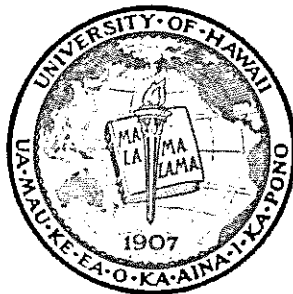


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RETIREMENT SYSTEMS FOR LEGISLATORS



Report No. 5 - 1949

Legislative Reference Bureau
University of Hawaii

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RETIREMENT SYSTEMS FOR LEGISLATORS

by

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-- Report No. 5 - 1949 --

(Request No. 1016)

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SUMMARY

Extending retirement benefits to legislators is a practice which has become more widespread among the states during the past five years. At least fourteen states and the federal government now have legislative retirement plans. All but one of the states whose legislative body meets every year have made provision for retiring their legislators.

Thirteen states permit legislators to join the retirement system set up for state employees generally. California set up a special retirement system for its legislators similar to the federal retirement plan for congressmen.

Legislative office differs from other types of public employment in that the tenure is less secure, the salary is likely to be lower and the number of on-the-job working days comparatively small. Nor is the legislator likely to be dependent solely upon his legislative salary for his livelihood.

Several states have made allowances for these differences in setting up legislative retirement plans. They have changed the state retirement law as it applies to legislators to allow him to:

(1) join the system or not, as he wishes. (Many states require public employees to join the retirement system.)

(2) make larger contributions to the system than other public employees do and to draw a higher percentage of his salary as a retirement benefit.

(3) compute his creditable service in terms of the number of years he has held office rather than the number of on-the-job working days.

(4) receive retirement benefits when he reaches the minimum retirement age whether he is an active member of the legislature at that time or not.

(5) continue as an active member of the legislature after he has passed the age at which retirement for other public employees is compulsory.

Hawaii's legislators have been excluded from membership in the territorial employees' retirement system since it went into operation in 1926. Attempts to provide legislators with a retirement plan were made during the 1949 session of the territorial legislature through H. B. No. 1198 and S. B. No. 7. H. B. No. 1198 set up a special pension plan for legislators which would have been financed entirely through appropriations. S. B. No. 7 would have permitted legislators to join and contribute to the territorial employees' retirement system on the same basis as other public employees. Comparing S. B. No. 7 with similar state plans, it appears that more extensive changes will probably need to be made in Hawaii's retirement law if it is to provide a complete and realistic plan for legislators' retirement needs.

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MAINLAND PRECEDENTS FOR RETIRING LEGISLATORS

The practice of extending retirement benefits to legislators has spread rapidly within recent years. At least fourteen states and the federal government permit legislators to enjoy pension benefits.¹ Eleven states have begun allowing legislators to participate in some form of state retirement plan within the past five years.

New York state's retirement plan, set up in 1921, was the first to include legislators. Other states which make provision for retiring members of the legislature are: California, Florida, Louisiana, Maryland, Massachusetts, Montana, Nevada, New Jersey, North Dakota, Ohio, Pennsylvania, Rhode Island and Utah. Florida admitted legislators by amending the state retirement law at the 1949 session of the legislature. The way was opened for the inclusion of legislators in the Louisiana retirement system through an opinion of the state attorney general on October 13, 1949.² In California, Massachusetts, Nevada, North Dakota, Pennsylvania and Utah, legislators have been eligible for retirement benefits since 1947; in Maryland and Montana, since 1945; in Ohio since 1941 and in New Jersey since 1931. The federal plan for retiring members of Congress was set up in July, 1946.

Although fourteen states make some provision for retiring legislators, legislative retirement plans have attracted an appreciable membership in only five states. About half or more of the legislators in California, Massachusetts, New York, Ohio and Rhode Island are participating in the state's retirement plan. But none of the legislators have joined in New Jersey,

¹For citations to the state retirement system laws considered, see the appendix of this report.

²Letter from P. J. Becker, Executive Secretary, Louisiana State Employees' Retirement System, October 17, 1949.

North Dakota and Utah. In Maryland and Montana, only a few of the legislators are members.

Twenty-one states have retirement systems for state employees generally but exclude legislators from joining the system. These states are: Alabama, Colorado, Connecticut, Delaware, Illinois, Indiana, Iowa, Maine, Michigan, Minnesota, New Hampshire, New Mexico, North Carolina, Oregon, South Carolina, Tennessee, Texas, Vermont, Virginia, Washington and Wisconsin. The question of whether legislators are eligible to join the Georgia retirement system had not been clarified at the date of this report.

