The Judiciary, State of Hawai‘i

Testimony to the Thirtieth State Legislature, 2020 Session
House Committee on Finance
Representative Sylvia Luke, Chair
Representative Ty J.K. Cullen, Vice Chair

Tuesday, February 25, 2020, 11:00 A.M. (Agenda #1)
State Capitol, Conference Room 308

by
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Bill No. and Title: House Bill No. 1793, H.D. 1, Relating to the Commission on Salaries.

Purpose: Requires the commission on salaries that convenes in 2024 to make salary recommendations for the following eight fiscal years. Provides for the executive, judicial, and legislative branch salary recommendations to become effective on the same date beginning on July 1, 2033. Takes effect on 7/1/2050.

Judiciary's Position:

The Judiciary offers the following comments on this bill.

This bill proposes that the next Salary Commission, which will convene in 2024, make recommendations for **eight** instead of six fiscal years, overlapping with the convening of the succeeding Salary Commission, which will convene in 2030. In pertinent part, this bill specifically proposes:

> . . . The commission may include incremental increases that take effect [~~prior to~~] before the convening of, and remain in effect for the next two fiscal years after, the next salary commission.
>
> [~~The recommended salaries submitted by the commission shall become effective July 1 of the next fiscal year~~] The commission that convenes in 2024, shall make salary recommendations through fiscal year 2032–2033. . . .

The plain language of Article XVI, Section 3.5 of the Hawai‘i Constitution provides for a six-year cycle. The Commission on Salaries process is governed by HRS § 26-56 (to which this bill seeks amendment) and Section 3.5 of Article XVI of the Hawai‘i Constitution. In pertinent part, Article XVI provides:

> Not later than the fortieth legislative day of the 2007 regular legislative session **and every six years thereafter**, the commission shall submit to the legislature its recommendations and then dissolve.

(Emphasis added).

In 2007, then Attorney General Mark Bennett approved the following legal opinion regarding Section 3.5:

> The legislative history clearly shows that the Legislature intended a six-year cycle. The Senate Committee on Ways and Means, in Standing Committee Report No. 3485, dated April 7, 2006, stated, "[t]his measure requires the commission to make salary recommendations to the legislature every six years." . . . The constitutional amendment [(in reference to what is now Section 3.5)] does not contemplate submissions outside of this six-year cycle.

In addition, Article XVI, Section 3.5 also states that "[t]he recommended salaries submitted **shall become effective as provided in the recommendation**, unless the legislature disapproves the entire recommendation as a whole . . ." (Emphasis added). Accordingly, it appears that the proposed statutory amendment may conflict with this language. Further, the Judiciary opposes any revision that would significantly extend the period when a change in salaries becomes effective and judges or justices begin receiving the recommended amounts.

Moreover, the proposed eight-year period could be problematic because it will be difficult to make informed recommendations and decisions about the impact of pertinent market and other economic forces, the vibrancy and outlook of the state economy and public funding priorities, and the prospects for recruitment and retention for these positions covered by this provision in relation to other employment prospects for possible candidates for these positions. In fact, as noted in the House Committee on Finance Standing Committee Report Number 871-06, the Department of Human Resources Development proposed that the eight-year period in the then draft constitutional amendment (H. B. No. 1917, H.D. 2) be reduced to four. Ultimately, the eight-year period was reduced to six years, and it was approved.

Thank you for the opportunity to testify on this measure.

LATE

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Submitted By	Organization	Testifier Position	Present at Hearing
Rayne	Individual	Oppose	No

Comments: