



Judicial Council of California

ADMINISTRATIVE OFFICE OF THE COURTS

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Director, Office of Governmental Affairs

January 5, 2012

Hon. Warren T. Furutani, Chair
Assembly Public Employees, Retirement & Social Security Committee
State Capitol, Room 6025
Sacramento, California 95814

Subject: AB 738 (Hagman), as amended January 4, 2012 – Oppose unless amended

Dear Assembly Member Furutani:

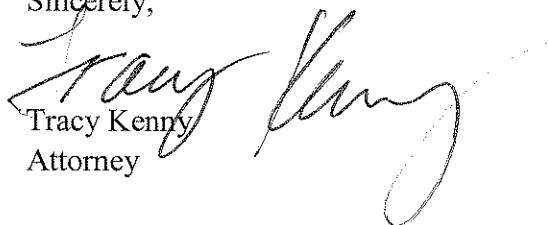
The Judicial Council was opposed to AB 738 as it was introduced because it did not explicitly exclude judges from its prohibition on elected public officials receiving retirement benefits. Recent amendments to AB 738 which would not apply this prohibition to those elected officials who serve on a full-time basis appear to resolve our concerns. However, the language in the bill remains ambiguous and should be clarified so that there is no question that the bill would have any impact on judicial retirement benefits.

Judges clearly meet the definition of “full-time” provided in the bill. Article VI, Section 17 provides that judges may not practice law or hold other public office, and are limited to engaging in “part-time teaching that does not interfere with the regular performance of his or her duties while holding office.” Thus judges are expected to work a full-time schedule and are prohibited from engaging in activities or work that would interfere with those duties. Yet the final sentence of the new provisions defining the full-time exception gives us cause for concern and to maintain our opposition. It provides that: “Designation of an elective or appointive office as full time shall be enacted by law.” We are aware of no such explicit designation in the law for judges, and find this language casts doubt upon what would otherwise be a clear provision exempting them from the provisions of the bill.

Hon. Warren T. Furutani
January 5, 2012
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To ensure that there is no ambiguity about the application of AB 738 to judges, the Judicial Council asks that it be amended to remove the requirement that there be statutory designations that a position is full-time. With that amendment, which preserves the intent of the legislation, the council's opposition to AB 738 would be removed.

Sincerely,


Tracy Kenney
Attorney

cc: Members, Assembly Public Employees, Retirement & Social Security Committee
Hon. Curt Hagman, Member of the Assembly
Ms. Karon Green, Chief Consultant, Assembly Public Employees, Retirement & Social Security Committee
Mr. Aaron Maguire, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Terry Mast, Consultant, Assembly Republican Office of Policy



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April 25, 2011

Hon. Warren T. Furutani, Chair
Assembly Public Employees, Retirement & Social Security Committee
State Capitol, Room 6025
Sacramento, California 95814

Subject: AB 738 (Hagman), as introduced - Oppose
Hearing: Assembly Public Employees, Retirement & Social Security Committee – May 4, 2011

Dear Assembly Member Furutani:

The Judicial Council regrets to inform you that it is opposed to AB 738, which would prohibit elected public officials from receiving retirement benefits, unless it is amended to explicitly exclude judges from the category of elected public officials who are subject to its provisions. Judges are constitutionally entitled to retirement benefits. Article VI, Section 20 of the Constitution requires that judges be provided with retirement “with reasonable allowance.” While one provision of AB 738 includes an exception to its prohibition on membership in a retirement system for elected officials if such membership is “required or permitted by the Constitution” other provisions in the bill do not contain this same exemption.

Currently, judges who have prior service in CalPERS or county retirement systems governed by the '37 Act, are eligible to have the pensions in those systems calculated using their judicial salary if they retire concurrently from both systems. This benefit is critical in attracting attorneys who serve in public sector positions to apply for judicial positions, and it is analogous to the reciprocity offered to other public sector attorneys who move from one retirement system to another. Because AB 738 amends the PERS and '37 Act statutes to prohibit the conferral of any benefit from those systems for service as an elected public official, it appears to eliminate this

benefit for judges. The Judicial Council is opposed to this elimination because of the negative impact it would have on the recruitment of judges from the public sector. To resolve this concern, AB 738 should be amended to explicitly provide that its prohibitions do not apply to judges and justices.

The Judges' Retirement System II (JRS II) is structured to provide an incentive for experienced, high caliber attorneys to seek judicial appointments and remain on the bench for at least 20 years and attain age 65 or at least 5 years and attain age 70 before they can retire with a defined benefit pension. Unlike the other elected officials subject to AB 738, who are subject to term limits, and therefore expected to serve only a small segment of their career in their elected office, judges are expected to conclude their legal careers on the bench and need to be able to secure a reasonable retirement benefit for that service. Moreover, judges, unlike many other elected officials, are barred from engaging in other employment during their years on the bench.

To ensure that there is no ambiguity about the application of AB 738, the Judicial Council asks that it be amended to expressly provide that none of its provisions would apply to judges. This change will not interfere with the fundamental objective of the bill, and will preserve the constitutionally required retirement system for judges.

For these reasons, the Judicial Council is opposed to AB 738 unless it is amended.

Sincerely,


Tracy Kenny
Attorney

cc: Members, Assembly Public Employees, Retirement & Social Security Committee
Hon. Curt Hagman, Member of the Assembly
Ms. Karon Green, Chief Consultant, Assembly Public Employees, Retirement & Social Security Committee
Mr. Aaron Maguire, Deputy Legislative Affairs Secretary, Office of the Governor
Ms. Kirsten Kolpitke, Deputy Director of Legislation, Governor's Office of Planning and Research
Mr. Terry Mast, Consultant, Assembly Republican Office of Policy