

TO: Committee on Legislative Management
Testimony for HCR219/HR190
LRB Study on the Disposition of Vacation Credits
for Transferring Public Employees]
Hearing: Monday, April 4, 2011 @ 2:00 p.m.

FROM: Patricia Mau-Shimizu
House Clerk



Chair Yamashita and Members of the Legislative Management Committee, I testify in my capacity as the House Clerk in favor of these Resolutions.

The State House is a small state governmental unit with regard to the number of individuals on its permanent employee payroll, in comparison to the Department of Education or the Department of Health. However the House's permanent employee payroll can be described as somewhat "transient" as the tenure of House employees is shorter than the 25-30 year tenure of the average State or county employee covered by collective bargaining provisions. The permanent staff, as you know, serves conterminously with their appointing House member.

In addition, many House permanent employees routinely transfer from, and to, other State government or county jobs with ERS benefit accruals. In particular, within past 5 years the House routinely accepts employees transferring from the City & County of Honolulu, the Legislative Reference Bureau, and the Senate, and routinely facilitates employee transfers to those same separate jurisdictions.

Whenever an ERS covered employee from, for example the Senate, LRB or the City & County of Honolulu, when that individual reports to the House for work, he/she brings a check to the House from their former employer in the amount of his/her accrued vacation. The House in turn must deposit the vacation payout check to the STATE GENERAL FUND, not the House General Fund.

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Section 78-23(b) of the HRS requires the deposit to the STATE GENERAL FUND:

"When an employee is transferred from one department to another within the same jurisdiction or to another jurisdiction within the State, the employee shall be given credit for the vacation earned or accumulated in the department from which the employee transferred, and the director of finance of the State or the equivalent officers of the several jurisdictions shall make the appropriate transfer of funds to implement the employee transfer. ***Moneys received from any such transfer of funds by a state agency financed by the general fund of the State shall be deposited with the director of finance of the State to the credit of the general fund of the State;*** provided, that, when an employee is transferred from one department to another within the same jurisdiction, the transfer of funds shall not be made if the employee's salary is paid from the same fund. Compensation for any period of vacation allowance shall be paid at the rate to which the employee is entitled." [Emphasis added].

If that individual leaves the House to transfer to another ERS covered position in an Executive agency or office, LRB or the Senate, the House must cut a check from the House General Fund for the accrued vacation earned from ALL State or county employment. Vacation payout funds for the employee in questions previously deposited to the STATE General Fund CANNOT be used.

In other words, when an individual transfers from a State or county job covered by ERS to another ERS covered position with the State or county, the STATE General Fund appears to profit.

For example, John works for LRB and has accrued vacation worth \$10,000. He transfers to the House and requests a vacation accrual transfer [as opposed to a vacation accrual payout, perhaps for tax or estate planning purposes]. On his first day of work, he brings a LRB check in the amount of \$10,000 to the House Accounting Office.

The House must then deposit the \$10,000 to the STATE General Fund.

After 2 years John decides to leave the House and accepts a position with the Senate. His accrued vacation is now worth \$12,000. The House must prepare a check payable to the Senate from the House General Funds for \$12,000. The Senate in turn must deposit the \$12,000 check into the STATE General Fund.

The money does not follow the employee. The STATE General Fund appears to benefit from each successive transfer.

Over the years, no one in the Department of Accounting and General services or the Department of Budget and Finance has been able to explain the rationale behind the STATE General Fund deposit requirement of HRS Section 78-23.

While the House is always willing to comply with statutory provisions, the vacation payout requirement seems to work as a disadvantage to a public employer like the House with its small permanent employee population which is "transient" due to its exempt status .

For the period January 1, 2010 through March 31, 2011 records in the House Clerk's Office indicate fiscal impact to the House general funds as follows:

Retirement vacation payout:	\$81,204
Vacation payout for permanent employees leaving State/county service	\$176,762
Vacation payout for employees transferring to other State/county agencies	\$99,229
TOTAL IMPACT TO HOUSE GENERAL FUND	\$357,195

Due to the nature of retirement and employment decisions on the part of employees, vacation payouts cannot be budgeted for in advance with any degree of accuracy.

Conclusion

The study requested will, hopefully, include information that:

- (1) Explains the rationale behind HRS Section 78-23.
- (2) Analyzes whether the rationale is still applicable.
- (3) Recommends, if appropriate, a more equitable funding scheme for vacation payouts for transferring employees.
- (4) Suggests, if appropriate, statutory revision(s).

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LEGISLATIVE REFERENCE BUREAU
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Written Comments

HCR219

REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO CONDUCT A STUDY ON THE CURRENT LAW AND PROCEDURES RELATING TO THE DISPOSITION OF VACATION CREDITS FOR PUBLIC EMPLOYEES THAT TRANSFER TO ANOTHER DEPARTMENT IN THE SAME JURISDICTION OR TO ANOTHER JURISDICTION

Comments by the Legislative Reference Bureau
Charlotte A. Carter-Yamauchi, Acting Director

Presented to the House Committee on Legislative Management

Monday, April 4, 2011, 2:00 p.m.
Conference Room 423

Chair Yamashita and Members of the Committee:

I am Charlotte Carter-Yamauchi, Acting Director of the Legislative Reference Bureau. The Bureau appreciates this opportunity to submit the following written comments on Senate Concurrent Resolution No. 219.

House Concurrent Resolution No. 219, requests that the Legislative Reference Bureau:

- (1) Conduct a study on the current law and procedures relating to the disposition of vacation credits for public employees who transfer from one department to another in the same jurisdiction or transfer to another jurisdiction;
- (2) Assess and determine the rationale for, and soundness of, the current law and procedures, and to offer viable alternatives; and
- (3) Submit a report of its findings and recommendations to the Legislature no later than twenty days prior to the convening of the Regular Session of 2012.

While the Bureau takes no position on the merits of the measure, we wish to note a concern with the scope of the study.

Generally speaking, conducting a study on existing state law and procedures relating to the disposition of vacation credits for public employees who transfer from one department to another in the same jurisdiction or transfer to another jurisdiction should be a manageable task for the Bureau to undertake. However, assessing and determining the rationale for, and soundness of, the existing law and procedures, and to offer viable alternatives, may prove difficult without further legislative clarification.

As drafted, the intent of the measure is unclear as to what the Legislature would deem as suitable parameters or benchmarks against which a viable alternative could be measured. In other words, if the Bureau has no guidance on what the Legislature views as an ideal law or procedure, or at least an idea of what it would like to accomplish, it would be difficult for the Bureau to provide any recommendations for "improving" the existing laws or procedures relating to the disposition of public employee vacation credits upon a public employee's transfer to another position.

As such, if the Committee decides that the Bureau should undertake the study, we respectfully request that parameters be included regarding what the Legislature would deem as an improvement to the existing law and procedures, so that the Bureau is able to provide the Legislature with the information it needs to make sound, fact-based policy decisions.

Thank you for this opportunity to provide written comments on this measure. If you have any questions, please do not hesitate to contact the Bureau at 587-0666.