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FIRST CIRCUIT COURT
STATE OF HAWAII
FILED

2016 AUG -9 PM 2:50

N. MIYATA
CLERK

SPECIAL DEPUTIES ATTORNEY GENERAL
Attorneys for Plaintiff
BOARD OF TRUSTEES OF THE
EMPLOYEES' RETIREMENT SYSTEM
OF THE STATE OF HAWAII

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

BOARD OF TRUSTEES OF THE
EMPLOYEES' RETIREMENT SYSTEM
OF THE STATE OF HAWAII,

Plaintiff,

vs.

STATE OF HAWAII; HAWAII HEALTH
SYSTEMS, CORP.; and DOES 1 -100,

Defendants.

Civil No. 16-1-1543-08 ECN
(Declaratory Relief)

SUMMONS

No Trial Date Set

SUMMONS

STATE OF HAWAII

To the above-named Defendants:

I do hereby certify that this is a full, true, and
correct copy of the original on file in this office.


Clerk, Circuit Court, First Circuit

You are hereby summoned and required to file with the court and serve upon Kobayashi, Sugita & Goda, LLP, attorneys for Plaintiff BOARD OF TRUSTEES OF THE EMPLOYEES' RETIREMENT SYSTEM OF THE STATE OF HAWAII, whose address is First Hawaiian Center, 999 Bishop Street, Suite 2600, Honolulu, Hawai'i 96813, an answer to the Complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

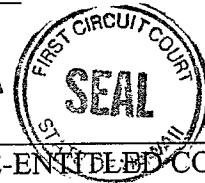
This summons shall not be personally delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the general public, unless a judge of the above-entitled court permits, in writing on this summons, personal delivery during those hours.

A failure to obey this summons may result in an entry of default and default judgment against the disobeying person or party.

AUG 09 2016

DATED: Honolulu, Hawaii, _____.

N. MIYATA



CLERK OF THE ABOVE-ENTITLED COURT

FIRST CIRCUIT COURT
STATE OF HAWAII
FILED

2016 AUG -9 PM 2: 10

KOBAYASHI, SUGITA & GODA
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J. KUBO
 CLERK

SPECIAL DEPUTY ATTORNEYS GENERAL
 Attorneys for Plaintiff
 BOARD OF TRUSTEES OF THE
 EMPLOYEES' RETIREMENT SYSTEM
 OF THE STATE OF HAWAII

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

16-1-1563-09 ECN.

BOARD OF TRUSTEES OF THE
 EMPLOYEES' RETIREMENT SYSTEM
 OF THE STATE OF HAWAII,

Plaintiff,

vs.

STATE OF HAWAII; HAWAII HEALTH
 SYSTEMS, CORP.; and DOES 1 -100,

Defendants.

Civil No. _____
 (Declaratory Relief)

COMPLAINT; EXHIBITS "A"- "E";
 SUMMONS

No Trial Date Set

I do hereby certify that this is a full, true, and
 correct copy of the original on file in this office.

Clerk, Circuit Court, First Circuit

SUMMONS
 DENIED

LEGAL DOCUMENTS FILED

COMPLAINT

BOARD OF TRUSTEES OF THE EMPLOYEES' RETIREMENT SYSTEM OF THE STATE OF HAWAII ("ERS"), by and through their attorneys, Kobayashi, Sugita & Goda, hereby alleges and avers as follows:

PARTIES

1. The ERS is a retirement system created by Hawai'i Revised Statutes ("**HRS**") §88-22 for the purpose of providing retirement allowances and other benefits for employees of the State and counties. As used in this Complaint, "ERS" refers to the formal plan established by the Legislature of the State of Hawai'i and codified in the HRS for the purpose of providing such retirement allowances and other benefits, together with the trust and trust assets set aside to fund such allowances and other benefits and the administrative functions through which allowances and other benefits are administered.

2. Pursuant to HRS §88-22, ERS has "the powers and privileges of a corporation" and by that name may "sue or be sued."

3. The board of trustees of the ERS ("**Board**") was created by HRS §88-23 to be responsible for the administration of the ERS.

4. Defendant State is a sovereign entity.

5. Defendant Hawai'i Health Systems Corporation ("**HHSC**") is a public body corporate and politic and an instrumentality and agency of the State that has the ability to sue and be sued individually. HRS §§ 323F-2; 323F-7.

6. Defendants DOE DEFENDANTS 1-100 are individuals, partnerships, corporations, non-profit corporations, or other entities, and are sued herein under their fictitious names for the reason that their true names and identifies are presently unknown to Plaintiff,

except that they are presently unknown to Plaintiffs or their attorneys due to the limited discovery powers afforded to Plaintiff prior to instituting suit. Plaintiffs pray for leave to amend their Complaint to show the true names and capacities, activities, and/or responsibilities of the Doe Defendants when the same have been ascertained.

FACTS

7. The ERS was established in 1925 to provide retirement allowances and other benefits to State and county government employees.

8. The ERS administers benefits for service retirement, disability retirement, and survivor benefits for employees of the State of Hawai'i, the City and County of Honolulu, County of Hawai'i, County of Maui and County of Kauai.

9. The ERS collects retirement contributions from members and employers; provides pre-retirement counseling services; conducts disability hearings and appeals; reviews claims for retirement, disability, and death benefits and certifies these benefits for payment; processes monthly pension checks to retirees and beneficiaries; accounts for and safeguards assets in the ERS investment portfolio; and invests funds to help finance this program.

10. The ERS is a qualified defined benefit public pension plan that is required, by HRS §88-22.5, to meet the tax qualification requirements of Section 401(a) of the Internal Revenue Code ("**Code**").

11. As evidenced by a favorable determination letter issued by the Internal Revenue Service dated October 27, 2014, and attached hereto as Exhibit "A", the language in the statutes and administrative rules that comprised the ERS "plan" on January 30, 2014, when the State last applied for a determination letter, met the tax qualification requirements of Section 401(a) of the Code.

12. So long as such requirements are met by the ERS, contributions to the ERS are excluded from employee income for tax purposes until distributed as benefits, and members are eligible to roll over "eligible rollover distributions" to another qualified retirement plan or arrangement. Deferment of income taxes on pension benefits is the primary benefit of the ERS to its members.

13. The ERS covers all eligible full time and part-time State and county employees in the State of Hawai'i.

14. The ERS has almost 120,000 members, including more than 67,000 active members and more than 44,000 retirees and beneficiaries.

15. As of June 2015, the ERS managed assets of approximately \$14.4 billion.

16. However, the ERS's funded status has been deteriorating since 2000 when it stood at 94.5% funded. In contrast, in fiscal year 2015, the ERS was determined to be funded at only 62.2%.

17. Attached hereto as Exhibit "B" is a chart showing the funding ratio for the period from 2000 through 2015 as well as the past and projected cash-flow for the ERS plan.

18. As is evident from Exhibit "B", the ERS has been dramatically impacted by a number of factors and is currently in a very difficult position.

19. To put the current financial state of the ERS in perspective, if the ERS were a private sector multiemployer plan covering the members of a union, it would be deemed to be in "critical status" under Section 1085(b)(2) of the Internal Revenue Code. As a result, distributions from the plan would be subject to restrictions, and the plan would be required to adopt a "rehabilitation plan" for the purpose of enabling the plan to regain financial strength, including by reducing future benefit accruals and eliminating early retirement benefits.

20. Additionally, the unfunded liability of the ERS fund is further challenged because the contributions received by the ERS from employees and their employers are substantially less than the benefit payments made by the ERS to retirees and their beneficiaries, resulting in a negative cash flow for the ERS.

21. The current unfunded liability of the ERS places it among the eleven worst-funded state pension plans in the United States.

22. The unfunded liability of the ERS remains a major concern of credit rating agencies of the State of Hawai'i and the four counties.

23. The legislature itself recognized the crisis in 2011 and implemented HRS §88-99, which specifically prohibited further benefit enhancements until the actuarial value of the ERS's assets is one hundred percent of the ERS's actuarial accrued liability.

ACT 1/S.B. 2077

24. On January 21, 2016, the Senate of the State of Hawai'i introduced Senate Bill 2077.

25. The purported purpose of Senate Bill 2077 was to:

(1) Authorize a severance benefit or special retirement benefit to an employee who is separated from service due to the transfer of management and operations of the Hawai'i Health Systems Corporation Maui Regional System and who elects to separate from service when the employee's position is identified for abolishment or when the employee is directly affected by a reduction-in-force or workforce restructuring plan; provided certain requirements are satisfied....

26. On May 5, 2016, Senate Bill 2077, SD1 HD2 CD2 ("**S.B. 2077**" or "**Act 1**") passed final reading and, on May 9, 2016, it was referred to the Governor.

27. S.B. 2077 provides in relevant part:

-2 Voluntary severance benefit. (a) Any employee entitled to reduction-in-force rights under chapter 89 and who receives official notification that the employee's position is being abolished or who is directly affected by a reduction-in-force or

workforce restructuring plan, including privatization, may elect to receive a voluntary severance benefit provided under this section in lieu of exercising any reduction-in-force rights under chapter 89 and in lieu of receiving any special retirement benefit under section -3.

[...]

-3 Special retirement benefit. (a) ... Any employee who receives official notification that the employee's position is being abolished or who is directly affected by a reduction-in-force or workforce restructuring plan, including privatization, proposed by any agency may elect, if the employee is eligible to receive benefits from the employees' retirement system and meets any of the criteria specified in subsection (c), the special retirement benefit provided by this section in lieu of ... receiving any severance benefits under section -2.

See Exhibit "C", a true and correct copy of S.B. 2077.

28. As such, S.B. 2077 allows certain HHSC employees the option of an election to choose between either: (1) the voluntary severance benefit described in section 2; or (2) a special subsidized retirement benefit described in section 3 which would not otherwise be available under the terms of the ERS.

29. On July 11, 2016, Governor Ige issued Message No. 1338 vetoing S.B. 2077 SD1 HD2 CD2 ("**Gov. Msg. No. 1338**"), a copy of which is attached hereto as Exhibit "D".

30. In relevant part, Governor Ige's Statement of Objections explained: "On July 8, 2016, the Employees' Retirement System (ERS) informed me that its tax counsel advised that the bill jeopardizes ERS's tax-qualified status because it allows the affected employees to choose between a lump-sum cash payment that is taxable as wages and a special employer subsidized early retirement benefit." Id.

31. Attached to Gov. Msg. No. 1338 is ERS's July 8, 2016 letter to Wesley Machida ("**ERS Letter**"), which states, in relevant part that S.B.2077 "will jeopardize ERS' tax qualified status." Id.

32. Further, the ERS Letter stated that "the offer to affected employees of a 'cash or deferred arrangement', which the severance benefit and special retirement benefit represents,

constitutes an impermissible election under the Internal Revenue Code sections governing our plan.” Id.

33. The ERS Letter also cited outside counsel’s opinion that offering of the benefit choices included in the bill would pose a threat to ERS’ tax-exempt status. Id. Attached to the ERS Letter is the July 7, 2016 letter from tax counsel, J. Thomas Maloney, Jr. Id.

34. On July 20, 2016, the Legislature of the State of Hawai‘i overrode Governor Ige’s veto of S.B. 2077 as Act 1 of the 2016 legislative Special Session. A copy of Act 1 is attached hereto as Exhibit “E”.

35. Act 1 has an immediate effective date. Id.

CONFLICT BETWEEN ACT 1 AND CODE SECTION 401(a)

36. Act 1 conflicts with Section 401(a) of the Code by requiring the State of Hawai‘i to give affected employees a choice between severance payments in cash and early retirement benefits which would otherwise not be available under the ERS.

37. Pursuant to Section 401(a) of the Code, the ERS is not permitted to offer such a “cash or deferred election” to its members.

38. Under the terminology of the Code, a “cash or deferred election” is made available under a “cash or deferred arrangement.”

39. The Treasury Regulations define a “cash or deferred arrangement” as “an arrangement under which an eligible employee may make **a cash or deferred election** with respect to contributions to, or accruals or other benefits under, a plan that is intended to satisfy the requirements of section 401(a) [of the Code].” 26 Code of Federal Regulations (hereafter, “Treas. Regs.”) § 1.401(k)-1(a)(2)(i) (emphasis added).

40. The Treasury Regulations define a “cash or deferred election” as

any direct or indirect election (or modification of an earlier election) by an employee to have the employer either—

- (A) Provide an amount to the employee in the form of cash (or some other taxable benefit) that is not currently available; or
- (B) Contribute an amount to a trust, or provide an accrual or other benefit, under a plan deferring the receipt of compensation.

See Treasury Regulations §1.401(k)-1(a)(3) (underlining added).

41. Act 1 gives an affected employee the right to elect to have the State of Hawai‘i “either ... provide [a severance] amount to the employee in the form of cash... or ... provide [an early retirement] benefit” under the ERS which would not otherwise be available.

42. The choice given to employees by Act 1 between severance and early retirement benefits is a “cash or deferred election” for purposes of Section 401(a), and the provision of such a choice under the ERS is a “cash or deferred arrangement.”

