

TESTIMONY BY WESLEY K. MACHIDA
ADMINISTRATOR, EMPLOYEES' RETIREMENT SYSTEM
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON FINANCE
ON
HOUSE BILL NO. 1811, H.D. 1

FEBRUARY 28, 2012

RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM

Chair Oshiro and Members of the Committee,

The provisions of H.B. 1811, H.D. 1 require State and county employers to pay greater contribution rates on their employees' "non-base" compensation than on their "base" compensation. The intent of this proposal is to place the burden on the employers, rather than on the Employees' Retirement System (ERS), to pay for the portion of employees' retirement allowances that are not adequately funded due to spikes in the employees' non-base compensation near retirement.

The ERS Board of Trustees supports the intent of this bill as it would have a positive effect on reducing the ERS' unfunded liability.

Higher employer contribution rates on an employee's non-base pay would reduce the ERS' unfunded liability more quickly than the current contribution rates. However, higher employer contributions on an employee's non-base pay during the employee's employment history may not necessarily address the unexpected increase in benefits for employees who inflate their "average final compensation" by sudden increases in their non-base pay at the end of their careers. These are the primary situations for which the employees' retirement pensions would not have been adequately funded.

The ERS wishes to note that this bill also amends the definition of "compensation" under §88-21.5 and may have unintentionally excluded recurring differentials from its definition of "base compensation." Recurring differentials are more like "normal periodic payments of money to an employee for service, the right to which accrues on a regular basis" than, for example, overtime, which fluctuates and is not paid on a regular basis. The Committee may wish to consider including recurring differentials under its definition of "base compensation." We also note that, although the bill excludes "deferred

compensation" from the definition of "non-base compensation," the term "deferred compensation" is not defined. We suggest either:

- (1) That "deferred compensation" be defined as "elective salary reduction contributions under section 125, 403(b), and 457(b) of the Internal Revenue Code, as amended"; or
- (2) That "elective salary reduction contributions under section 125, 403(b), and 457(b) of the Internal Revenue Code, as amended," be deleted from the definition of "non-base compensation" and added to the definition of "base compensation."

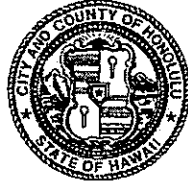
"Elective salary reduction contributions under section 125, 403(b), and 457(b) of the Internal Revenue Code, as amended," are expressly included in the current definition of "compensation" under §88-21.5. "Elective salary reduction contributions under . . . 403(b), and 457(b) of the Internal Revenue Code, as amended," allow government employees to exclude portions of their compensation from their income for federal, but not State, tax purposes, thereby deferring federal tax on those portions of their compensation. "Elective salary reduction contributions under section 125 . . . of the Internal Revenue Code, as amended," allow employees to pay for qualified health care and childcare expenses on a pre-tax basis for both State and federal tax purposes.

The ERS Board of Trustees believes that the principal intent of this proposed legislation is to reduce the ERS' unfunded liability, and therefore, supports the passage of this bill.

Thank you for the opportunity to testify on this important measure.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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OUR REFERENCE JC-JK

February 28, 2012

The Honorable Marcus R. Oshiro, Chair
and Members
Committee on Finance
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Oshiro and Members:

Subject: House Bill No. 1811, H.D. 1, Relating to the Employees' Retirement System

I am Janet Crotteau, Major of the Legislative Liaison Office of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD has several concerns with House Bill No. 1811, H.D. 1, and would like to submit comments regarding the impact that it may have on the counties and the police departments.

We understand that the intent of this bill is to deal with the unfunded liability currently facing the Employee Retirement System (ERS) by requiring the counties to contribute greater monetary contributions to the system on their employees' non-base compensation. However, police officers are currently paying into the retirement system at a higher rate for both base and non-base compensation.

The HPD recognizes overtime as an inherent part of police work that must be used wisely and managed so that we get the best use out of our funds. Overtime can result from the following occurrences: when officers work on a holiday, they receive overtime holiday pay; when officers attend court during the day and their normal shift is during the evening, they receive overtime pay; when officers make arrests or are assigned major cases at the end of their shift, they work overtime. In many of these circumstances, although the officer would rather choose to go home to his or her family, this is not possible. Their presence on the job is mandated by a supervisor and is often required for the safety of the public. Overtime is not built into the job, but occurs as a result of it.

Overtime use in HPD is currently managed by departmental policies and collective bargaining agreements. These management controls have been in existence for many years and have led to the HPD routinely giving money back to the City Council. The basic premise for management is that overtime work must be approved before it is earned, and supervisors at all levels are held responsible for its expenditure. The initial supervisor must give the first approval, but ultimately, the division commanders are required to explain the use of their overtime at command level reviews held by the Chief of Police.

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Our collective bargaining agreements detail the hours and conditions of work to protect both the employee and employer. These agreements spell out when overtime must be paid; i.e., a change of shift or schedule without 24-hour notice requires overtime, as does court, holidays and any additional hours of work beyond the normal shift. These agreements have been worked out and agreed upon through years of negotiations so that they are acceptable to both union and management.

Collective bargaining agreements (CBA) can be changed upon written notification by the union or employer, but a CBA is not a contract that can be easily changed. Notification must be given before negotiations can begin, and this can entail a lengthy process until completion. The existing CBA remains in effect until the new agreement is signed by all of the participants.

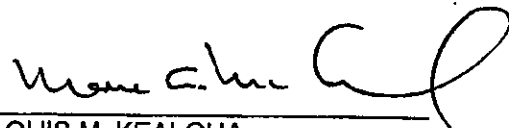
As a result, we are concerned that the counties are being required to pay more toward the Employees' Retirement System for their first responders due to no fault of their own. We believe this is an inequitable solution to the problem before the State and request the Finance Committee to hold this bill.

