EXECUTIVE CHAMBERS

HONOLULU

DAVID Y. IGE

GOVERNOR

July 11, 2016

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Twenty-Eighth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Joseph M. Souki,
Speaker
and Members of the House
Twenty-Eighth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Kouchi, Speaker Souki, and Members of the Legislature:

I am transmitting herewith SB2077 SD1 HD2 CD2, without my approval, and with the statement of objections relating to the measure.

SB2077 SD1 HD2 CD2 RELATING TO SEPARATION BENEFITS

Sincerely,

David Y. Ige

DAVID Y. IGE
Governor, State of Hawaii

EXECUTIVE CHAMBERS

HONOLULU

JULY 11, 2016

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 2077

Honorable Members
Twenty-Eighth Legislature
State of Hawai'i

Pursuant to Section 16 of Article III of the Constitution of the State of Hawai'i, I return herewith, without my approval, Senate Bill No. 2077, entitled "A Bill for an Act Relating to Separation Benefits."[1]

On July 8, 2016, the Employees' Retirement System (ERS) informed me that its tax counsel advised that the bill jeopardizes ERS's tax-qualified status because it allows the affected employees to choose between a lump-sum cash payment that is taxable as wages and a special employer subsidized early retirement benefit. See Attachment A (Memo from ERS Executive Director Thomas Williams to Director of Budget and Finance Wesley Machida). Under the Internal Revenue Code sections governing the state ERS plan, this is an impermissible election and threatens the plan's tax-exempt status. I will neither approve this bill nor let it become law when the offering

[1] The stated purpose of this bill is to assist public employees displaced through the privatization or closure of a Hawaii Health Systems Corporation (HHSC) facility. The bill adds a chapter to the Hawaii Revised Statutes that establishes a new benefit program specifically for state employees included in a collective bargaining unit under Chapter 89, Hawaii Revised Statutes, whose positions are abolished or who are adversely affected by a reduction-in-force or a workforce restructuring plan because of the closure of three HHSC Maui Region facilities that are slated to be closed under Act 103, Session Laws of Hawaii 2015. Employees may choose between continuing state employment by exercising reduction-in-force rights, or leaving state service and receiving a severance payment equal to five per cent of the employee's then current annual base salary for every year worked up to ten years, when the facilities are closed. Some employees may also choose between receiving the severance payment or retiring without penalties, under age and length of service thresholds significantly lower than the thresholds prescribed in Chapter 88, Hawaii Revised Statutes, the Employees' Retirement System law. The bill also allows the employees to receive contributions from the State toward their health benefit plan premiums as retirees, with fewer years of service than presently specified in Chapter 87A, Hawaii Revised Statutes, the Employer-Union Health Benefits Trust Fund (EUTF) law.

of benefit choices included in the bill poses this threat.

The bill also allows employees separated from service to claim a lump-sum cash severance payment but does not appropriate funds to make the payments. The bill appears to assume that the severance payments will be made out of the Maui Region's payroll appropriation for fiscal year 2016-2017. However, under Section 16.2 of Act 124, Session Laws of Hawaii 2016, if the three HHSC Maui Region facilities are closed and leased to the Maui Health System, a Kaiser Foundation Hospitals LLC (Kaiser), all of the appropriations for the Maui Region in Act 124, except those necessary to wind down the operations of the Maui Region hospitals, are to be disbursed to Kaiser. There is no fiscal year 2016-2017 payroll appropriation for the Maui Region.

In addition to the legal defects above, the bill's calculated fiscal impact is substantial. If all of the employees entitled to claim the lump-sum cash severance payment did so, the cost could be as much as $32 million. The early retirement benefit has been determined by the ERS Actuary (using the 2015 valuation data) to cost an additional $17.2 million.[2] The State would also have to pay $18.4 million in estimated enhanced health benefits to the EUTF for retirees. The total cost of all benefits provided under this bill is thus estimated to exceed $60 million, excluding the fringe benefit assessment on the severance benefit.

Despite these grave reservations concerning the bill, I acknowledge the Legislature's and my own responsibility to temper the adverse effect of layoffs resulting from the passage of Act 103, Session Laws of Hawaii 2015 (Act 103). In taking steps to provide more cost-effective and better overall healthcare at the Maui Region facilities in

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[2] The State's employer contribution cost for the retirement benefits for these employees for this fiscal year for the projected 26 year funding period would total $179 million over a 26-year period. I believe the $17.2 million needed to provide the special retirement benefit the bill undercuts the concerted effort the Legislature made in 2011 when it enacted Section 88-99, Hawaii Revised Statutes, which placed a moratorium on enhanced benefits to reduce the ERS' unfunded liability.

the future, we should recognize the employees who served these facilities over the past decades and who will now be separating from public service. The attached proposed amended bill addresses the concerns stated herein. See Attachment B. It eliminates the offering of benefit choices. It instead provides for a negotiated separation benefit to all affected employees upon leaving state employment. It creates a one-time opportunity for employees who separate early to purchase the service credit they could have earned through June 30, 2017, and provides an appropriation of general funds in the amount of $25 million.

To minimize future demands for separation benefits, the benefits this bill confers on HHSC employees are not codified and included as a statutory chapter of the Hawaii Revised Statutes, but provided instead, by means of a session law that will be repealed after Act 103 has been fully implemented. This emphasizes that these benefits have been fashioned for the unique circumstances presented in Act 103. While I agree that most lay-offs have adverse effects, I am not convinced that every lay-off under the civil service laws and collective bargaining contracts requires, or warrants the provision of severance, or retirement and health plan benefits for the employees who are laid off. Because lay-offs constitute a condition of work, and benefits to temper their adverse effects are provided in the form of compensation or benefits, relying on collective bargaining and cost-items, rather than a statutory formula to devise benefits to counter a lay-off's adverse effects could be more appropriate and cost-effective. It would allow room for the executive and the legislative branches in the future to consider the programmatic, socio-economic, geographic and fiscal context of each layoff and propose alternatives for tempering its particular expected effects at the proper time.

In closing, regarding the transition up to now, I understand only 191 out of 1,233 employees exercised reduction-in-force (RIF) rights during the HHSC-initiated RIF process in February of this year. I also understand that by the middle of May of this year, Kaiser had offered jobs to 1,538 HHSC Maui Region civil service and exempt employees, irrespective of whether they were included in a collective bargaining unit or worked for the State for less than a year, and more than 95 percent of the employees had accepted Kaiser's offer of employment. I also understand that Kaiser will pay most employees, salaries or wages equal to what the employees are presently paid by HHSC. This suggests to me that a substantial number if not majority of HHSC's Maui Region employees might not have to face the economic hardships to the degree that prompted the Legislature to consider and pass the current bill.

For the foregoing reasons, I am returning Senate Bill No. 2077 without my approval.

Respectfully,

David Y Ige

DAVID Y. IGE
Governor of Hawai'i