

DAVID Y. IGE
GOVERNOR



WESLEY K. MACHIDA
DIRECTOR

LAUREL A. JOHNSTON
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
OFFICE OF THE PUBLIC DEFENDER

STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE
P.O. BOX 150
HONOLULU, HAWAII 96810-0150

ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND
MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

WRITTEN COMMENTS

TESTIMONY BY WESLEY K. MACHIDA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE SENATE COMMITTEE ON
JUDICIARY & LABOR
ON HOUSE BILL NO. 76, HD1
March 16, 2017
9:00 a.m.
Conference Room 016

RELATING TO SEPARATION BENEFITS

The Department of Budget and Finance appreciates the intent of this measure to clarify when public employees covered under collective bargaining agreements are eligible for severance or special retirement benefits under a termination of their state employment. We will defer to the Employees' Retirement System about potential legal issues regarding the tax exempt status of the ERS should multiple options be offered to public employee beneficiaries.

If severance benefits negotiated through collective bargaining supplemental agreements are made available to separated employees affected by Act 103, Session Laws of Hawaii 2015, we estimate these payments will cost approximately \$30 million in general funds should all eligible employees receive such payments.

Thank you for your consideration of our comments.

DAVID Y. IGE
GOVERNOR



THOMAS WILLIAMS
EXECUTIVE DIRECTOR

KANOE MARGOL
DEPUTY EXECUTIVE DIRECTOR

STATE OF HAWAII
EMPLOYEES' RETIREMENT SYSTEM

TESTIMONY BY THOMAS WILLIAMS
EXECUTIVE DIRECTOR, EMPLOYEES' RETIREMENT SYSTEM
STATE OF HAWAII

TO THE SENATE COMMITTEE ON JUDICIARY AND LABOR
ON

HOUSE BILL NO. 76, H.D. 1

MARCH 16, 2017, 9:00 A.M.
ROOM 016

RELATING TO SEPARATION BENEFITS

Chair Keith-Agaran, Vice Chair Rhoads and Members of the Committee,

H.B. 76, H.D. 1 proposes to amend Section 89E, Hawaii Revised Statutes, by adding a new section to provide an additional option for employees who may be affected by Act 103 SLH, 2015 which allowed for the privatization of Hawaii Health Systems Corporation's (HHSC) Maui Regional facilities. The subsequent benefits provided under Act 1, SSLH, 2016 (Act 1) authorized HHSC employees facing position abolishment, reduction-in-force, or workforce restructuring to opt to receive either severance benefits or a special retirement benefit from the Employees' Retirement System (ERS) in lieu of exercising any reduction-in-force rights. In addition to the choice between a severance and special retirement, H.B. 76, H.D. 1 proposes to provide the employee with the option of electing to remain in the employee's position until the expiration of the applicable collective bargaining agreement.

The ERS Board of Trustees strongly opposes H.B. 76, H.D. 1 as both it, and the statute it proposes to amend, pose a definitive risk to the tax-qualified status of the ERS and its members.

ERS staff would like to bring the Committee's attention the following tax-qualification risks proposed by H.B. 76, H.D.1:



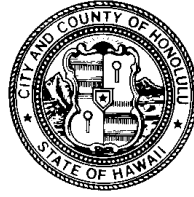
Employees' Retirement System
of the State of Hawaii

1. Act 1, allowed affected employees to choose between receiving either a severance payment or a special retirement benefit. The Internal Revenue Code provides that a governmental plan that is a defined benefit pension plan, such as the ERS, may not offer a “cash or deferred arrangement.” ERS’s tax council advised that the choice provided by Act 1 represents an impermissible “cash or deferred arrangement” under the Internal Revenue Code that could jeopardize the tax-qualified status of the ERS. There is currently a temporary restraining order placed on the implementation of Act 1 until the ERS receives an Internal Revenue Service determination on the risk to ERS’s tax-qualified status. The Internal Revenue Service has indicated it expects to issue shortly a private letter ruling affirming the ERS interpretation. Adding an additional option of “leasing” or “assigning” an employee for the period of the collective bargaining agreement does not resolve this “cash or deferred arrangement” – the initial issue still exists.
2. Although H.B. 76, H.D. 1 states that employees affected by Act 103, 2015 may be “leased” to any other facility of the agency or “assigned” to an equivalent position in public service until the expiration of their collective bargaining agreement in lieu of exercising any reduction-in-force rights, severance or special retirement benefits, the proposal needs to clearly define the extent and parameters of these arrangements. If there is a potential that ERS membership would be afforded to employees who find their positions transferred to a private entity, it would raise further tax-qualification questions for the ERS. There is an expectation that HHSC Maui regional facilities will be transferred to Kaiser Permanente in the future and there has been speculation of additional privatization of HHSC facilities.

