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EMPLOYEES' RETIREMENT SYSTEM

TESTIMONY BY THOMAS WILLIAMS
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TO THE SENATE COMMITTEE ON JUDICIARY AND LABOR
ON

SENATE BILL NO. 250

FEBRUARY 22, 2017, 9:00 A.M.
Room 016

RELATING TO THE BOARD OF TRUSTEES OF THE EMPLOYEES' RETIREMENT SYSTEM

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

S.B. 250 proposes to amend section 88-29, Hawaii Revised Statutes (HRS), by deleting the provision authorizing the Board of Trustees of the Employees' Retirement System (ERS) to appoint counsel other than the attorney general to serve as legal adviser to the ERS Board of Trustees.

The ERS Board of Trustees opposes S.B. 250. The ERS Board has concerns that the bill will restrict the Board's ability to retain counsel other than the Attorney General to serve as legal counsel to the ERS, particularly when the legal interests of the ERS and the State are in conflict.

When the ERS was established in 1925, the legislature explicitly affirmed that the purpose of the retirement system was to provide retirement and other benefits for its members. See, section 88-22, HRS. The Legislature also provided that the ERS shall have the "powers and privileges of a corporation and shall be known as the 'Employees' Retirement System of the State of Hawaii' and by that name may sue or be sued, transact all of its business, invest all of its funds, and hold all of its cash and securities and other property." *Ibid*. This designation



Employees' Retirement System
of the State of Hawaii

creates the ERS as a somewhat unique “quasi-corporate” entity with responsibilities and operations that are atypical and distinct from other State agencies and departments.

Section 28-8.3, HRS, presently designates the Department of the Attorney General as the legal counsel for the ERS. If the Attorney General or the ERS Board of Trustees determines that a need for the appointment of outside counsel exists, the ERS may, in cooperation with the Department of the Attorney General, or in certain rare circumstances, secure on its own initiative, legal counsel to serve as adviser to the Board. This arrangement has been highly successful in ensuring that ERS legal, contractual and tax-qualification requirements have been addressed while avoiding the potential costly or irreparable damage to the system which might arise from a legal conflict of interest.

As the ERS Trustees serve as fiduciaries of a trust fund and governmental plan with an almost \$15 billion investment program, it is properly opposed to legislation that may unintentionally or otherwise limit the ability of the ERS Board of Trustees to seek legal advice specific to the needs and requirements of the ERS.

Thank you for this opportunity to testify on S.B. 250.