Perhaps one reason why legislators have been excluded from so many state retirement systems is that most of the arguments for establishing retirement systems for government employees take on another aspect when applied to legislators.

For example, retirement is urged as a means of removing aged employees from the payroll. The assumption is that the aged employee is no longer able to do his job well and that it is cheaper in terms of governmental efficiency to retire him than to continue to pay him a salary he may no longer earn. This may be true in the case of some government employees, particularly those whose jobs require physical exertion. But it would be hard to show that it is equally true in the case of a legislator. His years of experience in public life may well be considered an asset to the legislature and to the community rather than a liability.

Retirement systems for public employees are also advocated as a way of improving the employee's morale by giving him an added sense of economic security. The job of legislator, however, is by its very nature insecure because tenure depends on the will of the people. It could be questioned whether a person interested primarily in economic security would choose

legislative service as a career.

The economic security argument has another aspect which should be taken into consideration. The state employee's retirement system is set up primarily to provide old age security for full-time employees. Legislators, however, are in most states part-time workers for the government. Their salaries may be so small that they do little more than cover the cost of the legislator's expenses during a session. This means that the legislator must usually have a source of income other than the compensation he receives for serving in the legislature. Since most state governments assumed comparatively little responsibility in providing the legislator's livelihood while he was in active service, it is sometimes questioned whether the state has an obligation to provide him with a measure of economic security in his old age. In many cases, the legislator's other sources of income may make it unnecessary for him to participate in a state retirement plan to insure an income on his retirement from public service.

Legislative retirement plans have become more numerous as the belief gained acceptance that any man who gives many years of service to his government should be rewarded--whether he served as a legislator or in some other capacity. The tendency in some states for law-making to become a full time job also appears to have influenced the spread of legislative retirement plans. Six states--California, Rhode Island, Massachusetts, New Jersey, New York and South Carolina--now hold legislative sessions every year instead of every two years.³ All of these states except South Carolina have made provision for extending retirement benefits to their legislators.

³Council of State Governments. Our State Legislatures, Report of the Committee on Legislative Processes and Procedures, Revised Edition. (Chicago, 1948) p. 22.

THE FEDERAL AND CALIFORNIA RETIREMENT SYSTEMS

Congressional Retirement Plan Described

Judging from the extent of participation, the two legislative retirement plans set up specifically for members of the legislature have been among the most successful. The first of these was the plan Congress established for its members in 1946. California set up a similar plan a year later.

Congress's retirement plan is part of Public Law 601 of the 79th Congress. It amends the Civil Service Retirement Act making congressmen eligible to receive retirement benefits similar to those offered other federal employees. The U. S. civil service commission administers the system.

All members of Congress who have given some service in the Senate or House of Representatives after August 2, 1946, are eligible to join the retirement program. They must apply for membership within six months after taking office. Once they have joined the system, they are required to pay in six per cent of their basic pay each month. This contribution may be deducted from their pay warrants. Interest on contributions is credited at the rate of four per cent a year.

To be eligible for retirement benefits, members of Congress must be at least sixty-two years old. There is no compulsory retirement age. Even after they have retired, they may still be elected for additional active service. They do not receive retirement benefits during this period of active service, but they may continue to make contributions toward retirement as if their service had never been interrupted. These contributions serve to increase the member's benefits upon his subsequent retirement.

Other requirements for retirement are that the congressman must have served in Congress for at least six years and have made sufficient contributions

to the system to cover at least the past five years of service. If the congressman is retiring because of disability, the period of required service is lowered to five years. There is no age requirement for disability retirement.

Retirement benefits amount to two and one-half per cent of the average annual basic salary of the member for each year of service. The maximum amount he may receive is limited to three-fourths of the salary he was getting at the time he left congressional service.

If a congressman wishes to do so, he may get credit toward retirement for any years of legislative service prior to August 2, 1946, when the Act was set up. He does this by paying in the contributions he would have been required to make if he had been a member of the system during the period in question. He must also pay in an amount equal to the interest that would have accumulated on these contributions.

