



Territory of Guam
Territorio Guam

OFFICE OF THE GOVERNOR
UFISINAN I MAGA'LAHI
AGANA, GUAM 96910 U.S.A.

MAR 25 1993

REFER TO
LEGISLATIVE SECRETARY

A handwritten signature in black ink, likely belonging to the Legislative Secretary mentioned in the stamp above.

The Honorable Joe T. San Agustin
Speaker, Twenty-Second Guam Legislature
155 Hesler Street
Agana, Guam 96910

Dear Mr. Speaker:

Transmitted herewith is Bill No. 246 which I have signed into law this date as
Public Law 22-02.

Sincerely yours,

A handwritten signature in black ink, reading "Joseph F. Ada".

JOSEPH F. ADA
Governor of Guam

220119

Attachment

RECEIVED
OFFICE OF THE SPEAKER
DATE: 3/25/93
TIME: 2:30
RECD BY: [Signature]

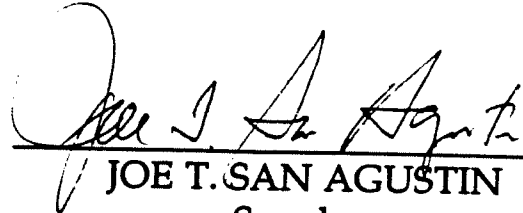


Commonwealth Now!

TWENTY-SECOND GUAM LEGISLATURE
1993 (FIRST) Regular Session


CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Bill No. 246 (LS), "AN ACT TO AMEND §6112 OF TITLE 7, GUAM CODE ANNOTATED, TO CLARIFY ITS PROVISIONS ON THE RETIREMENT OF JUDGES," was on the 16th day of March, 1993, duly and regularly passed.



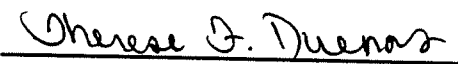
JOE T. SAN AGUSTIN
Speaker

Attested:



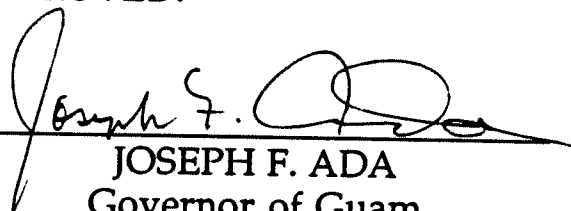
PILAR C. LUJAN
Senator and Legislative Secretary

This Act was received by the Governor this 17th day of March,
1993, at 4:30 o'clock P.M.



Assistant Staff Officer
Governor's Office

APPROVED:



JOSEPH F. ADA
Governor of Guam

Date: MAR 25 1993

Public Law No. 22-02

TWENTY-SECOND GUAM LEGISLATURE
1993 (FIRST) Regular Session

Bill No. 246 (LS)

As amended by the Committee on
Judiciary and Criminal Justice and
as further amended by the
Committee on Rules

Introduced by:

P. C. Lujan
T. C. Ada
J. P. Aguon
E. P. Arriola
M. Z. Bordallo
H. D. Dierking
C. T. C. Gutierrez
T. S. Nelson
V. C. Pangelinan
D. Parkinson
E. D. Reyes
J. T. San Agustin
F. R. Santos
D. L. G. Shimizu
J. G. Bamba
A. C. Blaz
D. F. Brooks
F. P. Camacho
M. D. A. Manibusan
T. V. C. Tanaka
A. R. Unpingco

AN ACT TO AMEND §6112 OF TITLE 7, GUAM CODE
ANNOTATED, TO CLARIFY ITS PROVISIONS ON THE
RETIREMENT OF JUDGES.

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:
2 Section 1. §6112 of Title 7, Guam Code Annotated, is hereby amended
3 to read:

1 "§6112. Resignation, or retirement for reasons of age. Any
2 Judge holding office at the time of enactment of this Act who
3 resigns after serving at least twenty (20) years, continuously or
4 otherwise, as a Judge, or after attaining the age of sixty-five (65)
5 and after serving at least fifteen (15) years, continuously or
6 otherwise, as a Judge, shall continue during the remainder of his
7 or her life to receive ninety percent (90%) of the salary he or she
8 received when he or she relinquished the office. For purposes of
9 calculating the number of years of service, a Judge in office on the
10 date of enactment of this Act shall receive one (1) year of credit for
11 each year of service with the government of Guam not as a Judge,
12 up to a maximum of five (5) years."

