

HB 76

RELATING TO SEPARATION BENEFITS.

LAB, FIN

HB76



Submit Testimony

Measure Title: RELATING TO SEPARATION BENEFITS.

Report Title: Separation Benefits; Elections

Description: 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.

Companion:

Package: None

Current Referral: LAB, FIN

Introducer(s): SAIKI, Johanson

<u>Sort by Date</u>		Status Text
1/18/2017	H	Pending introduction.
1/19/2017	H	Pass First Reading
1/23/2017	H	Referred to LAB, FIN, referral sheet 1
2/6/2017	H	Bill scheduled to be heard by LAB on Thursday, 02-09-17 8:30AM in House conference room 309.

S = Senate | H = House | D = Data Systems | \$ = Appropriation measure | ConAm = Constitutional Amendment
Some of the above items require Adobe Acrobat Reader. Please visit [Adobe's download page](#) for detailed instructions.

A BILL FOR AN ACT

RELATING TO SEPARATION BENEFITS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 89E, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§89E- Employees who elect to remain in their positions
5 until the expiration of their applicable collective bargaining
6 agreement. (a) Notwithstanding any other law and with the
7 consent of the employee's exclusive representative, the employee
8 may elect to remain in the employee's position until the
9 expiration of the applicable collective bargaining agreement.
10 Upon being given written notice of the employee's election by
11 the employee or the employee's exclusive representative, the
12 governor may:

13 (1) Direct the agency to lease the services of an employee
14 who opts to remain in the employee's state position
15 pursuant to sections 89E-2 and 89E-3 to any other
16 facility of the agency, at a cost to the State at
17 least equal to the amount of the employee's monthly



1 salary and fringe benefits, until the expiration of
2 the collective bargaining agreement that covers that
3 employee's position and the employee's state
4 employment is terminated; provided that the employee's
5 exclusive representative consents to the leasing of
6 the employee's services; or

7 (2) Assign an employee who opts to remain in the
8 employee's position pursuant to sections 89E-2 and
9 89E-3 to an equivalent position in public service
10 until the expiration of the collective bargaining
11 agreement that pertains to the employee's position and
12 the employee's state employment is terminated;
13 provided that the new position shall be on the same
14 island as the terminated position.

15 (b) An employee whose services are leased or who is
16 assigned an equivalent position pursuant to subsection (a) shall
17 retain the employee's civil service status, whether permanent or
18 temporary, without loss of salary, seniority (except as
19 prescribed by applicable collective bargaining agreement),
20 retention points, prior service credit, any vacation and sick
21 leave credits previously earned, and other rights, benefits, and



1 privileges, in accordance with state personnel laws and this
2 Act; provided that the employee possesses the minimum
3 qualifications and public employment requirements for the class
4 or position to which appointed, as applicable; provided further
5 that subsequent changes in status may be made pursuant to
6 applicable civil service and compensation laws."

7 SECTION 2. Section 89E-2, Hawaii Revised Statutes, is
8 amended by amending subsection (a) to read as follows:

9 "(a) Any employee entitled to reduction-in-force rights
10 under chapter 89 and who receives official notification that the
11 employee's position is being abolished or who is directly
12 affected by a reduction-in-force or workforce restructuring
13 plan, including privatization, may elect to receive a voluntary
14 severance benefit provided under this section in lieu of
15 [exercising]:

16 (1) Exercising any reduction-in-force rights under chapter
17 89 [and in lieu of receiving];

18 (2) Receiving any special retirement benefit under section
19 89E-3 [+]; and



1 (3) Electing to remain in the employee's position until
2 the expiration of the applicable collective bargaining
3 agreement."

4 SECTION 3. Section 89E-3, Hawaii Revised Statutes, is
5 amended as follows:

6 1. By amending subsection (a) to read:

7 "(a) Notwithstanding section 88-99 or any other law to the
8 contrary, the employees' retirement system may provide,
9 regardless of whether the actuarial value of the system's assets
10 is one hundred per cent of the system's actuarial accrued
11 liability, the benefits authorized under this section. Any
12 employee who receives official notification that the employee's
13 position is being abolished or who is directly affected by a
14 reduction-in-force or workforce restructuring plan, including
15 privatization, proposed by an agency may elect, if the employee
16 is eligible to receive benefits from the employees' retirement
17 system and meets any of the criteria specified in subsection
18 (c), the special retirement benefit provided by this section in
19 lieu of ~~[exercising]~~;

20 (1) Exercising any reduction-in-force rights under chapter
21 89 ~~[and in lieu of receiving]~~;



- 1 (2) Receiving any severance benefits under section
- 2 89E-2[-]; and
- 3 (3) Electing to remain in the employee's position until
- 4 the expiration of the applicable collective bargaining
- 5 agreement.