He may count military service as if it were congressional service for the purpose of computing retirement benefits. He is permitted to do this by an amendment to the Civil Service Retirement Act approved June 19, 1948, which provides that: "Any member of Congress who during any war or time of national emergency as proclaimed by the President or declared by the Congress, left or leaves his office to enter the armed forces of the United States shall . . . be deemed to have been a member of Congress for such period of military service."⁴

The congressman may not get credit for civilian government service other than that in Congress under the congressional retirement plan. He may, however, get credit for such non-congressional service through membership in

⁴5 U. S. C. A., section 693-1 (5).

the "general plan" for government employees. Unlike most state retirement laws, there is nothing in the congressional retirement law to prohibit the legislator from belonging to both the "general plan" and the special retirement system for legislators at the same time. This permits him to receive full credit for all of his government service--both congressional and non-congressional. He may not, of course, receive credit for the same period of service from more than one system at the same time.

Significant Features of the California Plan

The California legislators' retirement system was set up in 1947 by adding a new chapter to the state retirement law.⁵

The California retirement system plan comes under the jurisdiction of the state employees' retirement system board. This board has the authority to invest the legislators' retirement fund and to make rules for the administration of the system.

As in the federal plan, the legislator must be a member of the legislature at some time after the enactment of the legislative retirement law to become eligible for membership in the system. He may exercise the option of joining the retirement system within ninety days after he takes office, and he becomes a member of the system on the first day of the month after filing notice of his intention to do so with the board.

While a member of the system, he is required to contribute four per cent of his annual compensation to the retirement fund. For the purposes of the California law, compensation is considered to be all the remuneration paid in cash out of funds controlled by the state, excluding mileage and

⁵California Government Code, title 2, div. 2, pt. 1, ch. 3.5; Statutes and Amendments to the Code, California, 1947, ch. 879.

allowances or reimbursements for expenses incurred in the performance of official duties.

For the purpose of computing retirement benefits, the legislator's creditable service is figured in terms of the number of years he has held office. (This differs from the practice in several other states where legislative service is computed in terms of the number of days the legislature is in session.)

In the California system as in the federal system, the legislator may get credit for service prior to the date the system was set up. He does this by contributing to the retirement fund four per cent of the compensation he received from the legislature during the period for which he is requesting prior service credit.

California places a ceiling of fifteen years on the amount of creditable service a legislator may accumulate. It also limits the amount of retirement allowance for which he is eligible to seventy-five per cent of the compensation members of the legislature are receiving at the time he retires.

When a legislator reaches the age of sixty-three, he is eligible for retirement benefits, provided he has had one or more years of legislative service. He gets a retirement allowance equal to five per cent of the pay that members of the legislature are drawing at the time he retires multiplied by the years of service for which contributions have been made.

The formula for computing benefits for legislators appears liberal when compared to that for other state employees who get only 1/60th of their final salary per year of service upon retirement. It must be remembered, however, that the California legislator receives only \$1,200 a year for attending annual session of the legislature, a low salary when compared to

that paid full time state employees in jobs of comparable responsibility. Allowing the legislator a higher percentage of his salary on retirement makes his retirement benefit large enough so that there is a real benefit to be derived from his joining the system.

If the legislator is not elected, or if he resigns before retirement age, he has the alternative of withdrawing all of his accumulated contributions or leaving his contributions in the system and receiving an annuity when he reaches retirement age. If he should at any time withdraw from the retirement system, he may rejoin and get credit for all prior service by re-depositing his contributions. If he does not redeposit his contributions, he enters as a new member without any credit for his prior service.

As in the federal plan, a retired legislator who is reelected to office may reactivate his membership in the retirement system and again make contributions. He cannot receive benefits during this period of active service. However, they are resumed when this period of service ends.

If the legislator dies before he retires, provision is made for his accumulated contributions to go to a beneficiary or to his estate. A 1949 amendment to the California State Employees' Retirement system law makes provisions for the legislator's dependents to receive a death benefit and to allow legislators to receive benefits for disability.⁶

⁶ Statutes and Amendments to the Codes, California, 1949, ch. 1109; California Government Code, sec. 9359.8 and sec. 9360.2 to 9360.6.

STATE RETIREMENT PLANS WHICH INCLUDE LEGISLATORS

Typical Patterns

At least thirteen states have made provision for retiring their legislators through allowing legislators to join the retirement plan set up for state employees generally. These plans differ in certain details, but the following outline may be considered descriptive of the form of most of these plans.

