TESTIMONY BY KALBERT K. YOUNG
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON LABOR AND PU BLIC EMPLOYMENT

ON
HOUSE BILL 808

February 8, 2013

RELATING TO EMPLOYEES' RETIREMENT SYSTEM

House Bill No. (H.B.) 808, will provide that civil union partners are not entitled to the rights of "spouse" under Chapter 88, Hawaii Revised Statutes (HRS) where they are not entitled to the rights of spouses under the Internal Revenue Code and adds a new section to confirm that, for the purposes of Chapter 88, HRS, the terms "married", "marriage", "marital", "husband", "wife", or similar spousal terms shall include civil unions and civil union partners, unless to do so would jeopardize the tax-qualified status of the Employees' Retirement System (ERS), and amends sections 88-22.5(a) (6) and 88-74.7, HRS to delete redundant specific references to civil unions.

The Department of Budget and Finance strongly supports this Administration bill which is necessary to preserve the tax qualified status of the ERS under section 401 (a) of the Internal Revenue Code of 1986, as amended and to clarify the application of Chapter 88, HRS with regards to civil unions. Support of H.B. 808 is not a statement on the issue of civil union partnerships, but rather a purely legal compliance issue to the Federal Code to ensure that the ERS maintains its current tax-exempt status so that that benefit can continue for all the beneficiaries and members within the pension system.

TESTIMONY BY WESLEY K. MACHIDA
ADMINISTRATOR, EMPLOYEES' RETIREMENT SYSTEM
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT
ON
HOUSE BILL NO. 808

FEBRUARY 8, 2013

RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM

Chair Nakashima and Members of the Committee,

H.B. 808 proposes to amend sections 88-22.5 and 88-74.7(e)-(g), Hawaii Revised Statutes to provide that civil union partners are not entitled to the rights of "spouses" under chapter 88 where to do so would jeopardize the tax-qualified status of the ERS. In addition, this bill proposes to add a new section confirming that, for the purposes of chapter 88, marital and spousal terms shall include civil unions and civil union partners, unless to do so would jeopardize the tax-qualified status of the ERS.

The Employees' Retirement System of the State of Hawaii (ERS) is a tax-exempt, qualified retirement plan under section 401(a) of the Internal Revenue Code (Code). If the ERS should lose its tax-exempt status, the federal tax consequences would be extremely harmful to its members. Contributions received from employee members would no longer have favorable pre-tax treatment; instead, employees' contributions to the ERS would be entirely subject to federal income tax at the time of contribution. Further, all members would be taxed on the value of their total accrued retirement benefits at the time they vest rather than when they receive their retirement benefits.

In order to maintain its tax-qualified status, the Employees' Retirement System must meet the Internal Revenue Code requirements applicable to it in form (i.e., the wording of the statutes and administrative rules) and in operation (i.e., how the statutes and administrative rules are applied). Although in general, the rights and duties of members, retirants, and beneficiaries of the Employees' Retirement System are governed entirely by state law, where there are conflicts between state law and applicable federal law, the Employees' Retirement System must satisfy federal tax law or risk losing its tax-qualified status.

Certain provisions of federal tax law applicable to the Employees' Retirement System allow only a "spouse" of a retirement system member or retirant to receive certain rights or benefits. The federal Defense of Marriage Act of 1996 requires that, when interpreting a federal law, rulings, regulations and interpretations, such as the Internal Revenue Code and the regulations promulgated under the Internal Revenue Code, "the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife."

This bill amends section 88-22.5 to provide that civil union partners who are not "spouses" under federal law are not entitled to the benefits of "spouses" under chapter 88 where the Code governs the rights of spouses. At present, this amendment would affect three areas:

1) the right to receive a monthly survivor benefit that is the same as the retirant if the retirant's civil union partner is the retirant's beneficiary and is more than a specified number of years younger than the retirant (the surviving civil union partner would still be able to receive other forms of survivor benefits and the benefits payable to the retirant and the retirant's survivor beneficiary would be the actuarial equivalent in all cases to the retirant's "maximum retirement allowance");

2) the right to defer death benefits; and

3) preferential rollover rights under section 402(c)(9) of the Internal Revenue Code (non-spouse beneficiaries may make direct rollovers; however, their rollover options are more limited than the options available to spousal beneficiaries).

Civil union partners would still have the rights accorded to spouses under the portions of chapter 88 that are not restricted by the Internal Revenue Code.

This bill also adds a new section confirming that, for the purposes of chapter 88, the terms "married," "marriage," "marital," "husband," "wife," or similar spousal terms shall include civil unions and civil union partners, unless to do so would jeopardize the tax-qualified status of the Employees' Retirement System, and amends sections 88-22.5(a)(6) and 88-74.7 to delete specific reference to civil unions that are made superfluous by the new section.

In its commitment to protect the tax-qualified status of the ERS, the Board of Trustees supports this bill.

Thank you for the opportunity to testify on this important measure.