



*The Judiciary, State of Hawaii*

**Testimony to the Senate Committee on Judiciary and Labor**

Senator Clayton Hee, Chair  
Senator Maile S.L. Shimabukuro, Vice Chair

Thursday, February 7, 2013, 10:00 a.m.  
State Capitol, Conference Room 016

by

Rodney A. Maile  
Administrative Director of the Courts

**WRITTEN TESTIMONY ONLY**

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**Bill No. and Title:** Senate Bill No. 346, 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 Senate Bill No. 346 but suggests alternative language, as set forth in the attached proposed Senate Bill No. 346, S.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.

Senate Bill No. 346 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.



Senate Bill No. 346, 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  
Senate Committee on Judiciary and Labor

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The Judiciary offers the following comments and suggestions:

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 Senate Bill No. 346.

**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.

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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 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.





LEAGUE OF  
WOMEN VOTERS\*

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SENATE COMMITTEE ON JUDICIARY AND LABOR  
Senator Clayton Hee, Chair, Senator Maile S.L. Shimabukuro, Vice Chair  
Thursday, February 7, 2013 10:00 a.m. Conference Room 016

SB346, PROPOSING AN AMENDMENT TO THE HAWAII CONSTITUTION AUTHORIZING THE STATE SUPREME COURT  
CHIEF JUSTICE TO APPOINT RETIRED JUDGES TO SERVE AS EMERITUS JUDGES

TESTIMONY

Jean Aoki, Legislative Committee Member, League of Women Voters of Hawaii

Chair Hee, Vice-Chair Shimabukuro, and Committee Members:

**The League of Women Voters of Hawaii** strongly supports SB346 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 SB346.

We urge the adoption of SB346. Thank you for the opportunity to submit testimony.

TESTIMONY BY WESLEY K. MACHIDA  
ADMINISTRATOR, EMPLOYEES' RETIREMENT SYSTEM  
STATE OF HAWAII  
TO THE SENATE COMMITTEE ON JUDICIARY AND LABOR  
ON  
SENATE BILL NO. 346

FEBRUARY 7, 2013

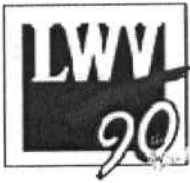
PROPOSING AN AMENDMENT TO ARTICLE VI, SECTION 3, OF THE  
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JUSTICE OF THE STATE SUPREME COURT TO APPOINT RETIRED JUDGES TO  
SERVE AS EMERITUS JUDGES

Chair Hee and Members of the Committee:

S.B. 346 allows the chief justice to appoint judges retired from the Employees' Retirement System (ERS) upon reaching the age of 70 as temporary emeritus judges. These post retirement appointments would be for terms "not to exceed three months per appointment." As proposed, this amendment would allow retired judges to receive a salary for their temporary appointments while still receiving a pension from the ERS.

Although the ERS Board of Trustees understands the mentoring benefits of emeritus judges, the Board opposes this bill as it would create the opportunity for retired judges to "double-dip" or being employed and collecting a retirement pension at the same time. The Internal Revenue Service scrutinizes these types of appointments and as a general policy to protect the ERS' tax-qualified status the ERS Board discourages this practice.

Thank you for opportunity to testify on this important measure.



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