Committee declared that "[t]he public should not be deprived of having the most qualified candidate for judicial appointment." The proposed diminishment of retirement benefits could lessen the likelihood that the most qualified would apply, and in turn could deprive our community of the opportunity to have the most qualified serve as judges.

Lastly, we note an apparent inadvertent error in Senate Standing Committee Report No. 872, which reads "*the two per cent of average final compensation used to calculate a retirement allowance applies to a member who first earned credited service as a judge after June 30, 2012, but before July 1, 2017.*" Indeed, the bill maintains, and does not reduce, the three per cent benefit multiplier currently applicable to members who first earned credited service as a judge after June 30, 2012, but before July 1, 2017. As the bill plainly provides, the reduced multiplier of two per cent applies only to members who first earn credited service as a judge after June 30, 2017.

For reasons stated in our testimony, the Judiciary respectfully opposes Senate Bill No. 249, SD2.

Thank you for the opportunity to provide testimony on Senate Bill No. 249, SD2.