Related to the “leasing” arrangement in H.B. 76, H.D. 1 is a question whether employees who elect to remain in their position until the expiration of the applicable collective bargaining agreement, but following the transfer of operations to a private entity, will be deemed by regulations as employees of the state or the private entity. Regulations attempt to address this question using a “control test.” In other words, who controls the individual’s work schedule, duties, etc.? If employees of private companies are permitted to participate (accrue benefits) in the ERS, there is the potential for the ERS to lose its status as a “governmental plan” and consequently, its tax-qualified status.

Thank you for this opportunity to provide testimony on H.B. 76, H.D. 1.

KIRK CALDWELL
MAYOR



NELSON H. KOYANAGI, JR.
DIRECTOR

GARY T. KUOKAWA
DEPUTY DIRECTOR

**Testimony of
NELSON H. KOYANAGI, JR.
Director of Budget and Fiscal Services
City and County of Honolulu**

**Before the Senate Committee on
JUDICIARY AND LABOR
Thursday, March 16, 2017
9:00 a.m.
State Capitol, Conference Room 016**

**In consideration of
HOUSE BILL 76, HD1
RELATING TO SEPARATION BENEFITS**

The City and County of Honolulu (City) has concerns regarding House Bill 76, HD1, which amends Act 1, SSLH 2016, by offering employees the further option of electing to remain in the employee's position until the expiration of the applicable collective bargaining agreement. This would be done by either leasing the employees' services or assigning the employee an equivalent position.

The City is concerned about the effects of the bill on ERS's status as a tax qualified plan. According to testimony by the ERS Executive Director, the leasing of employees' services could cause the loss of ERS's status as a governmental plan under IRC 414(d), and could lead to the loss of ERS's status as a tax qualified plan. The ERS stated that the proposal needs to clearly define the extent and parameters of these arrangements.

If ERS loses its status as a tax qualified plan, employees' contributions to ERS would be entirely subject to federal tax at the time of contribution, and members would be taxed on the value of their total accrued retirement benefits at the time they vest rather than when they receive their retirement benefits. This would be a severe consequence for ERS members; many would have difficulty paying the taxes on the value of the total accrued retirement benefits at the time they vest.

Senate Committee on Judiciary and Labor
3/14/2017
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Thank you for the opportunity to testify on House Bill 76, HD1.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

The Twenty-Ninth Legislature, State of Hawaii
The Senate
Committee on Judiciary and Labor

Testimony by
Hawaii Government Employees Association

March 16, 2017

H.B. 76, H.D. 1 - RELATING TO
SEPARATION BENEFITS

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of H.B. 76, H.D. 1 which makes amendments to Act 1, Special Session Laws of Hawaii, 2016, by offering an employee the further option of electing to remain in the employee's position until the expiration of the applicable collective bargaining agreement.

The affected employees of the Hawaii Health Systems Corporation, Maui Region privatization have been in limbo regarding their employment and retirement benefits for too long. The hospitals' transfer to Kaiser is slated to take effect on July 1, 2017 and employees deserve to know their full benefit package and all options so that they can make the best decisions for themselves and their families.

Thank you for the opportunity to testify in strong support of the passage of H.B. 76, H.D. 1.

Respectfully submitted,

Randy Perreira
Executive Director



March 16, 2017

9:00 AM

Conference Room 016

To: Senate Committee on Judiciary & Labor

Sen. Gilbert S.C. Keith-Agaran, Chair

Sen. Karl Rhoads, Vice Chair

From: Grassroot Institute of Hawaii

Joe Kent, Vice-President of Research

RE: HB76 – Relating to Separation Benefits

Comments Only

Dear Chair and Committee Members:

The Grassroot Institute of Hawaii would like to offer its comments on HB76 HD1, which amends Act 1, SSLH 2016 to offer employees the additional option of remaining in their position until the expiration of the collective bargaining agreement.

