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**STATE OF HAWAII**  
**EMPLOYEES' RETIREMENT SYSTEM**

TESTIMONY BY THOMAS WILLIAMS  
EXECUTIVE DIRECTOR, EMPLOYEES' RETIREMENT SYSTEM  
STATE OF HAWAII

TO THE SENATE COMMITTEES ON HIGHER EDUCATION AND  
LABOR, CULTURE AND THE ARTS

ON

SENATE BILL NO. 590

**February 16, 2021**  
**3:00 P.M.**  
**Conference Room 229**

RELATING TO THE UNIVERSITY OF HAWAII

Chairs Kim & Taniguchi, Vice Chairs Kidani & Ihara, and Members of the Committees,

S.B. 590 proposes amendments to Hawaii Revised Statute Section 88-8 regarding the University of Hawaii (UH) optional retirement system.

We appreciate and understand that the intent behind the bill may be to provide an alternate retirement option for certain classes of UH employees, as well as to aid in recruitment of faculty and for other UH positions.

However, we must oppose the bill as currently written. The bill would jeopardize the federal tax qualification of the ERS. The bill also has financial and actuarial implications for the ERS's unfunded liability and, though a lesser concern, it may provide a prohibited benefit enhancement.

1. Section 88-8(f) allows current UH employees (members of the ERS when the UH optional retirement system is established) to opt out of the ERS. This "opt-out" provision would jeopardize the federal tax qualification of the ERS.



Employees' Retirement System  
of the State of Hawaii

The ERS has a “pick-up” arrangement whereby mandatory employee contributions to the ERS are “picked up” by the employers and treated as tax-deferred “employer” contributions under Section 414(h)(2) of the Internal Revenue Code. See HRS Sections 88-46 and 88-326.

Since the ERS is a qualified defined benefit plan offering an employer pick-up arrangement, it must not permit a participating employee to have an option to opt out of the plan, as the opt out option is viewed by the IRS as constituting a cash or deferred election. Participating employees must not be permitted to opt out of the “pick-up”. See Revenue Ruling 2006-43. Cash or deferred elections are prohibited.

Thus, the “opt-out” provision in Section 88-8(f) would violate federal tax qualification requirements.

We believe that the “opt-out” provision should be removed from Section 88-8(f) and suggest that it be revised to clarify that an “opt-out” is not available for current and former ERS members, as follows:

(f) Any member or former member of the state employees' retirement system when the optional retirement system of the University of Hawaii is established shall not be eligible for membership in the optional retirement system.

2. Section 88-8(g) provides that new UH employees (persons hired after the establishment of the UH optional retirement system) “shall be enrolled” as a member of the ERS unless the employee elects to be enrolled in the UH optional retirement system within 90 days of the date of the employee's employment.

Section 88-8(g) is problematic. The words “shall be enrolled” can be interpreted to mean that a new employee is automatically enrolled in the ERS but may opt out within 90 days. As with Section 88-8(f), such an “opt out” would be interpreted as constituting a cash or deferred election and would thus jeopardize the federal tax qualification of the ERS.

We believe that Section 88-8(g) should be revised to clarify that there is no “opt-in” or “opt-out” for new employees. We suggest that Section 88-8(g) be revised to provide that (1) upon hire, new employees must elect to be enrolled in either the ERS or the UH optional retirement system; and (2) once the election is made, the employee may not transfer out of, or into, the ERS, as follows:

(g) Any person hired after the establishment of the optional retirement system of the University of Hawaii who is an appointee of the board of regents and is eligible for membership in the state employees' retirement system shall, upon hire, elect to be enrolled in either the state employees' retirement system or the optional retirement system of the University of Hawaii. Any such person who elects to be enrolled in the employees' retirement system may not transfer to the optional retirement system of the University of Hawaii. Any such person who elects to be enrolled in the optional retirement system of the University of Hawaii may not transfer to the state employees' retirement system.

3. Absent specifics as to the optional retirement plan's design, contributions, and eligibility, we are concerned the bill may negatively impact the ERS's unfunded liability. If new UH employees enroll in the UH optional retirement system, this would direct funds away from the ERS. There may be no contributions from the new employees or their employer that would defray the ERS's unfunded liability.

4. The benefits under the UH optional retirement system may provide a prohibited benefit enhancement. HRS Section 88-99 provides that there shall be no benefit enhancements until the actuarial value of the ERS's assets is 100 per cent of the ERS's actuarial accrued liability.

For these reasons, and given the lack of details about the UH optional retirement system, the ERS testifies in strong opposition to this bill. We would, however, be amenable to working with the University on mutually agreeable revisions to S.B. 590 that would address ERS's concerns.

Thank you for this opportunity to provide testimony.



# UNIVERSITY OF HAWAII SYSTEM

## Legislative Testimony

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Testimony Presented Before the  
Senate Committee on Higher Education  
and  
Senate Committee on Labor, Culture and the Arts  
February 16, 2021 at 3:00 p.m.  
by  
Kalbert K. Young  
Vice President for Budget and Finance/Chief Financial Officer  
University of Hawai'i System

### SB 590 – RELATING TO THE UNIVERSITY OF HAWAII

Chairs Kim and Taniguchi, Vice Chairs Kidani and Ihara, and members of the Committees:

Thank you for the opportunity to submit testimony on SB 590. The University of Hawai'i (UH) is supportive of this measure and offers suggested revisions. This bill will expand the existing statutory authority of the UH to create an alternative retirement program separate from the State Employees' Retirement System (ERS).

Section 88-8, Hawai'i Revised Statutes (HRS), already provides for the UH to establish its own retirement system for its employee members of bargaining unit 7 and those employees excluded from bargaining unit 7, provided in chapter 89, HRS. As written, this bill seeks to add bargaining unit 8 employees as well, but adds prescriptive language as to the form and organization of the new retirement plan.

First, the UH has not established its own retirement system provided under Section 88-8, HRS. As an agency of the State of Hawai'i, the employees of the UH can participate in the State of Hawai'i Deferred Compensation (457) plan. The UH offers a 403(b) plan for its employees as well. Both the 457 and the 403(b) plans are voluntary to participate, but the membership in the ERS is required of nearly all employees (not student employees, temporary hires, etc.), in part, because the UH has not created an alternative retirement system as outlined in Section 88-8, HRS.

In late-2020, the UH President requested the formation of a "blue ribbon" committee to consider ideas on how to improve fiscal balance in the UH-Mānoa athletics program. The UH President and UH-Mānoa athletics director have recently presented the committee's recommendations to the UH Board of Regents. The recommendations included a suggestion for an alternative retirement offering for coaches and assistant coaches to the ERS as a means to reduce the fringe benefit expense for pension in the athletics program. Currently, the employer (UH) must contribute the equivalent of 24% of an employee's salary to the ERS. Since most of the athletic department's operations are paid for by operating revenues of the athletic program, this expense is a significant portion of the athletics special fund operations.

Another thought to consider is that many collegiate coaches, assistant coaches, and sport-specific support staff do not stay in their positions for more than ten years – which, is the minimum vesting period required of the ERS for new employees in order to earn pension benefits in retirement. The committee recommendation was grounded in the thought that if an alternative retirement program could be offered to coaches and assistant coaches that was portable for the employee and where the employer would contribute less than what is currently required for the ERS, it could be a win-win for both the employee and the UH.

The UH supports this bill to the extent that UH is only seeking to expand the current Section 88-8, HRS, to include coaches, assistant coaches, and possibly other sport-specific athletic positions (trainers, specialists, etc.). These positions are included as part of bargaining unit 8. In reviewing the existing statute and SB 590 with the ERS, I am acknowledging that the ERS may identify legal- and tax-related issues with the way the bill contemplates an employee's membership in either plan, opt-in or opt-out features, and sensitivity to the financial viability of the ERS should there be a large exodus of members. The UH defers to the ERS on how best to construct the statute that would preserve the ability to establish a UH retirement plan without jeopardizing the ERS.

Section 88-8, HRS, and SB 590 may also not be sufficiently drafted to accommodate health insurance retirement benefits of the Employer-Union Trust Fund (EUTF) under Section 87, HRS. In particular, Section 87A-21(b), HRS, provides that “a retired member of the employees’ retirement system; a county pension system; or a police firefighters, and bandsmen pension system of the State or county, shall be eligible to qualify as an employee beneficiary...” As such, the only retired employees that are eligible to enroll as employee-beneficiaries in EUTF's plans are a retired member of the ERS; a county pension system; or a police, firefighters, and bandsmen pension system of the State or county. There is no reference to the optional retirement system of the UH provided in the (current) Section 88-8, HRS. Therefore, employees who retire under this plan may not be eligible to participate in any of the EUTF plans. This aspect would require additional legal consult and review.

The UH recommends that the committee should also consider amending the bill to utilize existing alternative surrogate retirement plans already offered by State or university employment rather than prescribing details and parameters of a new plan described in paragraph (g). I am recommending that the bill be amended to incorporate the State of Hawai'i Deferred Compensation (457) plan and/or the UH 403(b) plans as permitted alternatives. Attached are suggested revisions to SB 590.

Thank you for the opportunity to submit testimony on this measure.

Attachment

UH Testimony Attachment  
SB 590 Suggested Language

1 SECTION 1. Section 88-8, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 **"§88-8 University of Hawaii optional retirement system.**

4 (a) Notwithstanding any other law to the contrary, the board of  
5 regents may establish without regard to the public notice or  
6 public hearing requirements of chapter 91, a retirement system  
7 separate from the state employees' retirement system to provide  
8 retirement allowances and other benefits for University of  
9 Hawaii employees who are:

10 (1) Members of bargaining unit (7); [~~or~~]

11 (2) Other employees of the University of Hawaii or the  
12 community college system who are excluded from  
13 bargaining unit (7) pursuant to chapter 89[~~7~~]; or

14 (3) Athletic coaches and assistant coaches employed by the  
15 University of Hawaii, who are included as bargaining  
16 unit (8) pursuant to chapter 89, and hired on or after  
17 July 1, 2021.

18 (b) The general administration and the responsibility for  
19 the proper operation of the optional retirement system of the  
20 University of Hawaii shall be vested in the board of regents.  
21 The board of regents may manage the optional retirement system  
22 within the University of Hawaii or contract for the management

1 of the optional retirement system. In fulfillment of its  
2 general administrative responsibilities in establishing an  
3 optional retirement plan, the board of regents may utilize the  
4 following:

5 (1) The state of Hawaii deferred compensation (457) plan;

6 (2) The funds and plans offered as part of the University  
7 of Hawaii's 403(b) program;

8 (3) Any additional companies or plan providers to provide  
9 annuity contracts, mutual fund accounts, or similar  
10 investment products.

11 (c) The board of regents may establish vesting periods for  
12 the members of the optional retirement system of the University  
13 of Hawaii that are different from those established in this  
14 chapter.

15 (d) The board of regents may establish retirement  
16 allowances and other benefits for the optional retirement system  
17 of the University of Hawaii.

18 (e) The employer's share of the cost of the optional  
19 retirement plan of the optional retirement system of the  
20 University of Hawaii shall not exceed the equivalent amount for  
21 any other group covered by this chapter.

1 (f) Any member of the state employees' retirement system  
2 when the optional retirement system of the University of Hawaii  
3 is established who is also:

4 (1) A member of bargaining unit (7); [~~or~~]

5 (2) Other employees of the University of Hawaii or the  
6 community college system who are excluded from  
7 bargaining unit (7) pursuant to chapter 89[~~7~~]; or

8 (3) Whose eligibility in the optional retirement system of  
9 the University of Hawaii has been authorized and  
10 prescribed by the rules of the board of regents,

11 shall remain a member of the state employees' retirement system  
12 unless the person elects in writing on a form prescribed by the  
13 board of regents to terminate the person's membership. The form  
14 shall be submitted to the state employees' retirement system no  
15 later than ninety days after the establishment of the optional  
16 retirement system of the University of Hawaii.

17 (g) Any person hired after the establishment of the  
18 optional retirement system of the University of Hawaii who is:

19 (1) A member of bargaining unit (7); [~~or~~]

20 (2) Other employees of the University of Hawaii or the  
21 community college system who are excluded from  
22 bargaining unit (7) pursuant to chapter 89[~~7~~]; or



1       (3) and, whose eligibility in the optional retirement  
2           system of the University of Hawaii has been authorized  
3           and prescribed by the rules of the board of regents,  
4 shall elect to be a member of the state employees' retirement  
5 system or the optional retirement system of the University of  
6 Hawaii. Upon an election the person may not transfer from one  
7 system to the other.

8       (h) Notwithstanding any other law to the contrary,  
9 retirement benefits for the optional retirement system of the  
10 University of Hawaii shall be a subject of collective bargaining  
11 negotiations for bargaining unit (7)."



**LATE**

Senate Committee on Higher Education  
and  
Senate Committee on Labor, Culture and the Arts  
February 16, 2021, 3:00 pm Videoconference

**RE: SB 590 RELATING TO THE UNIVERSITY OF HAWAII**

Attention: Chairs Kim and Taniguchi, Vice Chairs Kidani and Ihara and  
Members of the Joint Committee:

The University of Hawaii Professional Assembly (UHPA) supports the intent of this measure and understands the University of Hawai'i will be submitting recommended changes to the bill, and are supportive of those recommendations.

This bill seeks to expand the existing authority of the University of Hawai'i to create an alternative retirement program separate from the State Employee Retirement System. Section 88-8, Hawai'i Revised Statutes, which was strongly supported by UHPA, already provides for the University of Hawai'i to establish its own retirement system for its employee members of bargaining unit 7 and those employees excluded from unit 7, provided in chapter 89, HRS. As the bill is currently written, it seeks to add unit 8 employees as well.

The University has never taken the step to establish its own retirement system provided under 88-8, HRS. The idea to expand those eligible for the alternative retirement system was one recommendation from the Blue Ribbon Committee, which was established by the University of Hawai'i President during the Fall 2020 semester, to consider ideas to improve the fiscal situation of the UH-Mānoa's Athletics Department. This recommendation was presented as a means to reduce the fringe benefits costs for athletic coaches, who are members of bargaining unit 8, and often don't stay in their positions for more than 10 years, the minimum vesting period in order to earn pension benefits in retirement.

Thank you for the opportunity to submit testimony supporting the intent of this measure and supporting the recommended changes by the University of Hawai'i.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'C. Fern'.

Christian L. Fern  
Executive Director  
University of Hawaii  
Professional Assembly