

STAND. COM. REP. NO.

950

Honolulu, Hawaii

March 6, 2009

RE: H.B. No. 1536
H.D. 2

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Sir:

Your Committee on Finance, to which was referred H.B. No. 1536, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO SALARIES,"

begs leave to report as follows:

The purpose of this bill is to mitigate some of the adverse effects on state revenue resulting from the current fiscal crisis by establishing a temporary salary freeze for certain members of the executive, legislative, and judicial branches of government.

The Senior Policy Advisor to the Governor and Department of Human Resources Development submitted comments.

Your Committee recognizes that the economic crisis we are currently experiencing is unprecedented in our State's history, necessitating the suspension of pay raises for executive, judicial, and legislative officials. In devising the method of freezing the salaries, your Committee intends to have the practical financial impact of the salary freeze imposed in a fair and equitable manner so that the officials of any single branch of government would not bear a disproportionate burden compared to the others.

Effectuating this intent through legislation has been a daunting task given the staggered effective dates of annual salary increases proposed by the Salary Commission, and the requirements of Article XVI, Section 3.5, of the Hawaii Constitution which

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prohibit legislative amendment of approved salary increases "unless by general law applying to all salaried officers of the State."

Your Committee believes that the framers of this constitutional requirement intended that any decrease in salary through legislative fiat be done in a uniform manner via general law, to ensure fairness and consistency. However, it has become very clear to your Committee, that this very provision which was intended to safeguard the public interest has become a barrier to the equitable application of a salary freeze in the practical sense.

In an opinion issued by the Attorney General on November 24, 2008, the Attorney General wrote:

". . . even though the terms of some legislators would expire in November 2010 and the terms of the Governor, Lieutenant Governor, department heads and deputy or assistant department heads and administrative director of the State would expire in December 2010, we believe that the approved salary recommendations of the salary commission for the full six-year period are approved as a whole. Thus, a 'suspension' of an increase in the later years, even if it coincides with a general election and new terms of office, would constitute a reduction in salary that must be enacted by general law and be applicable to all salaried officers of the State.

"Because the express language of article XVI, section 3.5, prohibits a salary decrease unless by general law applying to all salaried officers of the State, we believe that the salaries of all salaried officers of the State must be decreased by general law. There is no provision in either the constitutional section or in section 26-56, Hawaii Revised Statutes, addressing the suspension of a prospective salary increase. However, based upon the legislative intent to achieve fairness and consistency, we believe that suspension of salary increases must be treated the same as salary decreases." [Emphasis added.]

Your Committee strongly asserts that it is the Legislature's prerogative to determine the manner in which fairness and consistency may be achieved through the suspension of salary increases.



As proposed by the Governor, the Executive Branch would have the starting and ending dates of the salary freeze be applied on the same days for all three branches despite the fact that the salary increases approved for the officials of the Legislative Branch apply on a calendar year basis, while the increases for the officials of Executive and Judicial Branches occur on a fiscal year basis. To have the starting and ending dates occur on the same dates would disproportionately impact officials from one branch of government, who would go without three salary increases as approved by the Salary Commission. The officials of the other two branches would go without two salary increases during that same period. In fact, if the amendment proposed by the Governor were to go into effect, the officials from a single branch of government would be required to have their salaries decreased, with no similar requirement imparted on the officials of the other two branches.

Accordingly, your Committee believes that the only way for a salary freeze to be fairly and equitably applied among all three branches of government would be to require the officials of all three branches of government to do away with an equal number of salary increases, as recommended by the Salary Commission. To achieve this legislatively, the salary freeze must be applied on staggered starting or ending points -- for the Legislative Branch, dates based on a calendar year, and for the Executive and Judicial Branches, dates based on a fiscal year.


Your Committee notes that the standard by which salary adjustments are tested to withstand constitutional muster is generally whether the difference amongst the categories of officers bear a reasonable relationship to the legislative purposes. (See, *Eielson v Parker*, 179 Conn. 552, 427 A.2d 814 (1980), cited in Attorney General Opinion to the Honorable Calvin K.Y. Say dated November 24, 2008 (Standard by which statute establishing graduated salary system for judges had to be tested was whether classification that it embodied bore reasonable relationship to legitimate state interest.)) Accordingly, it is your Committee's intention that if the different ending dates proposed in this bill are construed as a material difference amongst the categories of officers, this material difference bears a reasonable relationship to the legislative purpose of applying the salary freeze in a fair and equitable manner among all three branches of government.



Your Committee has amended this measure by making technical, nonsubstantive amendments for style, clarity, and consistency.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1536, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1536, H.D. 2.

Respectfully submitted on
behalf of the members of the
Committee on Finance,


MARCUS R. OSHIRO, Chair



