

ACT 65

H.B. NO. 20

A Bill for an Act Relating to the Judiciary.

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

SECTION 1. The legislature finds that Hawaii's failure to adequately compensate its judges is adversely affecting the quality of justice. Insufficient compensation creates the risk that judges will leave the bench, thus depriving the public of the significant value of experienced jurists. Since 1992, ten seasoned and experienced judges have left Hawaii's bench due, in part, to the lack of adequate compensation. The legislature notes that in recent months, another two seasoned justices have announced their intention to leave the bench. The Judicial Salary Commission believes that these departures will continue until compensation is adjusted. Therefore, the legislature recognizes that an increase in judicial salaries is required in order to ensure that the most highly qualified individuals will be attracted to the state judiciary and will be able to serve and continue to serve without unreasonable economic hardship.

The purpose of this Act is to:

- (1) Amend the service retirement laws to correlate years on the bench with retirement benefits; and
- (2) Increase judicial salaries by 13 per cent over two years.

PART I

SECTION 2. Section 88-73, Hawaii Revised Statutes, is amended to read as follows:

"§88-73 Service retirement. Retirement of a member on a service retirement allowance shall be made by the board of trustees or its designee as follows:

- (1) Any member who has at least five years of credited service and who has attained age fifty-five or any member who has at least twenty-five years of credited service or any member who has at least ten years of credited service, [including] which includes service as a judge[,] before July 1, 1999, an elective officer, or [the chief clerk, assistant clerk, sergeant at arms, or assistant sergeant at arms of either house of the legislature] a legislative officer, may retire upon written application to the board specifying on what date, not less than thirty days nor more than ninety days subsequent to the execution and filing thereof, the member desires to be retired. In the event of the death of a member after the date of the filing of the member's written application to retire, the designated

beneficiary, otherwise the personal representative of the member's estate, shall receive the allowance under the option selected by the member which would have been payable had the member retired, and the benefits paid to the beneficiary or representative shall be computed as though the member had died on or after the effective date of the member's retirement;

- (2) Any member who first earned credited service as a judge after June 30, 1999, may retire upon written application to the board specifying on what date, not less than thirty days nor more than ninety days subsequent to the execution and filing thereof, the member desires to be retired; provided that the member has at least five years of credited service and has attained age fifty-five or has at least twenty-five years of credited service. In the event of the death of a member after the date of the filing of the member's written application to retire, the designated beneficiary, otherwise the personal representative of the member's estate, shall receive the allowance under the option selected by the member which would have been payable had the member retired, and the benefits paid to the beneficiary or representative shall be computed as though the member had died on or after the effective date of the member's retirement;
- [(2)] (3) Any member of the legislature who attains age sixty-five may retire and receive a service retirement allowance although the member continues to fill the elective position;
- [(3)] (4) For the purpose of computing or determining benefits for an elective officer or judge, or any beneficiary of either, the date upon which the elective officer or judge elected to retire, as provided by section 88-61(c), after attaining an allowance of seventy-five per cent of average final compensation, shall be used as the effective date of retirement; provided that the elective officer or judge may continue in active service, but shall not receive a retirement allowance until termination of active service; [however,] provided further that upon leaving active service the elective officer or judge shall receive the retirement allowance provided for in section 88-74, together with the post retirement allowances provided for in section 88-90, which post retirement allowances shall be computed from the date of the election as though the elective officer or judge had left active service on that day; and
- [(4)] (5) In the case of a class A or B member who also has prior credited service under part VII, total credited service as a class A, class B, and class C member shall be used to determine the eligibility for retirement allowance."

SECTION 3. Section 88-74, Hawaii Revised Statutes, is amended to read as follows:

"§88-74 Allowance on service retirement. Upon retirement from service, a member shall receive a retirement allowance as follows:

- (1) If the member has attained age fifty-five, a retirement allowance of two per cent of the member's average final compensation multiplied by the total number of years of the member's credited service as a class A and B member, excluding any credited service as [an] a judge, elective officer, or legislative officer, plus a retirement allowance of one and one-fourth per cent of the member's average final compensation multiplied by the total number of years of prior credited service as a class C member; provided that:

