

ACT 72

H.B. NO. 1718

A Bill for an Act Relating to the Judiciary.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriations contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$2,179,000, or 0.093 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriations made in this Act are necessary to serve the public interest and to meet the needs provided for by this Act.

SECTION 2. In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriations contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1990-1991 to be exceeded by \$1,450,843, or 0.057 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriations made in this Act are necessary to serve the public interest and to meet the needs provided for by this Act.

SECTION 3. Section 602-2, Hawaii Revised Statutes, is amended to read as follows:

“§602-2 Salary, supreme court justices. Effective January 1, [1986,] 1989, the salary of the chief justice of the supreme court shall be [\$80,000] \$90,699 a year and the salary of each associate justice of the supreme court shall be [\$78,500] \$89,699 a year. Effective January 1, 1990, the salary of the chief justice

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of the supreme court shall be \$94,780 a year and the salary of each associate justice of the supreme court shall be \$93,780 a year."

SECTION 4. Section 602-52, Hawaii Revised Statutes, is amended to read as follows:

"§602-52 Salary. Effective January 1, [1986,] 1989, the salary of the chief judge of the intermediate appellate court shall be [\$75,500] \$87,199 a year and the salary of each associate judge shall be [\$73,500] \$85,699 a year. Effective January 1, 1990, the salary of the chief judge of the intermediate appellate court shall be \$91,280 a year and the salary of each associate judge shall be \$89,780 a year."

SECTION 5. Section 603-5, Hawaii Revised Statutes, is amended to read as follows:

"§603-5 Salary of circuit court judges. Effective January 1, [1986,] 1989, the salary of each circuit court judge of the various circuit courts of the State shall be [\$69,500] \$82,699 a year. Effective January 1, 1990, the salary of each circuit court judge of the various circuit courts of the State shall be \$86,780 a year."

SECTION 6. Section 604-2.5, Hawaii Revised Statutes, is amended to read as follows:

"§604-2.5 Salary of district judges. Effective January 1, [1986,] 1989, the salary of each district court judge of the various district courts of the State shall be [\$64,500] \$77,699 a year. Effective January 1, 1990, the salary of each district court judge of the various district courts of the State shall be \$81,780 a year.

Whenever the chief justice appoints a district court judge of any of the various district courts of the State to serve temporarily as a circuit court judge of any of the various circuit courts of the State, the judge shall receive per diem compensation for the days on which actual service is rendered based on the monthly rate of compensation paid to a circuit court judge. For the purpose of determining per diem compensation in this section, a month shall be deemed to consist of twenty-one days."

SECTION 7. Section 601-3, Hawaii Revised Statutes, is amended to read as follows:

"§601-3 Administrative director. The chief justice, with the approval of the supreme court, shall appoint an administrative director of the courts to assist the chief justice in directing the administration of the judiciary. The administrative director shall be a resident of the State for a continuous period of three years prior to the administrative director's appointment, and shall be appointed without regard to chapters 76 and 77 and shall serve at the pleasure of the chief justice. The administrative director shall hold no other office or employment. Effective January 1, [1986,] 1989, the administrative director shall receive a salary of [\$68,400] \$81,629 a year. Effective January 1, 1990, the administrative director shall receive a salary of \$85,302 a year. The administrative director shall, subject to the direction of the chief justice, perform the following functions:

- (1) Examine the administrative methods of the courts and make recommendations to the chief justice for their improvement;
- (2) Examine the state of the dockets of the courts, secure information as to their needs of assistance, if any, prepare statistical data and

- reports of the business of the courts and advise the chief justice to the end that proper action may be taken;
- (3) Examine the estimates of the courts for appropriations and present to the chief justice the administrative director's recommendations concerning them;
 - (4) Examine the statistical systems of the courts and make recommendations to the chief justice for a uniform system of judicial statistics;
 - (5) Collect, analyze, and report to the chief justice statistical and other data concerning the business of the courts;
 - (6) Assist the chief justice in the preparation of the budget, the six-year program and financial plan, the variance report and any other reports requested by the legislature;
 - (7) Carry out all duties and responsibilities that are specified in title 7 as it pertains to employees of the judiciary; and
 - (8) Attend to such other matters as may be assigned by the chief justice.

The administrative director shall, with the approval of the chief justice, appoint a deputy administrative director of the courts subject to chapter 76 but not subject to chapter 77 and such assistants as may be necessary. Such assistants shall be appointed subject to chapters 76 and 77. Effective January 1, [1986,] 1989, the salary of the deputy administrative director shall be [\$61,560] \$74,608 a year. Effective January 1, 1990, the salary of the deputy administrative director shall be \$77,966 a year. The administrative director shall be provided with necessary office facilities.

The judges, clerks, officers, and employees of the courts shall comply with all requests of the administrative director for information and statistical data relating to the business of the courts and expenditure of public funds for their maintenance and operation.”

SECTION 8. There is appropriated out of the general revenues of the State of Hawaii the sum of \$2,179,000, or so much thereof as may be necessary for fiscal year 1989-1990, and the sum of \$1,450,843, or so much thereof as may be necessary for fiscal year 1990-1991, to provide salary increases and retroactive payments of salary for the justices of the supreme court, the judges of the intermediate court of appeals, the judges of the various circuit and district courts, the administrative director of the courts, and the deputy administrative director of the courts.

SECTION 9. The sums appropriated shall be expended by the judiciary for the purposes of this Act.

SECTION 10. The president of the senate and the speaker of the house of representatives shall, before July 1, 1990, each appoint three members to a joint legislative study committee to be comprised of a total of six members. The purpose of the joint legislative study committee shall be to prepare a fact-finding study on the effect of requiring district court judge applicants to go through the same confirmation process as supreme court justices and intermediate appellate court and circuit court judges. The study shall include the differences in the jurisdiction and responsibilities between district court and circuit court judges, the types of cases heard, the powers they have, and their direct impact on the public and the justice system. The joint legislative study committee shall solicit input from the bar as well as the bench, and shall include in its report findings and recommendations upon the following issues and questions:

- (1) Whether or not the term of district court judges should be extended from six to ten years if a district court judge is required to go through the same confirmation process as a circuit court judge.
- (2) Whether or not the duties and powers of district court judges should be expanded into areas such as handling misdemeanor jury trials. Presently, district court judges handle traffic cases, landlord-tenant disputes, simple collection cases, contract disputes, small claims, and other cases involving smaller monetary values. They have less sentencing authority than other judges. The joint legislative study committee should also study whether or not the sentencing authority of district court judges should be increased.
- (3) A comparison of the workload and types of cases handled by circuit court and district court judges, including a study of how often district court judges sit on the circuit court bench.
- (4)
 - (a) The impact on the willingness of persons in the legal community to apply for a district court judgeship without additional benefits such as a longer term and vested pension benefits; and
 - (b) The impact on the willingness of persons in the legal community to apply for a district court judgeship without additional benefits such as a longer term and vested pension benefits if confirmation is required.
- (5) Whether the present appointment system should remain the same or whether it should be changed to provide for appointment of district court judges by the governor with the consent of the senate or the chief justice with the consent of the senate.
- (6) Whether pension benefits of district court judges should be increased.
- (7) The extent of public participation in the present method of selecting district court judges through the judicial selection commission and whether there should be a public hearing process outside of the Legislature pending final approval of the appointment of a district court judge by the chief justice or the appointing authority.
- (8) The effect upon the balance of power between the executive and judiciary branches if there is a change in the method of appointing district court judges.
- (9) Whether the present method of selection of district court judges is a sufficient safeguard without a confirmation process.
- (10) The expected costs of holding public confirmation hearings for district court judges.
- (11) Advantages and disadvantages of changing the present method of selection of district court judges.
- (12) The judiciary is the only branch of government that is comprised entirely of persons who are not subject to the elective process. Would it result in a better balanced body of longer term public servants if two different selection processes are used at the entry level, rather than one?

