



Judicial Selection Commission — THE JUDICIARY • STATE OF HAWAII

417 SOUTH KING STREET • HONOLULU, HAWAII 96813 • TELEPHONE (808) 538-5200 • FAX (808) 538-5205

Rosemary Fazio, Chair
Philip Hellreich, Vice Chair
Shelton Jim On, Secretary

Melvin Chiba
Thomas Fujikawa
Susan Ichinose
Ralph LaFontaine
Frederick Okumura
Sheri Sakamoto

TESTIMONY OF THE JUDICIAL SELECTION COMMISSION

TWENTY-FOURTH LEGISLATURE, 2008

On the Following Measure:

SB 3202, HD1 PROPOSING AN AMENDMENT TO THE HAWAII CONSTITUTION TO EXTEND THE MANDATORY RETIREMENT AGE FOR THE STATE JUSTICES AND JUDGES FROM SEVENTY TO EIGHTY YEARS OF AGE.

Before the:

HOUSE COMMITTEE ON FINANCE

Date: March 26, 2008

Time: 11:00 a.m.

Location: State Capitol, Conference Room 308

Testifier: Rosemary Fazio, Chair of the Judicial Selection Commission

Chair Oshiro, Vice-Chair Lee, and Members of the Committee.

This relates to SB3202, HD1, which proposes a constitutional amendment to extend the mandatory retirement age for justices and judges.

Two years ago, the Judicial Selection Commission opposed a similar proposal. I have attached our prior letter, dated March 23, 2006. The Judicial Selection Commission continues to have the same reservations about the current proposal, SB 3202, and therefore opposes it.

The Judicial Selection Commission thanks the House Committee on Finance for allowing us again to express our concerns.



Judicial Selection Commission - THE JUDICIARY - STATE OF HAWAII
417 SOUTH KING STREET • HONOLULU, HAWAII 96813 • TELEPHONE (808) 538-5200 • FAX (808) 538-5205

Meilyn Chiba, Chair
Rosemary Fazio, Vice Chair
Lois Suzawa, Secretary

March 23, 2006

Sidney Ayabe
Thomas Fujikawa
Philip Hutcheon
Shelton Jim On
Ralph LaFountain
Shari Sakamoto

Representative Dwight Takamine
Chair, Finance Committee
Hawaii State House of Representatives
State Capitol, Room 306
Honolulu, Hawaii 96813

Dear Representative Takamine:

Re: SB995 SD1: Judges; Mandatory
Retirement Age (ConAm)

The Judicial Selection Commission appreciates this opportunity to express some concerns about this proposed constitutional amendment. The Commission believes that the proponents of this legislation are convinced that this change is in the public interest, but we feel an obligation to share our reservations with the House Finance Committee.

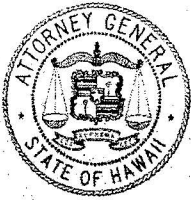
We fear that this legislation will make it far more difficult for current judges to move up to higher judicial positions, will discourage many attorneys from applying for judicial openings, and will, therefore, impede the introduction of new ideas and ways of looking at the law. Additionally, we feel that this is unfair to all those applicants and judges who made their decisions based on the current rules. Therefore, if the Legislature wishes to repeal the mandatory retirement age of 70, they should at least apply these rules prospectively to future appointed judges.

The Judicial Selection Commission once again thanks the House Finance Committee for allowing us to express our concerns.

Sincerely yours,

Melvin Chiba, Chair

cc. Representative Sylvia Luke, Chair
House Judiciary Committee



TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FOURTH LEGISLATURE, 2008

ON THE FOLLOWING MEASURE:

S.B. NO. 3202, H.D. 1, PROPOSING AN AMENDMENT TO THE HAWAII CONSTITUTION TO EXTEND THE MANDATORY RETIREMENT AGE FOR STATE JUSTICES AND JUDGES FROM SEVENTY TO EIGHTY YEARS OF AGE.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Wednesday, March 26, 2008 **TIME:** 11:00 AM

LOCATION: State Capitol, Room 325
Deliver to: Committee Clerk, Room 306, 2 copies

TESTIFIER(S): Mark J. Bennett, Attorney General

Chair Oshiro and Members of the Committee:

The Department of the Attorney General will support the H.D. 1 version of this bill as a compromise from the original version; however, we strongly believe that a study of the issue of judicial retirement and related issues is very important.

This bill proposes an amendment to the State Constitution to extend the mandatory retirement age for state court justices and judges from 70 to 80. In its original form, this bill proposed to make this change retroactively. As amended in H.D. 1, the change would apply only to justices and judges appointed after November 4, 2008. If this bill is to be passed at all, we support the change made in H.D. 1, and would support this bill as a compromise.

