



The Judiciary, State of Hawai'i

Testimony to the House Committee on Labor and Public Employment

Representative Mark M. Nakashima, Chair
Representative Jarrett Keohokalole, Vice Chair
Tuesday, March 15, 2016, 10:30 a.m.
State Capitol, Conference Room 309

by

Rodney A. Maile
Administrative Director of the Courts

Bill No. and Title: Senate Bill No. 2244, SD1 - Relating to Retirement.

Purpose: Senate Bill No. 2244, SD1 proposes to amend the provisions of Chapter 88, Hawai'i Revised Statutes, to: 1) establish different retirement requirements for current ERS members who become a judge after June 30, 2016 and for new ERS members who become a judge after June 30, 2016, and 2) reduce the service retirement allowance for credited service as a judge for new judicial appointments after June 30, 2016.

Judiciary's Position:

The Judiciary strongly opposes Senate Bill No. 2244, SD1. This bill singles out one group of employees—judges—from among several categories of employees (legislators, police, fire, and several others) who currently participate in the contributory retirement plan of the ERS. The bill would create a disparity between judges and other employee group/retirement classes by (1) establishing a more stringent years of service requirement for judges appointed after June 30, 2016, and (2) reducing the benefit “multiplier,” thus resulting in retirement benefits being earned at a lower rate for those appointed as a judge after June 30, 2016. In so doing, it would create a disincentive for current and new ERS members to serve as judges. It would also require ERS to make expensive modifications that ERS notes are out of proportion to the small number of members affected by this bill.

The approach taken by this bill is in stark contrast to that taken in Act 163, Session Laws of Hawaii 2011, when changes were made across the board with respect to *all* of the categories of employees enrolled in the different plans including contributory and hybrid plans for



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employees who were hired after June 30, 2012. Act 163 in essence required that all new employees entering into the system after June 30, 2012 would be subject to more restrictive requirements and/or reduced benefits. In contrast, Senate Bill 2244, SD1 targets only judges.

Under current law, judges who are appointed after June 30, 2012 are subject to age and service requirements of 60 years with 10 years of service. Senate Bill No. 2244, SD1 would increase the service requirement to age 60 with 12 years of service for existing ERS members who become judges after June 30, 2016. This bill also impacts new ERS members upon appointment as judges after June 30, 2016. New ERS members who are appointed judges after June 30, 2016 will also be subject to the vesting requirements of age 60 with 12 years of service.

The proposed 12 years of service requirement is higher than *any* other employee group of *any* retirement class. Unlike past changes made to the retirement plans which were effectuated to all categories of employee groups on a prospective basis, this bill targets only one group—judges. Other contributory members, who were hired on or after July 1, 2012, such as elected and legislative officers, police officers, and fire fighters, are subject to 10 years of service. In short, this bill essentially moves judges out of line with other contributory members of the ERS.

There are many reasons that this bill will deter qualified and experienced persons from becoming judges:

1. Unlike other categories of employees, judges are subject to a constitutionally mandated retirement at age 70. Accordingly, new ERS members who are appointed judges at age 59 or older will not meet the more stringent vesting requirement of 12 years. If the same requirements were applied to another category of ERS membership, that employee hired at age 59 or older would have the choice of working past age 70 to meet the 12 years of service requirement. Judges will not have that option. This would deter many of the most qualified and experienced candidates from considering the bench.
2. Retirement benefits are tremendously important for judges. As noted by the 2013 Salary Commission, “Judges are constitutionally prohibited from practicing law, running for, or holding any other office or position of profit, including paid service on for-profit boards.” Reducing retirement benefits adversely affects the total compensation and benefits package for judges, impairing the ability to attract the most qualified and experienced persons to serve.
3. The more stringent years of service requirement (12 years of service) serves as a disincentive for those current ERS members who wish to become judges, such as prosecutors, public defenders, deputies attorney general, etc. Adopting this legislation



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would thus dissuade qualified attorneys in the public sector from serving as judges, especially those who are in the latter part of their career.

