



The Judiciary, State of Hawai'i

Testimony to the House Committee on Labor and Public Employment

Representative Aaron Ling Johanson, Chair

Representative Stacelynn Eli, Vice Chair

Tuesday, February 5, 2019, 9:30 a.m.

State Capitol, Conference Room 309

WRITTEN TESTIMONY ONLY

by

Rodney A. Maile

Administrative Director of the Courts

Bill No. and Title: House Bill No. 1260, Relating to Employees' Retirement System.

Purpose: House Bill No. 1260 proposes to reduce, for members who join the Employees' Retirement System after June 30, 2019, and have credited service as a judge, the retirement allowance for each year of credited service as a judge from 3% to 2 1/4% of the member's average final compensation.

Judiciary's Position:

The Judiciary respectfully opposes House Bill No. 1260.

This bill proposes, for the second time in seven years, a reduction of pension benefits for judges—specifically the retirement allowance. (The retirement allowance was reduced from 3.5% to 3.0% under Act 163, Sessions Laws of Hawaii 2011, for judges appointed after June 30, 2012; this bill proposes another reduction from 3.0% to 2.25% for judicial appointments after June 30, 2019.)

Unlike Act 163, which created a new benefit structure and impacted all new members with Employees Retirement System (ERS) membership status after June 30, 2012, House Bill 1260 would impact only judges. The Judiciary is unaware of a measure singling out another category of employees for a reduction of this nature and significant magnitude.

It does not appear that this measure will have any significant impact on reducing the State's future obligations for decades. In testimony on a similar bill to reduce retirement benefits for judges alone, SB249 (2017), before the Senate Committee on Judiciary and Labor, the Employees' Retirement System stated: "Creating this new 'tier' of benefits and requirements for a relatively small segment of the total ERS membership will require computer and administrative modifications and counseling resource costs which, from a business perspective, the ERS believes may be disproportionate to the small number of members affected by this legislation." ERS explained this statement in response to questioning before the House Finance Committee.

At the 1978 Constitutional Convention, the Judiciary Committee declared that "[t]he public should not be deprived of having the most qualified candidate for judicial appointment." The proposed diminishment of retirement benefits could lessen the likelihood that the most qualified would apply, and in turn could deprive our community of the opportunity to have the most qualified serve as judges.

Maintaining a competitive retirement package for judges is reasonable and necessary to attract experienced public and private sector attorneys to serve as judges. Many experienced attorneys who might apply for judgeships seriously consider that as a judge they would be statutorily precluded from using their legal training to supplement their income, i.e., they must leave their prominent law practices, and that they would be subject to mandatory retirement from the bench at age 70.

If contributory plan members with ERS membership status before July 1, 2012 choose not to become judges after the determined cutoff date, i.e., they choose to stay in the contributory plan as general employees, they would already earn nearly the same 2.0% retirement allowance and have less stringent vesting requirements of age 55 with 5 years of service. The proposed 2.25% retirement allowance for judges appointed after June 30, 2019 comparatively diminishes the attractiveness of a judgeship. The impact is significant to existing ERS members who may consider seeking a judgeship, such as prosecutors, public defenders, deputy attorneys general, and elected officials.

The Judiciary respectfully opposes House Bill 1260. Thank you for the opportunity to provide testimony on this measure.

Hawai‘i State Trial Judges Association

Testimony to the House Committee on Labor and Public Employment
Regarding House Bill No. 1260 Representative Aaron Ling Johanson, Chair
Representative Stacelynn Eli, Vice-Chair

Hearing on Tuesday, February 5, 2019, 9:30 a.m.
State Capitol, Conference Room 309

By

Board Members on Behalf of the Hawai‘i State Trial Judges Association
Hon. James H. Ashford, President
Hon. Darien W. Nagata, Vice President
Hon. Adrienne N. Heely, Secretary
Hon. Brian A. Costa, Treasurer

On behalf of the Hawai‘i State Trial Judges Association (“HSTJA”), thank you for the opportunity to comment on HB1260 which proposes to amend HRS Chapter 88 relating to retirement for judges.

