

TESTIMONY BY DAVID SHIMABUKURO
ADMINISTRATOR, EMPLOYEES' RETIREMENT SYSTEM
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON FINANCE
ON
HOUSE BILL NO. 1738
RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM

FEBRUARY 26, 2009

Chairperson Oshiro and Members of the Committee:

H.B. 1738 extends the moratorium on retirement benefit enhancement proposals while there is an ERS unfunded actuarial accrued liability by repealing the current January 2, 2011 sunset date.

The ERS' unfunded actuarial accrued liability on June 30, 2008 was \$5.168 billion and the actuarial funded ratio was 68.9%. To help reduce the large unfunded liability, the Legislature previously increased the State and county governments' contributions to the ERS beginning July 2008 and placed a moratorium on all retirement benefit enhancement proposals until January 2011.

Although the actuarial funded ratio improved during the past fiscal year, there was a sharp decline in the economy and global financial markets during the second half of 2008. The actuarial unfunded liability is expected to increase due to the significant investment losses being experienced and the uncertain state of the economy.

The ERS Board of Trustees supports this Bill and feels that it is prudent to place a permanent moratorium on retirement benefit enhancement proposals while there is an unfunded actuarial accrued liability.

Thank you for the opportunity to testify on this measure.

WRITTEN ONLY

TESTIMONY BY GEORGINA K. KAWAMURA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON FINANCE
ON
HOUSE BILL NO. 1738

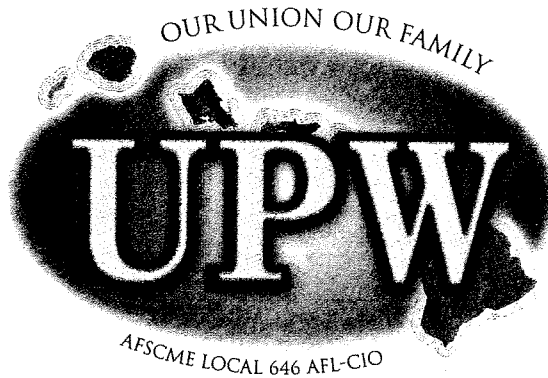
February 26, 2009

RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM

House Bill No. 1738 prohibits any retirement benefit enhancements for State and County employees while an unfunded accrued liability exists.

The Department of Budget and Finance supports this measure.

Currently, Section 88-122, Hawaii Revised Statutes (HRS), contains a moratorium on benefit enhancements only through January 2, 2011. The State's current financial conditions make it imperative that costs for employee benefits be contained. Appropriations for the State's employer pension accumulation contributions in FY 2009 total \$436.8 million and are estimated to increase to \$439.5 million by the end of FY 2009-2011. As of June 30, 2007, the ERS' actuarial unfunded liability was \$5.1 billion. Further, any benefit enhancements will only compound the significant fiscal challenges being experienced by pension systems nationwide given recent investment losses. The proposed permanent moratorium on any retirement benefit enhancements as long as there is an unfunded actuarial liability is a prudent and responsible course of action.



The House of Representatives
The Twenty-Fifth Legislature
Regular Session of 2009

Committee on Finance

Rep. Marcus R. Oshiro, Chair
Rep. Marilyn B. Lee, Vice Chair

DATE: Thursday, February 26, 2009
TIME: 11:00 a.m.
PLACE: House Conference Room 308
State Capitol
415 South Beretania Street

**TESTIMONY OF THE UNITED PUBLIC WORKERS, AFSCME,
LOCAL 646, AFL-CIO ON H.B. 1738 RELATING TO
EMPLOYEES' RETIREMENT SYSTEM**

My name is Dayton M. Nakanelua, and I am the state director of the United Public Workers, AFSCME, Local 646, AFL-CIO (UPW). The UPW currently represents approximately 8,700 blue collar, non-supervisory employees and 2,800 institutional, health, and correctional workers in the State of Hawaii and the various counties. We also represent approximately 3,000 retired members currently receiving benefits under chapter 88. We are opposed to House Bill No. 1738 which amends Section 88-122 (e), Hawaii Revised Statutes (HRS), because it permanently and indefinitely imposes a cap on retiree benefits under chapter 88, uses a broad and ambiguous term, i.e., "benefit enhancements," may violate Article XVI, Section 2 of the State Constitution, and is a one-sided approach to addressing unfunded liability.