Finally, we note that the ERS' prior testimony on this bill spoke to the creation of a new "tier" of benefits and requirements for a relatively small segment (82 judge positions) of the total ERS membership. ERS stated that this new tier will require computer modification and other resource costs that "from a business perspective, the ERS believes will be out of proportion to the members affected by this legislation." Thus, it appears that this bill may actually increase costs to the State.

For these reasons, the Judiciary respectfully opposes Senate Bill No. 2244, SD1.

Thank you for the opportunity to provide testimony on Senate Bill No. 2244, SD1.

DAVID Y. IGE
GOVERNOR



THOMAS WILLIAMS
EXECUTIVE DIRECTOR

KANOE MARGOL
DEPUTY EXECUTIVE DIRECTOR

STATE OF HAWAII
EMPLOYEES' RETIREMENT SYSTEM

TESTIMONY BY THOMAS WILLIAMS
EXECUTIVE DIRECTOR, EMPLOYEES' RETIREMENT SYSTEM
STATE OF HAWAII

TO THE HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT
ON

SENATE BILL NO. 2244, S.D. 1

MARCH 15, 2016, 10:30 A.M.

RELATING TO RETIREMENT

Chair Nakashima, Vice Chair Keohokalole and Members of the Committee,

S.B. 2244, S.D.1 would raise the required years of service for retirement benefits and reduce the retirement benefits for judges who first earn credited service as a judge after June 30, 2016, by amending sections 88-73 and 88-74, Hawaii Revised Statutes.

The Employees' Retirement System (ERS) Board of Trustees has not taken a formal position on S.B. 2244, S.D. 1; however, the ERS staff has the following comments:

This bill lowers the benefit multiplier from 3 percent to 2 percent for judges who first earn credited service as a judge after June 30, 2016. With this reduced multiplier, retirement benefits for judges will be earned a lower rate than that of elective and legislative officers, police officers and fire fighters and some other public safety employees. In addition, the minimum service requirement of twelve years for retirement eligibility proposed by this bill will be higher than any other employee group of any retirement class. Creating this new "tier" of benefits and requirements for a relatively small segment of the total ERS membership 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.

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



Employees' Retirement System
of the State of Hawaii

LATE

TESTIMONY

Chair of Senate: Representative Mark M. Nakashima, Chair, Vice-Chair
Representative Jerrett Keohokalole, Vice Chair

Bill: SB2244, SD1 Relating to Retirement.

Date of Hearing: March 15, 2016

Time and Place of Hearing: 10:30 a.m., Conf Room 309

Name of Person Testifying: Shackley F. Raffetto, Chief Judge (Ret.), Second Circuit Court, State of Hawaii

Testifying about: SB2244, SD1 Relating to Retirement

Position: I oppose SB2244, SD1 and recommend its rejection in its entirety

Testimony:

There are currently 21 District Court Judges, 15 Family Court Judges, 33 Circuit Court Judges, 6 Intermediate Court Judges and 5 Supreme Court Justices in Hawaii; totaling 80 judicial officers.

This means that 46 District Court/Family Court Judges serve 6 year terms of office. All other judges, including justices, (34) serve 10 year terms. Thus, under the proposed SB2244 all Hawaii judges would have to qualify to serve at least 2 terms of office in order to qualify for retirement benefits. Any lawyer 59 years of age or over would be prohibited from qualifying under SB2244 for a retirement benefit because of the mandatory age 70 retirement provision of our Hawaii Constitution. Therefore, these lawyers, our most experienced, will be highly unlikely to apply and others will be discouraged from applying.

