



## *THE JUDICIARY, STATE OF HAWAII*

### **Testimony to the Twenty-Fourth State Legislature, 2008 Session House Committee on Labor**

The Honorable Alex M. Sonson, Chair  
The Honorable Bob Nakasone, Vice Chair  
Tuesday, March 11, 2008, 9:00 a.m.  
State Capitol, Conference Room 309

by  
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**Bill No. and Title:** Senate Bill No. 1526, S.D. 2, H.D. 1, Relating to Judiciary.

**Purpose:** Mitigates inadvertent errors in statute by providing a mechanism to set the salaries of the Administrative Director (AD) of the Courts and Deputy AD by amending §601-3, Hawaii Revised Statutes (HRS).

**Judiciary's Position:** Senate Bill No. 1526, as introduced, is part of the Judiciary's package and, as such, is strongly supported. However, we cannot support the H. D. 1 version of the bill and note our strong concerns.

The original intent of the bill is to provide a temporary bridge over the period required to correct inadvertent errors in the Constitution and statutes. While creating this bridge, it is imperative that parity, fairness, and consistency in salaries, when compared to others within the Judiciary, are maintained and that the independence of the Judicial Branch is preserved. Further, since these were inadvertent errors, we request that the intent, purpose, process, and methodology used by the Commission on Salaries be given strong consideration, as it relates to Judicial salaries.

#### **Inadvertent Errors**

House Bill No. 1917<sup>1</sup>, from the 2006 legislative session, amended the Hawaii Constitution by establishing the aforementioned unitary Commission on Salaries responsible for reviewing and recommending changes to salaries for, among others, justices and judges. In addition, House

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<sup>1</sup>2006 Haw. Sess. Laws at 1272. H.B. No. 1917 was ratified by Hawaii voters on November 7, 2006.



Bill No. 1918<sup>2</sup> amended various statutes to put into effect the purpose of establishing the Commission. The intent of these changes was to “lend fairness and consistency to the process.”<sup>3</sup>

However, there are two inconsistencies that need clarification. First, House Bill No. 1917 (the Constitutional amendment) did not include the Administrative Director of the Courts (AD) nor Deputy AD. The 2007 Commission on Salaries acknowledged it did not have the Constitutional authority to review and recommend the salaries for these positions and so stated in its report<sup>4</sup> to the Legislature. However, since rectifying this omission would require another Constitutional amendment, something that may take many years to achieve, we instead suggested the temporary alternative found in the original version of the bill.

Secondly, House Bill No. 1918, when creating the Commission on Salaries in §26-56, HRS, likewise did not list the AD nor Deputy AD. However, mention was made in another section (§601-3, HRS) that refers back to §26-56, HRS. But since §26-56, HRS omits the two positions, making mention in another section is not applicable.

### **Proposals**

Senate Bill No. 1526 was introduced by request in the last session and crossed over from the Senate. The bill linked the salary of the AD at 89 percent of the Chief Justice’s salary (whose salary is set by the Commission on Salaries) based on the then-current relationship of the Governor’s “Administrative Director” (hereinafter, Chief of Staff) to the Governor. The salary of the Deputy AD (i.e., 95 percent of the AD’s salary) is based on the present relationship. This would allow the AD and Deputy AD salaries to increase when the Chief Justice’s salary increases. We chose this temporary mechanism as it seems to meet the Legislature’s criteria of lending “fairness and consistency to the process” and indirectly allows the Commission on Salaries to set the compensation levels for these two positions.

The Senate, in hearing the bill, made two substantive changes. The first is to change the percentage to 80 percent of the Chief Justice’s salary and the second is modify it to read “not exceed eighty percent...”<sup>5</sup>

In testimony before the House Committee on Judiciary, we further proposed changing the percentage to match the updated relationship between the Governor and Chief of Staff as reflected in the 2006-2007 Commission on Salaries report (i.e., 98 percent).

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<sup>2</sup> *Id.* at 1222. H.B. 1918 was enacted as Act 299, SLH 2006, on July 12, 2006.

