

**LATE**

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**THE HONORABLE SYLVIA LUKE, CHAIR  
HOUSE FINANCE COMMITTEE  
Twenty-Seventh State Legislature  
Regular Session of 2013  
State of Hawai`i**

**February 25, 2013**

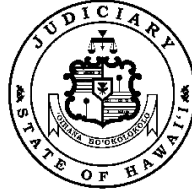
**RE: H.B. 275, H.D. 1; RELATING TO PROPOSING AN AMENDMENT TO ARTICLE VI, SECTION 3, OF THE CONSTITUTION OF THE STATE OF HAWAII AUTHORIZING THE CHIEF JUSTICE OF THE STATE SUPREME COURT TO APPOINT RETIRED JUDGES TO SERVE AS EMERITUS JUDGES.**

Chair Luke, Vice Chair Shimabukuro, Vice Chair Johanson, and members of the House Committee on Finance, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in opposition of H.B. 275, H.D. 1, which proposes a constitutional amendment authorizing the Chief Justice of the Supreme Court to appoint judges who have retired upon attaining the age of seventy years as emeritus judges, permitting the appointed judges to serve as temporary judges in courts no higher than the court level they reached prior to retirement and for terms not to exceed three months.

While the Department of the Prosecuting Attorney of the City and County of Honolulu supports judges and justices who are knowledgeable of the law and respectful to attorneys, staff, and witnesses pursuant to the Hawaii Revised Code of Judicial Conduct, the department notes that the mandatory retirement of judges and justices who reach the age of 70 provides opportunity for judicial nominees who have a fresh approach in analyzing the laws and a strong commitment to treating all participants in the court in a professional manner. Moreover, the mandatory retirement of age 70 for justices and judges is sometimes our only opportunity for change. By bringing back justices and judges who were forced to retire upon reaching the age of 70, we slow down this transition of leadership.

It is for these reasons that we oppose H.B. 275, H.D. 1. Thank you for this opportunity to testify on this measure.

**LATE**



*The Judiciary, State of Hawai‘i*

**Testimony to the House Committee on Finance**

Representative Sylvia Luke, Chair

Representative Scott Nishimoto, Vice Chair

Representative Aaron Ling Johanson, Vice Chair

Monday, February 25, 2013, 1:30 p.m.  
State Capitol, Conference Room 308

by

Rodney A. Maile

Administrative Director of the Courts

**WRITTEN TESTIMONY ONLY**

**Bill No. and Title:** House Bill No. 275, House Draft 1, Proposing an Amendment to Article VI, Section 3 of the Constitution of the State of Hawai‘i Authorizing the Chief Justice of the State Supreme Court to Appoint Retired Judges to Serve as Emeritus Judges.

**Purpose:** Proposes an amendment to Article VI, Section 3 of the Hawai‘i Constitution to authorize the Chief Justice of the Supreme Court to appoint judges and justices who have retired as emeritus judges, permitting the appointed judges and justices to serve as temporary judges in courts no higher than the court level that they reached prior to retirement and for terms not to exceed three months per appointment. (HB275, H.D. 1)

**Judiciary's Position:**

The Judiciary supports the intent of House Bill No. 275, H.D. 1, which proposes amending the Hawaii Constitution to permit the Chief Justice to call upon retired judges and justices to assist the courts when needed. The Judiciary supports this proposal as retired judges and justices are valuable resources for providing timely and fair resolution of cases.

By including retired justices of the Hawaii Supreme Court among those who may be appointed as emeritus judges, this proposal is consistent with last year’s legislative history on a comparable bill, Senate Bill No. 650, H.D. 1, which included language clarifying that *justices* of the Hawaii Supreme Court would also be included as judges who could be appointed as emeritus



House Bill No. 275, H.D. 1, 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

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judges. [Last year's Standing Committee report noted: "Additionally, your Committee notes that 'judges' as used in this measure is contemplated to include 'justices' as may be applicable." See Stand. Com. Rep. No. 1268-12 for Senate Bill No. 650, H.D. 1 (2012)].

We respectfully suggest that it would be prudent to clarify that this provision allows retired judges who have attained the age of seventy years, the judges' mandatory retirement age in the Constitution, to serve as emeritus judges. Accordingly, we respectfully recommend a clarifying amendment on page 3, lines 6-7 of House Draft 1. *See attached Proposed House Draft 2.*

The people of Hawai'i and the Judiciary would benefit significantly if a constitutional amendment is approved, conferring upon the Chief Justice the authority to appoint the experienced judges and justices who have retired and reached age seventy as emeritus judges.

Thank you for the opportunity to testify on House Bill No. 275, H.D. 1.