The HSTJA **opposes** HB1260 and respectfully requests that committee members vote no on this bill.

The bill singles out judges (and only judges) for a reduction in retirement benefits. No other group of employees in the Employee Retirement System (“ERS”), including members of the Legislature or government executives, receive an equal or similar reduction of pension benefits under the proposed bill.

There is no stated purpose or rationale in the bill or in any committee report for the reduction of judicial retirement benefits only. As far as we know, there has been no policy report or analysis indicating that reducing the retirement allowance for new judges will amount to any real savings or benefit to the State. Notably, in testimony on the original bill before the Senate Committee on Judiciary and Labor, the ERS questioned the efficacy of such a measure from a “business perspective” given the small number of members affected (new judges) versus the costs associated with computer and administrative modifications and counseling resources that would have to be undertaken by the ERS if the bill were passed.

Reducing retirement benefits for only a small group of employees (judges) in HB1260 also stands in stark contrast to Act 163, passed by the Legislature in 2011, which provided for changes to all categories of employees entering the ERS after June 30, 2012. While Act 163 was

grounded in policy decision making by the Legislature, there is no stated policy reason for singling out a select group -- judges -- in HB1260.

The measure provides for a significant reduction in compensation for future judges. Retirement benefits for judges are part of the overall compensation package that attract experienced and qualified attorneys to apply for judgeships and are taken into consideration by private practitioners when deciding to give up lucrative law practices for public service on the bench. The reduction will result in a diminishment of judicial positions and may likely deter experienced and highly qualified attorneys from seeking judgeships.

We further note that the bill as currently drafted creates uncertainty as to whether it may be amended to apply to current judges. To our knowledge, reducing retirement benefits for any group of existing employees (judges, police, fire fighters, legislators or others) would be unprecedented.

Finally, the heart of our democracy in the United States and in Hawai'i is that there are three separate and co-equal branches of government. It is essential to the functioning and legitimacy of our democracy that the judicial branch be independent from the executive and legislative branches. Judicial independence is not for the benefit of judges, but instead is for the public's trust and confidence that judges will decide cases fairly and based on the law.

Alexander Hamilton recognized the problem of financial influence over judges in *The Federalist No. 79* when he wrote, “[n]ext to the permanency in office, nothing can contribute more to the independence of judges than a fixed provision for their support. . . . In the general course of human nature, a power over a man's subsistence amounts to a power over his will.”

With all due respect to the legislature, singling out judges for a reduction in retirement benefits erodes the public trust in government and diminishes the role of the courts in our democracy.

For all of these reasons, we strongly oppose HB1260.

HB-1260

Submitted on: 2/2/2019 9:21:27 PM

Testimony for LAB on 2/5/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Brandon Segal	Maui County Bar Association	Oppose	No

Comments:

The Maui County Bar Association strongly OPPOSES HB1260, and any legislation that would, in effect, discourage qualified attorneys from applying for new judgeships, or possibly limit the number of qualified applicants because of financial considerations. Our communities and justice system are best served when many qualified candidates apply for judgeships.

HAWAII STATE TRIAL JUDGES ASSOCIATION

**Testimony of Kenneth S. Robbins, on behalf of the
Hawaii Chapter of the American Board of Trial Advocates
(ABOTA)**

Regarding House Bill 1260
COMMITTEE ON EMPLOYEES
RETIREMENT SYSTEM
Rep. Aaron Ling Johanson, Chair
Rep. Stacelynn K.M. Eli, Vice Chair

Hearing on Tuesday, February 5, 2018, 9:30 a.m.
State Capitol, Conference Room 309

By

Kenneth S. Robbins on Behalf of the American Board of Trial
Advocates ("ABOTA")

As an individual member of the Hawaii Chapter of the American Board of Trial Advocates (ABOTA) and on behalf of ABOTA, I thank you for the opportunity to comment on HB1260, which proposes to amend HRS Chapter 88, relating to retirement for judges.

