



The Judiciary, State of Hawai‘i

Testimony to the Thirty-Second Legislature, 2024 Regular Session

House Committee on Labor & Government Operations

Rep. Scot Z. Matayoshi, Chair

Rep. Andrew Takuya Garrett, Vice Chair

Tuesday, March 12, 2024, 9:30 a.m.

State Capitol, Conference Room 309 & Videoconference

by:

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WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 3350, SD1, Relating to Public Service.

Purpose: Requires appointees for judicial vacancies to file certain disclosures with the State Ethics Commission. Requires the Commission on Salaries to consider the deterrence of bribery and corruption when making its salary recommendations. (SD1)

Judiciary’s Position:

The Judiciary respectfully opposes the provisions in Part II of the bill on judicial appointees as unnecessary and because it could lead to conflict with the Hawai‘i Supreme Court’s constitutional authority to impose judicial discipline. Accordingly, we request Part II of the bill be stricken. In the alternative, the Judiciary requests Part II of the bill be amended to define judicial appointee as excluding any sitting judge/justice or per diem judge appointee.

Part II of the bill requires “an appointee for a judge or justice” to file a financial disclosure with the state ethics commission “within five business days of the appointee’s appointment.” SB 3350, SD1 at 2:4-11. The Judiciary opposes this provision as unnecessary. Currently, the senate under the consent process set forth in article VI, § 3 of the Hawai‘i Constitution could require the judicial appointee to voluntarily provide this financial information.



Specifically, under article VI, § 3 of the Hawai‘i Constitution a judicial appointee to the district court, circuit court, or the courts of appeal, is subject to the consent of the senate. During this consent process, the senate could require the judicial appointee to file or submit the financial disclosure required by SB 3350, SD 1 at Part II.

In addition, the Judiciary opposes Part II because the provisions could potentially conflict with the Hawai‘i Supreme Court’s authority under article 6, § 5 of the Hawai‘i State Constitution to impose judicial discipline. This is because all appointed full-time judges and per diem judges are already required to file an annual financial disclosure statement with the clerk of the supreme court under the Rules of the Supreme Court of the State of Hawai‘i (RSCH), Rule 15. However, SB 3350, SD 1 at Part II would require a judicial appointee who is already a judge to file yet another financial disclosure with the state ethics commission, which could lead to conflict with Hawai‘i Supreme Court’s constitutional authority under article 6, § 5 of the Hawai‘i State Constitution to impose judicial discipline. See also RSCH 15(c) (“A judge who fails to file a timely statement, or who files an incomplete statement, may be subject to discipline pursuant to the procedures set out in Rule 8 of the rules of this court.”).

In sum, Part II of the measure on judicial appointees is not necessary and potentially conflicts with the Hawai‘i Supreme Court’s authority to discipline judges/justices. Accordingly, the Judiciary requests the Committee strike the provisions in Part II.

In the alternative, the Judiciary requests Part II of the bill be amended to define the phrase “an appointee for a judge or justice” as excluding any sitting judge/justice, or per diem judge appointee. I will now explain why these amendments are necessary.

First, the Judiciary is concerned about SB 3350, SD1 at Part II requiring a sitting judge/justice who is seeking a different judicial office to file a financial disclosure with the state ethics commission. It is commonplace for a sitting judge to seek a different judicial office. For example, a district court judge may apply for a vacancy on the circuit court and be selected as the appointee by the governor. In this circumstance, it is not necessary for SB 3350, SD1 to require the sitting judge – who happens to now be the appointee to a different judicial office – to file a financial disclosure with the state ethics commission. This is because all judges (including per diem judges) and justices are already required to file an annual financial disclosure statement with the clerk of the supreme court under RSCH Rule 15. These financial disclosure statements are available online at: https://www.courts.state.hi.us/news_and_reports/reports/reports/. Accordingly, as it applies to a sitting full-time judge/justice, SB 3350, SD1 at Part II is not necessary because the financial disclosure is already a matter of public record.

Moreover, as noted above, to require a sitting judge who is seeking a different judicial office to file a financial disclosure with the state ethics commission could lead to a conflict with the Hawai‘i Supreme Court’s authority under article 6, § 5 of the Hawai‘i State Constitution to impose judicial discipline.



Second, the bill should include an explicit carve out for per diem judges appointed to the district court. This is because it appears the intent of the instant legislation is to only cover a nominee to those judicial offices that requires senate confirmation. But the senate does not advise and consent to a per diem judge selected by the chief justice. Rather, under article VI, § 3 of the Hawai‘i Constitution “[t]he chief justice shall appoint per diem district court judges as provided by law” and Hawai‘i Revised Statutes § 604-2(b) provides, in pertinent part, that “[t]he chief justice shall appoint district court judges to serve on a per diem basis[.]” In this way, the process to appoint a per diem district court judge is different from the appointment process for all other judges or justices, which require senate confirmation. Haw. Const. art. VI, § 3.

To resolve these concerns the Judiciary requests SB 3350, SD 1 be amended at Part II to add a new Section 3 that defines the phrase “an appointee for a judge or justice” as excluding any sitting full-time judge/justice or per diem judge appointee.

The proposed language to add at Section 3 follows:

Section 3. Section 84-3, Hawai‘i Revised Statutes is amended by adding a new definition for “appointee for a judge or justice” to read as follows:

“Appointee for a judge or justice” means a person selected by the governor, chief justice, or judicial selection commission from the list presented by the judicial selection commission under article 6, § 3 of the Hawai‘i Constitution; provided, a person who is already a sitting full-time judge or justice at the time of the selection shall be excluded from this definition; provided further, that the definition shall exclude a person who is appointed as a per diem district court judge by the chief justice.

In conclusion, the Judiciary opposes Part II of SB 3350, SD1 and requests that portion of the measure be stricken. In the alternative, the phrase “an appointee for a judge or justice” should be defined in the measure to explicitly exclude a sitting full-time judge/justice on the basis that RSCH 15 already requires the sitting full-time judge/justice to file an annual financial disclosure with the clerk of the supreme court. Similarly, the subject-phrase should be defined to exclude a per diem judge appointed by the chief justice because this appointment does not require senate confirmation, and the person who is appointed as a per diem judge will be required to file an annual financial disclosure with the clerk of the supreme court under RSCH 15.

Thank you for the opportunity to testify on SB 3350, SD1.



Committee on Labor & Government Operations
Chair Scot Matayoshi, Vice Chair Andrew Garrett

LATE

Tuesday, March 12, 2024, 9:30 a.m., CR309
SB3350 – Relating to Public Service
TESTIMONY

Judith Mills Wong, Legislative Committee, League of Women Voters of Hawaii

Chair Matayoshi, Vice Chair Garrett, and Committee Members:

The League of Women Voters of Hawaii supports SB3350

The League of Women Voters encourages all methods of assuring ethical behavior in public service. We strongly support the requirement that nominees for justices and judges file disclosure of financial interests. Past experience has shown that there needs to be a thorough vetting of all nominees to judicial positions. Disclosure information will be vital to the Senate review process and public disclosure will give the public confidence in the judges and justices that serve.

We further support the aspect of the bill charging the ethics commission to consider the deterrence of bribery and corruption when making salary recommendation for each position. Appropriate compensation is one of the aspects to attracting and keeping responsible, ethical individuals to important and responsible roles. International examples have shown that under compensation often leads to bribery and corruption.

Thank you for the opportunity to submit testimony.