

HB-1736-HD-1

Submitted on: 2/15/2022 8:48:16 AM

Testimony for EDN on 2/15/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Keith Hayashi	Hawaii Department of Education	Support	Yes

Comments:

Support

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 EDUCATION

ON

HOUSE BILL NO. 1736, HD1

February 15, 2022

2 P.M.

Via Videoconference, Conference Room 309

RELATING TO TEACHERS

Chair Woodson, Vice Chair Kapela, and Members of the Committee,

H.B. 1736, HD1 proposes to allow the Department of Education (DOE) or charter schools to hire a retired teacher during a state of emergency declared by the governor pursuant to Chapter 127A. The Board of Trustees of the Employees Retirement System ("ERS") has not yet had the opportunity to review this legislation. However, the ERS staff offers the following comments:

The ERS supports the intent of the bill but is concerned that the bill could have unintended consequences for both its tax qualification and the rate of teacher retirements. The ERS has the following concerns and respectfully asks that they be addressed:

(1) At present, a retirant (retiree) generally may not be employed by the State or by any county unless the retirant is reenrolled in the ERS. See Hawaii Revised Statutes (HRS) section 88-9(a). Reenrollment means that employer/employee contributions would resume and payment of retirement benefits would be suspended.

Section 89-9(d) currently allows certain categories of retirants to be rehired *without reenrollment* in the ERS and suffer no loss or interruption of benefits if: (1) the retirant



Employees' Retirement System
of the State of Hawaii

has been retired for at least 12 months; and (2) there is no prior agreement that the retirant would return to work. See sections 89-9(d)(4) (labor shortage identified by a jurisdiction); and 89- 9(d)(5) (teacher shortage identified by DOE or charter school).

H.B. 1736, HD1 would add a new subsection (d)(6) to section 88-9 that allows a retired teacher to be rehired during a state of emergency declared by the governor pursuant to chapter 127A, *without reenrollment*. The bill would retain the requirement that there be no prior agreement for return to work but would remove the requirement that a retired teacher be retired for at least 12 months before reemployment.

As a public pension plan, the ERS is concerned about whether the bill, including the removal of the 12-month requirement, may negatively impact the ERS's status as a qualified governmental plan under the Internal Revenue Code.

The IRS has generally required a bona fide retirement in order for a retiree to receive pension benefits. In other words, the retiring employee must separate from service without a pre-existing agreement or expectation of return to work. The need to, or act, of returning to work, especially immediately after retirement, must be considered to have been unforeseen. The IRS also generally prohibits payment of benefits (in-service distributions) to employees who are still working and have not yet retired.

The current provisions in section 89-9(d)(5), i.e., no prior agreement to return to work and the 12-month requirement, were intended to address the issue of bona fide retirement.

Given the bill's proposed removal of the 12-month requirement, the ERS suggests that the remaining safeguards should be reinforced. There should be affidavits or declarations from the teacher and employer certifying that there is no prior agreement for return to work after retirement.

The IRS recently posted informal guidance regarding rehiring retirees due to a labor shortage during the COVID-19 pandemic. Such a rehire of a retirant is predicated upon a bona fide retirement in advance of the rehire. That said, it is unclear whether those guidelines apply to the ERS as a public pension plan.

The ERS has consulted with its tax counsel regarding the potential impact of H.B. 1736, HD1 on the ERS's tax qualified status and they have indicated in writing that they share our concerns.

(2) The bill, including removal of the 12-month requirement, may incentivize currently employed teachers to retire early. In the long term, this may contribute to the shortage of teachers by accelerating the timing and increasing the rate of retirements. Further, if teachers could be rehired immediately after they retire, and without reenrollment, this may raise issues regarding bona fide retirement and the existence of an implied agreement to return to work.

(3) The ERS supports the bill's inclusion of a repeal date of June 30, 2023, on which date section 88-9(d) would be reenacted in its previous form.

(4) The ERS is concerned that the bill lacks details about the timing and duration of reemployment for retired teachers. Is the rehire contract limited to a single school year? Can it be extended and for how long? Is the contract period tied to the duration of the emergency?

Other states have addressed teacher shortages during the pandemic by allowing temporary rehiring of retired teachers, with restrictions such as:

- application only to teachers who retired as of certain date;
- limits on how long a retired teacher can be rehired (term of contract, number of renewals);
- commencement of reemployment only during the COVID-19 emergency;
- inclusion of a sunset provision;
- application of a temporarily reduced length of separation requirement.

To mitigate tax qualification concerns and to avoid questions related to the existence of a bona fide retirement, the ERS suggests that the bill should only apply to teachers who retire before the date the bill was introduced or the effective date of the act, or if the retirement is after the bill's passage, that it be limited to teachers who meet a reduced separation requirement of perhaps 9, 6 or 3 months. An immediate return to work would not be advisable. Also, there should be limits on the duration of reemployment, e.g., contract for one school year, with one renewal if the emergency order is still in effect.

