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STATE OF HAWAII
EMPLOYEES' RETIREMENT SYSTEM

TESTIMONY BY THOMAS WILLIAMS
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STATE OF HAWAII

TO THE HOUSE COMMITTEE ON FINANCE

HOUSE BILL NO. 2006

MARCH 1, 2016, 11:02 A.M.

RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM

Chair Luke, Vice Chair Nishimoto, and Members of the Committee,

H.B. 2006 proposes to change the Employees' Retirement System (ERS) membership classification of judges who serve as judges on or after July 1, 2016, to the extent that no benefits have accrued. This bill would delete judges from class A membership and include them as class H members by amending section 88-47. In addition, it would reduce the ERS benefit "multiplier" from 3 percent to 2 percent and, for some members, would increase the "unreduced" retirement age for a member who earns any credited service as a judge on or after July 1, 2016 by amending section 88-74.

As of the submittal of this testimony, the Board of Trustees of the Employees' Retirement System (ERS) has not yet reviewed H.B. 2006 and therefore has not yet taken a formal position on this proposal; however the ERS staff has the following comments and concerns regarding H.B. 2006:

As the primary intent of H.B. 2006 appears to be the reduction of the benefit multiplier for judges who first earn credited service as a judge after June 30, 2016 and for judges who become



Employees' Retirement System
of the State of Hawaii

reappointed or appointed as judges after June 30, 2016, we respectfully suggest the attached language amending section 88-74. This revision would not change the classification of new judges, or newly appointed judges, to class H membership; however, it would decrease the class A benefit multiplier to 2 percent for this group of members. Section 88-47 does not need to be amended to effectuate this change.

The ERS staff has concerns regarding the creation of this new “tier” of benefits and requirements for a relatively small segment of the total ERS membership. Although the revisions suggested by the ERS staff will provide clarification as to the application of this bill, class A judges with reduced benefit multipliers, annuities and 75 percent benefit limitations, will be a unique membership group for whom the ERS will have to identify, monitor and implement program changes. This unique segment (of a current membership group of approximately 80 judges) will require computer modification and counseling resource costs which, from a business perspective, the ERS believes will be out of proportion to the members affected by this legislation.

Please refer to the attached revisions to section 88-74.

On behalf of the Board of Trustees and staff of ERS we wish to thank you for the opportunity to testify.

REVISIONS TO HRS §88-74 TO REDUCE THE MULTIPLIER TO 2% FOR JUDGES WHO BECOME JUDGES AFTER 6/30/2016 AND TO REDUCE THE MULTIPLIER TO 2% FOLLOWING REAPPOINTMENT OR "PROMOTION" FOR JUDGES WHO RE REAPPOINTED OR "PROMOTED" AFTER 6/30/2016

§88-74 Allowance on service retirement. (a) Upon retirement from service, a member shall receive a maximum retirement allowance as provided in this section.

(b) If a member, who became a member before July 1, 2012, has attained age fifty-five, the member's maximum retirement allowance shall be two per cent of the member's average final compensation multiplied by the total number of years of the member's credited service as a class A and class B member, excluding any credited service as a judge, elective officer, or legislative officer, plus a retirement allowance of one and one-fourth per cent of the member's average final compensation multiplied by the total number of years of prior credited service as a class C member, plus a retirement allowance of two per cent of the member's average final compensation multiplied by the total number of years of prior credited service as a class H member; provided that:

- (1) After June 30, 1968, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a firefighter, police officer, or an investigator of the department of the prosecuting attorney;
- (2) After June 30, 1977, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a corrections officer;
- (3) After June 16, 1981, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as an investigator of the department of the attorney general;
- (4) After June 30, 1989, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a narcotics enforcement investigator;
- (5) After December 31, 1993, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a water safety officer;
- (6) After June 30, 1994, if the member has at least ten years of credited service, of which the last five or more years prior to retirement are credited service as a public safety investigations staff investigator;

