



The Judiciary, State of Hawaii

Testimony to the House Committee on Judiciary

Representative Karl Rhoads, Chair
Representative Sharon E. Har, Vice Chair

Thursday, January 31, 2012
State Capitol, Conference Room 325

by

Rodney A. Maile
Administrative Director of the Courts

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 275, 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 judges who retired upon attaining the age of seventy years to serve as emeritus judges.

Judiciary's Position:

The Judiciary supports House Bill No. 275 but suggests alternative language, as set forth in the attached proposed House Bill No. 275, H.D. 1. that would clarify that a judge or justice can serve as an emeritus judge or justice after they have retired, regardless of whether they retired based on their age or for another reason.

House Bill No. 275 proposes amending the Hawaii Constitution to permit the Chief Justice to call upon retired judges over the age of 70 to assist the courts when needed. The Judiciary supports this proposal as retired judges and justices are valuable resources in terms of both providing mentorship and also helping with the timely and fair resolution of cases.

The Judiciary offers the following comments and suggestions:



House Bill No. 275, 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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1. We would note that the bill, in its present form, could be read in a very limited fashion so that only those judges who retired because they reached the age of seventy years would be permitted to return as emeritus judges. Our proposed H.D.1 deletes the language that those judges who may be emeritus judges are those “who have retired upon attaining the age of seventy years” so that it is clear that judges who have retired, for reasons other than their age, may be appointed by the chief justice to serve as emeritus judges.
2. We note that the bill mentions only “retired judges” and does not specify that those retired judges may also include “justices” of the Hawaii Supreme Court. It should be noted that last year’s legislative history on a comparable bill, Senate Bill No. 650, H.D. 1, included language clarifying that *justices* of the Hawaii Supreme Court would also be included as judges who could be appointed as emeritus judges. We would respectfully suggest that the bill be amended to include “justices” or that the committee report reflect that intent. (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)).
3. Conferring upon the Chief Justice the authority to appoint as emeritus judges the experienced judges and justices who have retired, would be a significant benefit to the Judiciary and the people of Hawaii. Presently, there are 49 retired judges in the state. Thirty eight of those judges retired before attaining the age of 70. Eleven of those 49 judges retired upon attaining the age of 70. If this bill is passed, these judges and justices, with their wealth of experience and knowledge, could be called upon again to serve the Judiciary.

Thank you for the opportunity to testify on House Bill No. 275.

Report Title:

Chief Justice; Supreme Court; Emeritus Judge; Constitutional Amendment

Description:

Proposes constitutional amendment authorizing Chief Justice to appoint retired judges 70 years and older as emeritus 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 per appointment.

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 seventy years and older as
5 emeritus judges, to serve as temporary judges in courts no
6 higher than the court level they reached prior to retirement and
7 for terms not to exceed three months per appointment.

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

10 **"APPOINTMENT OF JUSTICES AND JUDGES**

11 **Section 3.** The governor, with the consent of the senate,
12 shall fill a vacancy in the office of the chief justice, supreme
13 court, intermediate appellate court and circuit courts, by
14 appointing a person from a list of not less than four, and not
15 more than six, nominees for the vacancy, presented to the
16 governor by the judicial selection commission.

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

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

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

6 The chief justice may appoint retired judges seventy years
7 and older as emeritus judges, to serve as temporary judges in
8 courts no higher than the court level they reached prior to
9 retirement and for terms not to exceed three months per each
10 appointment.

11 **QUALIFICATIONS FOR APPOINTMENT**

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

20 No justice or judge shall, during the term of office,
21 engage in the practice of law, or run for or hold any other

1 office or position of profit under the United States, the State
2 or its political subdivisions.

3 **TENURE; RETIREMENT**

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

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

19 SECTION 3. The question to be printed on the ballot shall
20 be as follows:

21 "Shall the chief justice of the state supreme court be
22 authorized to appoint retired judges seventy years and older

1 as emeritus judges, to serve as temporary judges in courts
2 no higher than the court level they reached prior to
3 retirement and for terms not to exceed three months per each
4 appointment?"

5 SECTION 4. New constitutional material is underscored.

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

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

January 31, 2012

**H.B. No. 275: 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 Rhoads and Members of the Committee:

We have concerns about H.B. No. 275 which proposes a constitutional amendment to allow for the appointment of retired judges to serve as emeritus judges. The initial concern is that we believe that this amendment would be in 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 appointing a retired judge as an emeritus judge could result in a change to the critical make up of the court on the appellate level. Currently, if an appellate court judge cannot hear a case due to a conflict of interest or other reason, a sitting circuit court judge is designated to replace the absent judge. However, if, pursuant to this measure, a former supreme court justice is appointed on an emeritus basis to replace an absent justice, the retired justice would substantially alter the philosophical make up of the court. Imagine the appointment of a former chief justice, for instance, on a temporary basis. Many parties to litigation would cry foul on such a sudden shift in the structure of the appeals court.

Parties have a right to rely upon the consistency of the justice system and the known judicial philosophies of sitting judges. Indeed, decisions are made daily on whether to proceed with litigation or whether to appeal cases to higher courts based upon prior decisions rendered by those courts and the make up of the appeals courts. The establishment of emeritus judges would threaten to upset this consistency.

Thank for the opportunity to comment on this measure.

DEPARTMENT OF THE PROSECUTING ATTORNEY
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**THE HONORABLE KARL RHOADS, CHAIR
HOUSE JUDICIARY COMMITTEE
Twenty-Seventh State Legislature
Regular Session of 2013
State of Hawai`i**

January 31, 2013

**RE: H.B. 275; 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 Rhoads, Vice Chair Har, and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in opposition of H.B. 275, 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. Thank you for this opportunity to testify on this measure.



TESTIMONY ON HB 275 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.

Committee on Judiciary
Representative Karl Rhoads, Chair
Representative Sharon E. Har, Vice Chair
Thursday, January 31, 2013 2:05 p.m. Conference Room 325

Testimony written by Jean Aoki, LWV Legislative Committee member.

Chair Karl Rhoads, Vice Chair Sharon Har, members of the House Judiciary Committee,

The League of Women Voters of Hawaii supports the constitutional amendment proposed by HB 275 which would give the Chief Justice of the Supreme Court the authority to appoint judges who have reach the mandatory retirement age of 70 as emeritus judges.

We have long felt that at age 70, most people are still as alert as ever, and coupled with the wisdom gathered through long living and working experiences, probably just as productive, if not more productive in their chosen field(s). And the process that precedes the actual selection of the judges as emeritus judges to fill a temporary vacancy for a maximum of three months gives ample opportunity for the testing of the fitness of the candidates.

Thank you for this opportunity to testify in support of HB 275.



har2-Vincent

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 28, 2013 11:39 AM
To: JUDtestimony
Cc: ndavlantes@aol.com
Subject: *Submitted testimony for HB275 on Jan 31, 2013 14:05PM*

HB275

Submitted on: 1/28/2013

Testimony for JUD on Jan 31, 2013 14:05PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Nancy Davlantes	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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