Thank you for the opportunity to testify.

Sincerely,


JANET CROTTEAU, Major
Legislative Liaison Office

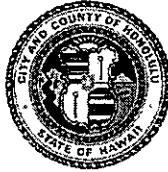
APPROVED:


LOUIS M. KEALOHA
Chief of Police

HONOLULU FIRE DEPARTMENT
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February 28, 2012

The Honorable Marcus Oshiro, Chair
Committee on Finance
House of Representatives
State Capitol, Room 306
Honolulu, Hawaii 96813

Dear Chair Oshiro:

Subject: H.B. 1811, H.D. 1 Relating to the Employees' Retirement System (ERS)

I am Kenneth G. Silva, Fire Chief of the Honolulu Fire Department (HFD). The City and County of Honolulu (City) supports efforts to address the unfunded liability of the ERS in a fair and equitable manner. This bill seeks to require employers to make contributions on the employees' nonbase compensation. The HFD opposes this bill and requests your consideration of the following concerns.

The HFD's overtime is operationally driven due to emergency services provided on a 24 hours per day, 7 days per week basis. The HFD budgets holiday and nonholiday overtime costs, which involves work on state holidays. Employees on a 56-hour workweek schedule are allotted three hours of overtime per week and together with holiday overtime, this amounts to an approximate ten percent increase of the employee's base salary. These costs are determined through collective bargaining agreements. Nonholiday overtime is controlled and approved by the Department's executive staff to prevent abuse.

Other overtime is determined according to the nature of the work performed, i.e., Fire Investigators and Public Information Officers rotate being on standby, and such overtime is earned when callouts occur. The HFD consistently operates within its budget on holiday and nonholiday overtime costs.

While we respect the legislature's attempt to minimize the impact of the ERS' unfunded liability, HFD employees earn overtime on a year-round basis due to the emergency life safety services provided for citizens who face life-threatening situations and conditions.

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Under these circumstances, this bill unfairly places the burden of paying the portion of an employee's retirement allowance attributed to nonbased compensation on the employer rather than the ERS.

The HFD urges your committee's consideration of our comments and recommends that H.B. 1811, H.D. 1 be deferred.

Should you have any questions, please contact Battalion Chief Socrates Bratakos of our Fire Prevention Bureau at 723-7151 or sbratakos@honolulu.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenneth G. Silva". The signature is fluid and cursive, with the first name being the most prominent.

KENNETH G. SILVA
Fire Chief

KGS/LR:cn

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 27, 2012 7:47 PM
To: FINTestimony
Cc: Brenda.Kosky@gmail.com
Subject: Testimony for HB1811 on 2/28/2012 10:00:00 AM

Testimony for FIN 2/28/2012 10:00:00 AM HB1811

Conference room: 308
Testifier position: Support
Testifier will be present: No
Submitted by: Brenda Kosky
Organization: Individual
E-mail: Brenda.Kosky@gmail.com
Submitted on: 2/27/2012

Comments:

DEPARTMENT OF BUDGET & FISCAL SERVICES

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MICHAEL R. HANSEN
DIRECTOR

February 28, 2012

The Honorable Marcus Oshiro, Chair
and Members of the Committee on Finance
The House of Representative
State Capitol
Honolulu, Hawaii 96813

Dear Chair Oshiro and Members:

Subject: House Bill 1811. House Draft 1
Relating to the Employees' Retirement System

The City and County supports efforts to address the unfunded liability of the Employees' Retirement system in a fair and equitable manner. However, we have questions regarding the impact of House Bill 1811, House Draft 1 and do not support it at this time.

The City notes that last year we fully supported a measure that will substantially increase our employer contribution to the ERS. This year we are faced with a number of bills that seem to focus on employees who tend to earn more overtime and other non-base payments than other general employees. Not surprisingly, for the City, these are our public safety and health employees—police officers, fire fighters, and emergency medical workers.

The City does understand why there is a focus on these employees, particularly in light of recent reports noting extreme examples of employee overtime earnings. However, given the critical nature of jobs performed by these employees, the City cannot support bills such as these without fully understanding their consequences—as we would not want to support a measure that would adversely affect the operations of agencies that provide these essential services.

We note that this bill directly affects only the employers by charging us for overtime and other non-base pay items. (There may, of course, be indirect effects on employees.) We wonder if charging only the employer the higher rates is due to the belief that management exerts significant control over the overtime and other non-base pay payments. The reality is that management's control of overtime is greatly affected by contractual provisions regarding overtime, assignments, and other payments that are not included in the base. In addition, in first responder agencies it is frequently the events of the day that create the necessity for overtime.

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The bill seeks to address spiking and to more closely match the contributions with the funding required. We are concerned the bill may not accomplish these objectives. The bill does not appear to address spiking since it does not limit the amount of non-base pay included in compensation that is counted towards retirement benefits. The bill also does not appear to more closely match the contributions and funding required as it would result in charging employers more for non-base payments whether or not there is spiking. It does, however, place an unfair share of the burden of reducing the unfunded liability on employers with a large percentage of employees in emergency response jobs where overtime is more prevalent due to the nature of the work.

In light of our concerns, we respectfully ask that this bill be held.

Thank you for the opportunity to testify on House Bill 1811.

Yours truly,



Michael R. Hansen, Director
Department of Budget & Fiscal Services



Noel T. Ono, Director
Department of Human Resources