**Report Title:**

Chief Justice; Supreme Court; Emeritus Judge; Constitutional Amendment

**Description:**

Proposes an amendment to Article VI, Section 3 of the Hawaii Constitution to authorize the chief Justice of the Supreme Court to appoint retired judges and justices who have attained the age of seventy years as emeritus judges, permitting the appointed judges and justices to serve as temporary judges and justices in courts no higher than the court level that they reached prior to retirement and for terms not to exceed three months per appointment. (HB275, HD2-PROPOSED)

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# A BILL FOR AN ACT

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.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The purpose of this Act is to propose an  
2 amendment to article VI, section 3, of the Constitution of the  
3 State of Hawaii to authorize the chief justice of the supreme  
4 court to appoint retired judges and justices who have attained  
5 the age of seventy years as emeritus judges, permitting the  
6 appointed judges and justices to serve as temporary judges in  
7 courts no higher than the court level they reached prior to  
8 retirement and for terms not to exceed three months per  
9 appointment.

10           SECTION 2. Article VI, section 3, of the Constitution of  
11 the State of Hawaii is amended to read as follows:

12                           **"APPOINTMENT OF JUSTICES AND JUDGES**

13           **Section 3.** The governor, with the consent of the senate,  
14 shall fill a vacancy in the office of the chief justice, supreme  
15 court, intermediate appellate court and circuit courts, by  
16 appointing a person from a list of not less than four, and not

1 more than six, nominees for the vacancy, presented to the  
2 governor by the judicial selection commission.

3       If the governor fails to make any appointment within thirty  
4 days of presentation, or within ten days of the senate's  
5 rejection of any previous appointment, the appointment shall be  
6 made by the judicial selection commission from the list with the  
7 consent of the senate. If the senate fails to reject any  
8 appointment within thirty days thereof, it shall be deemed to  
9 have given its consent to such appointment. If the senate shall  
10 reject any appointment, the governor shall make another  
11 appointment from the list within ten days thereof. The same  
12 appointment and consent procedure shall be followed until a  
13 valid appointment has been made, or failing this, the commission  
14 shall make the appointment from the list, without senate  
15 consent.

16       The chief justice, with the consent of the senate, shall  
17 fill a vacancy in the district courts by appointing a person  
18 from a list of not less than six nominees for the vacancy  
19 presented by the judicial selection commission. If the chief  
20 justice fails to make the appointment within thirty days of  
21 presentation, or within ten days of the senate's rejection of  
22 any previous appointment, the appointment shall be made by the

1 judicial selection commission from the list with the consent of  
2 the senate. The senate shall hold a public hearing and vote on  
3 each appointment within thirty days of any appointment. If the  
4 senate fails to do so, the nomination shall be returned to the  
5 commission and the commission shall make the appointment from  
6 the list without senate consent. The chief justice shall  
7 appoint per diem district court judges as provided by law.

8 The chief justice may appoint retired judges and justices  
9 who have attained the age of seventy years as emeritus judges,  
10 permitting the appointed judges and justices to serve as  
11 temporary judges in courts no higher than the court level they  
12 reached prior to retirement and for terms not to exceed three  
13 months per each appointment.

#### 14 **QUALIFICATIONS FOR APPOINTMENT**

15 Justices and judges shall be residents and citizens of the  
16 State and of the United States, and licensed to practice law by  
17 the supreme court. A justice of the supreme court, a judge of  
18 the intermediate appellate court and a judge of the circuit  
19 court shall have been so licensed for a period of not less than  
20 ten years preceding nomination. A judge of the district court  
21 shall have been so licensed for a period of not less than five  
22 years preceding nomination.

1 No justice or judge shall, during the term of office,  
2 engage in the practice of law, or run for or hold any other  
3 office or position of profit under the United States, the State  
4 or its political subdivisions.

5 **TENURE; RETIREMENT**

6 The term of office of justices and judges of the supreme  
7 court, intermediate appellate court and circuit courts shall be  
8 ten years. Judges of district courts shall hold office for the  
9 periods as provided by law. At least six months prior to the  
10 expiration of a justice's or judge's term of office, every  
11 justice and judge shall petition the judicial selection  
12 commission to be retained in office or shall inform the  
13 commission of an intention to retire. If the judicial selection  
14 commission determines that the justice or judge should be  
15 retained in office, the commission shall renew the term of  
16 office of the justice or judge for the period provided by this  
17 section or by law.

18 Justices and judges shall be retired upon attaining the age  
19 of seventy years. They shall be included in any retirement law  
20 of the State."

21 SECTION 3. The question to be printed on the ballot shall  
22 be as follows:



1 "Shall the chief justice of the state supreme court be  
2 authorized to appoint retired judges and justices who have  
3 attained the age of seventy years as emeritus judges, to  
4 serve as temporary judges in courts no higher than the court  
5 level they reached prior to retirement and for terms not to  
6 exceed three months per each appointment?"

7 SECTION 4. New constitutional material is underscored.

8 SECTION 5. This amendment shall take effect upon  
9 compliance with article XVII, section 3, of the Constitution of  
10 the State of Hawaii.