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In 2007 the legislature in Act 256 established a proviso in Section 88-122 (e), HRS, which prohibits any form of "benefit enhancements" under chapter 88, including any reduction in retirement age, for a three year period from January 2, 2008 to January 2, 2011. The enactment, which amended sections 88-105, and 88-122, HRS, was intended "to establish a policy framework to enable the employee's retirement system to eventually eliminate its \$5,100,000,000 unfunded liability." See Section 1 of Act 256, 2007 Haw. Sess. L. at 819. Lawmakers recognized that any grant of "additional benefits which include earlier retirements" by future legislation may lengthen the period of time needed to become "fully funded." 2007 Haw. Sess. L. at 820. The measure increased the standard for determining the normal cost of contributions and accrued liability effective fiscal year 2008 to 2009, and implemented a cap on "benefit enhancements" under chapter 88 for just three years.

House Bill No. 1738 amends the 2007 enactment by implementing a permanent and indefinite cap on benefits retroactive to January 2, 2008. It effectively prohibits any form of "benefit enhancements" under chapter 88 as long as there is any form of unfunded accrued liability. Where a statute contains the definition of a term or phrase its established meaning is followed by the courts. Stenberg v. Carhart, 530 U.S. 914, 942 (2000) ("When a statute includes an explicit definition, we must follow that definition, even if it varies from the term's ordinary meaning."). The phrase "no benefit enhancements under this chapter" was not defined in 2007 and is not defined in this bill. Where a term is undefined the courts may rely on legal and lay dictionaries and follow the ordinary meaning of terms. Singleton v. Liquor Comm'n, County of Hawaii, 111 Hawai'i 234, 140 P.3d 1014 (2006). The term "enhancement" is

defined in The Webster's Revised Unabridged Dictionary as follows:

The act of increasing, or state of being increased; augmentation; aggravation; as, the enhancement of value, price, enjoyments, crime. (Emphasis added).

Thus, using the foregoing definition, if adopted this measure prohibits any form of increase or change in the value of benefits regardless of when the statutory change was enacted, indefinitely. It could, for example, prohibit retiree bonuses which were authorized many years ago under Section 88-11, HRS, and any other increases in benefits under chapter 88 that an employee may receive hereafter by past legislation.

Article XVI, Section 2 of the Hawaii State Constitution states as follows:

Membership in any employees' retirement system of the State or any political subdivision thereof shall be a contractual relationship, the accrued benefits of which shall not be diminished or impaired. (Emphasis added).

In Chun v. Employees' Retirement Sys., 61 Haw. 596, 606, 607 P.2d 415, 421 (1980), our Supreme Court held that the foregoing provision was intended to protect members of the employee's retirement system from "reduction in accrued benefits." Article XVI, Section 2, has also been extended by necessary implication to protect the "sources of those benefits," i.e., the amounts of state and county contributions. See Kaho`ohanohano v. State, 114 Hawai'i 302, 338, 162 P.3d 696, 732 (2007). We believe that a permanent and indefinite prohibition of any form of enhanced benefits without considering the "sources of those benefits" under chapter 88 may be unconstitutional.

It is also unfair because it caps any form of benefit changes without considering the level and amounts of contributions to be made by employers in the future. Since the

Kaho`ohanohano decision there has been no remedy for the loss revenue from ERS. For years the legislature has annually revised chapter 88 to address benefits and cost factors together, and to make benefit adjustments prudently taking into account cost considerations and all relevant factors. This bill imposes the entire burden of unfunded liability on employees and current retirees without their input. It represents a significant departure from the legislature's past approach to chapter 88. A "permanent moratorium" is not a prudent means to address the unfounded actuarial accrued liability.

TO: Committee on Finance

Rep. Marcus R. Oshiro, Chair
Rep. Marilyn B. Lee, Vice Chair

DATE: Thursday, February 26, 2009
TIME: 11:00 a.m.
PLACE: Conference Room 308

RE: HB 1738 Relating to the Employees' Retirement System
Prohibits any retirement benefit enhancements for State and County employees while an unfunded accrued liability exists.

FROM: Donna Higashi, Vice President
HSTA - Retired

My name is Donna Higashi, Vice President and member of the Legislative Action Team of HSTA - Retired. While we recognize the need to be frugal during this time of economic challenges, we do not feel this measure should be permanent. We are opposed to this bill.

In the 2007 Legislative session, a similar "no enhancement of benefits" bill was introduced, but the legislators at that time amended it to be effective only from 2008 - 2011. We could live with that. Also, I understand the State and county governments' contributions to the ERS was also increased to help reduce the large unfunded liability. However, this unfunded liability of \$5.1 million was caused by many many factors throughout the years including the action or inaction of the legislators and it is incomprehensible on when this will cease to exist.

I believe there could be future legislation which will benefit the employees, the retirees and the State and counties but it will be the legislators who will decide its merit on a case by case basis. We should not be held back in proposing something worthwhile because of this unfunded liability.

Thank you for this opportunity to testify on this measure.