- (A) After June 30, 1968, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a firefighter, police officer, or an investigator of the department of the prosecuting attorney;
- (B) After June 30, 1977, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a corrections officer;
- (C) After June 16, 1981, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as an investigator of the department of the attorney general;
- (D) After June 30, 1989, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a narcotics enforcement investigator;
- (E) After December 31, 1993, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a water safety officer; and
- (F) After June 30, 1994, if the member has at least ten years of credited service, of which the last five or more years prior to retirement are credited service as a public safety [investigative] investigations staff investigator;

then for each year of service as a firefighter, police officer, corrections officer, investigator of the department of the prosecuting attorney, investigator of the department of the attorney general, narcotics enforcement investigator, water safety officer, or public safety investigations staff investigator, the retirement allowance shall be two and one-half per cent of the member's average final compensation. The maximum retirement allowance for those members shall not exceed eighty per cent of the member's average final compensation. If the member has not attained age fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced in accordance with factors of actuarial equivalence adopted by the board upon the advice of the actuary; provided that no reduction shall be made if the member has at least twenty-five years of credited service as a firefighter, police officer, corrections officer, investigator of the department of the prosecuting attorney, investigator of the department of the attorney general, narcotics enforcement investigator, public safety investigations staff investigator, sewer worker, or water safety officer, of which the last five or more years prior to retirement is credited service in such capacities;

- (2) If the member has made voluntary additional contributions for the purchase of an additional annuity and has not applied for a refund as permitted by section 88-72, the member may accept the refund at the time of retirement or, in lieu thereof, receive in addition to the retirement allowance provided in paragraph (1), an annuity that is the actuarial equivalent of the additional contributions with regular interest;
- (3) If the member has credited service as a judge, the member's retirement allowance shall be computed on the following basis:
 - (A) [Irrespective] For a member who has credited service as a judge before July 1, 1999, irrespective of age, for each year of credited service as a judge, three and one-half per cent of the member's average final compensation in addition to an annuity that is the

actuarial equivalent of the member's accumulated contributions allocable to the period of such service; and

- [(B)] For all other credited service, as provided in paragraphs (1), (2) and (4). No allowance shall exceed seventy-five per cent of the member's average final compensation. If the allowance exceeds this limit, it shall be adjusted by reducing the annuity included in subparagraph (A), and the portion of the accumulated contributions specified in that subparagraph in excess of the requirements of the reduced annuity shall be returned to the member.

The allowance for judges under this paragraph, together with the retirement allowance provided by the federal government for similar service, shall in no case exceed seventy-five per cent of the member's average final compensation; or]

- (B) For a member who first earned credited service as a judge after June 30, 1999, for each year of credited service as a judge, three and one-half per cent of the member's average final compensation in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of such service. If the member has not attained age fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced in accordance with factors of actuarial equivalence adopted by the board upon the advice of the actuary; or

- (C) For a judge with other credited service, as provided in paragraphs (1) and (2). If the member has not attained age fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced in accordance with factors of actuarial equivalence adopted by the board upon the advice of the actuary; or

- (D) For a judge with credited service as an elective officer or as a legislative officer, as provided in paragraph (4).

No allowance shall exceed seventy-five per cent of the member's average final compensation. If the allowance exceeds this limit, it shall be adjusted by reducing the annuity included in subparagraphs (A) and (B) and the portion of the accumulated contributions specified in the subparagraphs in excess of the requirements of the reduced annuity shall be returned to the member. The allowance for judges under this paragraph, together with the retirement allowance provided by the federal government for similar service, shall in no case exceed seventy-five per cent of the member's average final compensation; or

- (4) If the member has credited service as an elective officer or as a legislative officer, the member's retirement allowance shall be derived by adding the allowances computed separately under subparagraphs (A), (B), (C), and (D) as follows:

- (A) Irrespective of age, for each year of credited service as an elective officer, three and one-half per cent of the member's average final compensation as computed under section 88-81(d)(1), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service; and

- (B) Irrespective of age, for each year of credited service as a legislative officer, three and one-half per cent of the member's average final compensation as computed under section 88-81(d)(2), in addition to an annuity that is the actuarial equivalent of the

member's accumulated contributions allocable to the period of service;