6

TWENTY-SECOND GUAM LEGISLATURE
1993 (FIRST) Regular Session

Date: 3/16/93

Bill No. 246

VOTING SHEET

Resolution No. _____

Question: _____

NAME	AYE	NO	NOT VOTING/ ABSTAN	ABSENT/ OUT DURING ROLL CALL
ADA, Thomas C.	✓			
AGUON, John P.				✓
ARRIOLA, Elizabeth P.	✓			
BAMBA, J. George		✓		
BLAZ, Anthony C.	✓			
BORDALLO, Madeleine Z.	✓			
BROOKS, Doris F.	✓			
CAMACHO, Felix P.			✓	
DIERKING, Herminia D.	✓			
GUTIERREZ, Carl T. C.	✓			
LUJAN, Pilar C.	✓			
MANIBUSAN, Marilyn D. A.			✓	
NELSON, Ted S.	✓			
PANGELINAN, Vicente C.	✓			
PARKINSON, Don				✓
REYES, Edward D.	✓			
SAN AGUSTIN, Joe T.	✓			
SANTOS, Francisco R.	✓			
SHIMIZU, David L. G.	✓			
TANAKA, Thomas V. C.	✓			
UNPINGCO, Antonio R.	✓			

TOTAL 16 1 2 2

Senator Pilar Cruz Lujan
Twenty-Second Guam Legislature

Legislative Secretary

Committee on Judiciary and Criminal Justice
Chairman

March 9, 1993

The Honorable Joe T. San Agustin
Speaker, Twenty-Second Guam Legislature
155 Hesler St.
Agana, Guam 96910

VIA: Chairperson, Committee on Rules

Dear Mr. Speaker:

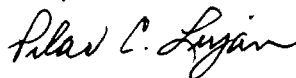
The Committee on Judiciary and Criminal Justice, to which was referred **Bill No. 246**, wishes to report its findings and recommendations to do pass.

The Committee voting record is as follows:

<u>8</u>	TO PASS
<u>0</u>	NOT TO PASS
<u>0</u>	ABSTAIN
<u>0</u>	TO PLACE IN INACTIVE FILE
<u>3</u>	Off-Island

A copy of the Committee report and all pertinent documents are attached for your information.

Sincerely,



PILAR C. LUJAN
Chairman



Twenty-Second Guam Legislature

155 Hesler Street
Agaña, Guam USA 96910

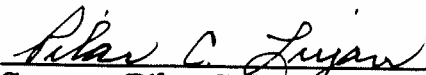

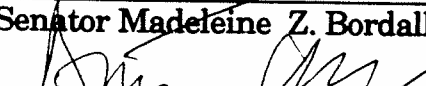
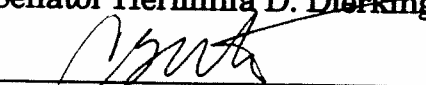

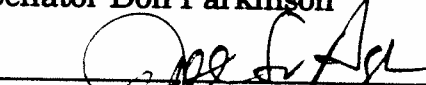


tel. (671)472-3444/5

Fax (671)477-9540

COMMITTEE ON JUDICIARY AND CRIMINAL JUSTICE

Substitute

Vote Sheet on: BILL 246

<u>COMMITTEE MEMBER</u>	<u>TO PASS</u>	<u>NOT TO PASS</u>	<u>ABSTAIN</u>	<u>TO PLACE IN INACTIVE FILE</u>
 Senator Pilar C. Lujan Chairman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Senator Francisco R. Santos Vice Chairman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ Senator Madeleine Z. Bordallo	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Senator Anthony C. Blaz	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ Senator Herminia D. Dierking	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Senator Carl T. C. Gutierrez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Senator Vicente C. Pangelinan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ Senator Don Parkinson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Speaker Joe P. San Agustin	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Senator Thomas V. C. Tanaka	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Senator Antonio R. Unpingco	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

COMMITTEE REPORT

On Bill 246

An act to amend §6112 of Public Law 21-147
relative to retirement of Judges.