Incumbent justices and judges were appointed to the bench under a certain set of rules, and other lawyers chose not to seek appointment under the same rules. As a matter of fundamental fairness, a change in the system should apply only to justices and judges who have already been appointed. In 2006, the Judicial Selection Commission testified:

[W]e feel that this is unfair to all those applicants and judges who made their decisions based on the current rules. Therefore, if the Legislature wishes to repeal the mandatory retirement age of 70, they should at least apply these rules prospectively to future appointed judges.

Only two years ago, the Legislature proposed a similar amendment to eliminate mandatory judicial retirement at age 70. That amendment was overwhelmingly rejected by the electorate, obtaining only a 34.8 percent Yes vote, with a 57.8 percent No vote. The No votes exceeded the Yes votes by 80,000. The amendment lost on every island, and we believe it lost in virtually every single one of the Hawaii's many hundreds of precincts. After such an unequivocal mandate from the voters, this type of amendment should not be proposed again without first conducting a thoughtful study.

When Hawaii's Constitution was originally adopted in 1959, article V, in addition to establishing a retirement age of 70 for judges, also provided: "The term of office of a justice of the supreme court shall be seven years and that of a judge of a circuit court six years." The framers were clearly concerned about lengthy judicial terms. Since then, the terms of justices and judges have been extended, but not the mandatory retirement age, so that the current retirement age serves both to limit tenures (there is no other absolute limit) and to ensure that there are opportunities for lawyers to be appointed to the bench through vacancies, and for judges of the lower courts to be appointed to higher courts through retirements.

It should be noted that when judges who are now nearing the mandatory retirement age were appointed, there were significantly fewer judicial opportunities for women, and to a certain extent for minorities. The proposed amendment would perpetuate reduced judicial opportunities, especially for women and minority lawyers. The serious consequences of such a change are made clear by the testimony of the Hawaii Judicial Selection Commission - the body tasked with merit selection of judges in Hawaii - on the 2006 proposal to eliminate mandatory retirement at age 70:

We fear that this legislation will make it far more difficult for current judges to move up to higher judicial positions, will discourage many

attorneys from applying for judicial openings, and will, therefore, impede the introduction of new ideas and ways of looking at the law.

A New York blue ribbon "Task Force on Mandatory Retirement of Judges" reported similar conclusions:

[C]ontinuation of judicial service beyond age 70 [should] not [be] at the expense of reduced judicial opportunities or delayed entry into the judiciary for women and minority lawyers. Regular turnover invigorates the judiciary by bringing fresh ideas and greater diversity to the bench [We note] the relatively high diversity [among judges, in the last] five years, and the relatively low diversity among the group of Justices most recently certificated for service beyond age 70.

The New York task force conducted many months of careful study on the issue of mandatory judicial retirement, including examination of alternatives to a mandatory retirement age -- for example, a senior judge system, which would allow judges to take reduced caseloads with reduced pay after a certain age and simultaneously foster more opportunities for judicial service by women, minorities, and younger lawyers. In Hawaii, in contrast, no thoughtful examination has been done.

Such an examination should look at the retirement age of judges; whether a better system might be to require retirement at 70 but allow judges or justices to reapply for their positions; term limits; whether, if there is to be a change, it should be retroactive; and other related matters. In 2007, several resolutions were introduced to establish a task force to study this issue, but none received a hearing. Several have been reintroduced in 2008, including H.C.R. No. 69, H.R. No. 60, S.C.R. No. 30, and S.R. No. 58, which state:

WHEREAS, major concerns with the proposed amendment [to repeal mandatory judicial retirement at age 70] included the lack of any careful study of:

(1) The effects of a repeal of the retirement age on the Judiciary and the administration of justice,

including a study of whether the retirement age should be retained, altered, or eliminated and, if so, whether prospectively only;

(2) Whether there should be term limits for state court justices and judges;

(3) Whether there should be a senior judge system for state court justices and judges; and

(4) Whether there is currently sufficient judicial accountability and means for determining judicial fitness; and

WHEREAS, a study:

(1) Reviewing the practices of other jurisdictions regarding: the regulation of judicial retirement, term limits for judges, a senior judge system, judicial accountability, and means for determining judicial fitness;

(2) Identifying public policies promoted or impeded by: the current Hawaii mandatory judicial retirement age or its alternatives, the lack of judicial terms limits in Hawaii, the lack of a senior judge system in Hawaii, the current Hawaii system of judicial accountability, and the current Hawaii means for determining judicial fitness; and

(3) Collecting data on the impact of changing any of the above;

would be valuable in facilitating an informed discussion of, evaluating the merits of retaining, repealing, or amending, the current Hawaii: mandatory judicial retirement age, including if there is to be a change whether it should be prospective only; lack of judicial terms limits; lack of a senior judge system; system of judicial accountability; means for determining judicial fitness