- [(C)] Irrespective of age, for each year of credited service as a judge, three and one-half per cent of the member's average final compensation as computed under section 88-81(d)(3), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service; and]
- (C) If the member has credited service as a judge, the member's retirement allowance shall be computed on the following basis:
 - (i) For a member who has credited service as a judge before July 1, 1999, irrespective of age, for each year of credited service as a judge, three and one-half per cent of the member's average final compensation as computed under section 88-81(d)(3), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of such service; and
 - (ii) For a member who first earned credited service as a judge after June 30, 1999, and has attained the age of fifty-five, for each year of credited service as a judge, three and one-half per cent of the member's average final compensation as computed under section 88-81(d)(3), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of such service. If the member has not attained age fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced in accordance with factors of actuarial equivalence adopted by the board upon the advice of the actuary; and
- (D) For each year of credited service not included in subparagraph (A), (B), or (C), the average final compensation as computed under section 88-81(d)(4) shall be multiplied by two per cent, two and one-half per cent, or one and one-quarter per cent, as applicable to the credited service earned as a class A, B, or C member, respectively. If the member has not attained age fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced in accordance with factors of actuarial equivalence adopted by the board upon the advice of the actuary.

The total retirement allowance shall not exceed seventy-five per cent of the member's highest average final compensation calculated under section 88-81(d)(1), (2), (3), or (4). If the allowance exceeds this limit, it shall be adjusted by reducing any annuity accrued under subparagraphs (A), (B), and (C) and the portion of the accumulated contributions specified in these subparagraphs in excess of the requirements of the reduced annuity shall be returned to the member. If a member has service credit as an elective officer or as a legislative officer in addition to service credit as a judge, then the retirement benefit calculation contained in this paragraph shall supersede the formula contained in paragraph (3)."

PART II

SECTION 4. Section 602-2, Hawaii Revised Statutes, is amended to read as follows:

“§602-2 Salary, supreme court justices. Effective [January 1, 1989,] July 1, 1999, the salary of the chief justice of the supreme court shall be [\$90,699] \$98,571 a year and the salary of each associate justice of the supreme court shall be [\$89,699] \$97,531 a year. Effective [January 1, 1990,] July 1, 2000, the salary of the chief justice of the supreme court shall be [\$94,780] \$102,514 a year and the salary of each associate justice of the supreme court shall be [\$93,780] \$101,432 a year.”

SECTION 5. Section 602-52, Hawaii Revised Statutes, is amended to read as follows:

“§602-52 Salary. Effective [January 1, 1989,] July 1, 1999, the salary of the chief judge of the intermediate appellate court shall be [\$87,199] \$94,931 a year and the salary of each associate judge shall be [\$85,699] \$93,371 a year. Effective [January 1, 1990,] July 1, 2000, the salary of the chief judge of the intermediate appellate court shall be [\$91,280] \$98,728 a year and the salary of each associate judge shall be [\$89,780] \$97,106 a year.”

SECTION 6. Section 603-5, Hawaii Revised Statutes, is amended to read as follows:

“§603-5 Salary of circuit court judges. Effective [January 1, 1989,] July 1, 1999, the salary of each circuit court judge of the various circuit courts of the State shall be [\$82,699] \$90,251 a year. Effective [January 1, 1990,] July 1, 2000, the salary of each circuit court judge of the various circuit courts of the State shall be [\$86,780] \$93,861 a year.”

SECTION 7. Section 604-2.5, Hawaii Revised Statutes, is amended to read as follows:

“§604-2.5 Salary of district judges. Effective [January 1, 1989,] July 1, 1999, the salary of each district court judge of the various district courts of the State shall be [\$77,699] \$85,051 a year. Effective [January 1, 1990,] July 1, 2000, the salary of each district court judge of the various district courts of the State shall be [\$81,780] \$88,453 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.”

PART III

SECTION 8. There is appropriated out of the general revenues of the State of Hawaii the sum of \$4,121,073 or so much thereof as may be necessary for fiscal year 1999-2000 and the sum of \$2,121,463 or so much thereof as may be necessary for fiscal year 2000-2001 for salaries in the judiciary. The sum appropriated shall be expended by the judiciary for the purposes of this Act.

SECTION 9. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

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SECTION 10. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 11. This Act shall take effect on July 1, 1999; provided that with respect to judges who are members of the employees' retirement system and who have credited service as a judge before July 1, 1999, the members' benefits shall not be diminished nor impaired by this Act.

(Approved June 10, 1999.)