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TESTIMONY BY LUIS P. SALAVERIA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE SENATE COMMITTEE ON LABOR AND TECHNOLOGY
ON
SENATE BILL NO. 2716

February 9, 2024
3:15 p.m.
Room 224 and Videoconference

RELATING TO COLLECTIVE BARGAINING

The Department of Budget and Finance (B&F) strongly opposes this bill.

Senate Bill No. 2716 amends Chapter 89-9, HRS, to allow public employee organizations to negotiate retirement benefits.

First, the bill is inconsistent with Chapter 88-99, HRS, which provides that there shall be no benefit enhancements to retirement benefits for any group of members, including any reduction of retirement age, until such time as the actuarial value of the system's assets is 100 % of the system's actuarial accrued liability. The State's pension unfunded liability remains a serious concern. The State has a long-term plan to address that liability, but this bill would significantly disrupt those plans and make it almost impossible to control the State's unfunded pension liability.

In addition, allowing each bargaining unit to negotiate its own benefits could essentially create 15 different pools of employees increasing administrative complexity of the Employees' Retirement System (ERS). Each negotiating team would need to be advised or trained on retirement benefit matters, including compliance with federal requirements.

Finally, for many bargaining units, arbitration is part of the resolution process. Allowing arbitration panels to decide matters relating to retirement benefits is fraught with uncertainty. Arbitration panels are tasked to consider the employer's ability to pay and overall economic conditions. Panels often fail to grasp the complexities of the State budget and under the provisions of this measure, they would also need to become experts in retirement plan design. While difficult fiscal conditions can make it challenging to reach resolutions in collective bargaining (CB) negotiations, altering the current process by allowing binding arbitration would take this critical decision out of the hands of elected leaders and put it in the hands of unelected and unaccountable arbitrators. While the Legislature would still have the authority to reject an arbitration award, it appears all cost items would be rejected, not just retirement benefits. The end result of this bill could result in giving the Legislature a choice of fully conceding control of this significant portion of the budget to arbitration panels or risk unending CB negotiations.

Thank you for your consideration of our comments.

JOSH GREEN, M.D.
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 AND TECHNOLOGY
ON
SENATE BILL NO. 2716
February 9, 2024
3:15 P.M.
Conference Room 224 and VIA Videoconference

RELATING TO COLLECTIVE BARGAINING

Chair Aquino, Vice Chair Moriwaki, and Members of the Committee,

S.B. 2716 proposes to amend Hawaii Revised Statutes (HRS) § 89-9 to allow public employee organizations to negotiate retirement benefits. The Employees' Retirement System (ERS) Board of Trustees opposes this bill. Any allowance of retirement benefits to be negotiated through separate collective bargaining agreements would cede control over the plan's benefits, liabilities, contributions and funding levels to the detriment of the plan's sustainability, both legally and fiscally.

The ERS Board believes that allowing any of the 15 employee organizations and five employers (State and four counties) to each separately negotiate benefits to be paid by the ERS under each of the three classes of employees (two of which have two tiers), poses negative implications for the sustainability of the plan, prove administratively burdensome and expensive but more importantly place at risk the plan's IRS qualified status.

The general administration and operation of the ERS is vested in the ERS's Board of Trustees. The determination of plan benefits and contribution rates is vested with the legislature. The ERS, its plan and retirement benefits for State and county employees



Employees' Retirement System
of the State of Hawaii

are governed by HRS Chapter 88, Hawaii Administrative Rules Title 6 and Internal Revenue Code (IRC) § 401(a). ERS statutes and administrative rules currently establish the classes of employees along with requirements for each class of employee, including membership, membership tier, employee contributions, employer contributions, accrual of service credits, included earnings, parameters for the eligibility and calculation of benefits. The proposed bill places no limits as to what aspect of ERS retirement benefits or service accrual may be negotiated separately by the current 15 employee organizations and five employers.

Allowing those aspects of ERS retirement benefits identified above to be modified by separate negotiations between each collective bargaining unit and each employer, could create inequities among the employees in each of the ERS's classes of employees. The ERS would have difficulty administering the different benefit structures that result from collective bargaining within any of the plans for the classes and meeting any accompanying need for additional staff and resources. Changes to ERS's pension processing system would also result in additional costs.

Allowing those aspects of ERS retirement benefits identified above, to be determined and/or modified by separate negotiations between individual employees and their respective employer (pursuant to grievance procedures set forth in collective bargaining agreements), may violate the HRS § 88-99 moratorium on benefit enhancements, which states: "There shall be no benefit enhancements under this chapter for any group of members, including any reduction of retirement age, until such time as the actuarial value of the system's assets is one hundred per cent of the system's actuarial accrued liability."

The current requirements for included earnings and the calculation of benefits in the statutes factor into efforts by the ERS and the State to reach full funding (100%) of the plan in 23 years. The ERS's Unfunded Actuarial Accrued Liability is \$13.71 billion as of June 30, 2023, and its actuarial funded ratio is 62.2%. The ERS has improved its funded ratio from a low of 54.7% in 2016 with the current membership, contribution, eligibility, and benefit requirements in place. Notable changes made by the Legislature to increase contribution rates and to lower benefits for employees hired after June 30, 2012, have significantly contributed to the lowering of the plan's unfunded liability.