6 To receive the special retirement benefit offered under
7 this section, the employee shall comply with the application and
8 time frame requirements specified in subsection (b)."

9 2. By amending subsection (e) to read:

10 " (e) The head of the agency shall transmit a list of
11 employees who elected and received the special retirement
12 benefit to the board of trustees of the employees' retirement
13 system not less than thirty days but not more than one hundred
14 fifty days prior to the employee's retirement date. The head of
15 the agency shall certify that the employees on the list have in
16 fact selected the special retirement benefit in lieu of
17 [receiving]:

18 (1) Receiving the severance benefit under section 89E-2
19 [and exercising];

20 (2) Exercising any reduction-in-force rights under chapter
21 89[-]; and



H.B. NO. 76

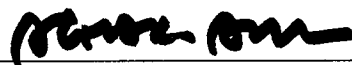
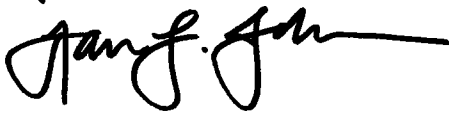
1 (3) Electing to remain in the employee's position until
2 the expiration of the applicable collective bargaining
3 agreement."

4 SECTION 4. This Act does not affect rights and duties that
5 matured, penalties that were incurred, and proceedings that were
6 begun before its effective date.

7 SECTION 5. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 6. This Act shall take effect on July 1, 2017.

10

INTRODUCED BY: 


JAN 18 2017



H.B. NO. 76

Report Title:

Separation Benefits; Elections

Description:

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.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



DAVID Y. IGE
GOVERNOR



WESLEY K. MACHIDA
DIRECTOR

LAUREL A. JOHNSTON
DEPUTY DIRECTOR

**STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE**

P.O. BOX 150
HONOLULU, HAWAII 96810-0150

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

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 HOUSE COMMITTEE ON
LABOR & PUBLIC EMPLOYMENT
ON HOUSE BILL NO. 76, 233, 234

February 9, 2017

8:30 a.m.

Conference Room 309

HB 76 -- RELATING TO SEPARATION BENEFITS

HB 233-- RELATING TO SEPARATION BENEFITS

HB 234 --RELATING TO EMPLOYEES' RETIREMENT SYSTEM

The Department of Budget and Finance appreciates the intent of these measures 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 are unable to provide a fiscal impact at this time, as we would not know how many employees would choose which option. We will defer to the Office of Collective Bargaining and the Employees' Retirement System regarding potential legal issues should multiple options be offered to public employees.

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 HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT
ON

HOUSE BILL NO. 76

FEBRUARY 9, 2017, 8:30 A.M.

RELATING TO SEPARATION BENEFITS

Chair Johanson, Vice Chair Holt and Members of the Committee,

H.B. 76 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 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 has not had the opportunity to review H.B. 76 and therefore has not taken a formal position on this proposal; however, H.B. 76 and the statute it proposes to amend pose a definitive risk to the tax-qualified status of the ERS and its members, and would thus necessitate the Board's opposition.

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



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. 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 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.

There 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.



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
House of Representatives
Committee on Labor and Public Employment

Testimony by
Hawaii Government Employees Association

February 9, 2017

H.B. 76 - RELATING TO SEPARATION BENEFITS

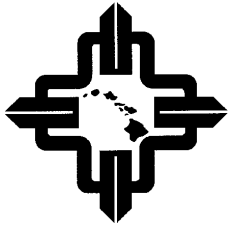
The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of H.B. 76 which makes amendments to Act 1, Special Session Laws of Hawaii, 2016, by offering an employee the further option of electing to remain in the employee's position until the expiration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

Respectfully submitted,

Randy Perreira
Executive Director



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

"Quality Healthcare For All"

**House Committee on Labor & Public Employment
Representative Aaron Ling Johanson, Chair
Representative Daniel Holt, Vice Chair**

February 9, 2017
Conference Room 309
8:30 a.m.
Hawaii State Capitol

Testimony Providing Comments on House Bill 76 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 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. Further, 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. The payment of the voluntary severance benefit and 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, HHSC cannot afford to

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Hawaii Health Systems Corporation
Testimony for HB 76

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.

HB 76

Late testimony