ABOTA opposes HB 1260, and respectfully requests that committee members vote no on this bill.

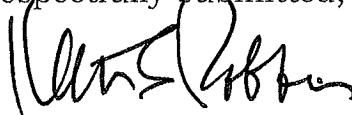
Of all categories of State of Hawaii employees, only judges are singled out for the proposed reduction in retirement benefits. There has been no rationale given for treating judges any differently than other categories of State employees and there has been nothing offered by way of financial data which substantiates any economic savings by enacting this proposed legislation. Indeed, given the relatively low number of State of Hawaii employees who fall into this category, it has been statistically shown that the cost of implementing this legislation will be greater than any savings to taxpayers.

Further, it is already a very difficult challenge to encourage competent, experienced top-tier practicing lawyers, engaged in a lucrative law practice, to submit their applications for service as judges. By reducing the retirement benefits of judges, that challenge will become even greater.

It is difficult to see a single plus emerging from enactment of this bill. Without speculating as to whatever the motivation behind this proposed legislation may be, we and citizens at large can only conclude that the motivation is not meritorious in terms of establishing and maintaining a quality judiciary, which is indispensable in interpreting and enforcing the legislation enacted by the body within which you serve. We, in ABOTA, witness day in and day out the extraordinary importance of justice and the perception of justice for those who seek righting wrongs in our civil and family courts and those who seek justice in our criminal courts. The most important component of the equation which yields justice within our judicial system is a judge of the highest caliber.

Our system of government can only function as it should, when each of the 3 branches of government are served by the best, brightest and most competent. This is what the people of the State of Hawaii need and deserve. When there cannot be articulated a justifiable reason for treating judges any less fairly than firefighters, police officers or even legislators, there is no excuse for enacting legislation that will weaken one of the 3 pillars of our democracy.

Respectfully submitted,



Kenneth S. Robbins
for the Hawaii Chapter of the
American Board of Trial Attorneys

Testimony to the House Committee on Labor & Public Employment
Representative Aaron Ling Johanson, Chair
Representative Stacelynn Eli, Vice-Chair

Tuesday, February 5, 2019, 9:30 a.m.
State Capitol, Conference Room 309

HB 1260

I am Ronald T.Y. Moon, former Chief Justice of The Supreme Court of Hawai'i (1993–2010). I strongly oppose HB 1260.

My experience of serving as a judge and justice for approximately 30 years convinces me that this bill that reduces employee benefits is unfair and unjust by singling out—and discriminating against—judges. Moreover, it is quite possibly unconstitutional.

In 2011, the Legislature made a policy decision to reduce the retirement benefits across the board for Legislators, judges, and senior executive branch officials.

Unlike that 2011 legislation, this bill only affects judges. That is discriminatory.

Further, the relatively small number of people it would affect will not meaningfully reduce the future fiscal responsibilities of the State. Indeed, I understand that the State Employees' Retirement System has testified as much by noting that, "from a business perspective, the ERS believes [the downward adjustment proposed in this bill] may be disproportionate to the small number of members affected by this legislation."

Thank you for the opportunity to submit testimony in opposition to HB 1260.

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

HOUSE BILL NO. 1260

**February 5, 2019
9:30 A.M.
Conference Room 309**

RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM

Chair Johanson, Vice Chair Eli and Members of the Committee,

H.B. 1260 would reduce the retirement benefits for judges who first earn credited service as a judge after June 30, 2019, by amending section 88-74, Hawaii Revised Statutes.