- (7) After June 30, 2002, if the member:
 - (A) Has at least ten years of credited service as a firefighter;
 - (B) Is deemed permanently medically disqualified due to a service related disability to be a firefighter by the employer's physician; and
 - (C) Continues employment in a class A or B position other than a firefighter; and
- (8) After June 30, 2004, if the member:
 - (A) Has at least ten years of credited service as a police officer;
 - (B) Is deemed permanently medically disqualified due to a service related disability to be a police officer by the employer's physician; and
 - (C) Continues employment in a class A or B position other than a police officer;

then for each year of service as a firefighter, police officer, corrections officer, investigator of the department of the prosecuting attorney, investigator of the department of the attorney general, narcotics enforcement investigator, water safety officer, or public safety investigations staff investigator, the retirement allowance shall be two and one-half per cent of the member's average final compensation. The maximum retirement allowance for those members shall not exceed eighty per cent of the member's average final compensation. If the member has not attained age fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced for age as provided in subsection (e).

(c) If a member, who became a member prior to July 1, 2012, has credited service as a judge, the member's retirement allowance shall be computed on the following basis:

- (1) For a member who has credited service as a judge before July 1, 1999, irrespective of age, for each year of credited service as a judge, three and one-half per cent of the member's average final compensation in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service;
- (2) For a member who first earned credited service as a judge after June 30, 1999, but before July 1, 2012, for each year of credited service as a judge, three and one-half per cent of the member's average final compensation in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service. If the member has not attained age fifty-five, the

member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced for age as provided in subsection (e);

- (3) For a member who first earned credited service as a judge after June 30, 2012, but before July 1, 2016, for each year of credited service as a judge, three per cent of the member's average final compensation in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service. If the member has not attained age sixty, the member's retirement allowance shall be computed as though the member had attained age sixty, reduced for age as provided in subsection (i);
- (4) For a member who first earned credited service as a judge after June 30, 2016, for each year of credited service as a judge, two per cent of the member's average final compensation in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service. If the member has not attained age sixty, the member's retirement allowance shall be computed as though the member had attained age sixty, reduced for age as provided in subsection (i);
- (5) For a member described in paragraphs (1), (2), or (3), who is reappointed or appointed to a different court (such as the appointment of a circuit court judge to an appellate court, if the appointment requires consent by the senate), after June 30, 2016, in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service:
 - (A) For credited service as a judge prior to reappointment or appointment to a different court, as provided in paragraph (1), (2), or (3), respectively; and
 - (B) For each year of credited service as a judge after reappointment or appointment to a different court, two per cent of the member's average final compensation.

If the member has not attained the applicable age for an unreduced retirement allowance under paragraph (1), (2), or (3), the member's retirement allowance shall be computed as though the member had attained the age for an unreduced retirement allowance, reduced for age as provided in subsection (e) or (i), as applicable;

~~[(4)]~~ (6) For a judge with other credited service, as provided in subsection (b). If the member has not attained age fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced for age as provided in subsection (e); or

~~[(5)]~~ (7) For a judge with credited service as an elective officer or as a legislative officer, as provided in subsection (d).

No allowance shall exceed seventy-five per cent of the member's average final compensation. If the allowance exceeds this limit, it shall be adjusted by reducing the annuity included in paragraphs (1), (2), ~~[and]~~ (3), (4), and (5) and the portion of the accumulated contributions specified in paragraphs (1), (2), ~~[and]~~ (3), (4), and (5) in excess of the requirements of the reduced annuity shall be returned to the member upon the member's retirement or paid to the member's designated beneficiary upon the member's death while in service or while on authorized leave without pay. The allowance for judges under this subsection, together with the retirement allowance provided by the federal government for similar service, shall in no case exceed seventy-five per cent of the member's average final compensation.

(d) If a member, who became a member before July 1, 2012, has credited service as an elective officer or as a legislative officer, the member's retirement allowance shall be derived by adding the allowances computed separately under paragraphs (1), (2), (3), (4), (5), and (6) as follows:

- (1) For a member who has credited service as an elective officer before July 1, 2012, irrespective of age, for each year of credited service as an elective officer, three and one-half per cent of the member's average final compensation as computed under section 88-81(e)(1), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service;
- (2) For a member, who first earned credited service as an elective officer after June 30, 2012, irrespective of age, for each year of credited service as an elective officer, three per cent of the member's average final compensation as computed under section 88-81(e)(1), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service;
- (3) For a member who has credited service as a legislative officer before July 1, 2012, irrespective of age, for each year of credited service as a legislative

