



STATE OF HAWAII
DEPARTMENT OF EDUCATION
KA 'OIHANA HO'ONA'AUAO
P.O. BOX 2360
HONOLULU, HAWAII 96804

Date: 03/18/2026

Time: 01:00 PM

Location: CR 229 & Videoconference

Committee: EDU

Department: Education

Person Testifying: Keith T. Hayashi, Superintendent of Education

Title of Bill: HB2172, HD2, RELATING TO EMPLOYMENT OF RETIRANTS.

Purpose of Bill: Establishes a 5-year pilot program to authorize the Department of Education to rehire retired teachers and educational officers for hard-to-staff positions. Repeals 6/30/2031. Effective 7/1/3000. (HD2)

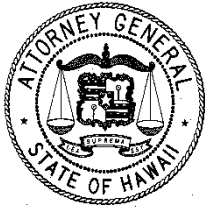
Department's Position:

The Hawaii State Department of Education (Department) provides comments on HB 2172 HD 2 to address persistent teacher and educational officer shortages by allowing retired educators to return to service. The Department shares the Legislature's commitment to exploring innovative approaches to Hawaii's recruitment and retention challenges.

While we support the intent of this measure, we respectfully offer the following consideration: successfully implementing annual certification requirements, reappointment processes, and compliance monitoring would require additional resources and staffing support for our human resources system to ensure smooth operations and program success.

Finally, the bill's success depends on attracting a sufficient pool of retirees willing and able to return to full-time teaching or educational officer positions. We note that amendments to the bill now require that individuals must not have held employment with the State or a county within the twelve calendar months immediately preceding re-employment. Currently, the Department lacks the necessary data to estimate the number of retirees who would be willing to return to work under this condition. The Department remains committed to working with the Legislature to develop comprehensive solutions to our educator workforce challenges.

Thank you for the opportunity to provide testimony on HB 2172 HD 2.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2026**

ON THE FOLLOWING MEASURE:

H.B. NO. 2172, H.D. 2, RELATING TO EMPLOYMENT OF RETIRANTS.

BEFORE THE:

SENATE COMMITTEE ON EDUCATION

DATE: Wednesday, March 18, 2026 **TIME:** 1:00 p.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Jenny J.N.A. Nakamoto, Deputy Attorney General

Chair Kim and Members of the Committee:

The Department of the Attorney General (Department) provides the following comments.

The bill establishes a five-year pilot program authorizing the Department of Education (DOE) to rehire retired teachers and education officers for hard-to-staff positions.

The Employees' Retirement System (ERS) is a qualified governmental plan under the Internal Revenue Code (IRC). To maintain its tax-qualified status, the ERS must be administered according to its "plan provisions" or "plan documents" set forth in chapter 88, Hawaii Revised Statutes (HRS), including section 88-22.5, HRS, and in compliance with section 401(a) of the Internal Revenue Code (I.R.C.). Section 88-22.5, HRS, expressly provides that "the [ERS] shall be administered in accordance with the requirements of section 401(a) . . . of the Internal Revenue Code of 1986, as amended."

Because ERS is a single qualified governmental plan under section 401(a) of the I.R.C., a failure to comply with applicable qualification requirements could jeopardize the tax-qualified status of the entire system, not merely the positions affected by this bill.

The Department consulted with ERS's tax counsel regarding the potential impact of this bill on the ERS's tax-qualified status. Tax counsel advised that federal guidance requires pension benefits under a qualified plan to be "definitely determinable." In general, this means that benefits must be calculable pursuant to an objective formula

set forth in the plan document and may not depend on employer discretion. The Internal Revenue Service (IRS) has concluded that post-retirement employment conditions may be considered in certain circumstances, provided the relevant criteria are clearly specified in the plan and applied in a nondiscretionary manner. Treasury regulations further recognize that limited ministerial discretion in applying objective and clearly ascertainable criteria is permissible.

Based on that guidance, the Department offers the following concerns and recommendations.

First, proposed section 302A- (c)(1), HRS (page 3, line 13, through page 4, line 2), requires the superintendent to certify certain conditions before employing or reemploying a retirant. Section 302A- (c)(1)(A) (page 3, lines 16-17) requires only a "good-faith" recruitment effort. To reduce discretion and strengthen compliance with the "definitely determinable" requirement, the Department recommends incorporating more objective standards. For example, the paragraph could be amended to require that a position be advertised for a specified minimum period using DOE's standard recruitment efforts.

