



**TESTIMONY OF THE STATE ATTORNEY GENERAL
TWENTY-FOURTH LEGISLATURE, 2008**

ON THE FOLLOWING MEASURE:

H.B. NO. 3287, RELATING TO PUBLIC EMPLOYMENT.

LATE TESTIMONY

BEFORE THE:

HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

DATE: Friday, February 8, 2008 **TIME:** 8:30 AM

LOCATION: State Capitol, Room 309
Deliver to: Committee Clerk, Room 424, 5 copies

TESTIFIER(S): Mark J. Bennett, Attorney General
or Brian Aburano, Deputy Attorney General

Chair Sonson and Members of the Committee:

The Attorney General has a number of concerns with this bill as presently worded.

This bill seeks to amend sections 87A-35 and 87A-36, Hawaii Revised Statutes (HRS) to permit employees who were hired prior to July 1, 1996, and who have a break in service prior to accumulating ten years of credited service, to qualify for the maximum base monthly contribution under section 87A-33, HRS, if they return to State or county employment and cumulatively accrue a total of ten years of credited service whether such credited service occurred before or after the break in service (page 1, line 10 to page 4, line 6). The bill also amends section 88-62, HRS, to provide that the membership status of the following former contributory plan members (classes A and B) of the Employees' Retirement System ("ERS") shall be in accordance with section 88-97, HRS,: (a) former members who have less than five years of credited service and who have been out of service for four full calendar years after the year in which they left service; (b) former members who withdrew their accumulated contributions from the ERS; and (c) former members who have less than five years of credited service, did not withdraw their accumulated contributions, and return within four full

calendar years of the year in which they left service (page 4, line 7 to page 6, line 16). The bill also amends section 88-273, HRS, to provide that any former non-contributory plan member (class C) of the ERS who becomes a member again more than one calendar year after the member's date of termination shall have all service credit for prior service restored rather than having one month of prior service restored for each month of service rendered after returning to membership (page 6, line 17 to page 8, line 3). Finally, the bill also amends section 88-342, HRS, to provide that a former hybrid class member (class H) of the ERS who does not have vested benefit status when he or she returns to service shall be credited with all service credit that the member had when he or she terminated employment (page 8, line 4 to page 9, line 9).

First, it is not necessary to amend HRS section 88-62, 88-273, or 88-342, if the purpose of the bill is to require the public employers to pay up to the entire base monthly contribution for retirees who were hired prior to July 1, 1996, have a break in service of more than one year, and cumulatively accrue ten years of credited service either prior to or after the break in service (page 1, lines 1-9). Former ERS members who return to service after a break in service of any duration may restore prior service credits by making a lump-sum payment, entering into an irrevocable payroll authorization plan, or earning back service-credits on a month by month basis. See section 88-59, HRS, (allowing contributory plan members to restore prior service credits by making a lump-sum payment or entering into an irrevocable payroll authorization plan; section 88-273, HRS, (allowing noncontributory plan members to earn back prior service credits); and section 88-324, HRS, (allowing hybrid class members to restore prior service credits by making a lump-sum payment or entering into an irrevocable payroll authorization plan).

Second, the proposed amendment to section 88-62, HRS, is confusing. The proposed amendment provides that former contributory

plan members with less than five years of credited service or who have withdrawn their accumulated contributions shall, upon a return to service, have membership status in accordance with section 88-97, HRS. Section 88-97, HRS, provides that former members who have vested benefit status under section 88-96(b), HRS, shall upon return to service resume their membership and obtain retirement benefits based on their combined service. However, section 88-96(b), HRS, pertains only to former members who have five or more years of credited service and grants vested benefit status only to such members who have not withdrawn their accumulated contributions. Thus, it is unclear what the proposed amendment to section 88-62, means to accomplish.

In addition, section 88-97, HRS, pertains to the return to service of contributory plan members who have "vested benefit status" under section 88-96(b), HRS. Under section 88-96(b), HRS, vested benefit status appears to mean being eligible for service retirement benefits. It is unclear how a former contributory plan member with less than five years of credited service or who has withdrawn all of his or her accumulated contributions could be considered a member who has vested benefit status. Under section sections 88-73(a) and 88-96, HRS, such members are not eligible for service retirement benefits.

Third, the proposed amendment to section 88-62, HRS, seems to allow former contributory plan members who have withdrawn their accumulated contributions to obtain retirement benefits based on their total combined years of service without requiring them to pay for the restoration of prior service credit under section 88-59, HRS. This would be unfair to other contributory plan members who have the same total number of years of service but no break in service because: (a) the former contributory plan members would obtain the same retirement benefits as the contributory plan members who did not have a break in service; and (b) the former contributory plan members unlike the contributory plan members who did not have a

break in service would also benefit from an early return of their accumulated contributions.

Fourth, many of the same issues raised regarding the proposed amendment to section 88-62, HRS, pertain to the proposed amendment to section 88-342, HRS. The proposed change to section 88-342, HRS, treats former hybrid plan members who do not have vested benefit status upon a return to service, the same as former hybrid plan members who do have vested benefit status. See section 88-343, HRS. It does not require former hybrid plan members who have withdrawn accumulated contributions from prior service to pay for such service in order to have it used in computing their retirement benefits. In this respect, it is inconsistent with the provisions of sections 88-324 and 88-341, HRS.