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 FINANCE
ON

HOUSE BILL NO. 76, H.D. 1

FEBRUARY 22, 2017, 3:00 P.M.

RELATING TO SEPARATION BENEFITS

Chair Luke, Vice Chair Cullen and Members of the Committee,

H.B. 76, H.D. 1 proposes to amend Section 89E, Hawaii Revised Statues, 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:

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, 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.

HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

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AFSCME
LOCAL 152, AFL-CIO

The Twenty-Ninth Legislature, State of Hawaii
House of Representatives
Committee on Finance

Testimony by
Hawaii Government Employees Association

February 22, 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

THE HAWAII STATE SENATE
The Twenty-Ninth Legislature
Regular Session of 2017

HOUSE COMMITTEE ON FINANCE
The Honorable Representative Sylvia Luke, Chair
The Honorable Representative Ty J.K. Cullen, Vice Chair

DATE OF HEARING: Wednesday, February 22, 2017
TIME OF HEARING: 3:00pm
PLACE OF HEARING: Conference Room 308
State Capitol
415 South Beretania Street

TESTIMONY ON HOUSE BILL 76 HD1: RELATING TO SEPARATION BENEFITS.

By DAYTON M. NAKANELUA,
State Director of the United Public Workers,
AFSCME Local 646, AFL-CIO ("UPW")

My name is Dayton M. Nakanelua, State Director of the United Public Workers, AFSCME, Local 646, AFL-CIO (UPW). The UPW is the exclusive bargaining representative for approximately 14,000 public employees, which include blue collar, non-supervisory employees in Bargaining Unit 01 and institutional, health and correctional employees in Bargaining Unit 10, in the State of Hawaii and various counties. The UPW also represents about 1,500 members of the private sector.

The UPW supports the intent of HB 76 HD1, 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.

Thank you for the opportunity to submit this testimony.

House Committee on Finance
Representative Sylvia Luke, Chair
Representative Ty J. K. Cullen, Vice Chair

February 22, 2017
Conference Room 308
3:00 p.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 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 have 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.