

The House of Representatives  
The Twenty-Fifth Legislature  
Regular Session of 2009

Committee on Labor and Public Employment

Rep. Karl Rhoads, Chair  
Rep. Kyle T. Yamashita, Vice Chair

DATE: Tuesday, February 10, 2009  
TIME: 9:00 a.m.  
PLACE: House Conference Room 309  
State Capitol  
415 South Beretania Street

**TESTIMONY OF THE UNITED PUBLIC WORKERS, AFSCME,  
LOCAL 646, AFL-CIO ON H.B. 1738 RELATING TO  
EMPLOYEES' RETIREMENT SYSTEM**

My name is Dayton M. Nakanelua, and I am the state director of the United Public Workers, AFSCME, Local 646, AFL-CIO (UPW). The UPW currently represents approximately 8,700 blue collar, non-supervisory employees and 2,800 institutional, health, and correctional workers in the State of Hawaii and the various counties. We also represent approximately 3,000 retired members currently receiving benefits under chapter 88. We are opposed to House Bill No. 1738 which amends Section 88-122 (e), Hawaii Revised Statutes (HRS), because it permanently and indefinitely imposes a cap on retiree benefits under chapter 88, uses a broad and ambiguous term, i.e., "benefit enhancements," may violate Article XVI, Section 2 of the State Constitution, and is a one-sided approach to addressing unfunded liability.

In 2007 the legislature in Act 256 established a proviso in Section 88-122 (e), HRS, which prohibits any form of "benefit enhancements" under chapter 88, including any reduction in retirement age, for a three year period from January 2, 2008 to January 2, 2011. The enactment, which amended sections 88-105, and 88-122, HRS, was intended "to establish a policy framework to enable the employee's retirement system to eventually eliminate its \$5,100,000,000 unfunded liability." See Section 1 of Act 256, 2007 Haw. Sess. L. at 819. Lawmakers recognized that any grant of "additional benefits which include earlier retirements" by future legislation may lengthen the period of time needed to become "fully funded." 2007 Haw. Sess. L. at 820. The measure increased the standard for determining the normal cost of contributions and accrued liability effective fiscal year 2008 to 2009, and implemented a cap on "benefit enhancements" under chapter 88 for just three years.

House Bill No. 1738 amends the 2007 enactment by implementing a permanent and indefinite cap on benefits retroactive to January 2, 2008. It effectively prohibits any form of "benefit enhancements" under chapter 88 as long as there is any form of unfunded accrued liability. Where a statute contains the definition of a term or phrase its established meaning is followed by the courts. Stenberg v. Carhart, 530 U.S. 914, 942 (2000) ("When a statute includes an explicit definition, we must follow that definition, even if it varies from the term's ordinary meaning."). The phrase "no benefit enhancements under this chapter" was not defined in 2007 and is not defined in this bill. Where a term is undefined the courts may rely on legal and lay dictionaries and follow the ordinary meaning of terms. Singleton v. Liquor Comm'n, County of Hawaii, 111 Hawai'i 234, 140 P.3d 1014 (2006). The term "enhancement" is

defined in The Webster's Revised Unabridged Dictionary as follows:

The act of increasing, or state of being increased; augmentation; aggravation; as, the enhancement of value, price, enjoyments, crime. (Emphasis added).

Thus, using the foregoing definition, if adopted this measure prohibits any form of increase or change in the value of benefits regardless of when the statutory change was enacted, indefinitely. It could, for example, prohibit retiree bonuses which were authorized many years ago under Section 88-11, HRS, and any other increases in benefits under chapter 88 that an employee may receive hereafter by past legislation.

Article XVI, Section 2 of the Hawaii State Constitution states as follows:

Membership in any employees' retirement system of the State or any political subdivision thereof shall be a contractual relationship, the accrued benefits of which shall not be diminished or impaired. (Emphasis added).

In Chun v. Employees' Retirement Sys., 61 Haw. 596, 606, 607 P.2d 415, 421 (1980), our Supreme Court held that the foregoing provision was intended to protect members of the employee's retirement system from "reduction in accrued benefits." Article XVI, Section 2, has also been extended by necessary implication to protect the "sources of those benefits," i.e., the amounts of state and county contributions. See Kaho`ohanohano v. State, 114 Hawai'i 302, 338, 162 P.3d 696, 732 (2007). We believe that a permanent and indefinite prohibition of any form of enhanced benefits without considering the "sources of those benefits" under chapter 88 may be unconstitutional.

It is also unfair because it caps any form of benefit changes without considering the level and amounts of contributions to be made by employers in the future. Since the

Kaho`ohanohano decision there has been no remedy for the loss revenue from ERS. For years the legislature has annually revised chapter 88 to address benefits and cost factors together, and to make benefit adjustments prudently taking into account cost considerations and all relevant factors. This bill imposes the entire burden of unfunded liability on employees and current retirees without their input. It represents a significant departure from the legislature's past approach to chapter 88.