

DAVID Y. IGE  
GOVERNOR



THOMAS WILLIAMS  
EXECUTIVE DIRECTOR

KANOE MARGOL  
DEPUTY EXECUTIVE DIRECTOR

**STATE OF HAWAII  
EMPLOYEES' RETIREMENT SYSTEM**

**Date: August 9, 2016**

**Employees' Retirement System of the State of Hawaii Files Suit to Stop Implementation of Improper Benefits Election in 2016 Hawaii Laws 2nd Sp. Sess. Act 1 (S.B. 2077)**

The Employees' Retirement System of the State of Hawaii (ERS) filed a lawsuit today to protect the tax exempt status of the ERS and the retirement benefits of its almost 120,000 members. The ERS sued to stop 2016 Hawaii Laws 2nd Sp. Sess. Act 1 (S.B. 2077) from taking effect because it is unconstitutional as it impairs the retirement benefits of all State and county employees and retirees.

Act 1 gives certain state employees, who are terminated due to the transfer of Hawaii Health Systems Corporation's Maui and Lanai facilities to a private entity, the option of electing a cash severance payment or certain early retirement benefits. The United States Internal Revenue Code does not allow the ERS plan to offer employees such an election. If Act 1 goes into effect, it could result in the loss of the ERS's status as a tax-qualified defined benefit pension plan under the Internal Revenue Code.

The loss of tax-qualified status by the ERS would be catastrophic for all State and county employees. The employees would no longer be able to defer the payment of taxes on employee retirement contributions. Rather, the contributions would be included in the employees' income and taxed as normal wages when contributed. Further, the employees would be subject to federal income taxes on the portion of their benefits funded by the employer at the time that the benefits vest, instead of when they actually receive the benefits. Additionally, the employees would lose their right to the tax deferred rollover of their retirement contributions to other retirement vehicles, such as IRAs.

To prevent such a catastrophe, the ERS is asking the State court to temporarily stay the effect of Act 1 so the ERS can seek guidance from the Internal Revenue Service (IRS). If the IRS determines that any portion of Act 1 would disqualify the ERS plan, then the ERS is seeking to have the court declare those provisions unconstitutional.

This lawsuit does not address the ongoing proposed transfer of Maui Memorial Medical Center, Kula Hospital & Clinic and Lanai Community Hospital from the Hawaii Health Systems Corporation to Kaiser Permanente Hawaii. The ERS takes no position as to that transaction, and the lawsuit does not seek to prevent it.

Thomas Williams, Executive Director for the ERS, stated "As the steward of all the State and county employees' retirement, the ERS must do everything it can to protect its beneficiaries and the fund. All we want is to make sure this statute does not have the unintended consequence of jeopardizing the ERS plan."

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Contact: Donna Curry, Program Specialist / Phone: (808) 586-1700 / Email: [donna.curry@hawaii.gov](mailto:donna.curry@hawaii.gov)



Employees' Retirement System  
of the State of Hawaii

City Financial Tower • 201 Merchant Street, Suite 1400 • Honolulu, Hawaii 96813-2980  
Telephone (808) 586-1735 • Fax (808) 586-1677 • <http://ers.ehawaii.gov>