1. The system is created by amending the law which sets up a retirement system for state employees generally.
2. Legislator's benefits and periods of creditable service are computed on the same basis as the benefits received by full time state employees.
3. The system which legislators are permitted to join is administered by the state employees' retirement system board. This board's functions include investing the retirement system fund and deciding in doubtful cases which employees shall be considered eligible to join the system.
4. Membership in the system is optional for legislators. A legislator may elect to become a member of the system but must do so, however, within a specified period of time after he takes office. An individual who was formerly a member of the legislature may not join the retirement system unless he has some legislative service after the retirement system plan is set up.
5. Once members of the legislature join the system, they are required to make regular contributions toward their retirement.⁷ These contributions

⁷Complete tables comparing the various state retirement plans with respect to the percentage of salary required as contribution, the formula used in computing benefits, the minimum age and service requirements for retirement, etc., may be found either in A. A. Weinberg's article, "Retirement Planning for Public Employees," State Government, XX, No. 1 (January 1947), pp. 10-19, or in Report of the Territorial Retirement and Pension Commission of Hawaii, 1948, pp. 71-97.

are deducted from their pay warrants. The deduction is a specified percentage of the compensation received. "Compensation" may or may not include mileage allowances and reimbursements for expenses received in addition to regular pay.

6. A member must have made contributions for a specified number of years to be eligible for retirement benefits.

7. Credit may be received for service prior to the date the retirement system was set up by depositing an amount equal to the contributions and interest that would have accumulated if the legislator had been a member of the system during this period.

8. A member must have attained the specified retirement age before he can receive retirement benefits. He can, however, receive benefits at an earlier age for disability.

9. Failure to be reelected does not necessarily jeopardize the legislator's retirement benefits. The legislator may receive retirement benefits when he attains retirement age even though he discontinues service (voluntarily or involuntarily) before reaching retirement age, provided he has given a certain number of years of service.

10. Retirement is not compulsory for a legislator. Even after he retires, he may be reelected to legislative service and may continue to make contributions to the retirement system if he wishes to do so, but he receives no benefits during the period of active service. However, his contributions serve to increase the amount of his retirement benefits when he again leaves active service.

11. Retirement benefits are computed by multiplying a fraction of the legislator's average pay (or the pay of members of the legislature at the

time he retires) by the number of years of service accumulated.

12. At the time a legislator retires, he has the option of receiving reduced benefits for himself and having payments made after his death to a beneficiary.

Problems Which May Arise When Legislators are Included in General Retirement Plans

Legislators have comparatively shorter periods of active service and receive lower salaries than most state employees. Their tenure is uncertain and they are not likely to depend in full upon their legislative salaries for support. The average age of the legislator may in many cases be older than that of other state employees and he may be reelected to office after he has passed the age at which most public employees are required to retire. Consequently, problems may arise in applying the general provisions of state retirement laws to legislators. Where adequate modifications in the state retirement plan have not been made with respect to legislators, joining the retirement system may bring negligible benefits.

This has proved to be the case in Montana. Under the Montana law, a legislator may receive credit toward retirement only for the period during which he is receiving compensation from the state. This means that the Montana legislator may count toward retirement only the actual number of days the legislature is in session. Adeline J. Clarke, State Law Librarian for Montana, points out that "as they (the legislators) serve only 60 days every two years, it would take something like 50 years to establish 10 years of service." She adds: "Two or three legislators have joined, but it is obvious that there is not much benefit for them in doing so."⁸

⁸Letter from Adeline J. Clarke, State Law Librarian for Montana, September 6, 1949.

The Florida law contains the same provision found in the Montana law-- that only the aggregate number of days of legislative service may be considered for retirement.⁹

California, on the other hand, computes the legislator's benefits on the basis of the number of years he has held office--regardless of how much actual service he gave during that period.¹⁰ Massachusetts has a similar provision. Its law states that the legislator "shall be credited with a year of creditable service for each calendar year during which he served as an elected official."¹¹

Even though the legislator's service is computed in terms of the number of years he gave service, another difficulty may arise. A legislator's pay is low compared to that of other state employees. If the legislator is allowed the same percentage of his salary for a retirement benefit as other state employees, the benefit is likely to be so small that it may not be worth his while to join the system. In Utah, for example, legislators receive \$300 a year. Retirement benefits amount to 1/50th of the legislator's annual salary for each year of service. Assuming that a legislator has served ten years, his retirement benefit would amount to only \$60 a year or \$5 a month. If old age security is the objective of the retirement law, it is obvious that \$5 a month will not go far toward accomplishing this purpose.

California met this problem by allowing the legislator on retirement a larger percentage of his final salary for each year of service than it allows other state employees. A legislator receives five per cent of his final

⁹Florida Statute, 1949, sec. 121.041; Laws of Florida, 1949, ch. 25375.

