



The Judiciary, State of Hawaii

Testimony to the House Committee on Finance

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

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State Capitol, Conference Room 308

by
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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.