Working Together for Hawaii

888 Mililani Street, Suite 601
Honolulu, Hawaii 96813-2991
www.hgea.org

Telephone: 808.536.2351
Facsimile: 808.528.4059

Hawaii Government Employees Association
AFSCME Local 152, AFL-CIO

The Twenty-Fourth Legislature, State of Hawaii
Hawaii State House of Representatives
Committee on Finance

Testimony by
Hawaii Government Employees Association
March 26, 2008

**S.B. 3202, H.D. 1 – PROPOSING
AN AMENDMENT TO
ARTICLE VI, SECTION 3, OF
THE HAWAII CONSTITUTION
TO EXTEND THE MANDATORY
RETIREMENT STATE JUSTICES
AND JUDGES FROM SEVENTY TO
EIGHTY YEARS OF AGE**

The Hawaii Government Employees Association supports the purpose and intent of S.B. 3202, H.D. 1, which proposes a constitutional amendment to extend the mandatory retirement age of 70 for state justices and judges to 80 years of age. Each individual deserves consideration as an individual member rather than a stereotypic member of a certain group.

The mandatory retirement age of 70 automatically considers that all judges and justices unfit to perform their judicial duties beyond that point. The current age restriction precludes the state from utilizing the experience and ability of jurists who reach the age of 70, who are still highly productive. It makes good sense to increase the mandatory retirement age for justices and judges to 80 years of age.

Thank you for the opportunity to present testimony in support of S.B. 3202, H.D. 1.

Respectfully submitted,

Nora A. Nomura
Deputy Executive Director



To: House Committee on Finance
Rep. Marcus Oshiro, Chair
Rep. Marilyn Lee, Vice-Chair

Date: March 26, 2008
Conference Room 308
11:00 am

Re: SB 3202, HD1, PROPOSING AN AMENDMENT TO THE HAWAII CONSTITUTION TO EXTEND THE MANDATORY RETIREMENT AGE FOR STATE JUSTICES AND JUDGES FROM SEVENTY TO EIGHTY YEARS OF AGE

Chair Oshiro and Members of the Committee:

My name is Ed Thompson, Associate State Director of Advocacy for AARP Hawaii. We are a membership organization for people 50 and older with 156,000 members in Hawaii. AARP provides access to services and information, meaningful volunteer opportunities, and the opportunity for our members to create positive change in their lives.

AARP opposes SB 3202, HD1, which proposes a constitutional amendment to change the mandatory retirement age for only newly appointed justices and judges after November 4, 2008, from 70 to 80 years of age.

AARP does not support mandatory retirement at any age. While raising the retirement age is a step in the right direction, we continue to oppose any mandatory retirement solely on age. The trend among states is toward longer service – in 1999, 24 states required retirement at age 70 – this number has fallen to 21 today. Fitness to serve – not age – should be the principal measure of an individual's performance on the job. Appropriate performance reviews already exist for state judges.

Moreover, any amendment to raise the age of retirement should avoid further discrimination by applying to incoming judges only.

State judges continue to be the only employee class in the Hawaii Constitution designated to retire by a certain age. If there is no age limit for federal judges, president, governor, member of Congress, or legislators, why should judges be singled out for age discrimination?

In conclusion, we respectfully ask that the bill be amended to remove the mandatory age of retirement in its entirety. If, however, the proposed mandatory retirement age of 80 for justices and judges prevails, we request that the law not exclude currently sitting justices and judges.

Thank you for the opportunity to testify before your committee.

FINTestimony

From: Ruthtutu@aol.com
Sent: Tuesday, March 25, 2008 1:48 AM
To: FINTestimony
Subject: 3/26/2008 SB3202 Agenda #2

From: Ruth Dias Willenborg, 1015 Aoloa Pl. #360, Kailua, Hi. 96734
To _ House of Representatives, Committee on Finance:

Wed. March 26, 2008 11 a.m. Rm. 308 AGENDA 2

SB3202 HD1 CONSTITUTIONAL AMENDMENT, MANDATORY RETIREMENT AGE

AGREE that the Retirement age should be increased from Age 70 to Age 80
DO NOT AGREE that there should be appointment DATE AGE difference. ALL judges etc. now appointed and serving should be included

This is an unfair exclusionary change and I would not think would be CONSTITUTIONAL. The reason for this Constitutional Amendment should be to protect all NOW serving AND in the future!

Our Supreme Court consists of many in their eighties! We have a Senator who is now 71 running for the Presidency! Many in the U.S. Congress are over seventy!

Everyone may vary in their capabilities as they age. if they are struck with some debilitating disease or physical problem that would hinder further service they would be forced by their very own health and physical capabilities to retire because of this, Retirement then should be possible.

I do not believe that those now serving should be eliminated from the age extension

Mahalo for serving your community,
Ruth Dias Willenborg

Create a Home Theater Like the Pros. [Watch the video on AOL Home.](#)