



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2025**

ON THE FOLLOWING MEASURE:

H.B. NO. 841, H.D. 1, RELATING TO RETIRED TEACHERS.

BEFORE THE:

HOUSE COMMITTEE ON LABOR

DATE: Tuesday, February 11, 2025 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 309

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Elmira K.L. Tsang, Deputy Attorney General

Chair Sayama and Members of the Committee:

The Department of the Attorney General opposes this bill.

This bill amends section 88-9, Hawaii Revised Statutes (HRS), by adding a teacher or an administrator in a "difficult-to-fill" position identified by the Department of Education (DOE) to the categories of positions in which retirants may be reemployed without reenrollment in the Employees' Retirement System (ERS) and without suffering loss or interruption of pension benefits provided by the ERS or under chapter 87A, HRS, subject to certain conditions. This bill also amends section 88-9, HRS, as it relates to retirants reemployed as a teacher or an administrator in a teacher shortage area or difficult-to-fill position identified by the DOE, or in a charter school, or as a mentor for new classroom teachers, by: (1) removing the condition that the retirant not be employed by the State or a county during the twelve calendar months prior to the first day of reemployment; and (2) adding that the retirant shall not be eligible for benefits afforded to active employees pursuant to chapter 78, HRS.

This bill's removal of the condition that the retirant not be employed by the State or a county during the twelve calendar months prior to the first day of reemployment, may have a significant and unpredictable impact on the ERS's status as a qualified governmental plan under section 401(a) of the Internal Revenue Code (IRC) of 1986, as amended. In Internal Revenue Service (IRS) Private Letter Ruling 201147038 (Apr. 20, 2010), the IRS determined that:

[E]mployees who 'retire' on one day in order to qualify for a benefit under the Plan, with the explicit understanding between the employee and employer that they are not separating from service with the employer are not legitimately retired. Accordingly, because these employees would not actually separate from service and cease performing services for the employer when they 'retire,' these 'retirements' would not constitute a legitimate basis to allow participants to qualify for ... retirement benefits.... Such 'retirements' will violate section 401(a) of the [Internal Revenue] Code and result in disqualification of the Plan under section 401(a) of the Code.

On October 24, 2014, the IRS issued a favorable determination letter confirming that the ERS's plan terms in chapter 88, HRS, as they existed at the time of submission (which included the condition of a twelve month separation from service for retirees reemployed as teachers or administrators in teacher shortage areas or in a charter school, or as mentors for new classroom teachers, at section 88-9(d)(5), HRS), met the requirements of section 401(a), IRC. Internal Revenue Procedure 2016-37 ended the ability of ongoing plans to obtain IRS determination letters, effective January 1, 2017. To mitigate the risk to the ERS's status as a qualified governmental plan under section 401(a), IRC, we recommend that the Legislature leave intact and not remove the condition that the retirant not be employed by the State or a county during the twelve calendar months prior to the first day of reemployment.

Furthermore, the bill's addition of a provision that the retirant shall not be eligible for benefits afforded to active employees pursuant to chapter 78, HRS, makes it unclear whether the ERS or the retirants' respective employers (the DOE or a charter school) will have the authority and obligation to administer such requirement. If it is intended that the retirants' respective employers (the DOE or a charter school) have such authority and obligation over their employees' employment benefits (other than the pensions administered by the ERS pursuant to chapter 88, HRS), the amendment in this bill would be better situated in chapter 78, HRS (Public Service), and outside of chapter 88, HRS (Pension and Retirement Systems).

Given these risks, we urge the Committee to hold the bill to avoid jeopardizing the ERS's status as a qualified governmental plan under section 401(a) of the Internal Revenue Code of 1986.

Thank you for the opportunity to testify.

JOSH GREEN, M.D.
GOVERNOR



KEITH T. HAYASHI
SUPERINTENDENT

STATE OF HAWAII
DEPARTMENT OF EDUCATION
KA 'OIHANA HO'ONA'AUAO
P.O. BOX 2360
HONOLULU, HAWAII 96804

Date: 02/11/2025

Time: 09:00 AM

Location: 309 VIA VIDEOCONFERENCE

Committee: House Labor

Department: Education

Person Testifying: Keith T. Hayashi, Superintendent of Education

Bill Title: HB 0841, HD1 RELATING TO RETIRED TEACHERS.

Purpose of Bill: Repeals the provision prohibiting retirants to be rehired as teachers or administrators in teacher shortage areas or in hard-to-fill positions within twelve calendar months of leaving employment with the State or a county. Prohibits rehired retirants from receiving additional employment benefits. Directs the Department of Education to adopt rules to identify teacher shortage areas and hard-to-fill positions. Effective 7/1/3000. (HD1)

Department's Position:

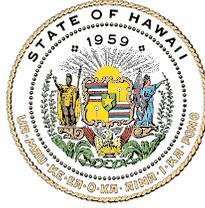
The Hawai'i State Department of Education (Department) appreciates the opportunity to comment on House Bill 841, HD 1, relating to retired teachers.

The Department seeks clarification on Section 1 (d) (5) (C) concerning employment benefits. As Bargaining Unit 05 members, teachers receive specific benefits through their collective bargaining agreement. The bill should specify which benefits would not be available to returning retirees to ensure proper implementation and to avoid potential conflicts with existing contracts.

Thank you for the opportunity to provide testimony on HB 841, HD 1.

JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LIEUTENANT GOVERNOR



THOMAS WILLIAMS
EXECUTIVE DIRECTOR

GAIL STROHL
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
PROVIDING COMMENTS ON
HOUSE BILL NO. 841, H.D.1**

February 11, 2025

9:00 A.M.

Conference Room 309 and VIA Videoconference

RELATING TO RETIRED TEACHERS.

Chair Sayama, Vice Chair Lee, and Members of the Committee,

While the ERS Board of Trustees has not had the opportunity to review this legislation, ERS staff believes the Board would have concerns about the potential negative impact to the system's tax qualification and respectfully offers the following comments.

H.B. 841, H.D.1 proposes to remove the existing 12-month break required for ERS retirees to return to an ERS eligible position without re-enrollment as a member of the system.

The ERS recognizes that the DOE is experiencing a shortage of teachers and is dealing with challenges as a result of these vacancies.

However, the ERS respectfully recommends that the 12-month break not be repealed. A 12-month break before returning to an ERS eligible position, for any ERS retiree, fulfills the Internal Revenue Service's requirement for a bona fide break in service to exempt the payment of pension while an employee of the system from constituting a disqualifying "in-service distribution".



Employees' Retirement System
of the State of Hawaii

As a qualified plan under section 401(a) of the Internal Revenue Code (IRC) of 1986, as amended, the ERS and our members enjoy a beneficial tax status which permits contributions to be made on a pre-tax basis and allows benefits to accrue as non-taxable events. Revocation of this tax status could result in irreparable harm and additional tax liability for our members.

Thank you for the opportunity to provide testimony on H.B. 841, H.D.1.



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TESTIMONY TO THE HAWAI'I HOUSE COMMITTEE ON LABOR

Item: HB 841, HD1 – Relating to Retired Teachers

Position: Support

Hearing: Tuesday, February 11, 2025, 9:00 am, Room 309

Submitter: Osa Tui, Jr., President - Hawai'i State Teachers Association

Dear Chair Sayama, Vice Chair Lee and members of the committee,

The Hawai'i State Teachers Association (HSTA) supports HB 841, HD1 which allows retired teachers to return to work in teacher shortage areas or difficult-to-fill positions within twelve calendar months of leaving employment with the State or a county.

As you know, Hawai'i has a severe teacher shortage. We need an estimated 1,200 to 1,500 new teachers every year. This shortage is especially predominant in certain subject areas, such as special education, Hawaiian language, and STEM fields.

We believe many qualified teachers who have retired would consider returning to work. HB 841, HD1 would remove barriers and allow these experienced educators to return to the classroom. This would help to improve the quality of education in Hawai'i and reduce the workload of current teachers.

We recommend passage of HB 841, HD1.

Mahalo.