



The Judiciary, State of Hawaii

Testimony to the House Committee on Judiciary

Representative Gilbert S.C. Keith-Agaran, Chair

Representative Karl Rhoads, Vice Chair

Tuesday, March 13, 2012, 2:00 p.m.

State Capitol, Conference Room 325

by

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Bill No. and Title: Senate Bill No. 650, Proposing an Amendment to Article VI, Section 3, of the Constitution of the State of Hawaii Authorizing the Chief Justice of the State Supreme Court to Appoint Retired Judges to Serve as Emeritus Judges.

Purpose: Amends Article VI Section 3 of the Hawaii Constitution to authorize the Chief Justice to appoint retired judges who have attained the age of seventy years to serve as emeritus judges.

Judiciary's Position:

The Judiciary supports Senate Bill 650.

Senate Bill No. 650 would amend the Hawaii Constitution to allow the Chief Justice to call upon retired judges over the age of 70 to assist the courts when necessary. The Judiciary supports this proposal as the knowledge and experience of such judges are recognized as valuable resources not only as judicial mentors but also to help provide fair and timely disposition of cases.

The Judiciary offers the following comments and suggestions:

1. State statutes affecting retirees limit the state's ability to rehire employees after their retirement. For example, to preserve the State of Hawaii, Employees' Retirement System's tax exempt status and ensure compliance with federal tax law, in 2010 the legislature passed Act 179. Act 179 prohibits the employer, prior to retirement, from making an agreement to employ an employee after retirement. Act 179 also requires a retiree to have a six consecutive calendar month break in State or county



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employment prior to the first day of reemployment in a position that is excluded from membership in the ERS. However, retirees may volunteer their services on an unpaid basis during the six-month period.

Any appointment of emeritus judges would need to be in accordance with Act 179, SLH 2010 and any other applicable laws governing appointment or employment of retirees.

2. The Legislature may wish to clarify the language of “emeritus judges” to explicitly include retired judges and justices of the Supreme Court. Alternatively, the Legislature may wish to include this clarification in the legislative history.
3. The Judiciary is somewhat concerned that the language of the amendment might be interpreted to mean a retired judge or justice could be called to serve only one time. We hope the legislative history will clarify that a retired judge or justice may serve more than one (1) three-month term of service if such service is needed and provided the terms are in accordance with applicable retirement laws.
4. Finally, we note that the term “judicial mentors” is not defined, but assume that it would include administrative duties in which the judge could share his or her expertise.

Although Act 179, SLH 2010 would limit the immediate usefulness of the amendment for those appointments on a per diem or paid basis, the ability to call upon experienced judges and justices who have attained the age of 70 years, would be a significant benefit to the people of Hawaii.

Thank you for the opportunity to testify in support of Senate Bill No. 650.

**Testimony of the Office of the Public Defender, State of Hawaii,
to the House Committee on Judiciary**

March 13, 2012

**S.B. No. 650: PROPOSING AN AMENDMENT TO ARTICLE VI, SECTION 3,
OF THE CONSTITUTION OF THE STATE OF HAWAII
AUTHORIZING THE CHIEF JUSTICE OF THE STATE
SUPREME COURT TO APPOINT RETIRED JUDGES TO SERVE
AS EMERITUS JUDGES**

Chair Keith-Agaran and Members of the Committee:

We have concerns about S.B. No. 650 which proposes a constitutional amendment to allow for the appointment of retired judges to serve as emeritus judges. The initial concern is that, for retired judges who have reached the mandatory retirement age of 70 years old, this amendment would conflict with the constitutional provision establishing the mandatory retirement age. Therefore, if the intent of this bill is to appoint former judges over the age of 70, there must be an accompanying amendment to the current mandatory retirement provision.

Another concern is that the bill provides for the appointment of retired judges to serve as judicial mentors to sitting judges. We believe that this could create a serious question of judicial independence. If a mentor restricts his/her advice to procedural or court operational matters, there would be no problem. However, if a mentor begins to influence judicial philosophy or a judge's rulings, there would be a serious interference with judicial independence. Moreover, in day-to-day court proceedings, there are many issues that fall in the grey area between procedural and substantive law.

Thank for the opportunity to comment on this measure.