¹⁰See page 7.

¹¹Acts and Resolves of Massachusetts, 1947, ch. 660, sec. 3.

salary per year of service; other state employees receive only 1/60th of their final salary for each year of service.

In some states, restrictions are placed on the period of time during which an employee may rejoin the retirement system after having once separated from service. For legislators and elected officials whose tenure is uncertain, this provision might mean exclusion from the retirement system if they failed to be reelected for a few terms. Nevada requires that a legislator rejoin the retirement system within five years after having once discontinued service. In Pennsylvania, the time limit is ten years. Several states, however, have no such requirement.

Many state laws provide that to be eligible for retirement benefits an employee either must be in active service at the time he reaches retirement age or must have accumulated a certain amount of government service by the time he wishes to retire. California permits a legislator who has had one year of service and who fulfills the other requirements for retirement to receive benefits at retirement age whether or not he is an active member of the system at that time. The federal plan has a provision similar to California's except that the service requirement is six years. In other states, however, the service requirement is as high as twenty-five years. It appears that a long service requirement might easily exclude the legislator from receiving retirement benefits at retirement age. He would, however, under most state laws be permitted to withdraw his accumulated contributions in a lump sum at the time he withdrew from the retirement system.

Another problem results from a provision included in many state laws that an employee may not belong to more than one state supported retirement system at the same time. This is intended to prevent the employee from re-

ceiving credit twice for the same service. However, this provision could bar the legislator from getting credit for all of his government service--if part of it has been in branches other than the legislative.

Assuming that such a provision exists in a state where there are separate retirement systems for public school employees and for legislators, an individual who has served both as a member of the state legislature and as a school administrator could not get full retirement credit for his service. He could get credit for either the legislative service or the public school service, but not for both.

This difficulty has been avoided by allowing the employee to transfer his service from one state-supported retirement system to another. Both the New Jersey and New York law make provision for transferring service.¹² Other states and the federal government allow the employee to belong to two systems at the same time. A congressman who has had other federal government service gets coverage for his non-legislative service by joining the "general plan" for federal employees, and he receives retirement benefit for his congressional service through the congressional retirement plan. He may not get credit for congressional service under the "general plan" or vice versa.¹³

In Ohio, a member of the state employees' retirement system may join another system by "taking a leave of absence" from the system he joined originally. He is permitted to do this if he accepts a job in which he is eligible to join a new retirement system and is no longer eligible to remain an active member of the other. While he is on leave of absence, he retains all of his

¹²Revised Statutes of New Jersey, 1937, title 43, ch. 14, sec. 4; Laws of New York, 1947, ch. 841, art. 4, sec. 59.

¹³5 U. S. C. A., sec. 691-1 (8).

rights and privileges in the state employees' retirement system.¹⁴

In Massachusetts, an employee may join as many systems as he is eligible to join. However, the law provides that he may not receive greater benefits from all systems that he would have received had he been a member of a single retirement system. If he is holding two jobs at the same time, his creditable service may not be greater than it would be if he were employed in only one system.¹⁵

The compulsory retirement provision in many state retirement laws is another feature that may cause difficulty when legislators are included. New York, Ohio and the federal government are among those which specifically exclude elected officials from the compulsory retirement provisions.¹⁶ This indicates a recognition that it is sometimes desirable to retain experienced legislators in office after they have passed the usual compulsory retirement age.

Since most legislative retirement plans have been set up within the past few years, the question of obtaining credit for prior service is an important one. The general practice in the plans studied is to allow the member to obtain credit for service rendered prior to the establishment of the system by making the contributions he would have been required to make had he been a member of the system during this period.

Pennsylvania allows former members of the legislature to receive

¹⁴Throckmorton's Ohio Code Annotated, Baldwin's 1948 Revision, sec. 486-65a.

¹⁵Acts and Resolves of Massachusetts, 1945, ch. 658, sec. 3 (7).

¹⁶Laws of New York, 1947, ch. 841, art. 4, sec. 75; Throckmorton's Ohio Code Annotated, Baldwin's 1948 Revision, sec. 486-59; 5 U. S. C. A., sec. 693-1 (9).

credit for service prior to the time the system was set up.¹⁷ This is the only one of the legislative retirement plans considered in this report which permits persons who have had no active service after the plan is set up to join the system.