- officer, three and one-half per cent of the member's average final compensation as computed under section 88-81(e)(2), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service;
- (4) For a member who first earned credited service as a legislative officer after June 30, 2012, irrespective of age, for each year of credited service as a legislative officer, three per cent of the member's average final compensation as computed under section 88-81(e)(2), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service;
- (5) ~~[If the]~~ For a member who has credited service as a judge ~~[, the member's retirement allowance shall be computed on the following basis]:~~
- (A) For a member who has credited service as a judge before July 1, 1999, irrespective of age, for each year of credited service as a judge, three and one-half per cent of the member's average final compensation as computed under section 88-81(e)(3), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service;
- (B) For a member who first earned credited service as a judge after June 30, 1999, but before July 1, 2012, and has attained the age of fifty-five, for each year of credited service as a judge, three and one-half per cent of the member's average final compensation as computed under section 88-81(e)(3), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service. If the member has not attained age fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced for age as provided in subsection (e); and
- (C) For a member who first earned credited service as a judge after June 30, 2012, but before July 1, 2016, and has attained the age of sixty, for each year of credited service as a judge, three per cent of the member's average final compensation as computed under section 88-81(e)(3), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of

service. If the member has not attained age sixty, the member's retirement allowance shall be computed as though the member had attained age sixty, reduced for age as provided in subsection (i); ~~and~~

(D) For a member who first earned credited service as a judge after June 30, 2016, and has attained the age of sixty, for each year of credited service as a judge, two per cent of the member's average final compensation in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service. If the member has not attained age sixty, the member's retirement allowance shall be computed as though the member had attained age sixty, reduced for age as provided in subsection (i); and

(E) For a member described in paragraphs (A), (B), or (C), who is reappointed or appointed to a different court (such as the appointment of a circuit court judge to an appellate court, if the appointment requires consent by the senate), after June 30, 2016, in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service:

(i) For credited service as a judge prior to reappointment or appointment to a different court, as provided in subparagraph (A), (B), or (C), respectively, ; and

(ii) For each year of credited service as a judge after reappointment or appointment to a different court, two per cent of the member's average final compensation. If the member has not attained the applicable age for an unreduced retirement allowance under paragraph (A), (B), or (C), the member's retirement allowance shall be computed as though the member had attained the age for an unreduced retirement allowance, reduced for age as provided in subsection (e) or (i), as applicable;

(6) For each year of credited service not included in paragraph (1), (2), (3), (4), or (5), the average final compensation as computed under section 88-81(e) (4) shall be multiplied by two per cent for credited service earned as a class A or class H

member, two and one-half per cent for credited service earned as a class B member, and one and one-quarter per cent for credited service earned as a class C member. If the member has not attained age fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced for age as provided in subsection (e).

The total retirement allowance shall not exceed seventy-five per cent of the member's highest average final compensation calculated under section 88-81(e)(1), (2), (3), or (4). If the allowance exceeds this limit, it shall be adjusted by reducing any annuity accrued under paragraphs (1), (2), (3), (4), and (5) and the portion of the accumulated contributions specified in these paragraphs in excess of the requirements of the reduced annuity shall be returned to the member upon the member's retirement or paid to the member's designated beneficiary upon the member's death while in service or while on authorized leave without pay. If a member has service credit as an elective officer or as a legislative officer in addition to service credit as a judge, then the retirement benefit calculation contained in this subsection shall supersede the formula contained in subsection (c).

(e) Except as provided in subsections (b), (c), and (d), if a member, who became a member before July 1, 2012, has not attained age fifty-five at the date of retirement, the member's retirement allowance shall be reduced, for each month the member's age at the date of retirement is below age fifty-five, as follows:

- (1) 0.4166 per cent for each month below age fifty-five and above age forty-nine and eleven months; plus
- (2) 0.3333 per cent for each month below age fifty and above age forty-four and eleven months; plus
- (3) 0.2500 per cent for each month below age forty-five and above age thirty-nine and eleven months; plus
- (4) 0.1666 per cent for each month below age forty;

provided that no reduction shall be made if the member has at least twenty-five years of credited service as a firefighter, police officer, corrections officer, investigator of the department of the prosecuting attorney, investigator of the department of the attorney general, narcotics enforcement investigator, public safety investigations staff investigator, sewer worker, or water safety officer, of which the last five or more years prior to retirement is credited service in these capacities.