Preface

The public hearing on **Bill 246** was conducted by the Committee on Judiciary and Criminal Justice on **Wednesday, February 24, 1993** in the **Legislative Public Hearing Room**.

The hearing was called to order by Committee Chairwoman **Pilar C. Lujan**. Also present was Senator **Doris F. Brooks** and Legislative Counsel **Andy Gayle**.

Overview

In December 1992, after nearly eight years of effort, a local Supreme Court was created.

Alongside of providing for the new 3-panel court, reorganization of the judiciary including provisions concerning judicial retirement were contained in the **Frank G. Lujan Memorial Court Reorganization Act of 1992**.

One of those provisions, section 6112, allowing for a retired judge to have his or her annuity adjusted upward every time sitting judges receive pay increases was crafted under a 1985 Law Revision Commission draft of the local Supreme Court Act.

At that time, salaries of judges were \$60,000 per annum. Subsequent legislation was passed increasing judges' salaries to the current \$100,000 per annum.

Additionally, the section extends to sitting Judges on the date of enactment of this Act a maximum of five years credit of non-judicial service within GovGuam. However, language needs to be clarified to ensure that such sitting Judges receive one year of credit for each year of service with GovGuam not as a Judge, up to a maximum of five years.

Committee Findings

At the outset of the hearing, legislative counsel Andy Gayle noted that he had worked on the final draft language of Public Law 21-147 and that *"the last three lines which refer to the years of credit for prior government service were intended to provide that each Judge gets a credit of one year for each year of government service, but no more than five. So this is merely an attempt to clarify what was not too clear before."*

The legislative counsel added that the other language allowing retirement annuity adjustments upward was being modified under Bill 246.

In response to concerns articulated by Judge Peter Siguenza, (ATTACHMENT I), the legislative counsel noted that existing laws do not prohibit the legislature from modifying or amending salaries of sitting Judges.

Attorney General Elizabeth Barrett-Anderson presented testimony based upon a legal opinion supporting legislative counsel's views on the retirement credit and noted that the retirement annuity adjustment provisions were a policy decision of the legislature.

In response to Committee Chairman Lujan's inquiry on the intent of the retirement credit language, the Attorney General said *"as far as I can see, it is crystal clear."*

The Attorney General, however, added that work and review on the annuity adjustment was being conducted by her office in concert with the Superior Court staff attorney's office.

The Attorney General testified that she was generally in favor of Bill 246.

Unrelated to the retirement section, the Attorney General requested the Committee to consider repeal of another section within the Supreme Court Act requiring government attorney's to take the bar exam. Committee Chairman Lujan noted that the issue would be addressed at another hearing. Compiler of Laws Charles Troutman submitted testimony (ATTACHMENT II) noting the duplication of intent in Sections 6114 and 6117. He suggested repealing Section 6117.

Court Clerk Don Calvo presented the testimony of Judge Peter Siguenza (see ATTACHMENT I).

Committee Recommendations

To provide clarification and legislative intent on retirement provisions of the recently enacted Supreme Court Act, the Committee recommends passage of Bill 246 with minor technical amendments. (see attached Substitute Bill 246)

TWENTY-SECOND GUAM LEGISLATURE
1993 (FIRST) Regular Session

Bill No. 246

As amended by the:

Committee on Judiciary
& Criminal Justice

Introduced by:

P. C. Lujan

**AN ACT TO AMEND SECTION §6112 OF PUBLIC LAW 21-147
RELATIVE TO RETIREMENT OF JUDGES.**

1 **BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:**

2 **Section 1.** § 6112 of Public Law 21-147 is hereby amended to read:

3 "§6112. Resignation, or retirement for reasons of age. Any Judge holding
4 office at the time of enactment of this Act who resigns after serving at least
5 twenty (20) years, continuously or otherwise, as a Judge, or after attaining the
6 age of sixty-five (65) and after serving at least fifteen (15) years, continuously
7 or otherwise, as a Judge, shall continue during the remainder of his or her life
8 to receive ninety percent (90%) of the salary he or she received when he or
9 she relinquished the office [~~or ninety percent (90%) of the salary of a sitting~~
10 ~~Judge on the court from which the Judge has retired, whichever is higher].~~

11 For purposes of calculating the number of years of service, a Judge in office on
12 the date of enactment of this Act shall receive one (1) year of credit [of up to a
13 maximum of of five (5) years] for each year of service with the government of
14 Guam not as a Judge, up to a maximum of five (5) years."

2/19/93
KPL

TWENTY-SECOND GUAM LEGISLATURE
1993 (FIRST) Regular Session

Bill No. 246

Introduced by:

P. C. Lujan *pcz*

AN ACT TO AMEND SECTION §6112 OF PUBLIC LAW 21-147
RELATIVE TO RETIREMENT OF JUDGES.

1 **BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:**

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5 **twenty (20) years, continuously or otherwise, as a Judge, or after attaining the**
6 **age of sixty-five (65) and after serving at least fifteen (15) years, continuously**
7 **or otherwise, as a Judge, shall continue during the remainder of his or her life**
8 **to receive ninety percent (90%) of the salary he or she received when he or**
9 **she relinquished the office [or ninety percent (90%) of the salary of a sitting**
10 **Judge on the court from which the Judge has retired, whichever is higher].**

11 **For purposes of calculating the number of years of service, a Judge in office on**
12 **the date of enactment of this Act shall receive one (1) year of credit [of up to a**
13 **maximum of of five (5) years] for each year of service with the government of**
14 **Guam not as a Judge, up to a maximum of five (5) years."**



SUPERIOR COURT OF GUAM
 Judiciary Building
 110 West O'Brien Drive
 Agana, Guam 96910



Chambers of
PETER C. SIGUENZA
 Judge

Tel: (671) 472-8961-8

February 8, 1993

Senator Pilar Lujan
 Chairwoman
 Committee on Judiciary
 and Criminal Justice

Dear Senator Lujan:

I have long supported the creation of a Supreme Court of Guam, and I was pleased that Bill 102 was passed by the legislature and signed into law by the Governor as Public Law 21-147.

However, I must strongly protest Bill No. 246 which proposes to amend Public Law 21-147, Section 6112.

Bill No. 246 proposes to change the current law regarding judicial retirement in terms of eligibility and dollar amount. It is my opinion that Bill No. 246 is in direct violation of CCP §81 which provides that "... the salary ... of the judges shall be fixed by law and shall not be diminished during their terms of office."

This statute is designed specifically to ensure and safeguard the independence of the Judiciary and to promote public confidence in the notion that decisions on important and sensitive topics that affect all citizens are made by impartial judges.

With these salient goals in mind then, it cannot be argued that a judge's retirement benefits can be diminished, but his or her salary cannot. For purposes of judicial independence, neither salary nor benefits can be diminished during a judge's term of office.

I stand firmly behind this principle of judicial independence, and I must vigorously oppose any attempt to amend the existing law regarding judicial retirement.

I know you will give this matter serious thought, and I urge you to withdraw Bill No. 246.

Respectfully,

Peter C. Siguenza
 Peter C. Siguenza

OFFICE OF THE LEGISLATIVE SECRETARY	
ASSIGNMENT RECEIPT	
Received By	<u><i>DM</i></u>
Time	<u>10:42 A.M.</u>
Date	<u>2.9.93</u> J00144



Office of the Attorney General
Territory of Guam
Compiler of Laws Division

Elizabeth Barrett-Anderson
Attorney General

Phone: (671) 475-3324
Telefax: (671) 477-6118

Donald L. Paillette
Chief Deputy Attorney General

February 24, 1993

Charles H. Troutman
Compiler of Laws

Honorable P.C. Lujan
Chairman
Committee on Judiciary & Criminal Justice
Twenty-second Guam Legislature
Agana, Guam

Dear Senator Lujan,

After examining the recently passed Supreme Court Act, I wish to testify in favor of Bill No. 246 and suggest several areas that definitely need amendment. These are listed on the attached pages.