43. This “cash or deferred arrangement” is deemed to be a “part” of the ERS pursuant to Treas. Regs. §1.401(k)-1(a)(1) because early retirement “benefits under the plan, are ... provided” by Act 1 (underlining added).

44. Section 401(k) of the Code allows such “cash or deferred arrangements” to be included only in a profit-sharing, stock bonus, pre-ERISA money purchase, or rural cooperative plan. Treas. Regs. §1.401(k)-1(a)(1).

45. But the ERS is not a profit-sharing, stock bonus, pre-ERISA money purchase, or rural cooperative plan. Instead, it is a defined benefit plan.

46. Section 1.401(k)-1(a) of the Treasury Regulations prohibits defined benefit plans such as the ERS plan from including a “cash or deferred arrangement”. *See* IRS Rev. Rul. 2006-43 (stating “Thus, a qualified defined benefit plan is not permitted to include a cash or deferred arrangement.”).

47. Further, except for certain plans in existence before May 6, 1986, governmental plans, regardless of type, are expressly prohibited from including a “cash or deferred arrangement” pursuant to Code §401(k)(4)(B)(ii) and Treas. Regs. §1.401(k)-1(e)(4).

48. The ERS is a governmental plan under the Code. Code §414(d).

49. Because the ERS is a defined benefit and governmental plan, the ERS may not provide electing employees the early retirement benefits made available by Act 1 without violating the tax qualification requirements imposed upon it by Section 401(a) of the Code.

CONSEQUENCES OF LOSS OF TAX QUALIFIED STATUS

50. The ERS’s loss of tax qualified status would violate HRS §88-22.5, which requires the ERS to meet the tax qualification requirements of the Code.

51. Failure to provide employees a tax qualified pension plan would impair employees’ benefits because it would cause ERS members to lose the benefits of tax deferral provided by a qualified plan under the Code.

52. Specifically, the benefits normally provided to members by a qualified plan would be impaired by the ERS plan’s loss of qualified status as follows:

- (a) ERS members would lose the benefit of income tax deferral on their benefits, which is the primary benefit conferred on employees by a tax qualified plan. Specifically:
 - (1) All ERS members would lose the benefit of income tax deferral on employee contributions to the ERS. All such contributions would be taxable when contributed.
 - (2) Vested ERS members would lose the benefit of income tax deferral on accrued benefits funded by the employer. Such accrued benefits would be taxable when the member vested and incrementally each year thereafter.
- (b) ERS members would lose their right to the tax deferred rollover of their benefits to another account as they would no longer meet the definition of “eligible rollover distributions.” Treas. Regs. §1.402(c)-2, Q&A-3.

53. For the State of Hawai'i and the ERS, the annual calculation of accrued benefits for vested members would entail complex and costly calculations. Similarly, the reporting of distributions under Code §72 would become substantially more burdensome and expensive because it would require particularized calculations as to an employee's basis in such distributions and would substantially increase costs and administrative burden. These costs would serve to increase the unfunded liability of the ERS plan.

54. For the foregoing reasons, a disqualification of the ERS plan would impair the benefits to members intended to be made available by a plan which meets the tax qualification requirements of Section 401(a) of the Code..

55. This, in turn, would violate employees' rights under Article XVI, Section 2 of the Constitution of the State of Hawai'i ("**Non-Impairment Clause**"), which provides as follows:

Section 2. 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.

56. The Hawai'i Supreme Court has interpreted the Non-Impairment Clause broadly, holding, for example, that it is a blanket prohibition of any reduction of benefits for past service. See Everson v. State, 122 Hawai'i 402, 416, 228 P.3d 282, 296 (2010).

57. Further, the Hawai'i Supreme Court has held that any impairment of the sources used to fund the constitutionally protected "accrued benefits" is also a violation of the Non-Impairment Clause. Kaho'ohanohano v. State, 114 Hawai'i 302, 338, 162 P.3d 696, 732 (2007).

58. Owing to the loss of income tax deferral and rollover rights for members incident to disqualification of the ERS and to the increased costs and burdens of income tax reporting for both members and the ERS, any law which would result in the disqualification of the ERS under Section 401(a) is *per se* unconstitutional under the Non-Impairment Clause. See Kaho'ohanohano v. State, 114 Hawai'i 302, 338, 162 P.3d 696, 732 (2007).

MAINTENANCE OF STATUS QUO ANTE PENDING GUIDANCE FROM IRS

59. As soon as administratively possible, the ERS will submit a request for a private letter ruling from the IRS as to whether the election contemplated by Act 1 would cause the ERS to violate the tax qualification requirements of the Code.

60. Unless and until the IRS provides a ruling confirming that the election would not jeopardize the qualified status of the ERS, we respectfully submit that this Court must suspend the implementation of Act 1 as the impact of disqualification would be catastrophic to the ERS and its almost 120,000 members.

POSITION AS TO TRANSFER OF MAUI MEMORIAL HOSPITALS

61. It is noted that the genesis of Act 1 arises from Act 103 of the 2015 legislative session ("**Act 103**").

62. The stated purpose of Act 103 was the following:

The purpose of this Act is to ensure that the people of the State have continued access to health care services in the county of Maui. Accordingly, this Act authorizes the Maui regional system of the Hawai'i health systems corporation, in collaboration with a private entity, to transition any one or more of its facilities, which include Maui memorial medical center, Kula hospital and clinic, and Lanai community hospital, to operation by a new private nonprofit corporation.

63. Following the passage of Act 103, the United Public Workers ("**UPW**") filed a lawsuit in the Hawai'i Federal District Court, which is designated as United Public Workers, American Federation of State, County, Municipal Employees, Local 646, AFL-CIO v. Ige, Civ. No. 15-00303 HG-KSC ("**UPW Lawsuit**").

64. In the UPW Lawsuit, the UPW sought to enjoin the Governor from implementing Act 103.

65. Subsequently, the UPW filed a motion for preliminary injunction and Governor Ige filed a motion for judgment on the pleadings. On February 19, 2016, Judge Helen Gillmor

granted Governor Ige's motion and denied the UPW's motion for preliminary injunction. Subsequently, the UPW appealed Judge Gillmor's ruling to the Ninth Circuit. On May 17, 2016, the Ninth Circuit issued an injunction pending appeal and ordered as follows:

Plaintiff-Appellant's motion for an injunction pending appeal is granted, in part. Defendant-Appellee David Y. Ige ("Governor") and all persons acting in concert with the Governor are enjoined from enforcing or implementing, or taking any steps to enforce or implement, 2015 Hawai'i Session Law, Act 103. This injunction pending appeal is issued pursuant to Fed. R. App. P. 8 and Fed. R. Civ. P. 62(g), and shall remain in effect only until September 30, 2016, unless sooner terminated by the court. On or before June 30, 2016, the parties shall file a Joint Status Report setting forth any change in the status of the case.

66. Thus, the implementation of Act 103 is currently stayed until September 30, 2016 or an earlier disposition of the UPW Lawsuit.

67. The ERS takes no position as to the transfer of the hospitals or the issues raised in the UPW Lawsuit. The ERS is not seeking to stop or even delay the transfer of the hospitals. The sole issue addressed in this complaint is whether Act 1 is in violation of the Non-Impairment Clause of the Hawai'i State Constitution because it could result in the ERS plan being in violation of IRS Code Section 401(a) and thus result in the disastrous consequence that the ERS plan might no longer be a qualified plan. As discussed above, that would be catastrophic to the almost 120,000 state and county workers and retirees whose benefits are managed by the ERS.

68. As such, the relief sought in this suit is limited solely to addressing the terms of Act 1 and does not address Act 103 or the transfer of the Maui hospitals.

COUNT I

(Declaratory Judgment)

69. Plaintiff reincorporates and realleges the foregoing paragraphs as if set forth fully herein.

70. HRS § 632-1 provides that:

In cases of actual controversy, courts of record, within the scope of their respective jurisdictions, shall have power to make binding adjudications of right, whether or not consequential relief is, or at the time could be, claimed, and no action or proceeding shall be open to objection on the ground that a judgment or order merely declaratory of right is prayed for; provided that declaratory relief may not be obtained in any district court, or in any controversy with respect to taxes, or in any case where a divorce or annulment of marriage is sought. Controversies involving the interpretation of deeds, wills, other instruments of writing, statutes, municipal ordinances, and other governmental regulations, may be so determined, and this enumeration does not exclude other instances of actual antagonistic assertion and denial of right.

Relief by declaratory judgment may be granted in civil cases where an actual controversy exists between contending parties, or where the court is satisfied that antagonistic claims are present between the parties involved which indicate imminent and inevitable litigation, or where in any such case the court is satisfied that a party asserts a legal relation, status, right, or privilege in which the party has a concrete interest and that there is a challenge or denial of the asserted relation, status, right, or privilege by an adversary party who also has or asserts a concrete interest therein, and the court is satisfied also that a declaratory judgment will serve to terminate the uncertainty or controversy giving rise to the proceeding. Where, however, a statute provides a special form of remedy for a specific type of case, that statutory remedy shall be followed; but the mere fact that an actual or threatened controversy is susceptible of relief through a general common law remedy, a remedy equitable in nature, or an extraordinary legal remedy, whether such remedy is recognized or regulated by statute or not, shall not debar a party from the privilege of obtaining a declaratory judgment in any case where the other essentials to such relief are present.

See HRS § 632-1.

71. An actual controversy exists as to whether Act 1 is unconstitutional and in violation of the Non-Impairment Clause of the Hawai'i State Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for a judgment as follows:

A. Holding that Act 1 is in violation of the Hawai'i State Constitution, particularly the Non-Impairment Clause, unless the IRS provides a ruling which confirms that the election contemplated by Act 1 would not result in disqualification of the ERS plan;

B. Enjoining State, and all of its agencies, departments, and employees, as well as Defendant HHSC from taking any further action which would implement the provisions of Act 1 until such a ruling is received from the IRS;

C. Declaring Act 1, in whole or in part, null and void in the event that such a ruling is not received from the IRS; and

D. Awarding such other and further relief as this Court deems just and equitable.

DATED: Honolulu, Hawai'i, August 9, 2016.



KOBAYASHI, SUGITA & GODA
DAVID M. LOUIE
CLIFFORD K. HIGA
JOSEPH A. STEWART
AARON R. MUN

Attorneys for Plaintiff
BOARD OF TRUSTEES OF THE
EMPLOYEES' RETIREMENT SYSTEM OF THE
STATE OF HAWAII

INTERNAL REVENUE SERVICE
P. O. BOX 2508
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date: OCT 27 2014

STATE OF HAWAII
C/O D' AMATO & MALONEY, LLP
JOHN THOMAS MALONEY JR
900 FORT STREET MALL STE 1680
HONOLULU, HI 96813

Employer Identification Number:
99-6011493
DIN:
17007044117004
Person to Contact:
RUTH CHEN ID# 95048
Contact Telephone Number:
(626) 927-1423
Plan Name:
EMPLOYEES' RETIREMENT SYSTEM OF THE
STATE OF HAWAII
Plan Number: 001

Dear Applicant:

We have made a favorable determination on the plan identified above based on the information you have supplied. Please keep this letter, the application forms submitted to request this letter and all correspondence with the Internal Revenue Service regarding your application for a determination letter in your permanent records. You must retain this information to preserve your reliance on this letter.

Continued qualification of the plan under its present form will depend on its effect in operation. See section 1.401-1(b)(3) of the Income Tax Regulations. We will review the status of the plan in operation periodically.

The enclosed Publication 794 explains the significance and the scope of this favorable determination letter based on the determination requests selected on your application forms. Publication 794 describes the information that must be retained to have reliance on this favorable determination letter. The publication also provides examples of the effect of a plan's operation on its qualified status and discusses the reporting requirements for qualified plans. Please read Publication 794.

This letter relates only to the status of your plan under the Internal Revenue Code. It is not a determination regarding the effect of other federal or local statutes.

This determination letter gives no reliance for any qualification change that becomes effective, any guidance published, or any statutes enacted, after the issuance of the Cumulative List (unless the item has been identified in the Cumulative List) for the cycle under which this application was submitted.

This determination letter is based solely on your assertion that the plan is entitled to be treated as a Governmental plan under section 414(d) of the Internal Revenue Code.

This determination letter is applicable to the plan and related documents submitted in conjunction with your application filed during the remedial amendment cycle ending 1-31-14.

Letter 2002

EXHIBIT "A"

STATE OF HAWAII

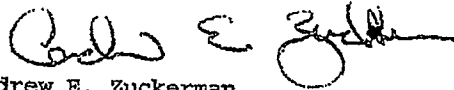
This letter may not be relied on after the end of the plan's first five-year remedial amendment cycle that ends more than 12 months after the application was received. This letter expires on January 31, 2019. This letter considered the 2012 Cumulative List of Changes in Plan Qualification Requirements.

This is not a determination with respect to any language in the plan or any amendment to the plan that reflects Section 3 of the Defense of Marriage Act, Pub. L. 104, 110 stat. 2419 (DOMA) or U.S. v. Windsor, 570 U.S. 12 (2013), which invalidated that section.

We have sent a copy of this letter to your representative as indicated in the Form 2848 Power of Attorney or appointee as indicated by the Form 8821 Tax Information Authorization.

