



THE JUDICIARY, STATE OF HAWAII

Testimony to the House Committee on Finance

The Honorable Marcus R. Oshiro, Chair

The Honorable Marilyn B. Lee, Vice Chair

Wednesday, March 26, 2008, 12:30 p.m. (Agenda # 2)

State Capitol, Conference Room 308

by

Tom Mick

Policy and Planning Department Head

Bill No. and Title: Senate Bill No. 1526, S.D. 2, H.D. 2, 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, there is one amendment that we urge be made to avert a pay cut to the Deputy Administrative Director of the Courts.

Overall, 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. 1917¹, 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 for the period beginning July 1, 2007 through June 30, 2013, and every six years thereafter. In addition, House

¹2006 Haw. Sess. Laws at 1272. Hawaii voters ratified H.B. No. 1917 on November 7, 2006.



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Bill No. 1918² 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.”³

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. Subsequently, 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 report⁴ 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 Senate Bill No.1526.

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 that has been in effect for some time, as a result of the 2004 Judicial Salary Commission.

The bill provides that the AD and Deputy AD salaries be adjusted 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...”⁵

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).

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

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

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

⁵ 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.



Further, in testimony before the House Committee on Labor and Public Employment we suggested, among other things, that the link be within the Judiciary (rather than to the Executive Branch) and that the Deputy's salary be left at the present 95% of the AD's salary so as to avoid a pay cut.

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 (49th out of 48 states and the District of Columbia).⁶ The original bill, at 89% of the Chief Justice's salary, would have moved the AD's salary up to two spaces to 47th. The H.D. 2 version, at 80% of the Chief Justice's salary, would move the AD up one spot to 48th place.

H.D. 2 Concerns

If the AD salary position is sadly lacking, the picture is even bleaker when considering the Deputy AD's position. If the H.D. 2 version of the bill were to go into effect for the next fiscal year, the Deputy would see a **pay cut of \$5,287** (which is even larger than the \$64 pay cut found in the H.D. 1 version of the bill). 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."⁷ Yet unmistakably, the H.D. 2 version of this bill appears to do exactly that for the Deputy AD.

Conclusion

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.

We strongly urge that the percentage between the AD and Deputy AD be set to 95 percent so as to avoid a substantial pay cut and that an appropriation of \$30,075 be provided to fund the two position increases for FY 2008-2009.

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

⁶ 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.

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