There are two more problems with sitting judges' retirement. I do not have access to the exact times involved, but I believe the new act should leave no possibility for serious harm to any sitting judge.

The rider dealing with Government Attorneys becomes more incomprehensible the more I read it. You should repeal it and, if new legislation is needed, pass it, but only after a public hearing on the subject. Today is not the time to go into the merits of the proposal, since I really do not know how this section can be interpreted!

You should rethink the qualifications of temporary judges, and clear up the conflict there, too. I do wish that the Legislature would repeal reference to having off-island judges sit on Guam's Supreme Court. This section is taken from the old situation during the Trust Territory High Court, when Congress felt that both it and the District Court were legislative courts, so judges of both courts could just as easily sit on the other court. Now, every part of the old Trust Territory is a separate jurisdiction, some independent or soon to be so. We should reexamine this and not just copy past practices here. If you desire to retain this provision, please make sure that the choice of such "designated judges" is done only if no other judge on Guam can serve.

Sincerely yours,

Charles H. Troutman

CHARLES H. TROUTMAN COMMONWEALTH NOW!

238 Archbishop F.C. Flores Street, Suite 701

Agana, Guam USA 96910

OFFICE OF THE LEGISLATIVE SECRETARY

ACKNOWLEDGMENT RECEIPT

Received By *[Signature]*

Time _____

Date

2-24-93

000216

SUGGESTED AMENDMENTS
FOR
SUPREME COURT ACT

I have five major concerns regarding the recently enacted Supreme Court law. I believe that each should be addressed by the legislature and amended accordingly.

1. Judicial Retirement

You have addressed the first concern in Bill No. 246. However, that section contains a problem similar to that which required an Organic Act amendment -- namely, that the number of years of required service in the case of retirement on account of age is 15 years. The federal amendment increased the term of a territorial District Court judge to ten years to correspond to the minimum period of service required before a federal judge could retire. I suggest that, on Guam, the retirement limit be changed because there is so little time between two full terms as a judge and 15 years, depending upon the actual dates of appointment. The accident of appointment should not deprive a judge of retirement on account of age. Fifteen years may be just a few months, certainly less than one year, more than two full terms of a Superior Court judge, since each term is seven years plus the time until the next January following the retention election. In most instances, that may actually add up to slightly more than 15 years, but there is a possibility that it may not, depending upon when the judge was appointed. To cure this problem, I suggest that the clause be amended to read:

“... or after attaining the age of 65 and after serving at least 15 years, or two full terms as a judge of the Superior Court. . . .”

My second concern is with §6114 and §6117. Section 6114(a) says that “any Judge holding office” may elect to bring himself within the purview of the Retirement Fund if he does so within six months after enactment (sometime in July 1993). There is no limitation on this right of election. However, §6117, taken from former law and only slightly amended, indicates that, perhaps, a judge can elect to receive retirement benefits from the Retirement Fund only if “he or she is a member of the Fund.”

Must a judge be eligible to be a member of the Retirement Fund, i.e., under the age of 60 at the time of election, in order to participate in either the election under §6114 or §6117? The two sections indicate that the Legislature may be waiving this age requirement. Whatever the intent, it should be made clear. If the Legislature wishes to waive the age requirement of the Retirement Fund, I urge that §6114 be amended to read:

“... may, by written election filed with the Government of Guam Retirement Fund (the ‘Fund’) and regardless of his or her age at the time of election, within six months . . .”

Of course, other provisions are required to provide for that judge to pay in his contribution, with interest, in the same manner as any other employee who is reentering the Fund.

2. Government Attorneys Practicing without Examination

Regardless of what you eventually decide to do on the merits of this issue, please

be aware that §8 both amends a series of sections which were repealed in the 14th Guam Legislature and refers to sections (§§28002 and 28002.1) which were also repealed in the 14th Legislature. These series of sections were the old law governing lawyers prior to the creation of the Integrated Bar Act. Since the Integrated Bar Act, government attorneys who are not otherwise regularly admitted to the Bar of Guam, are governed by §28019.1.