The ERS is a tax-qualified governmental retirement plan under the Internal Revenue Code ("IRC"). See H.S.C.R. No. 343 (2011) ("Hawaii's ERS is currently a tax-qualified retirement plan under the IRC"); see *also* HRS § 88-22.5 ("the [ERS] shall be administered in accordance with the requirements of section 401(a)... of the Internal Revenue Code of 1986, as amended"); and Stand. Comm. Rep. No. 692, in 2004 Senate Journal, at 1359 (indicating HRS § 88-22.5 was enacted "to ensure that the tax-qualified status of the [ERS] is not placed in jeopardy").

Allowing those aspects of ERS retirement benefits identified above to be administered in accordance with negotiations between collective bargaining units (or individual employees, pursuant to grievance procedures set forth in collective bargaining agreements) and employers, places the ERS's tax-qualified status at risk for violation of a significant number of IRS rules and regulations. Amongst them would be the plan document rule, which requires that qualified plans be administered in accordance with the terms of its plan documents, the "definitely determinable" benefits rule and the IRS prohibition against "cash or deferred" options under qualified retirement plans.

If there are collective bargaining agreements that conflict with the terms of the ERS plan document at HRS Chapter 88, benefits will not meet the definitely determinable benefits requirements established by the IRS. If bargaining units are allowed to negotiate whether to receive additional cash compensation in lieu of retirement benefits or vice versa, a violation of the IRS prohibition against "cash or deferred" options under qualified retirement plans would occur.

Thus, the ERS has significant concerns regarding the potential negative impact of S.B. 2716 on the ERS's status as a qualified governmental plan under the Internal Revenue Code. The ERS has consulted with its tax counsel regarding the potential negative impact of S.B. 2716 on the ERS's tax qualified status and they have indicated in writing that they share our concerns.

Accordingly, the ERS believes the long-term sustainability of the plan is best served by the statutory scheme and governance structure currently in place as set forth in HRS Chapter 88.

Thank you for the opportunity to provide testimony on S.B. 2716.



UNITED PUBLIC WORKERS

AFSCME Local 646, AFL-CIO

THE SENATE
KA 'AHA KENEKOA
THE THIRTY-SECOND LEGISLATURE
REGULAR SESSION OF 2024

COMMITTEE ON LABOR AND TECHNOLOGY

Senator Henry J.C. Aquino, Chair
Senator Sharon Y. Moriwaki, Vice Chair

Friday, February 9, 2024, 3:15 PM
Conference Room 224 & Videoconference

Re: **Testimony on SB2716 – RELATING TO COLLECTIVE BARGAINING**

Chair Aquino, Vice Chair Moriwaki, and Members of the Committee:

The United Public Workers, AFSCME Local 646, AFL-CIO (“UPW”) is the exclusive bargaining representative for approximately 14,000 public employees, which includes blue collar, non-supervisory employees in Bargaining Unit 1 and institutional, health, and correctional employees in Bargaining Unit 10, in the State of Hawaii and various counties.

UPW **strongly supports** SB2716, which allows retirement benefits to be negotiated during collective bargaining negotiations.

For the past several years, the Legislature has sought answers from the Department of Human Resources Development (“DHRD”) about what is collectively being done to fill the State’s vacant positions. Simultaneously, similar questions are being asked of DHRD’s counterparts at the county level. While State and county agencies have taken steps to strengthen their ability to attract new employees (e.g., recruitment bonuses), UPW believes improving retention has generally relied upon hypothetical repricing scenarios and unproductive discussions about longevity bonuses for longtime public employees.

While some county governments, with the hope to improve recruitment and retention, have proposed statutory changes to restore retirement benefits that were previously available to specific groups of employees (e.g., police officers), there has been no significant, widespread effort to utilize retirement benefit enhancements to retain public workers. This is because there has been a moratorium on retirement benefit enhancements since 2011. §88-99, Hawaii Revised Statutes (“HRS”), states, “[t]here shall be no benefit enhancements under this chapter for any group of members, including any reduction of retirement age, until such time as the actuarial value of the system’s assets is one hundred per cent of the system’s actuarial accrued liability.” As a result, the Employees’ Retirement System (“ERS”), has opposed all recent legislation that proposed to improve retirement benefits, in part, due to this statutory provision.

Retirement benefits are currently excluded from the scope of collective bargaining negotiations. We believe this bill would allow exclusive representatives the ability to negotiate better retirement benefits without violating the moratorium prescribed in §88-99, HRS.

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It is UPW's position that this measure does not conflict with §88-99, HRS, because pursuant to §89-19, HRS, collective bargaining takes precedence over all conflicting statutes, and it does not provide for actual retirement benefit enhancements. It merely provides the opportunity to negotiate retirement benefits.

Mahalo for the opportunity to testify on this measure. We humbly ask the committee to pass this measure.

Sincerely,



Kalani Werner
State Director

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The Thirty-Second Legislature, State of Hawaii
The Senate
Committee on Labor and Technology

Testimony by
Hawaii Government Employees Association

February 9, 2024

S.B. 2716 — RELATING TO COLLECTIVE BARGAINING.

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the purpose and intent of S.B. 2716 which allows public employee organizations to negotiate retirement benefits.

Our state's retirement benefits used to be one of the primary reasons why individuals sought a career in public service. However, over the past decade our states retirement plan has diminished for new employees. For the state to become a competitive employer they must take a holistic approach in respect to an employee's retirement plan, particularly for the newer generation. The newer generation may think differently about retirement, and it may be important for the state to work with public sector unions to develop retirement benefits that would be appealing and attractive to the younger generation, but also cost effective for the state. The topic about retirement benefits for future and younger employees at least warrants a conversation between public sector unions and the state.

Thank you for the opportunity to provide testimony in support of S.B. 2716.

Respectfully submitted,

Randy Perreira
Executive Director