Like the other bills which propose to amend the controversial Act 1, SSLH 2016, this bill poses a danger to the future of the state Employees' Retirement System as well as to the state budget and future public-private partnerships.

Any separation provision that threatens the tax-qualified status of the ERS and its members should raise red flags. The pension system is already in a precarious position financially—we should not be creating additional problems for it.

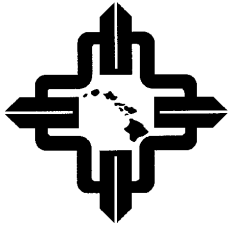
Then there is the issue of the costs of Act 1 and its associated provisions—costs that will be difficult for HHSC to bear and which the state cannot afford, given its sinking tax revenues and current rate of spending.

Finally, we must consider the overall impact this deal will have on future partnerships. The legislative end-run around earlier negotiations creates a troubling precedent and one which might raise questions about whether the state of Hawaii is desirable as a partner ... or whether the costs are too high.

The workers in question were already amply provided for in the original agreement. This is not a situation in which thousands of state employees are losing their jobs and need help making it through tough times. Their jobs are intact, and legally more secure now than before. This is a waste of taxpayer dollars at a time when the state faces significant financial burdens. While we support the transition of labor to a private non-profit provider, we have concerns about the unnecessary cost of a special benefits package.

Thank you for your consideration of our comments.

Sincerely,
Joe Kent
Vice President of Research
Grassroot Institute of Hawaii



HAWAII HEALTH SYSTEMS
C O R P O R A T I O N

"Quality Healthcare For All"

Senate Committee on Judiciary and Labor
Senator Gilbert S. C. Keith-Agaran, Chair
Senator Karl Rhoads, Vice Chair

March 16, 2017
Conference Room 016
9:00 a.m.
Hawaii State Capitol

Testimony Providing Comments on House Bill 76, HD1 Relating to Separation Benefits
Amends Act 1, SSLH 2016, as codified, by offering an employee the further option of electing to remain in the employee's position until the expiration of the applicable collective bargaining agreement.

Linda Rosen, M.D., M.P.H.
Chief Executive Officer
Hawaii Health Systems Corporation

On behalf of the Hawaii Health Systems Corporation (HHSC) Corporate Board of Directors, thank you for the opportunity to present testimony **providing comments** on HB 76, HD1 that amends Act 1, SSLH 2016, as codified, by offering an employee the further option of electing to remain in the employee's position until the expiration of the applicable collective bargaining agreement.

HHSC respectfully requests that the committee consider that the additional costs of the voluntary severance benefit and the special retirement benefit contemplated in Act 1, SSLH 2016 and in this bill be paid through a general fund appropriation, and that in no way would that appropriation diminish the amount of additional general fund appropriations requested by HHSC to fund the four remaining HHSC regions.

HHSC is currently facing a cash flow deficit in fiscal year 2017 which will leave HHSC's facilities with extremely low levels of cash on hand as compared to industry norms. HHSC is already asking for an increase in its general fund appropriation base of approximately \$36.5 million and \$34.7 million for fiscal years 2018 and 2019, respectively, just to achieve a break-even cash flow for those fiscal years. Further, the House Draft of the State Budget (H.B. 100 H.D.1) does not provide for any of the general fund appropriation increases that HHSC has asked for, and also does not provide any operating appropriations for the Maui Health System which would be

required in order for the transition of Maui Region operations to Kaiser Permanente to occur. The payment of the special retirement benefit as contemplated in Act 1, SSLH 2016, and this bill would represent additional costs to HHSC as the employer. Given the fragile financial condition that HHSC is in (which is exacerbated by the results of the H.B. 100 H.D.1), HHSC cannot afford to pay for these benefits without a general fund appropriation. Further, HHSC's priority is to make sure that the safety-net hospitals that it operates has sufficient funding to operate efficiently and effectively for this fiscal year and the next biennium of fiscal years 2018 and 2019.

Thank you for the opportunity to testify before this committee. We would respectfully request that this committee take into account our comments on this measure in considering the action to take on this bill.