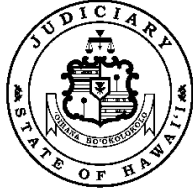


HB275

HD1

LATE

TESTIMONY



The Judiciary, State of Hawai‘i

Testimony to the Senate Committee on Judiciary and Labor
Senator Clayton Hee, Chair
Senator Maile S. L. Shimabukuro, Vice Chair

Tuesday, March 11, 2014, 2:00 p.m.
State Capitol, Conference Room 016

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.

Position:

The Judiciary supports the intent of House Bill No. 275, H.D.1, which authorizes the Chief Justice to place retired justices and judges in temporary judicial appointments throughout the State's trial and appellate courts, as needed. With their expertise and years of experience on the bench, Hawaii's retired justices and judges can be a valuable resource in the Judiciary's efforts to provide for the fair and timely resolution of court cases.



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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However, the Judiciary would note that a proposed constitutional amendment will appear on the 2014 general election ballot, pursuant to Senate Bill 886, which seeks to raise the mandatory retirement age from age 70 years to age 80 years for justices and judges. The Judiciary respectfully suggests that two proposed constitutional amendments on the subject of judges' retirement age and status may create confusion for voters in the 2014 election, and thus, it might be prudent to defer on this measure.

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

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

March 11, 2014

**H.B. No. 275 HD1: 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 Hee and Members of the Committee:

We oppose H.B. No. 275 HD1 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 allow for the temporary appointment of former judges over the age of 70 to adjudicate cases, we believe 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.

Finally, we believe that a significant defect in the bill is that former judges who have been forced into retirement due to non-retention by the Judicial Selection Commission would be allowed to continue judicial service under this provision. Indeed, in testimony submitted by the Judiciary in support of H.B. No. 275 HD1, judges who would be eligible for emeritus appointment are those who have retired on the basis of age or for any other reason. If the Judicial Selection Commission has found that a judge is not fit to continue in office, we believe that such a finding should preclude the judge from being appointed on a temporary basis.

Thank for the opportunity to comment on this measure.

The Twenty-Seventh Legislature
Regular Session of 2014

THE SENATE

Committee on Judiciary and Labor
Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
State Capitol, Conference Room 016
Tuesday, March 11, 2014; 10:00 a.m.

**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 275, HD1
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**

The ILWU Local 142 supports H.B. 275, HD1, which proposes a Constitutional Amendment to authorize the Chief Justice of the Supreme Court to appoint retired judges and justices 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.

Requiring justices and judges to retire at age 70 is arbitrary and a form of age discrimination. That this provision is in our State Constitution does not make it any less so. However, this proposal to amend the Constitution to allow the Chief Justice to appoint retired justices and judges on a temporary basis is a way to mitigate the effects of forced retirement and is both reasonable and sensible.

The Constitutional Amendment does not require the Chief Justice to appoint any retired jurist but affords him or her the option to do so and provides a pool from which to make a selection. In addition, retired justices and judges are free to decline appointment if they so choose. The appointments will be temporary, not to exceed three months. The concern raised by the Employee Retirement System about “double-dipping” can be addressed by its own rules, which currently allow retired state and county employees to return to duty on a temporary basis. The justices and judges will be earning their pay while on temporary appointment.

Forcing justices and judges to retire at age 70 has resulted, for some, in a disservice to the community. Whether a judge or justice should continue to serve on the bench should really be about competence, judicial temperament, and fairness, not age alone. H.B. 275, HD1 will allow the judicial system in Hawaii to benefit from the experience, knowledge, and expertise of retired judges and justices, who can offer mentoring and assistance to new jurists.

The ILWU urges passage of H.B. 275, HD1. Thank you for considering our testimony.