(f) If a member, who becomes a member after June 30, 2012, has attained age sixty, the member's maximum retirement allowance shall be one and three-fourths per cent of the

member's average final compensation multiplied by the total number of years of the member's credited service as a class A and class B member, excluding any credited service as a judge, elective officer, or legislative officer, plus a retirement allowance of one and one-fourth per cent of the member's average final compensation multiplied by the total number of years of prior credited service as a class C member, plus a retirement allowance of one and three-fourths per cent of the member's average final compensation multiplied by the total number of years of prior credited service as a class H member; provided that:

- (1) If the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a firefighter, police officer, or an investigator of the department of the prosecuting attorney;
- (2) If the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a corrections officer;
- (3) If the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as an investigator of the department of the attorney general;
- (4) If the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a narcotics enforcement investigator;
- (5) If the member has at least ten years of credited service, of which the last five or more years prior to retirement is credited service as a public safety investigations staff investigator;
- (6) If the member:
 - (A) Has at least ten years of credited service as a firefighter;
 - (B) Is deemed permanently medically disqualified due to a service related disability to be a firefighter by the employer's physician; and
 - (C) Continues employment in a class A or class B position other than a firefighter; and
- (7) If the member:
 - (A) Has at least ten years of credited service as a police officer;
 - (B) Is deemed permanently medically disqualified due to a service related disability to be a police officer by the employer's physician; and

(C) Continues employment in a class A or class B position other than a police officer, then for each year of service as a firefighter, police officer, corrections officer, investigator of the department of the prosecuting attorney, investigator of the department of the attorney general, narcotics enforcement investigator, or public safety investigations staff investigator, the retirement allowance shall be two and one-fourth per cent of the member's average final compensation. The maximum retirement allowance for those members shall not exceed eighty per cent of the member's average final compensation. If the member has not attained age sixty, the member's retirement allowance shall be computed as though the member had attained age sixty, reduced for age as provided in subsection (i).

(g) If a member, who becomes a member after June 30, 2012, has credited service as a judge, the member's retirement allowance shall be computed on the following basis:

- (1) For a member who first earned credited service as a judge before July 1, 2016, for each year of credited service as a judge, three per cent of the member's average final compensation in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service. If the member has not attained age sixty, the member's retirement allowance shall be computed as though the member had attained age sixty, reduced for age as provided in subsection (i);
- (2) For a member who first earned credited service as a judge after June 30, 2016, for each year of credited service as a judge, two per cent of the member's average final compensation in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service. If the member has not attained age sixty, the member's retirement allowance shall be computed as though the member had attained age sixty, reduced for age as provided in subsection (i);
- (3) For a member described in paragraph (1), who is reappointed or appointed to a different court (such as the appointment of a circuit court judge to an appellate court, if the appointment requires consent by the senate), after June 30, 2016, in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service:

- (A) For credited service as a judge prior to reappointment or appointment to another court, as provided in paragraph (1); and
- (B) For each year of credited service as a judge after reappointment or appointment to another court, two per cent of the member's average final compensation.

If the member has not attained age sixty, the member's retirement allowance shall be computed as though the member had attained age sixty, reduced for age as provided in subsection (i);

- (4) For a judge with other credited service, as provided in subsection (f). If the member has not attained age sixty, the member's retirement allowance shall be computed as though the member had attained age sixty, reduced for age as provided in subsection (i); and
- (5) For a judge with credited service as an elective officer or as a legislative officer, as provided in subsection (h).

No allowance shall exceed seventy-five per cent of the member's average final compensation. If the allowance exceeds this limit, it shall be adjusted by reducing the annuity included in paragraph (1) and the portion of the accumulated contributions specified in paragraph (1) in excess of the requirements of the reduced annuity shall be returned to the member upon the member's retirement or paid to the member's designated beneficiary upon the member's death while in service or while on authorized leave without pay. The allowance for judges under this subsection, together with the retirement allowance provided by the federal government for similar service, shall in no case exceed seventy-five per cent of the member's average final compensation.