If H.B. 1736, HD1 is passed for retired teachers, retirants in other occupations that are experiencing shortages (e.g., police, firefighters, health care workers), may seek a similar arrangement. The ERS notes that shortages of teachers, as well as in these other groups, were exacerbated by the COVID-19 pandemic, but were not necessarily caused by the pandemic.

The ERS supports the provision in the bill that requires the DOE or charter school to contribute to the pension accumulation fund the required percentage of the rehired retirant's compensation to amortize the system's unfunded liability.

Conclusion

In view of the foregoing concerns, the ERS staff believes that the ERS Board would be inclined to oppose H.B. 1736, HD1 as proposed, unless the bill can be modified to include provisions that:

- Limit application of the bill to teachers who retire before the date of the bill's introduction or the effective date of the act; and

- If the option of return to work is extended to retirees who elect to do so after passage of this bill, then it should be limited to those who meet a newly established and temporarily reduced separation period;
- Limit the duration of reemployment to one school year, with possible renewal for one additional school year, if the emergency order is still in effect; and
- Require an affidavit or declaration from the employer and teacher certifying that there is no prior agreement that the teacher would return to work after retirement.

Thank you for this opportunity to provide testimony.



STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

Date: 02/15/2022

Time: 02:00 PM

Location: 309 Via Videoconference

Committee: House Education

Department: Education

Person Testifying: Keith T. Hayashi, Interim Superintendent of Education

Title of Bill: HB 1736, HD1 RELATING TO EDUCATION.

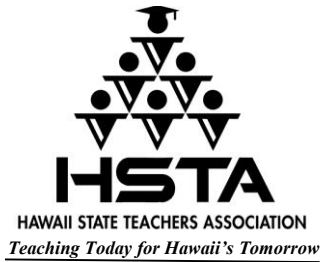
Purpose of Bill: Temporarily allows licensed teachers who have retired to be employed as teachers during a state of emergency and within twelve months of their retirement. Effective 7/1/2050. Repeals on 6/30/2023. (HD1)

Department's Position:

The Hawaii State Department of Education (Department) supports HB 1736, HD1. If passed, this legislation will provide the Department with an additional tool to fill vacant teacher positions during a state of emergency by allowing recently retired licensed teachers to be re-employed.

The Department recognizes the benefits of in-person learning even during a state emergency, particularly for younger children and those students with special educational needs. In addition to receiving instruction, students are provided with access to mental health services, healthy meals, after-school programs, extracurricular activities, and socialization with their teachers and peers on school campuses. The ability to hire recently retired teachers to fill vacant positions during a declared state of emergency will enable the Department to provide uninterrupted educational and student support services.

Thank you for the opportunity to testify in support of this measure.



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TESTIMONY BEFORE THE HOUSE COMMITTEE ON EDUCATION

RE: HB 1736, HD1 - RELATING TO EDUCATION

TUESDAY, FEBRUARY 15, 2022

OSA TUI, JR., PRESIDENT
HAWAII STATE TEACHERS ASSOCIATION

Chair Woodson and Members of the Committee:

The Hawaii State Teachers Association **supports HB 1736, HD1**, relating to education. This bill temporarily allows licensed teachers who have retired to be employed as teachers during a state of emergency and within twelve months of their retirement.

Due to COVID-19, the current teacher shortage crisis has been exacerbated. This pandemic has caused further staffing shortages with even more teachers resigning. Many teachers have also stayed home from work, because they have tested positive for COVID-19, are awaiting test results to confirm whether they are positive for COVID-19, or have to take care of loved ones who are sick with COVID-19. Many teachers have also retired during the 2020-2021 academic year. According to data provided by the department of education, four hundred twenty-eight teachers retired during the 2020—2021 academic year. Some of these individuals may wish to return to employment as teachers. **However, existing law prevents a retiree from being employed as a teacher within twelve months of retiring.** This temporary change in law would allow recently retired licensed teachers to return to the workforce which will help mitigate the teacher shortage and create the opportunity for all of our students in Hawaii to receive uninterrupted, quality education.

To temporarily allow our retired licensed teachers to return back to teaching and provide us with more licensed teachers that we desperately need right now, the Hawaii State Teachers Association asks your committee to **support** this bill.

HB-1736-HD-1

Submitted on: 2/11/2022 5:00:15 PM

Testimony for EDN on 2/15/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Cynthia Reves	Individual	Support	No

Comments:

I am a teacher at McKinley High School and worry every time I have to miss a day of work that I might not be able to secure a substitute for my students. I am in support of this legislation for emergency use as long as it doesn't jeopardize the Employees' Retirement System's tax-qualified status.