With respect to section 302A- (c)(1)(B) (page 3, line 18, through page 4, line 2), which allows designation of systemic shortage areas where recruitment has failed, the Department recommends defining measurable criteria for what constitutes a "qualified" applicant or what qualifies as a "sufficient number" of applicants. This paragraph should also specify the duration of the recruitment effort or recruitment failure. Clarifying these standards would help ensure that eligibility for reemployment is based on objective criteria rather than open-ended administrative discretion.

Second, proposed section 302A- (d), HRS (page 4, lines 8-21), identifies categories of differentials that would qualify positions for participation in the pilot program. The Department is concerned that the criteria determining which positions qualify for non-reenrollment in ERS are not incorporated into chapter 88, HRS, and that the bill does not define the relevant differentials. Some of the listed differentials (page 4, lines 10-13) are defined in collective bargaining agreements or DOE memoranda,

which may grant DOE substantial discretion in determining or applying the criteria for those differentials. Other categories (page 4, lines 14-21) appear to create new differential categories without any statutory definitions. Because ERS qualification under section 401(a) of the I.R.C. requires that eligibility and benefit conditions be definite and not subject to employer discretion, the Department strongly recommends that the bill specify the governing criteria for each qualifying differential directly in statute. At a minimum, the bill should incorporate by reference fixed, identifiable standards and limit DOE's discretion to modify those standards administratively. Providing clear, objective statutory criteria would strengthen the position that the program operates under definite and nondiscretionary rules.

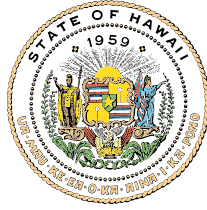
Finally, proposed section 302A- (e)(2), HRS (page 5, lines 6-7), would benefit from clarification. To avoid any implication of a prearranged return-to-work agreement, an issue that may raise federal tax concerns, the paragraph should clearly prohibit any agreement or understanding for reemployment before retirement. The Department recommends replacing proposed section 302A- (e)(2), HRS (page 5, lines 6-7), with the following:

(2) Entered into an agreement with the State or a county, prior to the retirement of the retirant, for the return to work by the retirant after retirement.

Thank you for the opportunity to provide these comments. The Department remains available to provide additional review and technical assistance as the Legislature considers refinements to the bill.

JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LIEUTENANT GOVERNOR



KALBERT K. YOUNG
EXECUTIVE DIRECTOR

GAIL STROHL
DEPUTY EXECUTIVE DIRECTOR

**STATE OF HAWAII
EMPLOYEES' RETIREMENT SYSTEM**

**TESTIMONY BY KALBERT YOUNG
EXECUTIVE DIRECTOR, EMPLOYEES' RETIREMENT SYSTEM
STATE OF HAWAII
TO THE SENATE COMMITTEE ON EDUCATION
ON
HOUSE BILL NO. 2172 HD2**

March 18, 2026

1:00 PM

Conference Room 229 and VIA Videoconference

RELATING TO EMPLOYMENT OF RETIRANTS.

Chair Kim, Vice Chair Kidani, and Members of the Committee,

The Board of Trustees (BOT) of the Employees' Retirement System (ERS) appreciates the intent of HB 2172 HD2, however, is providing testimony in opposition based on tax counsel advice that the lack of clear and objective parameters around the requirements to return-to-work in the plan document would pose a threat to the ERS's beneficial tax qualification status under the US Internal Revenue Code (IRC). We respectfully recommend amendments that the requirements proposed to Chapter 302A in Section 2 of the measure be included and further described in Chapter 88 under Section 6 to mitigate this concern.

HB 2172 HD2 proposes to amend Section 88-9 of the Hawaii Revised Statutes (HRS) to allow positions identified under an amendment to Chapter 302A to be filled by a retiree without reenrollment into the system after a twelve-calendar month break.

The ERS has been advised by our tax counsel that the unspecified nature of the requirements and associated employer discretion in the bill would violate the "Definitely



Employees' Retirement System
of the State of Hawaii

Determinable Benefit” requirement under the Internal Revenue Code of 1986, as amended (IRC), as the qualifications are not part of the governing plan documents under Chapter 88. Violation of this requirement and/or non-compliance with the IRC puts at risk the ERS’s favorable tax status and the Internal Revenue Service’s favorable tax treatment for employees, Hawaii’s government employers, and retirees. The loss of ERS’s beneficial tax status would result in fatal tax consequences for the system and its membership.