(h) If a member, who becomes a member after June 30, 2012, has credited service as an elective officer or as a legislative officer, the member's retirement allowance shall be derived by adding the allowances computed separately under paragraphs (1), (2), (3), and (4) as follows:

- (1) Irrespective of age, for each year of credited service as an elective officer, three per cent of the member's average final compensation as computed under section 88-81(f)(1), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service;
- (2) Irrespective of age, for each year of credited service as a legislative officer, three per cent of the member's average final compensation as computed under section 88-81(f)(2), in addition to an annuity that is

- the actuarial equivalent of the member's accumulated contributions allocable to the period of service;
- (3) For ~~[each year of]~~ a member who has credited service as a judge~~[7]~~:
- (A) For a member who first earned credited service as a judge before July 1, 2016, three per cent of the member's average final compensation as computed under section 88-81(f) (3), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service. If the member has not attained age sixty, the member's retirement allowance shall be computed as though the member had attained age sixty, reduced for age as provided in subsection (i); ~~and~~
- (B) For a member who first earned credited service as a judge after June 30, 2016, for each year of credited service as a judge, two per cent of the member's average final compensation in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service. If the member has not attained age sixty, the member's retirement allowance shall be computed as though the member had attained age sixty, reduced for age as provided in subsection (i); and
- (C) For a member described in paragraph (A), who is reappointed or appointed to a different court (such as the appointment of a circuit court judge to an appellate court, if the appointment requires consent by the senate), after June 30, 2016, in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service:
- (i) For credited service as a judge prior to reappointment or appointment to a different court, as provided in subparagraph (A); and
- (ii) For each year of credited service as a judge after reappointment or appointment to a different court, two per cent of the member's average final compensation. If the member has not attained age sixty, the member's retirement allowance shall be computed as though the member had attained age sixty, reduced for age as provided in subsection (i);

- (4) For each year of credited service not included in paragraph (1), (2), or (3), the average final compensation as computed under section 88-81(f)(4) shall be multiplied by one and three-fourth per cent for credited service earned as a class A or class H member, two and one-fourth per cent for credited service earned as a class B member, and one and one-fourth per cent for credited service earned as a class C member. If the member has not attained age sixty, the member's retirement allowance shall be computed as though the member had attained age sixty, reduced for age as provided in subsection (i).

The total retirement allowance shall not exceed seventy-five per cent of the member's highest average final compensation calculated under section 88-81(f)(1), (2), (3), or (4). If the allowance exceeds this limit, it shall be adjusted by reducing any annuity accrued under paragraphs (1), (2), and (3) and the portion of the accumulated contributions specified in these paragraphs in excess of the requirements of the reduced annuity shall be returned to the member upon the member's retirement or paid to the member's designated beneficiary upon the member's death while in service or while on authorized leave without pay. If a member has service credit as an elective officer or as a legislative officer in addition to service credit as a judge, then the retirement benefit calculation contained in this subsection shall supersede the formula contained in subsection (g).

(i) Except as provided in subsections (f), (g), and (h), if a member, who becomes a member after June 30, 2012, has not attained age sixty at the date of retirement, the member's retirement allowance shall be reduced, for each month the member's age at the date of retirement is below age sixty, as follows:

- (1) 0.4166 per cent for each month below age sixty and above age fifty-four and eleven months; plus
- (2) 0.3333 per cent for each month below age fifty-five and above age forty-nine and eleven months; plus
- (3) 0.2500 per cent for each month below age fifty and above age forty-four and eleven months; plus
- (4) 0.1666 per cent for each month below age forty-five;

provided that no reduction shall be made if the member has attained the age of fifty-five and has at least twenty-five years of credited service as a firefighter, police officer, corrections officer, investigator of the department of the prosecuting attorney, investigator of the department of the attorney general, narcotics enforcement investigator, public safety investigations staff investigator, sewer worker, water

safety officer, or emergency medical technician, of which the last five or more years prior to retirement is credited service in these capacities.



