



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-SEVENTH LEGISLATURE, 2013**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 886, PROPOSING AN AMENDMENT TO ARTICLE VI, SECTION 3, OF THE HAWAII STATE CONSTITUTION TO INCREASE THE MANDATORY RETIREMENT AGE FOR STATE JUSTICES AND JUDGES.

**BEFORE THE:**

SENATE COMMITTEE ON JUDICIARY AND LABOR

**DATE:** Tuesday, January 29, 2013

**TIME:** 09:30 a.m.

**LOCATION:** State Capitol, Room 016

**TESTIFIER(S):** David M. Louie, Attorney General, or  
Charleen Aina, Deputy Attorney General

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Chair Hee and Members of the Committee:

The Department of the Attorney General supports this bill, which proposes an amendment to Article VI, section 3, of the Hawaii State Constitution, to increase the mandatory retirement age for state justices and judges.

When Hawaii's Constitution was originally adopted in 1959, the framers established a retirement age of seventy and also provided for limitations on judicial terms. Since then, the terms of justices and judges, but not the retirement age, have been extended. We believe that the retirement age of seventy, while perhaps appropriate in 1959, is now outdated. People now live longer, healthier, and more productive lives and are contributing to their community and their jobs well past the age of seventy. In the local legal community, some of the finest minds and best attorneys are older than seventy.

This amendment would also bring Hawaii in line with the federal judiciary and many other states. For example, the federal judiciary system has no age limit for justices and judges. Likewise, at least twenty states have no such age limit. These jurisdictions have recognized that removing the accumulated wisdom of these judges because they have reached the relatively young age of seventy makes little sense. Many well-recognized and highly esteemed justices of the United States Supreme Court have served beyond the age of seventy, including several sitting justices. Justice John Paul Stevens did not retire until he was ninety and when he did retire, he was still an active member of the court.

This bill will prevent the loss of the services of intelligent and effective justices and judges simply because they have reached the age of seventy years. Because appointments are made for terms of a specified number of years, there is still ample opportunity for the community and the bar to scrutinize whether a judge over the age of seventy who applies for reappointment to another term is still capable of being effective.

The Department of the Attorney General requests the passage of this bill.

Thank you for the opportunity to testify.

**Testimony of the Office of the Public Defender, State of Hawaii,  
to the Senate Committee on Judiciary and Labor**

January 29, 2013

**S.B. No. 886: PROPOSING AN AMENDMENT TO ARTICLE VI,  
SECTION 3, OF THE HAWAII STATE CONSTITUTION  
TO INCREASE THE MANDATORY RETIREMENT AGE  
FOR STATE JUSTICES AND JUDGES**

Chair Hee and Members of the Committee:

S.B. No. 886 seeks to raise the mandatory retirement age for state judges and justices from 70 years of age to 80. We are in agreement that 70 is an arbitrary age at which to set mandatory retirement for judges. The prevalence of wellness programs which point out the importance of diet and exercise to the public and advances in healthcare have resulted in many who are able to serve effectively in a judicial position well past the age of 70. Therefore, to the extent that the age of 70 is deemed to be an age at which productivity and ability to serve is decreased, we agree that the retirement age must be raised.

However, to the extent that the retirement age of 70 is designed to be a de facto "term limit" on judicial positions, this measure raises a wider debate. There are some who believe that periodic replacement of judges benefits the legal system by bringing those with fresh, innovative ideas into the judiciary. We don't believe a bench dominated by septo and octogenarians would give the public confidence in the judicial system. But we do feel that a mix of judges of various ages, gender, ethnicity and background does provide for a strong judiciary.

The Hawaii chapter of the American Judicature Society has assembled a special committee made up of lawyers, judges, authorities in the field of personnel management and community leaders to study the current judicial mandatory retirement age. It has proven to be a very controversial issue with many differing points of view.

If the legislature proposes this constitutional amendment regarding the raising of the age, we would recommend that it be accompanied by provisions for removing a judge who is experiencing difficulty efficiently administering his/her cases due to age or health related infirmities.

Thank for the opportunity to comment on this measure.