LEGISLATIVE RETIREMENT IN HAWAII

Existing Interpretations of the Retirement System Law

Under Hawaii's present retirement law, members of the territorial legislature are neither specifically included nor excluded from the territorial employees' retirement system. The law gives the board of trustees of the system the power to "deny the right to become members to any class of elected officials" or to "make optional with persons in any such classes their individual entrance into the system."¹⁸

The question of whether former legislative service could be counted for prior service credit under the retirement system was presented to the territorial attorney general's office at the time the retirement system was set up in 1926.

The opinion was written by Deputy Attorney General Marguerite K. Ashford on January 15, 1926 in response to a request from the territorial retirement system board. She advised the board that the law clearly distinguishes "employees" from "members of the legislature" by providing that no one holding office in the territorial or the federal government shall be eligible for election to the legislature. In making this distinction, the law rules

¹⁷Session Laws of Pennsylvania, 1947, Act 530, sec. 6.

¹⁸Revised Laws of Hawaii, 1945, sec. 703 (3).

out the possibility of considering legislators "employees of the territory" for the purpose of receiving credit for prior legislative service, she said.¹⁹

Although the territorial law has been interpreted to exclude members of the legislature from the retirement system, other elected officials have been permitted to join. Several members of the county boards of supervisors are members of the territorial employees retirement system. However, in nearly all of these cases, the individual joined the system while he was employed in some other government job and retained membership after election to the board of supervisors.

In general, the retirement system board seems to have adopted a liberal policy in permitting individuals to join the system. Officials of the retirement system say they do not recall that membership has been denied to anyone who applied for it.

Two Recent Proposals For Legislative Retirement Plans

During the 1949 session of the legislature, two bills were introduced to provide retirement benefits for legislators. Both failed to pass. A house bill (H. B. No. 1198) was filed. A senate bill (S. B. No. 7) was referred to the Holdover Committee of 1949 for further study.

The house bill would have given any legislator who had served at least two terms a \$60 a month pension when he reached the age of fifty-five. He would have received an additional \$20 a month for each additional two years of service, but the maximum amount was limited to \$200 a month. The benefits were to go to the legislator for life, and, on his death, to his widow for the remainder of her life. No provision was made for contributions by the

¹⁹Opinions of the Attorneys General of Hawaii, 1925-1926, Opinion 1297.

legislator toward his retirement. It was the apparent intention of the bill that the entire amount of the pension come from money appropriated by the Territory.

The senate bill would allow legislators to join the Territorial Employees' Retirement System. If they elected to do so, the provisions of the law and the rules and regulations of the retirement board would apply to legislators as they do to any other member of the system. Under this bill, the legislative retirement plan is an integral part of the territorial retirement system.

The senate bill amends the definition of the word "employee" to include "members of the legislature who wish to be so classified." It provides that any member of the legislature who was in service on July 1, 1949, or thereafter may become a member. But if he decides to join the legislative retirement system, he may not receive a pension or retirement allowance from any other pension or retirement system supported wholly or in part by the Territory or any county. He may receive credit for prior service by filing with the retirement system board a statement of his past service and making contributions therefor. The board must verify this statement before crediting him with prior service indicated.

H. B. No. 1198 may be criticized on the grounds that it would set up a separate system which does not fit into the pattern of the retirement plan now in operation for territorial employees generally. The pension benefits consist of an outright grant on the part of the Territory. In making no provision for contributions by the legislator, H. B. No. 1198 runs contrary to the practice followed in the fourteen state systems studied, in the federal plan and in Hawaii's own territorial retirement system. H. B. No. 1198 has

the advantage of providing the legislator substantial benefits upon retirement. But it might be questioned whether financing such a retirement system would place too great a burden on the Territory. According to an estimate prepared by Arthur R. Keller, Secretary of the Territorial Retirement and Pension Commission, this plan would have required a biennial appropriation of about \$112,000.²⁰

S. B. No. 7 makes the legislative retirement plan an integrated part of the territorial retirement system. Many of the problems discussed in the previous chapter may arise, however, if this bill should become law. The legislator's retirement plan created by S. B. No. 7 might be improved by amplifying it to make clear how certain sections will apply to legislators.

For example, Hawaii's present law allows a member of the retirement system to retire after discontinuing service only if he has had thirty years of creditable service prior to the time he leaves territorial employ.²¹ Patterning Hawaii's law after California's would eliminate this difficulty. California allows any legislator who has served one year and is otherwise qualified to receive retirement benefits on reaching retirement age whether he is an active member of the legislature or not.