If you have questions concerning this matter, please contact the person whose name and telephone number are shown above.

Sincerely,



Andrew E. Zuckerman
Director, EP Rulings & Agreements

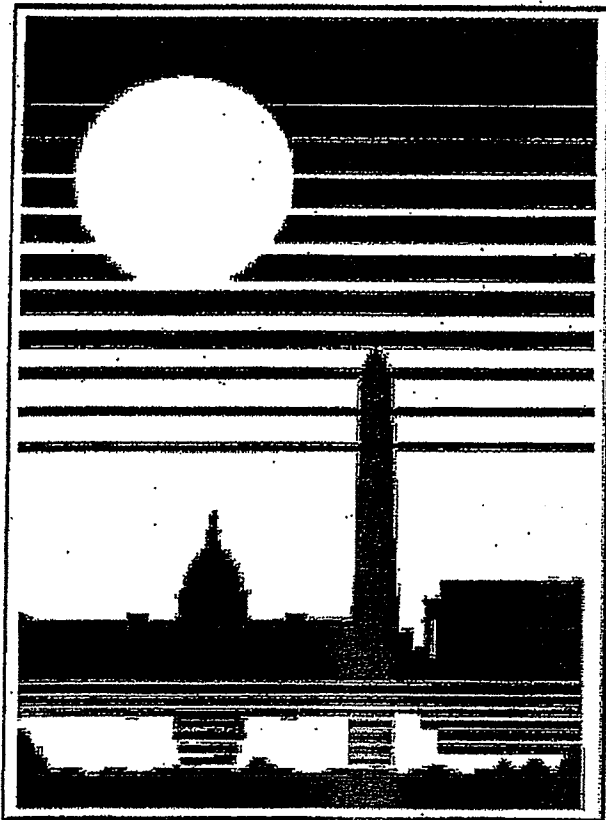
Enclosures:
Publication 794

Letter 2002



Favorable Determination Letter

Publication 794
(January 2013)



Introduction

This publication explains the significance of a favorable determination letter, points out some features that may affect the qualified status of an employee retirement plan and nullify the determination letter without specific notice from us, and provides general information on the reporting requirements for the plan.

Significance of a Favorable Determination Letter

An employee retirement plan qualified under Internal Revenue Code (IRC) section 401(a) (qualified plan) is entitled to favorable tax treatment. For example, contributions made in accordance with the plan document are generally currently deductible. However, participants will not include these contributions in income until the time they receive a distribution from the plan. In some cases, taxation may be further deferred by rollover to another qualified plan or individual retirement arrangement. (See Publication 575, Pension and Annuity Income, for further details.) Finally, plan earnings may accumulate tax free. Employee retirement plans that fail to satisfy the requirements under IRC section 401(a) are not entitled to favorable tax treatment. Therefore, many employers desire advance assurance that the terms of their plans satisfy the qualification requirements.

The Internal Revenue Service (IRS) provides such advance assurance through the determination letter program. A favorable determination letter indicates that, in the opinion of the IRS, the terms of the plan conform to the requirements of IRC section 401(a). A favorable determination letter expresses the IRS's opinion regarding the form of the plan document. However, to be a qualified plan under IRC section 401(a) entitled to favorable tax treatment, a plan must satisfy, in both form and operation, the requirements of IRC section 401(a), including nondiscrimination and coverage

requirements. If elected, a favorable determination letter may also provide assurance that the plan satisfies certain of these nondiscrimination requirements in form. See the following topic, *Limitations and Scope of a Favorable Determination Letter*, for more details.

Limitations and Scope of a Favorable Determination Letter

A favorable determination letter is limited in scope. A determination letter generally applies to qualification requirements regarding the form of the plan.

Generally no reliance for nondiscrimination requirements. Generally, a favorable determination letter does not consider, and may not be relied on with regard to whether a plan satisfies the nondiscrimination requirements of IRC section 401(a)(4).

However, if elected by the applicant, a determination letter may be relied on with respect to whether the terms of the plan satisfy one of the design-based safe harbors in Regulation sections 1.401(a)(4)-2(b) and 1.401(a)(4)-3(b), pertaining to the requirement that either the contributions or the benefits under a qualified plan be nondiscriminatory in amount.

No reliance for coverage requirements.

A favorable determination letter does not consider, and may not be relied on with regard to whether a plan satisfies the minimum participation requirements of IRC section 401(a)(26) and the minimum coverage requirements of IRC section 410(b).

No reliance for changes in law and guidance subsequent to publication of the applicable Cumulative List.

Every year, the IRS publishes a Cumulative List of Changes in Plan Qualification Requirements,

(Cumulative List). The Cumulative List identifies changes in the qualification requirements that the IRS will consider in reviewing determination letter applications that are filed during the 12-month "submission period" that begins on the February 1st following publication of the applicable list.

A determination letter for an on-going individually designed plan is based on the Cumulative List in effect for the submission period in which the determination letter application is filed (that is, the "applicable Cumulative List"). See sections 4, 13, and 14 of Revenue Procedure 2007-44 for further details.

Generally, a determination letter issued to an adopting employer of a pre-approved volume submitter plan with minor modifications is based on the list for which the volume submitter practitioner filed its application for an advisory letter for the volume submitter specimen plan (that is, the "applicable Cumulative List," in the case of a volume submitter plan).

For terminating plans, a determination letter is based on the law in effect at the time of the plan's proposed date of termination. See section 8 of Rev. Proc. 2007-44.

A favorable determination letter generally may not be relied on for any guidance published, or any statutes enacted, after the issuance of the "applicable Cumulative List" or for any qualification requirements that become effective in a calendar year after the calendar year in which the submission period begins, except for guidance that is included in the "applicable Cumulative List." See section 4.03 of Rev. Proc. 2007-44.

Other limitations. In addition, the following apply generally to all determination letters:

- If the employer maintain two or more retirement plans, any of which were either not submitted to the IRS

for determination or not disclosed on each application, certain limitations and requirements will not have been considered on an aggregate basis. Therefore, the employer may not rely on the determination letter regarding the plans when considered as a total package.

- A determination letter does not consider the special requirements relating to: (a) IRC section 414(m) (affiliated service groups), (b) IRC section 414(n) (leased employees), or (c) a partial termination of a plan unless the application includes requests that the letter consider such requirements.

- A determination letter does not consider whether actuarial assumptions are reasonable for funding or deduction purposes or whether a specific contribution is deductible.

- A determination letter does not express an opinion whether disability benefits or medical care benefits are accident and health plan benefits under IRC section 105 or whether contributions are contributions by an employer to accident and health plans under IRC section 106.

- A determination letter does not express an opinion on whether the plan is a governmental plan defined in IRC section 414(d).

- A determination letter does not express an opinion on whether contributions made to a plan treated as a governmental plan defined in IRC section 414(d) constitute employer contributions under IRC section 414(h)(2), nor on whether a governmental excess benefit arrangement satisfies the requirements of IRC section 415(m).

- A determination letter does not express an opinion on whether the plan is a church plan within the meaning of section 414(e).

Become familiar with the terms of the determination letter. Call the contact person listed on the determination letter if any of the terms in the determination letter are not understood.

Retention of Information.

Whether a plan meets the qualification requirements is determined from the information in the written plan document, the application form, and the supporting information submitted by the employer. Therefore, the employer must retain a copy of the application, information submitted with the application and all other correspondence.

Other Conditions for Reliance.

We have not verified the information submitted with the application. The determination letter will not provide reliance if:

- (1) there has been a misstatement or omission of material facts, (for example, the application indicated that the plan was a governmental plan and it was not a governmental plan);
- (2) the facts subsequently developed are materially different than the facts on which the determination was made; or
- (3) there is a change in applicable law.

Amendments to the plan for changes in law and guidance. A favorable determination letter issued for an individually designed plan provides reliance up to and including the expiration date identified on the determination letter. This reliance is conditioned upon the timely adoption of any necessary interim amendments as required by section 5.04 of Rev. Proc. 2007-44. A favorable determination letter issued to an adopting employer of a pre-approved volume submitter plan with minor modifications provides reliance up to and including the last day of

the six-year remedial amendment cycle, conditioned upon the timely adoption of any necessary interim amendments as required by section 5.04 of Rev. Proc. 2007-44. Also see Rev. Proc. 2011-49, 2011-44 I.R.B. 609 sections 5.01 and 15.05.

Plan Must Qualify in Operation

Generally, a plan qualifies in operation if it satisfies the coverage and nondiscrimination requirements and is maintained according to its terms. However, a plan generally must be operated in a manner that satisfies any change in the qualification requirements for the period beginning when the change is effective, even if the plan has not yet been amended for the change. Changes in facts on which the determination letter was issued may mean that the determination letter may no longer be relied upon.

Some examples of the effect of a plan's operation on a favorable determination are:

Contributions or benefits in excess of the limitations under IRC section 415. A retirement plan may not provide retirement benefits or, in the case of a defined contribution plan, contributions and other annual additions, that exceed the limitations specified in IRC section 415. The plan contains provisions designed to provide benefits within these limitations. The plan is disqualified if these limitations are exceeded.

Top heavy minimums under IRC section 416. If this plan is top heavy in accordance with IRC 416, the plan must provide certain minimum benefits and vesting for non-key employees. If the plan provides the minimum benefits and accelerated vesting only for years during which the plan is top heavy, failure to identify such years and to provide the accelerated vesting and benefits will disqualify the plan.

Actual deferral percentage or contribution percentage tests. If this plan provides for cash or deferred arrangements, employer matching contributions, or employee contributions, the determination letter considers whether the terms of the plan satisfy the requirements specified in IRC section 401(k)(3) or 401(m)(2), in form. However the determination letter does not consider whether special nondiscrimination tests described in IRC section 401(k)(3) or 401(m)(2) have been satisfied in operation.

Reporting Requirements

Most plan administrators or plan sponsors/employers who maintain an employee benefit plan must file a Form 5500 series annual return/report.

A "Final" Form 5500 series annual return/report must be filed if the plan is terminated.

Form 5330 for prohibited transactions. Transactions between a plan and someone having a relationship to the plan (disqualified person) are prohibited, unless specifically exempted from this requirement. A few examples are loans, sales and exchanges of property, leasing of property, furnishing goods or services, and use of plan assets by the disqualified person. Disqualified persons who engage in a prohibited transaction for which there is no exceptions must file Form 5330 by the last day of the seventh month after the end of the tax year of the disqualified person.

Form 5330 for tax on nondeductible employer contributions to qualified plans - If contributions are made to this plan in excess of the amount deductible, a tax may be imposed upon the excess contribution. Form 5330 must be filed by the last day of the seventh month after the end of the employer's tax year.

Form 5330 for tax on excess contributions to cash or deferred arrangements or excess employee contributions or employer matching contributions - If a plan includes a cash or deferred arrangement (IRC section 401(k)) or provides for employee contributions or employer matching contributions (IRC section 401(m)), then excess contributions that would cause the plan to fail the actual deferral percentage or the actual contribution percentage test are subject to a tax unless the excess is eliminated within 2½ months after the end of the plan year. Form 5330 must be filed by the due date of the employer's tax return for the plan year in which the tax was incurred.

Form 5330 for tax on reversions of plan assets - Under IRC section 4980, a tax is payable on the amount of almost any employer reversion of plan assets. Form 5330 must be filed by the last day of the month following the month in which the reversion occurred.

Form 5310-A for certain transactions - Under IRC section 6058(b), an actuarial statement is required at least 30 days before a merger, consolidation, or transfer (including spin-off) of assets to another plan. This statement is required for all plans. However, penalties for non-filing will not apply to defined contribution plans for which:

- (1) The sum of the account balances in each plan equals the fair market value of all plan assets,
- (2) The assets of each plan are combined to form the assets of the plan as merged,
- (3) Immediately after a merger, the account balance of each participant is equal to the sum of the account balances of the participant immediately before the merger, and

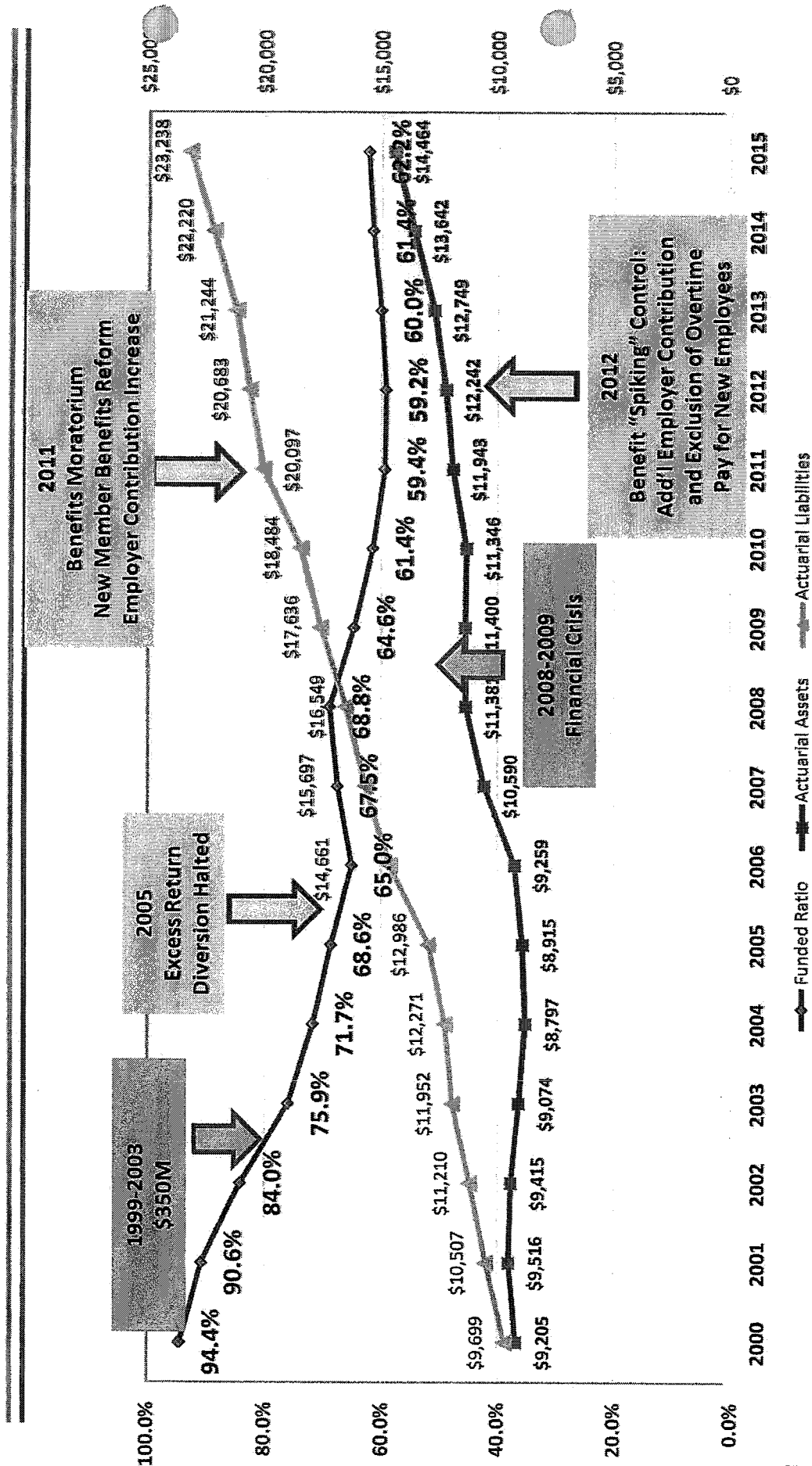
- (4) The plans must not have an unamortized waiver or unallocated suspense account.

Penalties will also not apply if the assets transferred are less than three percent of the assets of the plan involved in the transfer (spinoff), and the transaction is not one of a series of two or more transfers (spinoff transactions) that are, in substance, one transaction.

The purpose of the above discussions is to illustrate some of the principal filing requirements that apply to pension plans. This is not an exclusive listing of all returns and schedules that must be filed.

Employees' Retirement System of the State of Hawaii

Funded Ratio

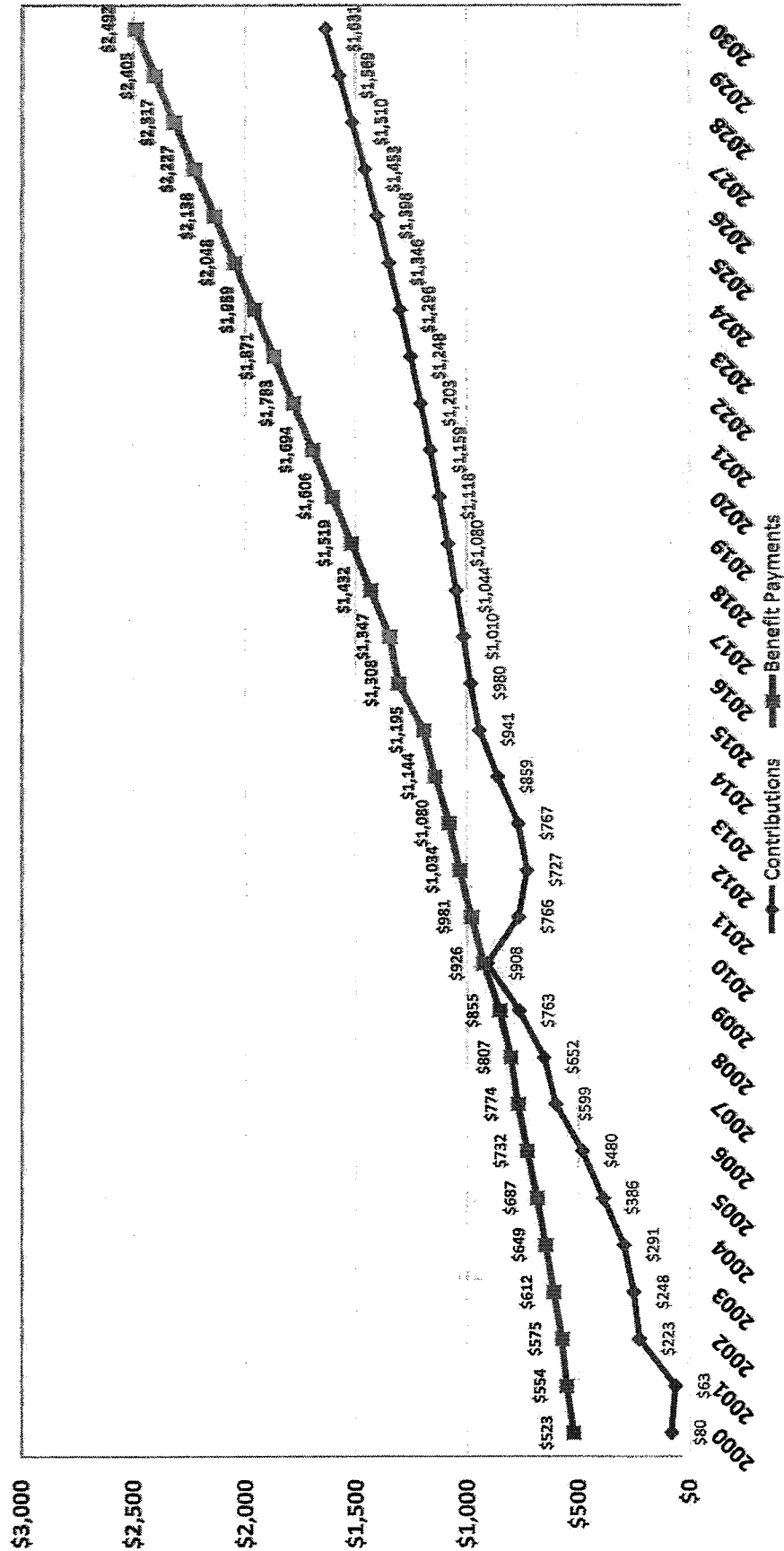


Funded Ratio is Actuarial Value of Assets divided by Actuarial Accrued Liabilities

Employees' Retirement System of the State of Hawaii

Past and Projected External Cash-flow

\$ in Millions



THE SENATE
TWENTY-EIGHTH LEGISLATURE, 2016
STATE OF HAWAII

S.B. NO. 2077
S.D. 1
H.D. 2
C.D. 2

A BILL FOR AN ACT

RELATING TO SEPARATION BENEFITS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

PART I

SECTION 1. The purpose of this part is to provide options to assist public employees who may be displaced through the privatization or closure of a Hawaii health systems corporation facility and reduce the need for layoffs. Specifically, this part authorizes the Hawaii health systems corporation to offer a severance or a special retirement benefit to an employee who elects to separate from service when the employee's position is identified for abolishment or when the employee is directly affected by a reduction-in-force or workforce restructuring plan, including privatization.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER

SEPARATION BENEFITS

§ -1 **Definitions.** For the purposes of this chapter:

"Actuarial present value" means the difference in value between a member's benefit reflecting termination of service without the

EXHIBIT "C"

special retirement provision and the value of the member's benefit reflecting the special retirement benefit.

"Agency" or "attached agency" means the Hawaii health systems corporation.

"Directly affected" refers to when an employee receives official reduction-in-force notification of displacement from the employee's position because of a senior employee exercising reduction-in-force rights, or because the employee's position is part of a workforce restructuring plan, including privatization.

"Employee" means an individual:

- (1) Employed by the state government or an attached agency in a position subject to chapters 88 and 89;
- (2) Whose position has been identified for abolishment or directly affected because of a reduction-in-force or workforce restructuring plan, including privatization; and
- (3) Whose employment is subject to Act 103, Session Laws of Hawaii 2015.

"Exclusive representative" has the same meaning as defined in section 89-2.

"Public employer" has the same meaning as defined in section 89-2.

"Reduction-in-force" includes layoffs under chapter 89.

§ -2 Voluntary severance benefit. (a) Any employee entitled to reduction-in-force rights under chapter 89 and who receives official notification that the employee's position is being abolished or who is directly affected by a reduction-in-force or workforce restructuring plan, including privatization, may elect to receive a voluntary severance benefit provided under this section in lieu of exercising any reduction-in-force rights under chapter 89

and in lieu of receiving any special retirement benefit under section -3.

(b) A one-time lump sum cash bonus severance benefit shall be calculated at five per cent of the employee's base salary for every year of service worked, not to exceed ten years, and shall not exceed fifty per cent of the employee's annual base salary.

For the purposes of this section, "annual base salary" means an employee's annual salary for the position from which the employee is to be separated, excluding all other forms of compensation paid or accrued, whether a bonus, allowance, differential, or value of leave or compensatory time off credits. Compensation excluded from base salary includes shortage category differential, night shift differential, overtime, compensatory time off credits, vacation or sick leave credits, and workers' compensation benefits.

(c) A severance benefit shall be in addition to any payment owing to the employee upon separation from service, including accumulated unused vacation allowances or compensatory time credits.

(d) All severance benefits paid under this section shall be subject to applicable state income tax laws and rules.

(e) A severance benefit provided under this section shall not be considered as a part of a discharged employee's salary, service credit, or a cost item as defined in section 89-2 when calculating retirement benefits or sick and vacation leave.

§ -3 **Special retirement benefit.** (a) Notwithstanding section 88-99 or any other law to the contrary, the employees' retirement system may provide, regardless of whether the actuarial value of the system's assets is one hundred per cent of the system's actuarial accrued liability, the benefits authorized under this

section. Any employee who receives official notification that the employee's position is being abolished or who is directly affected by a reduction-in-force or workforce restructuring plan, including privatization, proposed by an agency may elect, if the employee is eligible to receive benefits from the employees' retirement system and meets any of the criteria specified in subsection (c), the special retirement benefit provided by this section in lieu of exercising any reduction-in-force rights under chapter 89 and in lieu of receiving any severance benefits under section -2. To receive the special retirement benefit offered under this section, the employee shall comply with the application and time frame requirements specified in subsection (b).

(b) Any employee who elects to retire and receive the special retirement benefit under this section shall notify the employee's employing agency and file a formal application for retirement with the employees' retirement system not less than thirty days or more than one hundred fifty days prior to the date of retirement.

(c) Notwithstanding the age and length of service requirements of sections 88-73, 88-281, and 88-331, an employee shall qualify for the special retirement benefit if, on the employee's retirement date, the employee meets any one of the following criteria:

- (1) Has at least five years of credited service as a contributory class A or B member and is at least fifty years of age;
- (2) Has at least twenty years of credited service as a contributory class A or B member, irrespective of age;
- (3) Has at least ten years of credited service as a noncontributory class C member and is at least fifty-seven years of age;
- (4) Has at least twenty-five years of credited service as a noncontributory class C member, irrespective of age;

(5) A class H member who became a member prior to July 1, 2012, has at least five years of credited service and is at least fifty-seven years of age;

(6) A class H member who became a member prior to July 1, 2012, and has at least twenty-five years of credited service, irrespective of age;

(7) A class H member who became a member after June 30, 2012, has at least ten years of credited service and is at least sixty years of age; or

(8) A class H member who became a member after June 30, 2012, has at least twenty-five years of credited service and is at least fifty-five years of age.

(d) Any employee who exercises the option of the special retirement benefit under this section because the employee does not qualify with respect to the age and length of service requirements under section 88-73, 88-281, or 88-331, to receive a retirement benefit without penalty, shall not have the retirement benefit reduced in accordance with the actuarial formula normally used by the employees' retirement system for the calculation of early retirement benefits.

(e) The head of the agency shall transmit a list of employees who elected and received the special retirement benefit to the board of trustees of the employees' retirement system not less than thirty days but not more than one hundred fifty days prior to the employee's retirement date. The head of the agency shall certify that the employees on the list have in fact selected the special retirement benefit in lieu of receiving the severance benefit under section -2 and exercising any reduction-in-force rights under chapter 89.

(f) The board of trustees of the employees' retirement system shall make payments with respect to all eligible employees who retire pursuant to this section. The board shall determine the portion of the additional actuarial present value of benefits to be

charged to the State based upon retirements authorized under this section. If necessary, the State shall make additional payments to the employees' retirement system in the amounts required to amortize the additional actuarial present value of benefits over a period of five years. The unfunded actuarial present values of benefits payable under this section shall be considered part of the unfunded accrued liability of the employees' retirement system under sections 88-122 and 88-123.

§ **-4 Restrictions.** No severance benefit or special retirement benefit under this chapter shall be payable to an employee discharged for lawful disciplinary reasons or for reasons other than a reduction-in-force or workforce restructuring plan.

§ **-5 Reemployment.** Any employee who has received either a severance benefit or a special retirement benefit under this chapter and returns to public service within two years as an employee or contractor shall repay the severance benefit or the special retirement benefit to the State or the employees' retirement system, as the case may be, within thirty days of reemployment with a public employer.

§ **-6 Payments; lapse of unexpended funds.** After payments of all costs associated with the severance benefits and special retirement benefits, the public employer's remaining payroll balances shall not be expended for any purpose and shall be lapsed into the appropriate fund.

§ **-7 Reporting requirements; reduction in personnel counts.** The head of the agency that provided benefits under this chapter shall:

(1) Transmit a report of every position identified for abolishment and vacated under this chapter to the directors of finance and human resources development, who shall abolish these positions from the appropriate budget and personnel files. The governor shall report this information to the legislature no later than twenty days prior to the convening of each regular session beginning with the regular session of 2017;

(2) Reduce its personnel count by every position identified for abolishment and vacated under this chapter, whether the former incumbent vacated the position as a result of accepting a severance benefit or special retirement benefit authorized under this chapter or of exercising reduction-in-force rights; and

(3) Transmit a list that includes each employee who received benefits under this chapter and the benefit received by the employee to the directors of finance and human resources development.

§ -8 Guidelines; development and administration. The departments of human resources development and budget and finance shall develop and administer guidelines and time frames with the exclusive representatives of affected public employees to implement the voluntary severance benefits and special retirement benefits under this chapter. The department of human resources development, the department of labor and industrial relations, the employees' retirement system, and the Hawaii employer-union health benefits trust fund shall work cooperatively to ensure that briefings are provided prior to the implementation of any workforce restructuring plan to educate the employees whose positions are being abolished or who are directly affected by a reduction-in-force or workforce restructuring plan.

The department of human resources development and the department of budget and finance shall report to the legislature on any restructuring activities initiated as a consequence of this chapter no later than twenty days prior to the convening of each regular session beginning with the regular session of 2017.

The report shall include a description of the abolished positions, an explanation as to how the new workforce structure,

including resulting service delivery changes, will more efficiently serve the needs of the agency's clients, the cost of the benefit per participant, and the total cost to the State.

§ -9 **Matching funds.** The governor may provide funds to obtain matching federal moneys to retrain employees in the state executive branch who separated from service under this chapter.

§ -10 **Review by employee.** Employees offered a severance benefit or a special retirement benefit shall be given sufficient time to make an informed decision from the date of receiving accurate and complete information about the offer."

PART II

SECTION 3. State contributions; Hawaii health system corporation employees hired after June 30, 1996, and retired. (a) This section shall apply to state contributions to the Hawaii employer-union health benefits trust fund for Hawaii health systems corporation employees hired after June 30, 1996, and who were separated from service as a result of Act 103, Session Laws of Hawaii 2015.

(b) The State, through the department of budget and finance, shall pay to the Hawaii employer-union health benefits trust fund:

(1) For retired employees based on the self plan with at least nine years but fewer than twelve years of service, a monthly contribution equal to one-half of the base medicare or non-medicare monthly contribution set forth under section 87A-33(b), Hawaii Revised Statutes; provided that retired employees who were hired after June 30, 1996, but before July 1, 2001, with dependent-beneficiaries, as that term is defined in section 87A-1, Hawaii Revised Statutes, shall be eligible for a monthly contribution equal to one-half of the base medicare or non-medicare monthly contribution for two-party or family plans, as applicable, set forth in section 87A-33(b), Hawaii Revised Statutes;

(2) For retired employees based on the self plan with at least twelve years but fewer than twenty years of service, a monthly contribution equal to seventy-five per cent of the base medicare or non-medicare monthly contribution set forth under section 87A-33(b), Hawaii Revised Statutes; provided that retired employees who were hired after June 30, 1996, but before July 1, 2001, with dependent-beneficiaries, as that term is defined in section 87A-1, Hawaii Revised Statutes, shall be eligible for a monthly contribution equal to seventy-five per cent of the base medicare or non-medicare monthly

contribution for two-party or family plans, as applicable, set forth in section 87A-33(b), Hawaii Revised Statutes;

(3) For retired employees based on the self plan with twenty or more years of service, a monthly contribution equal to one hundred per cent of the base medicare or non-medicare monthly contribution set forth under section 87A-33(b), Hawaii Revised Statutes; provided that retired employees who were hired after June 30, 1996, but before July 1, 2001, with dependent-beneficiaries, as that term is defined in section 87A-1, Hawaii Revised Statutes, shall be eligible for a monthly contribution equal to one hundred per cent of the base medicare or non-medicare monthly contribution for two-party or family plans, as applicable, set forth in section 87A-33(b), Hawaii Revised Statutes; and

(4) Upon the death of a retired employee hired after June 30, 1996, but before July 1, 2001, for the dependent-beneficiary who becomes eligible as an employee-beneficiary, a monthly contribution equal to paragraphs (1), (2), or (3), as applicable; and upon the death of a retired employee hired after June 30, 2001, for the dependent-beneficiary who becomes eligible as an employee-beneficiary, a monthly contribution equal to one-half of paragraphs (1), (2), or (3), as applicable.

PART III

SECTION 4. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 5. This Act shall take effect upon its approval, and shall apply to employees of the Hawaii health systems corporation who are separated from service as a consequence of Act 103, Session Laws of Hawaii 2015.

Report Title:

ERS; HHSC; Separation Benefits; Early Retirement; EUTF

Description:

Authorizes HHSC employees facing position abolishment, reduction-in-force, or workforce restructuring to opt to receive either severance benefits or a special retirement benefit in lieu of exercising any reduction-in-force rights. Requires the State to pay a monthly contribution for employees separated from service as a result of Act 103, Session Laws of Hawaii 2015. (CD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



GOV. MSG. NO. 1338

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

July 11, 2016

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Twenty-Eighth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Joseph M. Souki,
Speaker
and Members of the House
Twenty-Eighth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Kouchi, Speaker Souki, and Members of the Legislature:

I am transmitting herewith SB2077 SD1 HD2 CD2, without my approval, and with the statement of objections relating to the measure.

SB2077 SD1 HD2 CD2

RELATING TO SEPARATION BENEFITS

Sincerely,

A handwritten signature in black ink, appearing to read "David Y. Ige", written over a circular stamp.

DAVID Y. IGE
Governor, State of Hawaii

EXHIBIT "D"

EXECUTIVE CHAMBERS

HONOLULU

JULY 11, 2016

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 2077

Honorable Members
Twenty-Eighth Legislature
State of Hawai'i

Pursuant to Section 16 of Article III of the Constitution of the State of Hawai'i, I return herewith, without my approval, Senate Bill No. 2077, entitled "A Bill for an Act Relating to Separation Benefits."¹

On July 8, 2016, the Employees' Retirement System (ERS) informed me that its tax counsel advised that the bill jeopardizes ERS's tax-qualified status because it allows the affected employees to choose between a lump-sum cash payment that is taxable as wages and a special employer subsidized early retirement benefit. See Attachment A (Memo from ERS Executive Director Thomas Williams to Director of Budget and Finance Wesley Machida). Under the Internal Revenue Code sections governing the state ERS plan, this is an impermissible election and threatens the plan's tax-exempt status. I will neither approve this bill nor let it become law when the offering

¹ The stated purpose of this bill is to assist public employees displaced through the privatization or closure of a Hawaii Health Systems Corporation (HHSC) facility. The bill adds a chapter to the Hawaii Revised Statutes that establishes a new benefit program specifically for state employees included in a collective bargaining unit under Chapter 89, Hawaii Revised Statutes, whose positions are abolished or who are adversely affected by a reduction-in-force or a workforce restructuring plan because of the closure of three HHSC Maui Region facilities that are slated to be closed under Act 103, Session Laws of Hawaii 2015. Employees may choose between continuing state employment by exercising reduction-in-force rights, or leaving state service and receiving a severance payment equal to five per cent of the employee's then current annual base salary for every year worked up to ten years, when the facilities are closed. Some employees may also choose between receiving the severance payment or retiring without penalties, under age and length of service thresholds significantly lower than the thresholds prescribed in Chapter 88, Hawaii Revised Statutes, the Employees' Retirement System law. The bill also allows the employees to receive contributions from the State toward their health benefit plan premiums as retirees, with fewer years of service than presently specified in Chapter 87A, Hawaii Revised Statutes, the Employer-Union Health Benefits Trust Fund (EUTF) law.

STATEMENT OF OBJECTIONS
SENATE BILL NO. 2077
Page 2

of benefit choices included in the bill poses this threat.

The bill also allows employees separated from service to claim a lump-sum cash severance payment but does not appropriate funds to make the payments. The bill appears to assume that the severance payments will be made out of the Maui Region's payroll appropriation for fiscal year 2016-2017. However, under Section 16.2 of Act 124, Session Laws of Hawaii 2016, if the three HHSC Maui Region facilities are closed and leased to the Maui Health System, a Kaiser Foundation Hospitals LLC (Kaiser), all of the appropriations for the Maui Region in Act 124, except those necessary to wind down the operations of the Maui Region hospitals, are to be disbursed to Kaiser. There is no fiscal year 2016-2017 payroll appropriation for the Maui Region.

In addition to the legal defects above, the bill's calculated fiscal impact is substantial. If all of the employees entitled to claim the lump-sum cash severance payment did so, the cost could be as much as \$32 million. The early retirement benefit has been determined by the ERS Actuary (using the 2015 valuation data) to cost an additional \$17.2 million.² The State would also have to pay \$18.4 million in estimated enhanced health benefits to the EUTF for retirees. The total cost of all benefits provided under this bill is thus estimated to exceed \$60 million, excluding the fringe benefit assessment on the severance benefit.

Despite these grave reservations concerning the bill, I acknowledge the Legislature's and my own responsibility to temper the adverse effect of layoffs resulting from the passage of Act 103, Session Laws of Hawaii 2015 (Act 103). In taking steps to provide more cost-effective and better overall healthcare at the Maui Region facilities in

² The State's employer contribution cost for the retirement benefits for these employees for this fiscal year for the projected 26 year funding period would total \$179 million over a 26-year period. I believe the \$17.2 million needed to provide the special retirement benefit the bill undercuts the concerted effort the Legislature made in 2011 when it enacted Section 88-99, Hawaii Revised Statutes, which placed a moratorium on enhanced benefits to reduce the ERS' unfunded liability.

STATEMENT OF OBJECTIONS
SENATE BILL NO. 2077
Page 3

the future, we should recognize the employees who served these facilities over the past decades and who will now be separating from public service. The attached proposed amended bill addresses the concerns stated herein. See Attachment B. It eliminates the offering of benefit choices. It instead provides for a negotiated separation benefit to all affected employees upon leaving state employment. It creates a one-time opportunity for employees who separate early to purchase the service credit they could have earned through June 30, 2017, and provides an appropriation of general funds in the amount of \$25 million.

To minimize future demands for separation benefits, the benefits this bill confers on HHSC employees are not codified and included as a statutory chapter of the Hawaii Revised Statutes, but provided instead, by means of a session law that will be repealed after Act 103 has been fully implemented. This emphasizes that these benefits have been fashioned for the unique circumstances presented in Act 103. While I agree that most lay-offs have adverse effects, I am not convinced that every lay-off under the civil service laws and collective bargaining contracts requires, or warrants the provision of severance, or retirement and health plan benefits for the employees who are laid off. Because lay-offs constitute a condition of work, and benefits to temper their adverse effects are provided in the form of compensation or benefits, relying on collective bargaining and cost-items, rather than a statutory formula to devise benefits to counter a lay-off's adverse effects could be more appropriate and cost-effective. It would allow room for the executive and the legislative branches in the future to consider the programmatic, socio-economic, geographic and fiscal context of each layoff and propose alternatives for tempering its particular expected effects at the proper time.

In closing, regarding the transition up to now, I understand only 191 out of 1,233 employees exercised reduction-in-force (RIF) rights during the HHSC-initiated RIF process in February of this year. I also understand that by the middle of May of this year, Kaiser had offered jobs to 1,538 HHSC Maui Region civil service and exempt

STATEMENT OF OBJECTIONS
SENATE BILL NO. 2077
Page 4

employees, irrespective of whether they were included in a collective bargaining unit or worked for the State for less than a year, and more than 95 percent of the employees had accepted Kaiser's offer of employment. I also understand that Kaiser will pay most employees, salaries or wages equal to what the employees are presently paid by HHSC. This suggests to me that a substantial number if not majority of HHSC's Maui Region employees might not have to face the economic hardships to the degree that prompted the Legislature to consider and pass the current bill.

For the foregoing reasons, I am returning Senate Bill No. 2077 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read "David Y. Ige", with a stylized flourish at the end.

DAVID Y. IGE
Governor of Hawai'i

ATTACHMENT A

DAVID Y. IGE
GOVERNOR



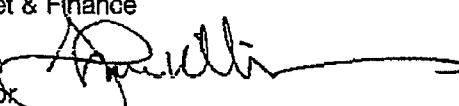
**STATE OF HAWAII
EMPLOYEES' RETIREMENT SYSTEM**

THOMAS WILLIAMS
EXECUTIVE DIRECTOR

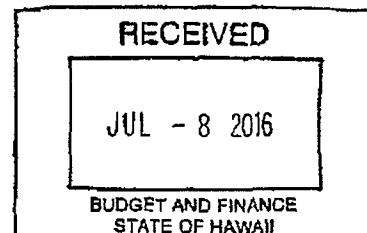
KANOE MARGOL
DEPUTY EXECUTIVE DIRECTOR

July 7, 2016

TO: Wesley Machida
Director of Budget & Finance

FROM: Thomas Williams 
Executive Director
Employees' Retirement System of the State of Hawaii

RE: SB 2077



The Board of the Employees' Retirement System (ERS) has strongly recommended that Governor Ige veto SB 2077.

Primary amongst the Board's concern was the negative impact of this bill's provisions on the \$8.77 billion unfunded liability of the System.

The expected cost of the bill's special retirement benefit is \$17.2 million and the severance benefit is approximately \$30.5 million for a total of \$47.7 million. Significantly, there is no provision for the funding of either component.

Further, the bill ignores Section 88-99 HRS which precludes provision of any enhancement of retirement benefits until the actuarial value of the System's assets is 100%. As noted above, we are far from that goal.

More importantly, with public policy decisions aside, the bill will jeopardize ERS' tax qualified status.

At my request, outside counsel has examined the implications of the bill and has determined that the offer to affected employees of a "cash or deferred arrangement", which the severance benefit and special retirement benefit represents, constitutes an impermissible election under the Internal Revenue Code sections governing our plan. Counsel consequently concluded that the offering of the benefit choices included in the bill poses a threat to our tax-exempt status.

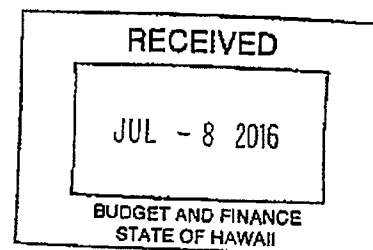
Counsel's letter is attached for your reference. Please let me know if you have questions or concerns.



Employees' Retirement System
of the State of Hawaii

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Telephone (808) 586-1735 • Fax (808) 586-1677 • <http://ers.ehawaii.gov>

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900 Fort Street Mall, Suite 1680
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July 7, 2016

Mr. Thomas Williams
Executive Director
Employees' Retirement System of the State of Hawaii
201 Merchant Street, Suite 1400
Honolulu, Hawaii 96813-2980

Re: Federal Tax-Qualification Issue with SB2077

Dear Thom:

We have reviewed SB2077, as passed by the Legislature this year. We conclude that SB2077 provides an impermissible "cash or deferred election," which would jeopardize the tax-qualified status of the Employees' Retirement System of the State of Hawaii (the "ERS"). Our analysis is as follows:

SB2077

SB2077 offers certain public employees whose employment is subject to Act 103, Session Laws of Hawaii 2015, an election to choose between a voluntary severance benefit and a special subsidized retirement benefit. The voluntary severance benefit would be currently taxable as wages. See 2016 General Instructions for Forms W-2 and W-3, p.4 ("Severance payments are wages subject to social security and Medicare taxes. . . . [S]everance payments are also subject to income tax withholding and FUTA tax.")

Federal Tax-Qualification Rules Applicable to the ERS

The ERS is a governmental defined benefit pension plan that must meet the requirements of section 401(a) of the Internal Revenue Code (the "Code") to maintain its status as a tax-qualified plan. The ERS would not meet the requirements of section 401(a) of the Code if it offered a "cash or deferred arrangement" because it is both a defined benefit pension plan and a governmental plan. Code § 401(k)(1) (specifying the type of plans that may offer "cash or deferred arrangements"); Treas. Reg. § 1.401(k)-1(a)(1) ("A plan, other than a profit-sharing, stock bonus, pre-ERISA money purchase pension, or rural cooperative plan, does not satisfy the requirements of section 401(a) if the plan includes a cash or deferred arrangement."); see also

Mr. Thomas Williams
Executive Director
Employees' Retirement System of the State of Hawaii
July 7, 2016
Page 2

Code § 401(k)(4)(B)(ii) (stating that a governmental plan may not offer a qualified cash or deferred arrangement).

A "cash or deferred arrangement" is "an arrangement under which an eligible employee may make a cash or deferred election with respect to contributions to, or accruals or other benefits under, a plan that is intended to satisfy the requirements of section 401(a) [of the Code]." Treas. Reg. § 1.401(k)-1(a)(2)(i) (emphasis added).

A "cash or deferred election" is:

any direct or indirect election (or modification of an earlier election) by an employee to have the employer either—

(A) Provide an amount to the employee in the form of cash (or some other taxable benefit) that is not currently available; or

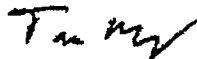
(B) Contribute an amount to a trust, or provide an accrual or other benefit, under a plan deferring the receipt of compensation.

Treas. Reg. § 1.401(k)-1(a)(3)(i) (emphasis added).

Since SB2077, as passed by the Legislature, offers an election between a severance benefit taxable as wages and a special subsidized retirement benefit, it offers an impermissible cash or deferred election. This would jeopardize the ERS's tax-qualified status.

Sincerely,

D'AMATO & MALONEY, LLP



J. Thomas Maloney, Jr.

IRS Circular 230 Disclosure: To ensure compliance with the requirements imposed on us by IRS Circular 230 (31 C.F.R. part 10), we inform you that any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (1) avoiding tax-related penalties under the Internal Revenue Code or (2) promoting, marketing, or recommending to another party any tax-related matter(s) addressed herein.

THE SENATE
TWENTY-EIGHTH LEGISLATURE, 2016
STATE OF HAWAII

S.B. NO. 2077
S.D. 1
H.D. 2
C.D. 3

A BILL FOR AN ACT

RELATING TO SEPARATION BENEFITS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this Act is to provide
2 separation benefits to employees of Maui regional system
3 facilities due to the closure and transfer of these facilities
4 and their lease to Maui Health System, a Kaiser Foundation
5 Hospitals LLC, pursuant to Act 103, Session Laws of Hawaii 2015.
6 Specifically, this Act recognizes the authority of the State of
7 Hawaii, the Hawaii health systems corporation, and the exclusive
8 representatives of affected employees to negotiate separation
9 benefits through supplemental agreements to existing collective
10 bargaining agreements pursuant to section 89-9, Hawaii Revised
11 Statutes, to address the effects of separation from state
12 employment. Further, this Act authorizes the Hawaii health
13 systems corporation to pay separation benefits to Maui regional
14 system employees based upon these supplemental agreements for
15 the purposes of tempering the adverse effects on affected
16 employees, as a result of the implementation of Act 103, Session
17 Laws of Hawaii 2015. Finally, this Act makes an appropriation
18 to the department of budget and finance for allocation to the

1 Hawaii health systems corporation for the costs of supplemental
2 agreements including separation benefits.

3 SECTION 2. As used in this Act:

4 "Affected employee" means an individual who is:

- 5 (1) Employed by an agency or attached agency in a
6 position subject to chapters 88 and 89;
7 (2) Separated from service on or before June 30,
8 2017, as a result of the implementation of Act
9 103, Session Laws of Hawaii 2015; and
10 (3) Subject to Act 103, Session Laws of Hawaii 2015.

11 "Agency" or "attached agency" means the Hawaii health
12 systems corporation.

13 "Exclusive representative" has the same meaning as
14 defined in section 89-2, Hawaii Revised Statutes.

15 SECTION 3. The State of Hawaii, the Hawaii health systems
16 corporation, and the exclusive representatives of the affected
17 employees may negotiate separation benefits for the affected
18 employees through supplemental agreements to existing collective
19 bargaining agreements that expire on June 30, 2017, for the
20 purposes of tempering the adverse effects of Act 103, Session
21 Laws of Hawaii 2015, on affected employees.

22 SECTION 4. The Hawaii health systems corporation, through
23 its authority as the employer for Maui regional system

1 facilities, shall provide separation benefits to affected
2 employees based upon supplemental agreements negotiated in
3 Section 3, upon the affected employee's separation from state
4 employment as a result of Act 103, Session Laws of Hawaii 2015.

5 SECTION 5. Notwithstanding section 88-99, Hawaii Revised
6 Statutes, or any other provision of law to the contrary, any
7 affected employee who chooses to receive separation benefits may
8 purchase non-earned service credits with the employees'
9 retirement system of the State of Hawaii pursuant to chapter 88,
10 Hawaii Revised Statutes. An affected employee may only purchase
11 the amount of service credit they could have earned between the
12 transfer completion date as defined in section 323F-51, Hawaii
13 Revised Statutes, through June 30, 2017. No purchase of service
14 credit under this section may be made by deduction from the
15 affected employee's compensation pursuant to section 414(h)(2)
16 of the Internal Revenue Code of 1986, as amended, under the
17 employer pick up plan in section 88-46, Hawaii Revised Statutes.
18 Any purchase of service credit under this Section 5 must comply
19 with the limitations on nonqualified service credit under
20 section 415(n)(3)(B) of the Internal Revenue Code of 1986, as
21 amended.

22 SECTION 6. There is appropriated from the general revenues
23 of the State of Hawaii, \$25,000,000, or so much thereof as may

1 be necessary, for fiscal year 2016-2017 to carry out the
2 purposes of this Act, including to provide separation benefits
3 and related fringe costs for affected employees pursuant to
4 negotiated supplemental agreements to current collective
5 bargaining agreements expiring on June 30, 2017.

6 The sum appropriated by this Act shall be expended by the
7 department of budget and finance, and allotted by the director
8 of finance to the Hawaii health systems corporation for the
9 purposes of this Act; provided that funds not expended or
10 encumbered by June 30, 2017, shall lapse to the general fund.

11 SECTION 7. If any provision of this Act or the application
12 thereof to any person or circumstance is held invalid, the
13 invalidity shall not affect the other provisions or application
14 of this Act that can be given effect without the invalid
15 provision or application, and to this end the provisions of this
16 Act are severable.

17 SECTION 8. This Act shall take effect upon its approval
18 and shall be repealed on July 1, 2017.

S.B. NO. 2077
S.D. 1
H.D. 2
C.D. 3

Report Title:

Separation Benefits; Maui Region Employees; Appropriation

Description:

To provide authority for payment of separation benefits to affected employees of Maui regional system facilities pursuant to Act 103, SLH 2015. Makes appropriation for separation benefits and related costs in fiscal year 2016-17. (CD3)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

A BILL FOR AN ACT

RELATING TO SEPARATION BENEFITS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

PART I

SECTION 1. The purpose of this part is to provide options to assist public employees who may be displaced through the privatization or closure of a Hawaii health systems corporation facility and reduce the need for layoffs. Specifically, this part authorizes the Hawaii health systems corporation to offer a severance or a special retirement benefit to an employee who elects to separate from service when the employee's position is identified for abolishment or when the employee is directly affected by a reduction-in-force or workforce restructuring plan, including privatization.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER

SEPARATION BENEFITS

§ -1 Definitions. For the purposes of this chapter:



1 "Actuarial present value" means the difference in value
2 between a member's benefit reflecting termination of service
3 without the special retirement provision and the value of the
4 member's benefit reflecting the special retirement benefit.

5 "Agency" or "attached agency" means the Hawaii health
6 systems corporation.

7 "Directly affected" refers to when an employee receives
8 official reduction-in-force notification of displacement from
9 the employee's position because of a senior employee exercising
10 reduction-in-force rights, or because the employee's position is
11 part of a workforce restructuring plan, including privatization.

12 "Employee" means an individual:

- 13 (1) Employed by the state government or an attached agency
14 in a position subject to chapters 88 and 89;
15 (2) Whose position has been identified for abolishment or
16 directly affected because of a reduction-in-force or
17 workforce restructuring plan, including privatization;
18 and
19 (3) Whose employment is subject to Act 103, Session Laws
20 of Hawaii 2015.



1 "Exclusive representative" has the same meaning as defined
2 in section 89-2.

3 "Public employer" has the same meaning as defined in
4 section 89-2.

5 "Reduction-in-force" includes layoffs under chapter 89.

6 § -2 Voluntary severance benefit. (a) Any employee
7 entitled to reduction-in-force rights under chapter 89 and who
8 receives official notification that the employee's position is
9 being abolished or who is directly affected by a reduction-in-
10 force or workforce restructuring plan, including privatization,
11 may elect to receive a voluntary severance benefit provided
12 under this section in lieu of exercising any reduction-in-force
13 rights under chapter 89 and in lieu of receiving any special
14 retirement benefit under section -3.

15 (b) A one-time lump sum cash bonus severance benefit shall
16 be calculated at five per cent of the employee's base salary for
17 every year of service worked, not to exceed ten years, and shall
18 not exceed fifty per cent of the employee's annual base salary.

19 For the purposes of this section, "annual base salary"
20 means an employee's annual salary for the position from which
21 the employee is to be separated, excluding all other forms of



1 compensation paid or accrued, whether a bonus, allowance,
2 differential, or value of leave or compensatory time off
3 credits. Compensation excluded from base salary includes
4 shortage category differential, night shift differential,
5 overtime, compensatory time off credits, vacation or sick leave
6 credits, and workers' compensation benefits.

7 (c) A severance benefit shall be in addition to any
8 payment owing to the employee upon separation from service,
9 including accumulated unused vacation allowances or compensatory
10 time credits.

11 (d) All severance benefits paid under this section shall
12 be subject to applicable state income tax laws and rules.

13 (e) A severance benefit provided under this section shall
14 not be considered as a part of a discharged employee's salary,
15 service credit, or a cost item as defined in section 89-2 when
16 calculating retirement benefits or sick and vacation leave.

17 § -3 Special retirement benefit. (a) Notwithstanding
18 section 88-99 or any other law to the contrary, the employees'
19 retirement system may provide, regardless of whether the
20 actuarial value of the system's assets is one hundred per cent
21 of the system's actuarial accrued liability, the benefits



1 authorized under this section. Any employee who receives
2 official notification that the employee's position is being
3 abolished or who is directly affected by a reduction-in-force or
4 workforce restructuring plan, including privatization, proposed
5 by an agency may elect, if the employee is eligible to receive
6 benefits from the employees' retirement system and meets any of
7 the criteria specified in subsection (c), the special retirement
8 benefit provided by this section in lieu of exercising any
9 reduction-in-force rights under chapter 89 and in lieu of
10 receiving any severance benefits under section -2. To
11 receive the special retirement benefit offered under this
12 section, the employee shall comply with the application and time
13 frame requirements specified in subsection (b).

14 (b) Any employee who elects to retire and receive the
15 special retirement benefit under this section shall notify the
16 employee's employing agency and file a formal application for
17 retirement with the employees' retirement system not less than
18 thirty days or more than one hundred fifty days prior to the
19 date of retirement.

20 (c) Notwithstanding the age and length of service
21 requirements of sections 88-73, 88-281, and 88-331, an employee



1 shall qualify for the special retirement benefit if, on the
2 employee's retirement date, the employee meets any one of the
3 following criteria:

- 4 (1) Has at least five years of credited service as a
5 contributory class A or B member and is at least fifty
6 years of age;
- 7 (2) Has at least twenty years of credited service as a
8 contributory class A or B member, irrespective of age;
- 9 (3) Has at least ten years of credited service as a
10 noncontributory class C member and is at least fifty-
11 seven years of age;
- 12 (4) Has at least twenty-five years of credited service as
13 a noncontributory class C member, irrespective of age;
- 14 (5) A class H member who became a member prior to July 1,
15 2012, has at least five years of credited service and
16 is at least fifty-seven years of age;
- 17 (6) A class H member who became a member prior to July 1,
18 2012, and has at least twenty-five years of credited
19 service, irrespective of age;



(7) A class H member who became a member after June 30, 2012, has at least ten years of credited service and is at least sixty years of age; or

(8) A class H member who became a member after June 30, 2012, has at least twenty-five years of credited service and is at least fifty-five years of age.

(d) Any employee who exercises the option of the special retirement benefit under this section because the employee does not qualify with respect to the age and length of service requirements under section 88-73, 88-281, or 88-331, to receive a retirement benefit without penalty, shall not have the retirement benefit reduced in accordance with the actuarial formula normally used by the employees' retirement system for the calculation of early retirement benefits.

(e) The head of the agency shall transmit a list of employees who elected and received the special retirement benefit to the board of trustees of the employees' retirement system not less than thirty days but not more than one hundred fifty days prior to the employee's retirement date. The head of the agency shall certify that the employees on the list have in fact selected the special retirement benefit in lieu of



1 receiving the severance benefit under section -2 and

2 exercising any reduction-in-force rights under chapter 89.

3 (f) The board of trustees of the employees' retirement
4 system shall make payments with respect to all eligible
5 employees who retire pursuant to this section. The board shall
6 determine the portion of the additional actuarial present value
7 of benefits to be charged to the State based upon retirements
8 authorized under this section. If necessary, the State shall
9 make additional payments to the employees' retirement system in
10 the amounts required to amortize the additional actuarial
11 present value of benefits over a period of five years. The
12 unfunded actuarial present values of benefits payable under this
13 section shall be considered part of the unfunded accrued
14 liability of the employees' retirement system under sections
15 88-122 and 88-123.

16 § -4 Restrictions. No severance benefit or special
17 retirement benefit under this chapter shall be payable to an
18 employee discharged for lawful disciplinary reasons or for
19 reasons other than a reduction-in-force or workforce
20 restructuring plan.



1 § -5 Reemployment. Any employee who has received either
2 a severance benefit or a special retirement benefit under this
3 chapter and returns to public service within two years as an
4 employee or contractor shall repay the severance benefit or the
5 special retirement benefit to the State or the employees'
6 retirement system, as the case may be, within thirty days of
7 reemployment with a public employer.

8 § -6 Payments; lapse of unexpended funds. After
9 payments of all costs associated with the severance benefits and
10 special retirement benefits, the public employer's remaining
11 payroll balances shall not be expended for any purpose and shall
12 be lapsed into the appropriate fund.

13 § -7 Reporting requirements; reduction in personnel
14 counts. The head of the agency that provided benefits under
15 this chapter shall:

16 (1) Transmit a report of every position identified for
17 abolishment and vacated under this chapter to the
18 directors of finance and human resources development,
19 who shall abolish these positions from the appropriate
20 budget and personnel files. The governor shall report
21 this information to the legislature no later than

1 twenty days prior to the convening of each regular
2 session beginning with the regular session of 2017;
3 (2) Reduce its personnel count by every position
4 identified for abolishment and vacated under this
5 chapter, whether the former incumbent vacated the
6 position as a result of accepting a severance benefit
7 or special retirement benefit authorized under this
8 chapter or of exercising reduction-in-force rights;
9 and

10 (3) Transmit a list that includes each employee who
11 received benefits under this chapter and the benefit
12 received by the employee to the directors of finance
13 and human resources development.

14 § -8 Guidelines; development and administration. The
15 departments of human resources development and budget and
16 finance shall develop and administer guidelines and time frames
17 with the exclusive representatives of affected public employees
18 to implement the voluntary severance benefits and special
19 retirement benefits under this chapter. The department of human
20 resources development, the department of labor and industrial
21 relations, the employees' retirement system, and the Hawaii

1 employer-union health benefits trust fund shall work
2 cooperatively to ensure that briefings are provided prior to the
3 implementation of any workforce restructuring plan to educate
4 the employees whose positions are being abolished or who are
5 directly affected by a reduction-in-force or workforce
6 restructuring plan.

7 The department of human resources development and the
8 department of budget and finance shall report to the legislature
9 on any restructuring activities initiated as a consequence of
10 this chapter no later than twenty days prior to the convening of
11 each regular session beginning with the regular session of 2017.

12 The report shall include a description of the abolished
13 positions, an explanation as to how the new workforce structure,
14 including resulting service delivery changes, will more
15 efficiently serve the needs of the agency's clients, the cost of
16 the benefit per participant, and the total cost to the State.

17 § -9 Matching funds. The governor may provide funds to
18 obtain matching federal moneys to retrain employees in the state
19 executive branch who separated from service under this chapter.

20 § -10 Review by employee. Employees offered a severance
21 benefit or a special retirement benefit shall be given



1 sufficient time to make an informed decision from the date of
2 receiving accurate and complete information about the offer."

3 PART II

4 SECTION 3. State contributions; Hawaii health system
5 corporation employees hired after June 30, 1996, and retired.

6 (a) This section shall apply to state contributions to the
7 Hawaii employer-union health benefits trust fund for Hawaii
8 health systems corporation employees hired after June 30, 1996,
9 and who were separated from service as a result of Act 103,
10 Session Laws of Hawaii 2015.

11 (b) The State, through the department of budget and
12 finance, shall pay to the Hawaii employer-union health benefits
13 trust fund:

14 (1) For retired employees based on the self plan with at
15 least nine years but fewer than twelve years of
16 service, a monthly contribution equal to one-half of
17 the base medicare or non-medicare monthly contribution
18 set forth under section 87A-33(b), Hawaii Revised
19 Statutes; provided that retired employees who were
20 hired after June 30, 1996, but before July 1, 2001,
21 with dependent-beneficiaries, as that term is defined



1 in section 87A-1, Hawaii Revised Statutes, shall be
2 eligible for a monthly contribution equal to one-half
3 of the base medicare or non-medicare monthly
4 contribution for two-party or family plans, as
5 applicable, set forth in section 87A-33(b), Hawaii
6 Revised Statutes;

- 7 (2) For retired employees based on the self plan with at
8 least twelve years but fewer than twenty years of
9 service, a monthly contribution equal to seventy-five
10 per cent of the base medicare or non-medicare monthly
11 contribution set forth under section 87A-33(b), Hawaii
12 Revised Statutes; provided that retired employees who
13 were hired after June 30, 1996, but before July 1,
14 2001, with dependent-beneficiaries, as that term is
15 defined in section 87A-1, Hawaii Revised Statutes,
16 shall be eligible for a monthly contribution equal to
17 seventy-five per cent of the base medicare or non-
18 medicare monthly contribution for two-party or family
19 plans, as applicable, set forth in section 87A-33(b),
20 Hawaii Revised Statutes;



(3) For retired employees based on the self plan with twenty or more years of service, a monthly contribution equal to one hundred per cent of the base medicare or non-medicare monthly contribution set forth under section 87A-33(b), Hawaii Revised Statutes; provided that retired employees who were hired after June 30, 1996, but before July 1, 2001, with dependent-beneficiaries, as that term is defined in section 87A-1, Hawaii Revised Statutes, shall be eligible for a monthly contribution equal to one hundred per cent of the base medicare or non-medicare monthly contribution for two-party or family plans, as applicable, set forth in section 87A-33(b), Hawaii Revised Statutes; and

(4) Upon the death of a retired employee hired after June 30, 1996, but before July 1, 2001, for the dependent-beneficiary who becomes eligible as an employee-beneficiary, a monthly contribution equal to paragraphs (1), (2), or (3), as applicable; and upon the death of a retired employee hired after June 30, 2001, for the dependent-beneficiary who becomes

1 eligible as an employee-beneficiary, a monthly
2 contribution equal to one-half of paragraphs (1), (2),
3 or (3), as applicable.

4 PART III

5 SECTION 4. If any provision of this Act, or the
6 application thereof to any person or circumstance, is held
7 invalid, the invalidity does not affect other provisions or
8 applications of the Act that can be given effect without the
9 invalid provision or application, and to this end the provisions
10 of this Act are severable.

11 SECTION 5. This Act shall take effect upon its approval,
12 and shall apply to employees of the Hawaii health systems
13 corporation who are separated from service as a consequence of
14 Act 103, Session Laws of Hawaii 2015.

APPROVED this day of , 2016

GOVERNOR OF THE STATE OF HAWAII

A BILL FOR AN ACT VETO OVERRIDE

RELATING TO SEPARATION BENEFITS.

ACT No. 1

Approved: *NE* *Qof*

Dated: July 20, 2016

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

PART I

SECTION 1. The purpose of this part is to provide options to assist public employees who may be displaced through the privatization or closure of a Hawaii health systems corporation facility and reduce the need for layoffs. Specifically, this part authorizes the Hawaii health systems corporation to offer a severance or a special retirement benefit to an employee who elects to separate from service when the employee's position is identified for abolishment or when the employee is directly affected by a reduction-in-force or workforce restructuring plan, including privatization.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER

SEPARATION BENEFITS

§ -1 Definitions. For the purposes of this chapter:



1 "Actuarial present value" means the difference in value
2 between a member's benefit reflecting termination of service
3 without the special retirement provision and the value of the
4 member's benefit reflecting the special retirement benefit.

5 "Agency" or "attached agency" means the Hawaii health
6 systems corporation.

7 "Directly affected" refers to when an employee receives
8 official reduction-in-force notification of displacement from
9 the employee's position because of a senior employee exercising
10 reduction-in-force rights, or because the employee's position is
11 part of a workforce restructuring plan, including privatization.

12 "Employee" means an individual:

13 (1) Employed by the state government or an attached agency
14 in a position subject to chapters 88 and 89;

15 (2) Whose position has been identified for abolishment or
16 directly affected because of a reduction-in-force or
17 workforce restructuring plan, including privatization;
18 and

19 (3) Whose employment is subject to Act 103, Session Laws
20 of Hawaii 2015.



1 "Exclusive representative" has the same meaning as defined
2 in section 89-2.

3 "Public employer" has the same meaning as defined in
4 section 89-2.

5 "Reduction-in-force" includes layoffs under chapter 89.

6 § -2 Voluntary severance benefit. (a) Any employee
7 entitled to reduction-in-force rights under chapter 89 and who
8 receives official notification that the employee's position is
9 being abolished or who is directly affected by a reduction-in-
10 force or workforce restructuring plan, including privatization,
11 may elect to receive a voluntary severance benefit provided
12 under this section in lieu of exercising any reduction-in-force
13 rights under chapter 89 and in lieu of receiving any special
14 retirement benefit under section -3.

15 (b) A one-time lump sum cash bonus severance benefit shall
16 be calculated at five per cent of the employee's base salary for
17 every year of service worked, not to exceed ten years, and shall
18 not exceed fifty per cent of the employee's annual base salary.

19 For the purposes of this section, "annual base salary"
20 means an employee's annual salary for the position from which
21 the employee is to be separated, excluding all other forms of



1 compensation paid or accrued, whether a bonus, allowance,
2 differential, or value of leave or compensatory time off
3 credits. Compensation excluded from base salary includes
4 shortage category differential, night shift differential,
5 overtime, compensatory time off credits, vacation or sick leave
6 credits, and workers' compensation benefits.

7 (c) A severance benefit shall be in addition to any
8 payment owing to the employee upon separation from service,
9 including accumulated unused vacation allowances or compensatory
10 time credits.

11 (d) All severance benefits paid under this section shall
12 be subject to applicable state income tax laws and rules.

13 (e) A severance benefit provided under this section shall
14 not be considered as a part of a discharged employee's salary,
15 service credit, or a cost item as defined in section 89-2 when
16 calculating retirement benefits or sick and vacation leave.

17 § -3 Special retirement benefit. (a) Notwithstanding
18 section 88-99 or any other law to the contrary, the employees'
19 retirement system may provide, regardless of whether the
20 actuarial value of the system's assets is one hundred per cent
21 of the system's actuarial accrued liability, the benefits



1 authorized under this section. Any employee who receives
2 official notification that the employee's position is being
3 abolished or who is directly affected by a reduction-in-force or
4 workforce restructuring plan, including privatization, proposed
5 by an agency may elect, if the employee is eligible to receive
6 benefits from the employees' retirement system and meets any of
7 the criteria specified in subsection (c), the special retirement
8 benefit provided by this section in lieu of exercising any
9 reduction-in-force rights under chapter 89 and in lieu of
10 receiving any severance benefits under section -2. To
11 receive the special retirement benefit offered under this
12 section, the employee shall comply with the application and time
13 frame requirements specified in subsection (b).

14 (b) Any employee who elects to retire and receive the
15 special retirement benefit under this section shall notify the
16 employee's employing agency and file a formal application for
17 retirement with the employees' retirement system not less than
18 thirty days or more than one hundred fifty days prior to the
19 date of retirement.

20 (c) Notwithstanding the age and length of service
21 requirements of sections 88-73, 88-281, and 88-331, an employee



1 shall qualify for the special retirement benefit if, on the
2 employee's retirement date, the employee meets any one of the
3 following criteria:

- 4 (1) Has at least five years of credited service as a
5 contributory class A or B member and is at least fifty
6 years of age;
- 7 (2) Has at least twenty years of credited service as a
8 contributory class A or B member, irrespective of age;
- 9 (3) Has at least ten years of credited service as a
10 noncontributory class C member and is at least fifty-
11 seven years of age;
- 12 (4) Has at least twenty-five years of credited service as
13 a noncontributory class C member, irrespective of age;
- 14 (5) A class H member who became a member prior to July 1,
15 2012, has at least five years of credited service and
16 is at least fifty-seven years of age;
- 17 (6) A class H member who became a member prior to July 1,
18 2012, and has at least twenty-five years of credited
19 service, irrespective of age;



1 (7) A class H member who became a member after June 30,
2 2012, has at least ten years of credited service and
3 is at least sixty years of age; or

4 (8) A class H member who became a member after June 30,
5 2012, has at least twenty-five years of credited
6 service and is at least fifty-five years of age.

7 (d) Any employee who exercises the option of the special
8 retirement benefit under this section because the employee does
9 not qualify with respect to the age and length of service
10 requirements under section 88-73, 88-281, or 88-331, to receive
11 a retirement benefit without penalty, shall not have the
12 retirement benefit reduced in accordance with the actuarial
13 formula normally used by the employees' retirement system for
14 the calculation of early retirement benefits.

15 (e) The head of the agency shall transmit a list of
16 employees who elected and received the special retirement
17 benefit to the board of trustees of the employees' retirement
18 system not less than thirty days but not more than one hundred
19 fifty days prior to the employee's retirement date. The head of
20 the agency shall certify that the employees on the list have in
21 fact selected the special retirement benefit in lieu of



1 receiving the severance benefit under section -2 and
2 exercising any reduction-in-force rights under chapter 89.
3 (f) The board of trustees of the employees' retirement
4 system shall make payments with respect to all eligible
5 employees who retire pursuant to this section. The board shall
6 determine the portion of the additional actuarial present value
7 of benefits to be charged to the State based upon retirements
8 authorized under this section. If necessary, the State shall
9 make additional payments to the employees' retirement system in
10 the amounts required to amortize the additional actuarial
11 present value of benefits over a period of five years. The
12 unfunded actuarial present values of benefits payable under this
13 section shall be considered part of the unfunded accrued
14 liability of the employees' retirement system under sections
15 88-122 and 88-123.

16 § -4 Restrictions. No severance benefit or special
17 retirement benefit under this chapter shall be payable to an
18 employee discharged for lawful disciplinary reasons or for
19 reasons other than a reduction-in-force or workforce
20 restructuring plan.



1 § -5 Reemployment. Any employee who has received either
2 a severance benefit or a special retirement benefit under this
3 chapter and returns to public service within two years as an
4 employee or contractor shall repay the severance benefit or the
5 special retirement benefit to the State or the employees'
6 retirement system, as the case may be, within thirty days of
7 reemployment with a public employer.

8 § -6 Payments; lapse of unexpended funds. After
9 payments of all costs associated with the severance benefits and
10 special retirement benefits, the public employer's remaining
11 payroll balances shall not be expended for any purpose and shall
12 be lapsed into the appropriate fund.

13 § -7 Reporting requirements; reduction in personnel
14 counts. The head of the agency that provided benefits under
15 this chapter shall:

16 (1) Transmit a report of every position identified for
17 abolishment and vacated under this chapter to the
18 directors of finance and human resources development,
19 who shall abolish these positions from the appropriate
20 budget and personnel files. The governor shall report
21 this information to the legislature no later than

1 twenty days prior to the convening of each regular
2 session beginning with the regular session of 2017;
3 (2) Reduce its personnel count by every position
4 identified for abolishment and vacated under this
5 chapter, whether the former incumbent vacated the
6 position as a result of accepting a severance benefit
7 or special retirement benefit authorized under this
8 chapter or of exercising reduction-in-force rights;
9 and

10 (3) Transmit a list that includes each employee who
11 received benefits under this chapter and the benefit
12 received by the employee to the directors of finance
13 and human resources development.

14 § -8 Guidelines; development and administration. The
15 departments of human resources development and budget and
16 finance shall develop and administer guidelines and time frames
17 with the exclusive representatives of affected public employees
18 to implement the voluntary severance benefits and special
19 retirement benefits under this chapter. The department of human
20 resources development, the department of labor and industrial
21 relations, the employees' retirement system, and the Hawaii



1 employer-union health benefits trust fund shall work
2 cooperatively to ensure that briefings are provided prior to the
3 implementation of any workforce restructuring plan to educate
4 the employees whose positions are being abolished or who are
5 directly affected by a reduction-in-force or workforce
6 restructuring plan.

7 The department of human resources development and the
8 department of budget and finance shall report to the legislature
9 on any restructuring activities initiated as a consequence of
10 this chapter no later than twenty days prior to the convening of
11 each regular session beginning with the regular session of 2017.

12 The report shall include a description of the abolished
13 positions, an explanation as to how the new workforce structure,
14 including resulting service delivery changes, will more
15 efficiently serve the needs of the agency's clients, the cost of
16 the benefit per participant, and the total cost to the State.

17 § -9 Matching funds. The governor may provide funds to
18 obtain matching federal moneys to retrain employees in the state
19 executive branch who separated from service under this chapter.

20 § -10 Review by employee. Employees offered a severance
21 benefit or a special retirement benefit shall be given



1 sufficient time to make an informed decision from the date of
2 receiving accurate and complete information about the offer."

3 PART II

4 SECTION 3. State contributions; Hawaii health system
5 corporation employees hired after June 30, 1996, and retired.

6 (a) This section shall apply to state contributions to the
7 Hawaii employer-union health benefits trust fund for Hawaii
8 health systems corporation employees hired after June 30, 1996,
9 and who were separated from service as a result of Act 103,
10 Session Laws of Hawaii 2015.

11 (b) The State, through the department of budget and
12 finance, shall pay to the Hawaii employer-union health benefits
13 trust fund:

14 (1) For retired employees based on the self plan with at
15 least nine years but fewer than twelve years of
16 service, a monthly contribution equal to one-half of
17 the base medicare or non-medicare monthly contribution
18 set forth under section 87A-33(b), Hawaii Revised
19 Statutes; provided that retired employees who were
20 hired after June 30, 1996, but before July 1, 2001,
21 with dependent-beneficiaries, as that term is defined



1 in section 87A-1, Hawaii Revised Statutes, shall be
2 eligible for a monthly contribution equal to one-half
3 of the base medicare or non-medicare monthly
4 contribution for two-party or family plans, as
5 applicable, set forth in section 87A-33(b), Hawaii
6 Revised Statutes;

7 (2) For retired employees based on the self plan with at
8 least twelve years but fewer than twenty years of
9 service, a monthly contribution equal to seventy-five
10 per cent of the base medicare or non-medicare monthly
11 contribution set forth under section 87A-33(b), Hawaii
12 Revised Statutes; provided that retired employees who
13 were hired after June 30, 1996, but before July 1,
14 2001, with dependent-beneficiaries, as that term is
15 defined in section 87A-1, Hawaii Revised Statutes,
16 shall be eligible for a monthly contribution equal to
17 seventy-five per cent of the base medicare or non-
18 medicare monthly contribution for two-party or family
19 plans, as applicable, set forth in section 87A-33(b),
20 Hawaii Revised Statutes;



(3) For retired employees based on the self plan with twenty or more years of service, a monthly contribution equal to one hundred per cent of the base medicare or non-medicare monthly contribution set forth under section 87A-33(b), Hawaii Revised Statutes; provided that retired employees who were hired after June 30, 1996, but before July 1, 2001, with dependent-beneficiaries, as that term is defined in section 87A-1, Hawaii Revised Statutes, shall be eligible for a monthly contribution equal to one hundred per cent of the base medicare or non-medicare monthly contribution for two-party or family plans, as applicable, set forth in section 87A-33(b), Hawaii Revised Statutes; and

(4) Upon the death of a retired employee hired after June 30, 1996, but before July 1, 2001, for the dependent-beneficiary who becomes eligible as an employee-beneficiary, a monthly contribution equal to paragraphs (1), (2), or (3), as applicable; and upon the death of a retired employee hired after June 30, 2001, for the dependent-beneficiary who becomes



1 eligible as an employee-beneficiary, a monthly
2 contribution equal to one-half of paragraphs (1), (2),
3 or (3), as applicable.

4 PART III

5 SECTION 4. If any provision of this Act, or the
6 application thereof to any person or circumstance, is held
7 invalid, the invalidity does not affect other provisions or
8 applications of the Act that can be given effect without the
9 invalid provision or application, and to this end the provisions
10 of this Act are severable.

11 SECTION 5. This Act shall take effect upon its approval,
12 and shall apply to employees of the Hawaii health systems
13 corporation who are separated from service as a consequence of
14 Act 103, Session Laws of Hawaii 2015.

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BOARD OF TRUSTEES OF THE
EMPLOYEES' RETIREMENT SYSTEM
OF THE STATE OF HAWAII

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

16-1-1543-08 ECN.

BOARD OF TRUSTEES OF THE
EMPLOYEES' RETIREMENT SYSTEM
OF THE STATE OF HAWAII,

Plaintiff,

vs.

STATE OF HAWAII; and DOES 1 -100,

Defendants.

Civil No. _____
(Declaratory Relief)

SUMMONS

No Trial Date Set

SUMMONS

STATE OF HAWAII

To the above-named Defendants:

You are hereby summoned and required to serve upon Kobayashi, Sugita & Goda, LLP, attorneys for Plaintiff BOARD OF TRUSTEES OF THE EMPLOYEES' RETIREMENT SYSTEM OF THE STATE OF HAWAII, whose address is First Hawaiian Center, 999 Bishop Street, Suite 2600, Honolulu, Hawai'i 96813, an answer to the Complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

This summons shall not be personally delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the general public, unless a judge of the above-entitled court permits, in writing on this summons, personal delivery during those hours.

A failure to obey this summons may result in an entry of default and default judgment against the disobeying person or party.

DATED: Honolulu, Hawaii, _____.

**SUMMONS
DENIED**

CLERK OF THE ABOVE-ENTITLED COURT

