

TESTIMONY BY DAVID SHIMABUKURO
ADMINISTRATOR, EMPLOYEES' RETIREMENT SYSTEM
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
ON
HOUSE BILL NO. 2533

RELATING TO THE
EMPLOYMENT OF EMPLOYEES' RETIREMENT SYSTEM RETIRANTS

FEBRUARY 5, 2010

Chair Rhoads and Members of the Committee:

The Board of Trustees supports this Administration Bill and recommends its passage as it is intended to maintain the status of the ERS as a tax-qualified retirement plan by providing penalties for retirants who are reemployed in violation of chapter 88 and the Internal Revenue Code of 1986, as amended.

This Bill also provides a more comprehensive structure by including certain provisions of Act 286, Session Laws of Hawaii 2006 (retired teachers and Department of Education administrators employed in teacher shortage areas or mentors for new teachers) and Act 156, Session Laws of Hawaii 2008 (labor shortage or difficult-to-fill positions)by:

- o Establishing the conditions for reemployment of a retirant in a position that is excluded from ERS membership (e.g., temporary or part-time) by requiring a six month "retirement" provision.
- o Requiring the retirant to reimburse the ERS for any retirement allowance or other benefit paid during the reemployment if in violation of the ERS statutes, plus eight per cent annual interest.
- o Requiring the retirant and the employer to pay the employee and employer contributions that should have been paid during the reemployment if in violation of the ERS statutes, plus eight per cent annual interest.
- o Requiring the employer and retirant to reimburse the ERS for administrative expenses incurred in responding to the violation, to the extent the retirant is determined to be at fault.

Thank you for the opportunity to testify on this measure.

WRITTEN ONLY

Date: 02/05/2010

Committee: House Labor & Public
Employment

Department: Education

Person Testifying: Kathryn Matayoshi, Interim Superintendent of Education

Title of Bill: HB 2533 Employees' Retirement System; Reemployment of Retirants

Purpose of Bill: The employees' retirement system of the State of Hawaii is intended to be a tax-qualified retirement plan under section 401(a) of the Internal Revenue Code of 1986, as amended (Code). Generally, the Code prohibits distribution of retirement benefits prior to an employee's "retirement". If a retiree is reemployed, without a bona fide separation from service, the retiree may not be considered to be retired for purposes of the Code. The legislature finds that chapter 88, Hawaii Revised Statutes, should be amended to clarify the circumstances under which an employees' retirement system retirant may be reemployed without the suspension of the retirant's benefits and to provide remedies for the employees' retirement system if a retirant is reemployed in violation of chapter 88 and the Code.

Department's Position: The Department of Education does not support H. B. 2533. The Department is aware of the Employee Retirement System (ERS) goal to maintain its tax-qualified status under section 401(a) of the Internal Revenue Code of 1986, as amended (Code). The Department has strived to be in compliance with current Hawaii Revised Statutes and has been proactive in auditing and changing any relevant policies in terms of reemploying retirees since the passage of Act 286 SLH 2006 and Act 156 SLH 2008. H. B. 2533 appears to give remedies to the Employee Retirement System (ERS) if any State or County agency employs a retirant in violation of the law or code. The Department does not support

this measure because there could be unexpected employee and employer ramifications; for example, when an employer or an employee is determined by the administrator to be at fault and there is disagreement in the finding. If H. B. 2533 is passed, the Department suggests that the law be amended to include an appeals process as part of the implementation.



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The Twenty-Fifth Legislature, State of Hawaii
Hawaii State House of Representatives

Committee on Labor & Public Employment

Testimony by
Hawaii Government Employees Association
February 5, 2010

H.B.2533 – RELATING TO THE
EMPLOYMENT OF EMPLOYEES'
RETIREMENT SYSTEM RETIRANTS

The Hawaii Government Employees Association Retirees Unit, AFSCME Local 152, AFL-CIO, supports H.B. 2533. The bill seeks to specify the various conditions that must be met before a person who had previously retired from State or County employment could be reemployed with the State or County.

The bill also establishes penalties for those individuals who violate the conditions set out in the bill for reemployment with the State or County governments. H.B. 2533 is intended to conform Hawaii law to the federal Internal Revenue Code and keep our retirement system recognized as a tax-qualified retirement plan.

It is on that basis that the HGEA Retirees Unit supports and urges passage of H.B. 2533.

Respectfully submitted,

Nora A. Nomura
Deputy Executive Director