In consideration of this concern, the ERS would respectfully advise that requirements under Section 2 be set forth in Section 6 which codifies the plan rules through the governing document of Chapter 88 and distances the requirements from employer discretion. Further clarification and definition of the following provisions from Section 2, page 4, lines 8-21, are recommended for specificity in Section 6:

- (1) Hard-to-Staff (line 10): identify specific locations or positions to be designated as hard-to-staff or through the use of objective stated metrics to determine identification of this category;
- (2) Special Education Differential (line 11): identify specific qualifications or positions to be designated for identification of this category;
- (3) Hawaiian Language Differential (line 12-13): identify specific qualifications or positions to be designated for identification of this category;
- (4) Eligibility for a Differential of \$3,000 or more per year (lines 14-15): replace this provision which provides significant employer discretion with specific qualifications or positions for identification;
- (5) Hard-to-Staff areas identified by the Superintendent (lines 20-21): identify specific locations or positions be designated as hard-to-staff or through the use of objective stated metrics to determine identification of this category.

The ERS also recommends that the twelve-month bona fide break in service, prohibition of any post-retirement employment agreement and provision that there be a requirement of employer contributions to be made for the amortization of the system's unfunded liability continue to be included in Section 88-9(d) as the chapter governing the system, for the positions stipulated.

As this bill progresses, the above components are important for the stability and sustainability of the pension system. ERS advises that the requirement for a twelve-calendar month break along with the prohibition on post-retirement agreements to return to work remain in any future drafts. These provisions would be consistent with existing statute that currently permit the return of other teacher or administrator positions identified in a shortage area or as a new classroom teacher mentor.

These requirements importantly provide for a separation from employment sufficient to prevent a prohibited expectation of reemployment as a retiree. This prevention from a reasonable expectation from reemployment is especially important when the retiree is returning to a position which performs similar duties in a similar capacity as those

performed prior to retirement. This break also provides for consistent general application of the retirement statutes which are important components expected as requirements to retain the tax qualified (exempt) status under Internal Revenue Code (IRC) for the state's pension system.

We support the HB 2172 HD2 requirements for funding contributions to be required by the employer towards the pension accumulation fund to amortize the system's unfunded accrued liability which mitigates the lost contributions when these positions are filled with unenrolled retirees rather than active members or reenrolled retirees earning retirement benefits. The amount employers will contribute under the proposed approach will be less than for a conventional employee who is also a ERS member working towards a pension. There is no requirement for the employee to fund the pension accumulation expense.

Thank you for the opportunity to provide testimony in opposition while recommending amendments on HB 2172 HD2 to mitigate the concerns.



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TESTIMONY TO THE HAWAI'I SENATE COMMITTEE ON EDUCATION

Item: HB 2172, HD2 – Relating to Employment of Retirants

Position: Support

Hearing: Wednesday, March 18, 2026, 1:00 pm, Room 229

Submitter: Osa Tui, Jr., President - Hawai'i State Teachers Association

Dear Chair Kim, Vice Chair Kidani, and members of the committee,

The Hawai'i State Teachers Association (HSTA) **supports** H.B. 2172, HD2, which establishes a 5-year pilot program to authorize the Department of Education to rehire retired teachers and educational officers for hard-to-staff positions. Currently, the department continues to face a critical shortage of qualified teachers, particularly in specialized subject areas and hard-to-staff geographic regions. This chronic shortage denies students consistent, high-quality instruction.

H.B. 2172, HD2 provides a structured way to fill these vacancies with experienced local talent. Under the pilot program, retired teachers can return to the classroom without an interruption of their retirement benefits. To ensure the program is used effectively, the Superintendent must certify in writing that the department has conducted a good-faith recruitment effort or that the position is in a licensure area or geographic complex with a systemic shortage.

For each rehired retiree, the department will contribute the employer's share of the unfunded actuarial accrued liability, helping to pay down state debt without creating new pension obligations. This legislation creates a practical pathway to utilize the expertise of retired educators to provide stability for our school communities.

Mahalo for the opportunity to testify in support of our schools and educators.