As now written, and considering the meaning of the repealed sections, this §8 is truly obscure. It purports to apply to attorneys not admitted under *either* §28002 or §28002.1. These two sections did the same thing as current §28019 and §28019.1. The former provides for "regular" admission to the Bar. The latter says that government attorneys may practice without taking the bar examination. There is no other way by which attorneys can **regularly** practice before the courts of Guam. Another section of current law governs practice *pro hac vice*, where an attorney comes in for only one case. In government practice, this would be a person hired as a special assistant attorney general. However, present law governs both private and government attorney alike since neither is admitted to practice law before the courts of Guam.

So, taken literally, and assuming the current sections which followed the repealed ones referred to, this section would still not apply to lawyers employed by the government on a regular or contract basis, nor logically to persons hired for a single matter.

I strongly urge that you repeal this §8 and, following a public hearing, take whatever action you deem necessary. This section is, quite frankly, beyond amending. Also, it is unnecessary, and subject to a very short life because the Chapter of which it was supposed to be a part will be repealed when the Supreme Court takes over the regulation of attorneys.

3. Qualifications of Temporary Judges

1. I strongly urge that you repeal the restriction on Part-Time Justices, contained in §3103(n), that prohibits any such person from being employed by the Government of Guam or representing any instrumentality thereof. If you are worried about conflicts of interest, then other law contained in the Title deals with that problem on an equal basis as with any lawyer in private practice. No one can judge a case in which he or she was involved as a lawyer, or party, or an associate of either, no matter that the parties being judged were government or private. For an attorney in private practice, a government instrumentality is just another client and conflicts are regulated in the same way as any other client. For attorneys in government service, there could be problems, but they can be solved under existing law on government employment, and if the two roles were determined by the agency head or Governor to be incompatible, then, on an individual basis, the person would not be appointed.

If this section represents some sort of bias against lawyers who represent the government in any capacity -- that they are somehow less qualified to serve as judges -- then this restriction is simply reprehensible with nothing good to support it.

In any event, it is not necessary and should be removed.

4. Appointment of Temporary Judges - conflict of law.

As to Justices of the Supreme Court, there is a clear conflict between §3103 and §6108. The former section requires all part-time Justices to be confirmed by the

Legislature. The latter section not only does not require confirmation, it provides for appointment by the Chief Justice from among a pre-determined list.

My own preference is to regain §6108 and repeal those inconsistent parts of §3103. If you retain both, the doctrine of the Ninth Circuit in the area is to refuse to enforce *either* section. Thus, the whole idea of part-time justices could be in jeopardy.

5. Initial Organization of the Supreme Court.

The initial organization of the Supreme Court turns around the idea of a Supreme Court and makes its validity questionable from the start. This was created as a **Supreme Court**, not as a branch of the Superior Court. Therefore, the Justices should be appointed first and then given the task of making the necessary rules and staffing patterns. Once they are appointed, you, the Legislature are certainly free to require that this initial organization be undertaken by a committee such as the one you have set up. Likewise, it is entirely proper to set back the opening of the court until all of the above has been accomplished.

Nevertheless, **the Justices should be the ones tasked with the organization, not the Superior Court.**

FEB 26 1993

TWENTY-SECOND GUAM LEGISLATURE
1993 (FIRST) Regular Session

Bill No. 246 (LS)

Introduced by:

P. C. Lujan *pcj*

AN ACT TO AMEND SECTION §6112 OF PUBLIC LAW 21-147
RELATIVE TO RETIREMENT OF JUDGES.

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7 or otherwise, as a Judge, shall continue during the remainder of his or her life
8 to receive ninety percent (90%) of the salary he or she received when he or
9 she relinquished the office [or ninety percent (90%) of the salary of a sitting
10 Judge on the court from which the Judge has retired, whichever is higher].

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13 maximum of of five (5) years] for each year of service with the government of
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