Another section of Hawaii's present law which would appear to need modifying before its application to legislators becomes clear is paragraph 4 of section 704. This section says: "nor shall the board allow credit as service for any period of more than one month's duration during which the

²⁰Letter from Arthur R. Keller to Paul J. Thurston, Director of the Territorial Bureau of the Budget, April 18, 1949.

²¹Revised Laws of Hawaii, 1945, sec. 708 (1), as amended by Act 85, Session Laws of Hawaii, 1947.

employee was absent without pay." It would be possible to interpret this section to mean that the legislator would get credit for retirement only for the period during which he was actually on the job. If there were no special session, this would amount to slightly more than sixty days each two years.²² During the remainder of the two-year term, the legislator could be considered "absent without pay." If this interpretation were accepted, benefits to the legislator would be negligible. Assuming that the session lasts sixty days, he would have to hold office for twenty-four years to get the same amount of retirement service credit a territorial employee would receive during two full years.

Reference has already been made to the difficulty provisions of this sort have caused on the mainland. If it is decided that legislators should receive more than a "token benefit" on retirement, service should be measured in the number of years during which they hold office, not in the number of months of on-the-job work.

Another factor which affects a legislator's retirement benefits is the low salary he receives. In Hawaii, a legislator receives \$1,000 for a regular session of the legislature and \$500 for a special session.²³ Where there is no special session, his annual salary is \$500 a year. Computing his retirement benefit on the same basis as for other territorial employees, the legislator would get a retirement benefit of only about \$6 a month after ten years' service.

Other states have taken care of this problem by computing the

²²Hawaiian Organic Act, sec. 43.

²³Ibid., sec. 26.

legislator's retirement benefits on a different basis from that used for other state employees. The amount of his retirement benefits is increased by giving him a higher percentage of his final salary for each year of service. If it is desired to give Hawaii's legislators a larger retirement benefit, a change in the basis for calculating the amount of benefit could easily be made within the present framework of the territorial retirement law.²⁴

Hawaii's law contains a provision that a member may increase his retirement benefit by buying additional annuity.²⁵ He is entitled to buy enough additional annuity to provide himself with up to one-half of his salary. However, this section of the law would be of little value to the legislator who is already receiving a benefit equal to more than half of his salary through the minimum benefit provision. (Assuming he has ten years' service, he receives a retirement benefit of \$360 a year. His annual salary is \$500 a year.)

To obtain more than the \$30 a month retirement benefit, the legislator would have to have served more than forty years.

The salary paid legislator raises a problem not only with regard to

²⁴It should be noted, however, that the minimum benefit provision of Hawaii's retirement law actually serves to provide a legislator with substantially greater benefits than his salary and service would entitle him. The minimum benefit provisions entitle any employee who has served ten years or more to a benefit of at least \$30 a month. So instead of \$6 a month, the legislator who has served ten years would actually receive \$30 a month. Revised Laws of Hawaii, 1945, sec. 709 (1).

If legislators are admitted to the retirement system while the \$25 a month bonus remains in effect, with ten years' service they would receive a minimum of \$55 a month, or \$660 a year. This bonus is provided for the fiscal year ending in 1951 by Act 32, Special Session Laws of Hawaii, 1949.

²⁵Revised Laws of Hawaii, 1945, sec. 712.

the retirement benefit he would receive but also with regard to the finances of the retirement system. It could cause a heavy drain on the retirement system fund. This is how such a problem might arise. Under the retirement system law, an employee's retirement benefit is computed on the basis of the highest salary received over a consecutive five-year period. Monthly contributions, however, are based on the salary received at the time the contribution is due.

Suppose, for example, that an individual serves in the legislature at a salary of \$500 a year for ten years. Then, suppose that he is appointed to a territorial job paying \$10,000 a year and serves in this job for ten years. When he retires, he will be credited with twenty years of service and will receive an annuity amounting to his own contribution plus a pension equal to 1/140th of the highest salary over a five-year period for each of his twenty years of service.²⁶ For ten years of this service, his contribution to the system would have been only 1/140th of \$500. But the Territory would be paying a pension of as much for the period when the contributions were low as for the period when higher contribution were made. Making up the discrepancy between the contribution received and the benefit paid out for the period when the employee held the low paying job might place a heavy financial burden on the Territory, according to retirement system officials.

It is impossible to say how often the situation described above would arise or how seriously it should be considered in drawing up a legislator's retirement law. However, a suggested way of safeguarding against this difficulty would be to change the means of computing the legislator's service in

²⁶Revised Laws of Hawaii, 1945, sec. 708 (2).

cases when he has both legislative and non-legislative government service to his credit.