The joint legislative study committee shall submit a report of its findings and recommendations to the Legislature twenty days prior to the convening of the Regular Session of 1991.

SECTION 11. Section 3 of Article VI of the Constitution of the State of Hawaii is amended to read as follows:

“APPOINTMENT OF JUSTICES AND JUDGES

Section 3. The governor shall, with the consent of the senate, fill a vacancy in the office of the chief justice, supreme court, intermediate appellate court and circuit courts, by appointing a person from a list of not less than six nominees for the vacancy, presented to the governor by the judicial selection commission.

If the governor fails to make any appointment within thirty days of presentation, or within ten days of the senate’s rejection of any previous appointment, the appointment shall be made by the judicial selection commission from the list with the consent of the senate. If the senate fails to reject any appointment within thirty days thereof, it shall be deemed to have given its consent to such appointment. If the senate shall reject any appointment, the governor shall make another appointment from the list within ten days thereof. The same appointment and consent procedure shall be followed until a valid appointment has been made, or failing this, the commission shall make the appointment from the list, without senate consent.

The chief justice shall fill a vacancy in the district courts by appointing a person from a list of not less than six nominees for the vacancy presented by the judicial commission. If the chief justice fails to make the appointment within thirty days of presentation, the appointment shall be made by the judicial selection commission from the list. The chief justice shall appoint per diem district court judges as provided by law.

QUALIFICATIONS FOR APPOINTMENT

Justices and judges shall be residents and citizens of the State and of the United States, and licensed to practice law by the supreme court. A justice of the supreme court, a judge of the intermediate appellate court and a judge of the circuit court shall have been so licensed for a period of not less than ten years preceding nomination. A judge of the district court shall have been so licensed for a period of not less than five years preceding nomination.

No justice or judge shall, during the term of office, engage in the practice of law, or run for or hold any other office or position of profit under the United States, the State or its political subdivisions.

TENURE; COMPENSATION; RETIREMENT

The term of office of justices and judges of the supreme court, intermediate appellate court and circuit courts shall be ten years. Judges of district courts shall hold office for the periods as provided by law. At least six months prior to the expiration of a justice’s or judge’s term of office, every justice and judge shall petition the judicial selection commission to be retained in office or shall inform the commission of an intention to retire. If the judicial selection commission determines that the supreme court, intermediate appellate court, or district court justice or judge should be retained in office, the commission shall renew the term of office of such justice or judge for the period provided by this section or by law. If the judicial selection commission determines that the circuit court judge should be retained in office, the commission shall, with the consent of the senate, renew the term of office of the judge for the period provided by this section or by law. If the senate fails to reject any renewal within thirty days thereof, it shall be deemed to have given its consent to such renewal.

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There shall be a salary commission to review and recommend salaries for justices and judges of all state courts. Justices and judges shall have salaries as provided by law. Their compensation shall not be decreased during their respective terms of office, unless by general law applying to all salaried officers of the State. They shall be retired upon attaining the age of seventy years. They shall be included in any retirement law of the State."

SECTION 12. The question to be printed on the ballot shall be as follows: "Shall the method of renewal of the terms of Circuit Court judges be changed from a determination of fitness by the Judicial Selection Commission to a determination of fitness by the Judicial Selection Commission with the consent of the Senate?"

SECTION 13. Statutory and constitutional material to be repealed is bracketed. New statutory and constitutional material is underscored.

SECTION 14. This Act shall take effect upon its approval, except that the constitutional amendment proposed in section 11 shall take effect upon compliance with section 3 of Article XVII of the Constitution of the State of Hawaii. All other sections shall take effect upon approval.

(Approved May 18, 1990.)