The Judiciary, State of Hawaii

Testimony to the House Committee on Finance

Representative Sylvia J. Luke, Chair
Representative Scott Y. Nishimoto, Vice Chair

Tuesday, March 1, 2016, 11:02 a.m.
State Capitol, Conference Room 308

by
Rodney A. Maile
Administrative Director of the Courts

Bill No. and Title: House Bill No. 2006, Relating to the Employees' Retirement System.

Purpose: House Bill No. 2006 proposes to classify as hybrid members under the Employees' Retirement System (ERS), persons serving as judges on or after 7/1/2016.

Judiciary's Position:

The Judiciary respectfully opposes the proposed amendments to Chapter 88, Hawaii Revised Statutes, in House Bill 2006 pertaining to retirement of judges. As set forth below, the intended scope of this proposal is unclear in several respects. However, to the extent it is intended to reduce retirement benefits for judges who are *currently* employed by the state, we are not aware of any other situation in recent memory in which current employees have had their retirement benefits reduced in this manner. Reducing retirement benefits for current employees (as opposed to individuals who become employees sometime in the future) would be contrary to the reasonable expectations those employees had when they began working for the state, and could have significant negative unintended consequences.

House Bill No. 2006 proposes to amend the provisions of Sections 88-47 and 88-74 by:

- 1) Deleting judges from Class A (Contributory) membership;
- 2) Adding to Class A (Contributory) membership those members serving as judges on or after July 1, 2016;
- 3) Adding to Class H (Hybrid) membership those members serving as judges on or after July 1, 2016; and



- 4) Reducing the service retirement allowance for credited service as a judge on or after July 1, 2016, for each year of credited service as a judge.

The proposed amendments raise questions on intent and application:

First, one of the proposed amendments to Section 88-47 would delete "judges" from Subsection 88-47(a) (1) (A), Class A membership. By deleting "judges" from Class A membership, it is unclear what the membership classification will be for current judges, i.e., continue as contributory members or inclusion in another class.

Second, while the term "judges" is being deleted from Class A membership, House Bill No. 2006 proposes to include the following language in Section 88-47 under both Class A (Subsection 88-47(a)(1)(G)) and Class H (Subsection 88-47(a)(4)(E)) membership:

"Members serving as judges on or after July 1, 2016, to the extent that no benefits have accrued, and for any reappointment or promotion thereafter;"

By including the above proposed language under both Class A and Class H, it is unclear whether:

1. the proposed language above is applicable only to new judges appointed on or after July 1, 2016 or applicable as well to current members who continue to serve as judges on or after July 1, 2016.
2. new and/or current judges will be Class A members or Class H members.
3. the inclusion in Hybrid plan would be applicable to current contributory plan judges upon their "reappointment or promotion" if such judge were to petition for and be retained as a judge or be appointed to a higher level judgeship on or after July 1, 2016.

Third, the proposed language also states "to the extent that no benefits have accrued. . ." It is not clear whether this language is to be interpreted as the amount of contributions in a pension plan whether or not the judge is eligible to access it or based on vested status.

Fourth, House Bill No. 2006 also proposes to amend Section 88-74 to decrease the service retirement allowance from 3.0% to 2.0% for a "member who earns any credited service as a judge on or after July 1, 2016." It is unclear whether this reduction in service retirement allowance is applicable only to new members who become judges on or after July 1, 2016 or also to current judges who are members who already earn credited service and will continue to earn credited service as a judge on or after July 1, 2016.



Act 163, Session Laws of Hawai'i 2011, decreased the service retirement allowance from 3.5% to 3.0% as well as, increased the age and service retirement requirements to age 60 with 10 years of service for those ERS members appointed as judges after June 30, 2012. A further decrease in the service retirement allowance to 2.0% for new judicial appointments on or after July 1, 2016, coupled with the more stringent age and service retirement requirements of age 60 with 30 years of service or age 65 with 10 years of service under Class H (Hybrid) serve as a disincentive for those **current** ERS members who wish to become judges, such as prosecutors, public defenders, deputy attorneys general, etc. who already earn a 2.0% retirement allowance and meet the retirement requirements of age 55 with 5 years of service.

If the proposed amendments in House Bill No. 2006 are intended for new judicial appointments on or after July 1, 2016, we offer comments that the more stringent age and service requirements and decreased service retirement allowance are disincentives to persons wishing to serve as judges.

Finally, if the intent of the proposed amendments in House Bill No. 2006 are for current judges, the proposed change to membership classification, i.e., change from contributory to hybrid, will adversely impact age and service requirements. We are concerned that current judges who became judges prior to July 1, 2016 were appointed with the understanding of retirement benefits applicable to them, i.e., contributory membership plan, and not the hybrid plan or reduced service retirement allowance. For example:

1. Judges appointed prior to July 1, 1999 have vested benefits under Chapter 88 which provide for a vesting requirement of age 55 with 5 years of service, or any age with 10 years of service together with a retirement allowance multiplier of 3.5%.
2. Under Act 65, SLH 1999, judges appointed after June 30, 1999 but prior to July 1, 2012 have vested benefits under Chapter 88 which provide for a vesting requirement of age 55 with 5 years of service together with a retirement allowance multiplier of 3.5%.
3. Under Act 163, SLH 2011, judges appointed on or after July 1, 2012 have vested benefits under Chapter 88 which provide for a vesting requirement of age 60 with 10 years of service together with a retirement allowance multiplier of 3.0%

Act 65 (SLH 1999) and Act 163 (SLH 2011) amended the retirement requirements for judges appointed **prospectively** on or after a designated date. The retirement requirements for these current judges were preserved based on the date the member was first appointed a judge.

In the past, benefit plan changes were effectuated prospectively for new employees and current employees were given the choice of electing to change to the new benefit plan or stay with their existing benefit plan, e.g., from contributory to non-contributory or hybrid. We are not aware of



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any prior situations where current employees' retirement benefit plans were affected or changed in the manner proposed in HB 2006. Thus, this change would be precedent setting if applied to current judges.

Applying the proposed changes contained in House Bill No. 2006 to vested ERS members currently serving as judges could have significant unintended negative consequences. To avoid being subject to the new vesting requirements under the Hybrid plan or any reduced benefits, current judges would contemplate retiring on or prior to July 1, 2016 to preserve their current contributory plan status with the retirement requirements of age 55 with 5 years, and the 3.5% retirement allowance multiplier. Many vested judges have more to lose by staying beyond July 1, 2016 if this bill passes. Approximately 65.85% of our judges are vested and eligible to retire. With the potential exodus of vested judges, the courts could become backlogged and the judiciary would lose experienced judges. The backlog created by the absence of judges and/or by other judges' increased workload will adversely impact the community and the public we serve.

We present this scenario as a possible impact that the proposed amendments in House Bill No. 2006 will have. While we hope it does not reach this proportion, we do expect seasoned and vested judges to strongly consider retirement should this bill be passed.

Based on the above, the Judiciary respectfully opposes the proposed amendments in House Bill No. 2006.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME Local 152, AFL-CIO

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The Twenty-Eighth Legislature, State of Hawaii
House of Representatives
Committee on Finance

Testimony by
Hawaii Government Employees Association

March 1, 2016

**H.B. 2006 – RELATING TO THE
EMPLOYEES' RETIREMENT SYSTEM**

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly opposes H.B. 2006, which amends Ch. 88, Hawaii Revised Statutes, by classifying employees serving as judges on or after July 1, 2016, to be hybrid members of the Employees' Retirement System.

Although the intent of the measure is slightly unclear, we interpret H.B. 2006 to not only reclassify future judges' retirement benefits, but also adversely affect *current* judges' retirement benefits. The immediate reclassification of current judges' benefits from the contributory system to the hybrid system is an unprecedented and severe reduction in benefits. We strongly oppose attempts to adversely impact *any* employee's retirement benefits mid-term and mid-employment. If our interpretation is accurate, then H.B. 2006 is in direct violation of Article XVI, Section 2 of the Constitution of the State of Hawaii, which provides:

"Membership in any employees' retirement system of the State or any political subdivision thereof shall be a contractual relationship, the accrued benefits of which shall not be diminished or impaired."
[Ren Const Con 1978 and election Nov 7, 1978] (emphasis added)

Therefore we respectfully request the Committee defer this measure. Thank you for the opportunity to testify in opposition to H.B. 2006.

Respectfully submitted,

Randy Perreira
Executive Director