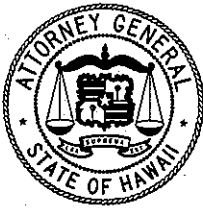


TESTIMONY

SB692

LATE



**TESTIMONY OF**  
**THE DEPARTMENT OF THE ATTORNEY GENERAL**  
**TWENTY-FIFTH LEGISLATURE, 2010**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 692, RELATING TO WORKERS' RIGHTS.

**BEFORE THE:**

SENATE COMMITTEE ON LABOR

**DATE:** Tuesday, February 9, 2010      **TIME:** 3:00 p.m.

**LOCATION:** State Capitol, Room 224

**TESTIFIER(S):** Mark J. Bennett, Attorney General, or  
Nelson T. Higa, Deputy Attorney General

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Chair Takamine and Members of the Committee:

The Attorney General has legal concerns with this bill.

Section 1 of this bill proposes that a new section be added to chapter 388, Hawaii Revised Statutes (HRS), allowing an employee suffering from a disability as defined under section 392-3, HRS, who has vested in an employer's pension plan to be able to begin to receive pension benefits regardless of age.

This provision appears to run afoul of the Employee Retirement Income Security Act of 1974 (ERISA). Section 1144(a) of Title 29 of the United States Code preempts "any and all State laws insofar as they may now or hereafter relate to an employee benefit plan." Section 1002(2) of Title 29 of the United States Code defines an "employee benefit plan" as "an employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan."

The United States Supreme Court in New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Insurance Company, 541 U.S. 645, 657, 115 S. Ct. 1671, 1677-78 (1995), observed that "The basic thrust of the [ERISA] pre-emption clause, then, was to avoid a multiplicity of [state and local] regulation in order to permit the nationally uniform administration of employee benefit plans." This

bill would directly dictate, regardless of the pension plan's age requirements, when an employer's pension plan is required to begin payment of pension benefits. This bill thus relates to an employee benefit plan and is most likely subject to preemption.

Section 2 of this bill proposes to amend section 386-89(b), HRS, to allow the Director of Labor and Industrial Relations to reopen workers' compensation settlements from July 1, 1997, onward.

This provision appears to have several legal concerns. First, this bill may violate the single-subject requirement of section 14 of article III of the State Constitution. Article III, section 14 requires that "[e]ach law shall embrace but one subject, which shall be expressed in its title." The title of a bill must "fairly indicate[] to the ordinary mind the general subject of the act, . . . [must be] comprehensive enough to reasonably cover all its provisions, and . . . [must not be] calculated to mislead." Schwab v. Ariyoshi, 58 Haw. 25, 34 (1977).

Here this bill is titled "relating to workers' rights." However, this amendment additionally provides enhanced rights for employers as well as the State.

Consequently, the proposed bill no longer deals just with provisions governing workers' rights, the subject expressed in the title, and cannot be said to "fairly indicate to the ordinary mind the general subject of the act." Because the subject matter of S.B. No. 692, applies to more than workers, it appears to be a violation of section 14 of article III of the State Constitution and may not validly become law.

Secondly, section 2 applies retroactively for a period of time of approximately thirteen years. Settlement agreements are contracts and section 2 significantly extends the time limit to bring legal action relating to contracts beyond six years. Finally, there are already remedies for settlements procured under fraud, and section 2 does not

define what standard of proof a party seeking to reopen a settlement must meet.

It is well-established that a retroactive law in a constitutional sense is one that takes away or impairs vested rights acquired under existing laws or attaches a new obligation, imposes a new duty, or attaches a new disability with respect to transactions or considerations already concluded. Employees Retirement Sys. v. Chang, 42 Haw. 532, 535 (1958). Generally, retrospective laws are not favored and all laws will be construed as prospective unless retrospective application is clearly intended and expressly declared, or is necessarily implied from the language used. Clark v. Cassidy, 64 Haw. 74 (1981). This principle is particularly applicable where the statute or amendment involves substantive, as opposed to procedural, rights. Clark, 64 Haw. at 77; Dash v. Wayne, 700 F. Supp. 1056 (D. Haw. 1988).

With respect to the constitutional proscription against impairment of contracts, it is a fundamental principle that obligations of a contract cannot be impaired by subsequent passage of any law. Taylor v. Taylor, 537 P.2d 483, 486 (Mont. 1975); Pulos v. James, 302 N.E.2d 768, 775 (Ind. 1973). The obligation of a contract is impaired by a law that alters the contract's terms by creating new rights or imposing new conditions or different liabilities. Northern Pacific Railway v. Duluth, 208 U.S. 583, 590 (1908). "Any law which changes the . . . legal effect of the original parties, giving to one greater or the other a less interest or benefit in the contract, impairs its obligation." Kentucky Utilities Co. v. Carlisle Ice Co., 131 S.W.2d 499, 504 (1939). See also Anthony v. Kualoa Ranch, Inc., 69 Haw. 112, 119-24 (1987) (law, enacted after lease executed, that required lessors to pay, at the sole option of the lessees, for improvements built upon the leased premises in order to get the leased premises back, substantially impaired the contractual rights of the parties and was unconstitutional). Because section 2 appears to allow executed settlement contracts from thirteen years ago to be reopened, without

reference to the standard of proof required, and without express reference to the retroactive nature of the provision, this bill violates well-settled legal standards.

We respectfully request that this bill be held.

HAWAII STATE  
TWENTY-FIFTH LEGISLATURE  
REGULAR SESSION OF 2009-2010  
COMMITTEE ON LABOR

Senator Dwight Takamine, Chair  
Senator Brian Taniguchi, Vice-Chair  
and Members:

February 9, 2009

TESTIMONY ON BEHALF OF S.B. 692 BY:

I support Senate Bill No. 692 relating to worker's rights;  
pension benefits; workers compensation.

Sincerely,

*Ernesto R. Untala*

HAWAII STATE  
TWENTY-FIFTH LEGISLATURE  
REGULAR SESSION OF 2009 <sup>SP</sup>  
COMMITTEE ON LABOR

Senator Dwight Takamine, Chair  
Senator Brian Taniguchi, Vice-Chair  
and Members:

February 9, 2010 <sup>SP</sup>

TESTIMONY ON BEHALF OF S.B. 692 BY:

I support Senate Bill No. 692 relating to worker's rights;  
pension benefits; workers compensation.

Sincerely,

*Merlisa B. Populutan*

HAWAII STATE  
TWENTY-FIFTH LEGISLATURE  
REGULAR SESSION OF ~~2009~~ 2010  
COMMITTEE ON LABOR

Senator Dwight Takamine, Chair  
Senator Brian Taniguchi, Vice-Chair  
and Members:

February 9, 2010  
February 9, 2009

TESTIMONY ON BEHALF OF S.B. 692 BY:

I support Senate Bill No. 692 relating to worker's rights;  
pension benefits; workers compensation.

Sincerely,

Cenla Rabago



HAWAII STATE  
TWENTY-FIFTH LEGISLATURE  
REGULAR SESSION OF ~~2009~~ 2010 SRS  
COMMITTEE ON LABOR:

Senator Dwight Takamine, Chair  
Senator Brian Taniguchi, Vice-Chair  
and Members:

February ~~5, 2009~~ <sup>9, 2010</sup> SRS

TESTIMONY ON BEHALF OF S.B. 692 BY:

I support Senate Bill No. 692 relating to worker's rights;  
pension benefits; workers compensation.

Sincerely, *Ricardo S. Labayo*

HAWAII STATE  
TWENTY-FIFTH LEGISLATURE  
REGULAR SESSION OF 2009-2010-88  
COMMITTEE ON LABOR

Senator Dwight Takamine, Chair  
Senator Brian Taniguchi, Vice-Chair  
and Members:

February 9, 2009-88

TESTIMONY ON BEHALF OF S.B. 692 BY:

I support Senate Bill No. 692 relating to worker's rights;  
pension benefits; workers compensation.

Sincerely,

*Shirley Piao Piao*

HAWAII STATE  
TWENTY-FIFTH LEGISLATURE  
REGULAR SESSION OF 2000  
COMMITTEE ON LABOR

Senator Dwight Takamine, Chair  
Senator Brian Taniguchi, Vice-Chair  
and Members:

February 9, 2000

TESTIMONY ON BEHALF OF S.B. 692 BY:

I support Senate Bill No. 692 relating to worker's rights;  
pension benefits; workers compensation.

Sincerely,

*Jessie Lolita Ventalan*

HAWAII STATE  
TWENTY-FIFTH LEGISLATURE  
REGULAR SESSION OF 2009 - 2010  
COMMITTEE ON LABOR

Senator Dwight Takamine, Chair  
Senator Brian Taniguchi, Vice-Chair  
and Members:

February 9, 2010

TESTIMONY ON BEHALF OF S.B. 692 BY:

I support Senate Bill No. 692 relating to worker's rights;  
pension benefits; workers compensation.

Sincerely,

*Ernest A. Utala*

HAWAII STATE  
TWENTY-FIFTH LEGISLATURE  
REGULAR SESSION OF 20~~19~~<sup>9</sup>  
COMMITTEE ON LABOR

Senator Dwight Takamine, Chair  
Senator Brian Taniguchi, Vice-Chair  
and Members:

February <sup>9</sup>~~5~~, 20~~19~~<sup>9</sup>

TESTIMONY ON BEHALF OF S.B. 692 BY:

I support Senate Bill No. 692 relating to worker's rights;  
pension benefits; workers compensation.