<sup>3</sup> Hawaii Senate Committee on Judiciary and Hawaiian Affairs, Standing Committee Report No. 3004, at 2 (2006).

<sup>4</sup> *Report and Recommendations to the 2007 Legislature*. Hawaii Commission on Salaries, March 14, 2007 at 7.

<sup>5</sup> As it stands now, it is our understanding that no one has the authority to set the two salaries. Thus, no one would be able to set the salary at anything other than the percentage set forth in the bill and therefore the phrase “not exceed” is moot.



### **Salary History**

It may be helpful to understand that, in the past, these positions did not receive regular or consistent salary adjustments. During the 27-year period between 1975 and 2002, they received only five increases. Within this time frame, for one nine-year period, no increases were received at all. Hence, the salary commissions have been trying to play catch up, with varying results due to the relatively large increases needed to make up for the years of few or no adjustments.

Moreover, the AD's position, when compared to other state ADs, is presently ranked last (49<sup>th</sup> out of 48 states and the District of Columbia).<sup>6</sup> The original bill, at 89% of the Chief Justice's salary, would have moved the AD's salary up to 47<sup>th</sup>. The S.D. 2 version, at 80% of the Chief Justice's salary, would have moved the AD up to 48<sup>th</sup> place. The present version, equal to the Chief of Staff, would keep the AD in last place.

### **H.D. 1 Concerns**

If the AD salary position is sadly lacking, the picture is even bleaker when considering the Deputy AD's position. If the present version of the bill were to go into effect for the next fiscal year, the Deputy would see a **pay cut** of \$64. Clearly, the stated intent of the Legislature, in creating the Commission on Salaries was: "The commission shall not recommend salaries lower than salary amounts recommended by prior commissions replaced by this section."<sup>7</sup> Yet unmistakably, the H.D. 1 version of this bill appears to do exactly that.

Additionally, the language referring to the "maximum salary for a deputy department head" may be open to interpretation because we must first assume it refers to the Executive Branch. If so, this branch has salaries presently segregated into tiers. Thus, the question becomes to which tier is this referring. If it is anything other than what is known as Tier 1, then the pay cut would be even larger than reported above.

In addition, this version links the AD's salary directly to that of the Governor's Chief of Staff and the Deputy AD to an Executive Branch deputy department head. This proposed amendment undermines §601-5, HRS which states, "The judiciary branch and the several judges and other judicial officers thereof shall be independent of both the executive and legislative departments." Setting the salaries of judiciary officials to be commensurate with the compensation of Executive Branch officers conflicts with the principle that the Judiciary is independent and deviates from the path taken by the Commission on Salaries.

The Chief Justice is the administrative head of the Judiciary (§601-2, HRS). Because the AD and Deputy AD assist the Chief Justice in administering the Judiciary, it is more reasonable to link their compensation to the Chief Justice's salary.

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<sup>6</sup> Two states did not report the data required, using the methodology used by the 2006-2007 Commission on Salaries, to determine fair and consistent relative rankings.

<sup>7</sup> Act 299, SLH 1996 (§26-56(b), HRS 2006).



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If the Legislature sees the proposed adjustments as being too vigorous an effort to catch up due to lack of previous increases, we suggest the solution is to change the percentage, not change the link to the Executive Branch.

As a technical note, we request that the effective date of June 30, 2050 be amended to July 1, 2008.

### **Summary**

We respectfully note that due to inadvertent errors, the Commission on Salaries does not have the authority, and no mechanism presently exists, to set the salaries of the AD and Deputy AD positions.

Additionally, the proposed link to the Executive Branch appears inappropriate and would result in a pay reduction to the Deputy AD. Therefore, we strongly suggest the link should be to the Judicial Branch and that the intent, purpose, process, and methodology used by the Commission on Salaries be given strong consideration by linking the AD salary at 98 percent of the Chief Justice's compensation and the Deputy AD at 95 percent of the AD.

Thank you for the opportunity to testify on Senate Bill No. 1526, S.D. 2, H.D. 1.