HOUSE COMMITTEE ON FINANCE
Representative Marcus Oshiro, Chair
Representative Marilyn Lee, Vice Chair

Date: Thursday, February 26, 2009
Time: 11:00 a.m.
Place: Conference Room 308/State Capitol

Subject: HB1738: "A BILL FOR AN ACT RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM"

Chairman Oshiro and members of the House Finance Committee, my name is Odetta Fujimori, a former trustee of the ERS and a beneficiary of the Employees' Retirement System. I would like to express my reservations to H.B. 1738 which seeks to repeal the January 2, 2011 sunset date on the prohibition on approving Employees' Retirement System (ERS) benefit enhancements while an unfunded accrued liability exists.

At the time that the prohibition was put into place, we as retirees took comfort in the fact that the moratorium would only be for three years and enhancements for retiree benefits could rightfully take place after 2011. While we understand that special interest groups, other than retirees, have often appealed to the legislature for benefit enhancements, we believe that retirees should not be penalized by this long term threat.

A 2006 study by ERS' Actuary points out that a 1985 retiree's pension, although increased by 2.50% (not compounded) each year through a post retirement allowance, is faced with an 87.38% change in the Consumer Price Index (CPI) since retirement and would therefore need an ad hoc increase of nearly 17% of the retiree's benefit to restore his/her purchasing power. Taking this scenario one step further, a pensioner who retired in 1980 is faced with almost a 145% change in the CPI since retirement and will need an ad hoc increase of nearly 35% to restore his/her purchasing power.¹

State lawmakers have an opportunity to recognize the dedication of state and county workers who contributed much to Hawaii's growth and progress. Those of us who were contributory members of the system helped to keep ERS funded above the 80% level. This bill tends to penalize us for having made timely contributions to the system.

It behooves this committee to make allowances for retirees to seek economic relief and you can do this by amending the bill to permit benefit enhancements for retirees.

¹ Gabriel Roder Smith & Company, Post Retirement Allowance Study, December 11, 2006, page 5.

¹ Gabriel Roder Smith & Company, Post Retirement Allowance Study, December 11, 2006, page 5.

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 25, 2009 8:44 AM
To: FINTestimony
Cc: bgotelli@msn.com
Subject: Testimony for HB1738 on 2/26/2009 11:00:00 AM

Testimony for FIN 2/26/2009 11:00:00 AM HB1738

Conference room: 308
Testifier position: oppose
Testifier will be present: No
Submitted by: Beverly Gotelli
Organization: Hawaii State Teachers Association - Retired
Address: 6286 Opaekaa Road Kapaa, HI
Phone: 808 821 9569
E-mail: bgotelli@msn.com
Submitted on: 2/25/2009

Comments:
TO: Committee on Finance

Rep. Marcus R. Oshiro, Chair
Rep. Marilyn B. Lee, Vice Chair

DATE: Thursday, February 26, 2009
TIME: 11:00 a.m.
PLACE: Conference Room 308

RE: HB 1738 Relating to the Employees' Retirement System Prohibits any retirement benefit enhancements for State and County employees while an unfunded accrued liability exists.

FROM: Beverly Gotelli, Secretary.
HSTA - Retired

My name is Beverly Gotelli a member of the Legislative Action Team of HSTA - Retired. While we recognize the need to be frugal during this time of economic challenges, we do not feel this measure should be permanent. We are opposed to this bill.

In the 2007 Legislative session, a similar "no enhancement of benefits" bill was introduced, but the legislators at that time amended it to be effective only from 2008 - 2011. We could live with that. However, this unfunded liability of \$5.1 million was caused by many, many factors throughout the years including the action or inaction of the legislature and it is incomprehensible on when this will cease to exist.

I believe this legislation would hurt those who have been retired for a long period. There are creative ways to look at how to take care of those and future retirees if legislators would be receptive to them. This is not the time to remove the sunset on the current legislation.

I urge the members to oppose this legislation.

Thank you for this opportunity to testify on this measure.

HB 1738

TESTIMONY by Paul Billand
Liaison Board of Water Supply/Chief Steward United Public Workers Union
TO THE HOUSE COMMITTEE on FINANCE
HOUSE BILL NO. 1738
February 26, 2009
RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM.

I'm a 36-year employee for the City and County of Honolulu. These bills will have an adverse effect on my fellow State, City and County Workers.

I Strongly Oppose House Bill 1738

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 25, 2009 10:19 AM
To: FINTestimony
Cc: angela_pahia@notes.k12.hi.us
Subject: Testimony for HB1738 on 2/26/2009 11:00:00 AM

Testimony for FIN 2/26/2009 11:00:00 AM HB1738

Conference room: 308
Testifier position: oppose
Testifier will be present: No
Submitted by: Angela Pahia
Organization: Individual
Address:
Phone: 239-3125
E-mail: angela_pahia@notes.k12.hi.us
Submitted on: 2/25/2009

Comments: