

DAVID Y. IGE
GOVERNOR



THOMAS WILLIAMS
EXECUTIVE DIRECTOR

KANOE MARGOL
DEPUTY EXECUTIVE DIRECTOR

**STATE OF HAWAII
EMPLOYEES' RETIREMENT SYSTEM**

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

TO THE SENATE COMMITTEE ON LABOR, CULTURE AND THE ARTS

ON

SENATE BILL NO. 2252

February 4, 2020

2:45 PM

Conference Room 224

RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM

Chair Taniguchi, Vice Chair Ihara, and Members of the Committee,

S.B. 2252 amends section 661-8, HRS, which would waive the sovereign immunity of the Employees' Retirement System of the State of Hawaii (ERS) from claims for pre judgment interest on delayed payments of accrued ERS membership benefits. In its current form, this proposal broadly covers "delayed payment of accrued benefits," exclusively focuses its interest claims on the ERS, and if passed, would result in an increase in expenses and an indeterminate increase to the plan's unfunded liability. Although the board of trustees of the ERS has not yet had the opportunity to review this bill, the ERS staff notes the following concerns regarding S.B. 2252 and respectfully requests that it be held.

The State generally has "sovereign immunity" from lawsuits "except where there has been a clear relinquishment' of immunity and the State has consented to be sued." *Chun v. Board of Trustees of ERS*, 106 Hawaii 416, 431-32 (Hawaii 2005).

However, the State has generally not waived its immunity regarding awards of prejudgment interest, except as allowed in HRS § 661-8, the subject of SB 2252. Further waiver needs to be "*unequivocally expressed in statutory text.*" *Chun*, 106 Hawaii at 432.



Employees' Retirement System
of the State of Hawaii

Essentially, SB2252 would waive ERS's sovereign immunity from liability for prejudgment interest on award of "accrued benefits." Currently, HRS § 661-8 only waives State immunity from prejudgment interest for two types of claims: (1) upon a contract expressly stipulating for the payment of interest; or (2) upon a refund of a payment into the "litigated claims fund" as provided by law (that "fund" holds money which is paid to the state under protest; if the payor files suit w/in 30 days and wins, they get their money back). If SB2252 passes, a judgment awarding payment of non-paid or "delayed" accrued ERS membership benefits, could also include an award of prejudgment interest. SB2252 would supersede *Chun's* rejection of prejudgment interest on ERS benefit awards. That would further add to the expense and unfunded liabilities of ERS.

Thank you for this opportunity to testify.