If the legislator moves from legislative service into a full-time territorial job, his legislative service could be counted only in terms of the months or days actually served--not in terms of the years he had held office. For example, instead of allowing him credit for two years of service at \$500 a year, he could be credited with two months of service at \$500 a month. For the purpose of computing his retirement benefits, his creditable service would amount to the number of years spent in full time territorial service plus the number of months served in the legislature. Precedent for this means of computing legislative service for a person who also has other territorial government service to his credit may be found in the system used in computing the service of part-time territorial employees who later become full-time territorial employees.

If the above system should be put into effect it would apply only when a person has both non-legislative and legislative service to his credit. If he has only legislative service, creditable service could be computed in terms of the number of years he held office.

Another point which should perhaps be clarified for the purposes of a legislative retirement system is the definition of compensation. The present law does not say whether or not per diem and other payments for miscellaneous expenses should be considered "salary" for the purposes of this law. The amount of per diem payment received by legislators from the neighbor islands is substantially larger than that received by legislators from Oahu. Neighbor island legislators receive fifteen dollars a day; Oahu legislators only five dollars a day. If per diem and other expenses are included, the neighbor

island legislators would receive a larger benefit than Oahu legislators--even though they had held office for the same period of time. For this reason, it might be desirable to consider as compensation only the actual salaries received by the legislators for a regular or special session of the legislature.

One further point which may need consideration in the creation of a legislative retirement system is the compulsory retirement provision. Under Hawaii's present law, employees are required to retire at the age of seventy. This provision might serve to remove from elective office able but elderly men.²⁷

In conclusion, if it is decided that Hawaii's legislators should be made eligible for retirement benefits, this could be accomplished in several ways. It seems likely that legislators could be admitted to the retirement system without amending the present territorial retirement law. The retirement system law gives the board of trustees of the retirement system discretionary powers to admit any class of elected officials. Although the territorial attorney's office interpreted the retirement law in 1926 to mean that legislators are not "employees" for the purposes of the retirement system, it seems possible that it might give a different interpretation to this point today.

Precedent for such an interpretation could be found in California supreme court's opinion in the case of Knight v. the Board of Administration of the State Employees Retirement System. This case tested the validity of the California legislative retirement law. In upholding the law, the court said:

²⁷Revised Laws of Hawaii, 1945, sec. 708 (1).

The term "employee" has no fixed meaning which must control in every instance. The flexibility of the term "employee" is of special significance when considered in connection with the rule that statutory provisions for pensions must be liberally construed to the end that their beneficial purposes are broadened rather than narrowed. . . . Thus "employee" should be given a comprehensive meaning to include officers elected or appointed, including legislators.²⁸

Even though legislators might be admitted to the retirement system under the present law, it seems doubtful that the present law makes adequate provision for legislative retirement needs. Further changes might profitably be made in the retirement system if it is made applicable to legislators.

²⁸Knight v. Board of Administrators of State Employees Retirement System, California, 196 P. 2d 547 (1948).

APPENDIX

Reference to Laws

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| California..... | California Statutes, 1947, ch. 879 as amended by ch. 1109 of California Statutes, 1949; or California Government Code, title 2, div. 2, pt. 1, ch. 3.5. |
| Florida..... | Florida Statutes, 1949, sec. 121.041. |
| Maryland..... | Annotated Code of Maryland, (1943 Supp.) sec. 3 of art. 73B, as amended by ch. 793, Laws of Maryland, 1945. |
| Massachusetts..... | Annotated Laws of Massachusetts, ch. 32 as amended by ch. 660, Acts and Resolves of Massachusetts, 1947. |
| Montana..... | Laws of Montana, 1945, ch. 212. |
| Nevada..... | Statutes of Nevada, 1947, ch. 181 as amended by ch. 124, Statutes 1949. |
| New Jersey..... | Revised Statutes of New Jersey, 1937, Vol. II, title 43, subtitle 5, ch. 14. |
| New York..... | Thompson's Laws of New York, pt. I, Civil Service Law, art. 4. |
| Ohio..... | Throckmorton's Ohio Code, Baldwin's 1948 Revision, ch. E, sec. 486 (32-74). |
| U. S. Government.. | Civil Service Retirement Act of May 29, 1930, as amended by Public Law 601, ch. 753, sec. 602, 79th Congress, 2nd session, 1946 or 5 U. S. C. A., sec. 693-1. |

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