

TESTIMONY BY DAVID SHIMABUKURO
ADMINISTRATOR, EMPLOYEES' RETIREMENT SYSTEM
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON FINANCE
ON
SENATE BILL NO. 3005, S.D.2, H.D. 1

MARCH 26, 2008

RELATING TO FEDERAL TAX QUALIFICATION
OF THE EMPLOYEES' RETIREMENT SYSTEM

Chair Oshiro and Members of the Committee:

The Board of Trustees supports the original intent of this Administration Bill which amended various provisions of Chapter 88, Hawaii Revised Statutes to comply with federal income tax laws and to maintain the tax-qualified status of the Employees' Retirement System.

However, the Board of Trustees opposes the recent amendments in S.B. 3005, S.D. 2, H.D. 1 which repealed the 75% statutory ceiling on retirement benefits for elective officers and judges (section 10: page 20, lines 13 to 22; page 21, lines 1 to 5; and page 24, lines 3 to 15.)

- The recent amendments affords elective officers and judges an enhanced retirement benefit which will increase the ERS' \$5.1 billion unfunded liability. This is contrary to the provisions of Act 256, Session Laws of Hawaii 2007, which placed a moratorium on benefit enhancements until January 2, 2011.
- These amendments are not related to federal tax qualification issues but are retirement benefit enhancement amendments which deviate from the Bill's title "Relating To Federal Tax Qualification Of The Employees' Retirement System."

This Bill requires other substantial technical changes. We, therefore, recommend that this Bill be revised back to the provisions in S.B. No. 3005, S.D. 2 to carry out the intent of this Bill.

Thank you for the opportunity to testify on this Bill.

TESTIMONY BY GEORGINA K. KAWAMURA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON FINANCE

ON
SENATE BILL NO. 3005, SENATE DRAFT 2, HOUSE DRAFT 1

March 26, 2008

RELATING TO THE FEDERAL TAX QUALIFICATION OF THE EMPLOYEES'
RETIREMENT SYSTEM

Senate Bill No. 3005, Senate Draft (SD) 2, House Draft (HD) 1 amends statutes governing the Employees' Retirement System (ERS) to protect its tax qualified status. House Draft 1 additionally deletes the existing pension benefit limit (seventy-five percent of average final compensation) for judges and elective officers.

The Department of Budget and Finance supports this administration measure as reflected in SD 2 and not the change included in HD 1. The HD 1 amendment is a benefit enhancement and is inconsistent with the title of the bill as it is not a tax qualification related issue.

In its original form, this bill eliminates optional membership in the ERS and includes 1) implementation of a one-time irrevocable election (at the time of initial election to office) to join the ERS by elective officers and 2) prohibition of the current practice by elective officers and judges to retire upon reaching the statutory cap on retirement benefits but delaying receipt of the benefits until a future separation date. Entrance into membership is currently at the option of elective officers and this optional membership jeopardizes the ERS' tax qualified status. The practice of retiring but delaying receipt of benefits until a future separation date

while the judge or elective officer continues in office raises tax qualification issues on optional membership and in-service distribution of pre-tax contributions. The bill also sets forth conditions under which a retiree may return to service as an elective officer and continue to receive their pension.

Inclusion of the HD 1 amendment is contrary to the benefit enhancement moratorium contained in Act 256, SLH 2007 and will further increase the ERS' \$5.1 billion unfunded liability. We support Senate Draft 2 of this bill as it protects the ERS' tax qualified status and ensures the continued favorable tax treatment of employee contributions made on a pre-tax basis.



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

ON THE FOLLOWING MEASURE:

S.B. NO. 3005, S.D. 2, H.D. 1 RELATING TO FEDERAL TAX QUALIFICATION OF THE EMPLOYEES' RETIREMENT SYSTEM.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Wednesday, March 26, 2008 **TIME:** 2:00 PM

LOCATION: State Capitol, Room 308
Deliver to: Committee Clerk, Room 306, 2 Copies

TESTIFIER(S): Mark J. Bennett, Attorney General
or Diane S. Kishimoto, Deputy Attorney General

Chair Oshiro and Members of the Committee:

This bill violates the requirement of section 14 of article III of the Hawaii Constitution that the subject of the bill be expressed in its title. The subject of this bill, as expressed in its title, is the federal tax qualification of the employees' retirement system. The amendment to section 88-74, Hawaii Revised Statutes, made by section 10 of the bill is beyond the scope of the bill's title. Section 10 of the bill was added by H.D. 1. Section 10 repeals the cap on the percent of the "average final compensation" used to calculate the retirement allowance of judges, elective officers, and legislative officers. The repeal of the cap is not related to the federal tax qualification of the employees' retirement system.

We recommend that section 10 be deleted to avoid violation of section 14 of article III of the Hawaii Constitution.