SB2244 appears to be a part of a current effort, when considered together with other Bills recently submitted to the Legislature, to substantially restructure the eligibility, selection, service and remuneration of our Hawaii judges. Yet no, or hardly any, reasons, justifications or perceived problems have been identified by the proponents of these significant changes to our Judiciary. Taken as a whole, these changes will significantly reduce the quality of the lawyer pool likely to seek public service as a judge in Hawaii. This will not be in best the interest of providing justice for the people of Hawaii.

SB2244 seeks to substantially alter the amount of retirement benefits for judges by reducing the "multiplier" used to 2% and increasing the qualification requirements by increasing the duration of the period of service necessary (to 12 years) in order to qualify. I believe that these changes will result in a compensation arrangement

for our judges that is not fair in consideration of the academic requirements (advanced degrees) and the experience requirements (5-10 years experience depending upon the court) necessary in order to qualify to apply; and, that these changes will discourage our most experienced and best qualified lawyers from seeking public service as a judge. Under current law, a judge “vests” under the Hawaii State retirement system after 10 years of service. An applicant to a judicial position, other than our District/Family Courts where service is for 6 years, knows that if they give up their law practice or prior career employment, to which they have likely devoted many years, in order to commit their lives to public service as a judge, he or she will have at least the opportunity to earn a minimum pension should they be able to serve only one term in office. Once an applicant becomes a judge, his or her prior career is, in most cases, over and their financial future is entirely dependent upon being able to create a successful new career serving as a judge. Most judges re-apply for more than one term of office. However, not all judges are approved to serve additional terms and there is no guarantee that a judge will be able to serve long enough in order to qualify for a full or maximum pension benefit. In order to earn something close to a full or maximum pension benefit a judge must serve about 18 or so years under the current system; more years will be required of course if SB2244 becomes law. Accordingly, a District court or Family Court judge must earn continuation in office at least 2 times in order to hope to earn a full pension benefit, and other judges at least one time. All of this presents a lawyer-applicant, when considering the opportunity to serve as a judge, with a necessarily significant cost-benefit analysis. Financial considerations such as these are very practical and very important for a prospective judge who is considering such a career change. It must also be considered that under Hawaii law our full-time judges are prohibited from engaging in outside gainful employment. Thus, the potential amount of retirement benefits that can be earned and the requirements in order for a judge to qualify for and maximize retirement benefits require serious consideration. These are important considerations both for the prospective judge and for the State of Hawaii in understanding and considering how to build and maintain the best judiciary we can to provide justice for the people of Hawaii.

The potential retirement benefits that may be earned by judges should be fair in amount in consideration of the extensive academic and experience requirements necessary in order to apply and be effective as inducement for our best and most experienced lawyers to leave their careers and devote their future, and that of their family, to public service with our Judiciary.

Given the above considerations, it is easy to see, then, that the most successful and experienced lawyers will be less likely to apply to serve as judges in Hawaii if SB2244 should become law.

SB2244 is a good example of the old adage of being “a penny wise and a pound foolish”. Accordingly, I oppose SB2244 and recommend that it not become Hawaii law.

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HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
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LATE

The Twenty-Eighth Legislature, State of Hawaii
House of Representatives
Committee on Labor and Public Employment

Testimony by
Hawaii Government Employees Association

March 15, 2016

S.B. 2244, S.D. 1 – RELATING TO RETIREMENT

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO raises serious reservations on S.B. 2244, S.D. 1, which amends Ch. 88, Hawaii Revised Statutes, by adversely changing the vesting requirements and pension calculation for judges.

Although some may classify this measure as a “housekeeping” bill necessary for all employees to be on par with wholesale changes made to the Employees’ Retirement System in 2012, we respectfully raise strong concerns. Maintaining a fair compensation and benefits package for judges can incentivize experienced attorneys to public service to serve as judges. Adopting this legislation may dissuade those most adept and impartial from serving and will hinder the Judiciary’s ability to recruit the most qualified.

Thank you for the opportunity to testify with strong reservations on S.B. 2244, S.D. 1.

Respectfully submitted,

Randy Perreira
Executive Director