The Employees' Retirement System (ERS) Board of Trustees has not taken a formal position on H.B 1260; however, the ERS staff has the following comments:

This bill lowers the benefit multiplier from 3 percent to 2.25 percent for judges who first earn credited service as a judge after June 30, 2019. With this reduced multiplier, retirement benefits for judges will be earned at a lower and different rate than from that of elective and legislative officers and judges hired after June 30, 2012. A preliminary review by ERS's actuary determines that this change will have no immediate impact on the unfunded actuarial accrued liability of the ERS as it will only be applied to new members and would not be expected to decrease ERS's current 25-year period to reach full funding. Creating this new "tier" of benefits for a relatively small segment of the total ERS membership will require substantial computer and



Employees' Retirement System
of the State of Hawaii

administrative modifications and counseling resource costs. While a reduction in the multiplier applicable to judges may be appropriate for a number of reasons, from a business perspective, the ERS believes that administrative and system programming costs may be disproportionate to the small number of members affected by this legislation, and projected effects on the unfunded liabilities.

On behalf of the Board of Trustees and staff of ERS we wish to thank you for the opportunity to provide comments on H.B. 1260.



LATE

The House Committee on Labor and Public Employment
Tuesday, February 5, 2019
9:30 am, Room 309

RE: HB 1260, RELATING TO EMPLOYEES' RETIREMENT SYSTEM

Attention: Chair Aaron Ling Johanson, Vice Chair Stacelynn Eli and
Members of the Committee

The University of Hawaii Professional Assembly **strongly opposes HB 1260**. As with all previous attempts to diminish retirement benefits for judges, UHPA cannot support the erosion of benefits that normally assist in attracting and retaining qualified individuals to serve as judges.

UHPA requests that the Committee **strongly oppose and defer HB 1260**.

Respectfully Submitted,

A handwritten signature in black ink that reads "Kristeen Hanselman".

Kristeen Hanselman
Executive Director

University of Hawaii
Professional Assembly

LATE

**Testimony of Kenneth S. Robbins, on behalf of the
Hawaii Chapter of the American Board of Trial Advocates
(ABOTA)**

Regarding House Bill 1260
COMMITTEE ON EMPLOYEES'
RETIREMENT SYSTEM
Rep. Aaron Ling Johanson, Chair
Rep. Stacelynn K.M. Eli, Vice Chair

Hearing on Tuesday, February 5, 2018, 9:30 a.m.
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By

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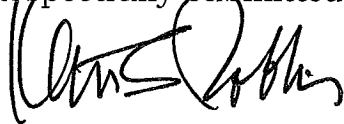
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Respectfully submitted,



Kenneth S. Robbins
for the Hawaii Chapter of the
American Board of Trial Attorneys

LATE

February 5, 2019

Representative Aaron Ling Johnson, Chair
Representative Stacelynn Eli, Vice Chair
House of Representatives
Hawaii State Capitol
415 So. Beretania Street
Honolulu, HI 96813

Testimony to the House Committee on Labor and Public Employment
Re: HB 1260

Dear Representatives Aaron Ling Johnson, Chair, and Daniel Holt, Vice Chair,
and members of the Committee:

My name is Momi Cazimero. I oppose House Bill 1260 for the following reasons.

What our citizens want from the Hawai'i State Judiciary, above all else, is fairness. In stark contrast, House Bill 1260 unfairly singles out judges with a bill to reduce their retirement benefits. This climate of "transparency" begs explanation for this punitive legislation that discriminates against judges.

As a concerned citizen, I have dedicated 36 years to the selection and ongoing improvement of judges AND the judiciary. From this unique vantage point I have witnessed, and participated in demands on sitting judges, in the public's behalf.

We hold judges to the highest standards, with justification. They are the final arbiters. Their expertise is nurtured and refined, requiring years of dedication.

We cannot expect to attract the most qualified individuals to the bench, in asking them to sacrifice their, or their family's future security.

The unintended consequence is predictable:
It will transform the courts from a venue of stability, to a venue of mobility.

The consequence is also predictable:
The people will be the losers.

Do not pass House Bill 1260.

Mahalo.