



The Judiciary, State of Hawai'i

Testimony to the Twenty-Ninth State Legislature, 2017 Session

House Committee on Finance

Representative Sylvia Luke, Chair

Representative Ty J.K. Cullen, Vice-Chair

Tuesday, April 4, 2017, 2:00 p.m. (Agenda #3)

State Capitol, Conference Room 308

by

Rodney A. Maile

Administrative Director of the Courts

Bill No. and Title: Senate Bill No. 249, SD2, HD1, Relating to Retirement.

Purpose: Senate Bill No. 249, SD2, HD1 proposes to amend the provisions of chapter 88, Hawai'i Revised Statutes, to reduce the service retirement allowance for credited service as a judge.

Judiciary's Position:

The Judiciary respectfully opposes Senate Bill No. 249, SD 2, HD1 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 judicial appointments after a yet-undetermined date.)

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, HD1 would impact only judges.

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."

Further, although SB 249, SD2 would only affect individuals who become judges after June 30, 2017, HD1 changed that date to 2050. Thus, it is unclear exactly who the bill is intended to affect. If this bill were amended to apply to current judges, we are not aware of any other situation in recent memory in which current employees have had their retirement benefits reduced in this manner. Such reduction would be contrary to the reasonable expectations those employees had when they began working for the state, and could have significant unintended consequences.

Even if the bill has only prospective effect, as in SD2, it will negatively impact the Judiciary's ability to attract the most qualified individuals as judges.

If contributory plan members with ERS membership status before July 1, 2012 choose not to become judges after the determined cutoff date, 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.

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.

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.

For reasons stated in our testimony, the Judiciary respectfully opposes Senate Bill No. 249, SD2, HD1.

Thank you for the opportunity to provide testimony on Senate Bill No. 249, SD2, HD1.