Sincerely,

*Merlina B. Pazapota*

HAWAII STATE  
TWENTY-FIFTH LEGISLATURE  
REGULAR SESSION OF ~~2009~~ 2010 ~~988~~  
COMMITTEE ON LABOR

Senator Dwight Takamine, Chair  
Senator Brian Taniguchi, Vice-Chair  
and Members:

February ~~8~~, 2010 ~~988~~

TESTIMONY ON BEHALF OF S.B. 692 BY:

I support Senate Bill No. 692 relating to worker's rights;  
pension benefits; workers compensation.

Sincerely,

*Cula Rabay*

HAWAII STATE  
TWENTY-FIFTH LEGISLATURE  
REGULAR SESSION OF ~~2008~~ 2010<sup>88</sup>  
COMMITTEE ON LABOR

Senator Dwight Takamine, Chair  
Senator Brian Taniguchi, Vice-Chair  
and Members:

February ~~15~~ 2009<sup>9 2010<sup>88</sup></sup>

TESTIMONY ON BEHALF OF S.B. 692 BY:

I support Senate Bill No. 692 relating to worker's rights;  
pension benefits; workers compensation.

Sincerely, *Ricardo S. Rabago*

HAWAII STATE  
TWENTY-FIFTH LEGISLATURE  
REGULAR SESSION OF 2009-2010 ~~88~~  
COMMITTEE ON LABOR

Senator Dwight Takamine, Chair  
Senator Brian Taniguchi, Vice-Chair  
and Members:

February <sup>9</sup> 8, 2009 ~~88~~

TESTIMONY ON BEHALF OF S.B. 692 BY:

I support Senate Bill No. 692 relating to worker's rights;  
pension benefits; workers compensation.

Sincerely,

*Shirley Pisoni*



HAWAII STATE  
TWENTY-FIFTH LEGISLATURE  
REGULAR SESSION OF 2009  
COMMITTEE ON LABOR

Senator Dwight Takamine, Chair  
Senator Brian Taniguchi, Vice-Chair  
and Members:

February 9, 2009

TESTIMONY ON BEHALF OF S.B. 692 BY:

I support Senate Bill No. 692 relating to worker's rights;  
pension benefits; workers compensation.

Sincerely,

*Jesusa Lolita Ventalan*

HAWAII STATE  
TWENTY-FIFTH LEGISLATURE  
REGULAR SESSION OF 2000 <sup>9</sup>SS  
COMMITTEE ON LABOR:

Senator Dwight Takamine, Chair  
Senator Brian Taniguchi, Vice-Chair  
and Members:

February <sup>9</sup> ~~11~~ 2000 <sup>9</sup>SS

TESTIMONY ON BEHALF OF S.B. 692 BY:

I support Senate Bill No. 692 relating to worker's rights;  
pension benefits; workers compensation.

Sincerely,

*Seneca McVintan*

HAWAII STATE  
TWENTY-FIFTH LEGISLATURE  
REGULAR SESSION OF 2009 *2010*  
COMMITTEE ON LABOR

Senator Dwight Takamine, Chair  
Senator Brian Taniguchi, Vice-Chair  
and Members:

<sup>9</sup>  
February 6, 2009 *4/3*

TESTIMONY ON BEHALF OF S.B. 692 BY:

I support Senate Bill No. 692 relating to worker's rights;  
pension benefits; workers compensation.

Sincerely,

*Merlina B. Paganfanta*

HAWAII STATE  
TWENTY-FIFTH LEGISLATURE  
REGULAR SESSION OF ~~2009~~ 2010  
COMMITTEE ON LABOR

Senator Dwight Takamine, Chair  
Senator Brian Taniguchi, Vice-Chair  
and Members:

February 9, ~~2009~~ 2010

TESTIMONY ON BEHALF OF S.B. 692 BY:

I support Senate Bill No. 692 relating to worker's rights;  
pension benefits; workers compensation.

Sincerely,

*Cela Rabayo*

HAWAII STATE

TWENTY-FIFTH LEGISLATURE

REGULAR SESSION OF 2009 - 2010

COMMITTEE ON LABOR

Senator Dwight Takamine, Chair  
Senator Brian Taniguchi, Vice-Chair  
and Members:

February 9, 2010

TESTIMONY ON BEHALF OF S.B. 692 BY:

I support Senate Bill No. 692 relating to worker's rights;  
pension benefits; workers compensation.

Sincerely, *Ricardo S. Rabago*