

HONOLULU FIRE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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PETER B. CARLISLE
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KENNETH G. SILVA
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EMMIT A. KANE
DEPUTY FIRE CHIEF

March 28, 2012

The Honorable David Ige, Chair
Committee on Ways and Means
The State Senate
State Capitol, Room 215
Honolulu, Hawaii 96813

Dear Chair Ige:

Subject: H.B. 2487, H.D. 1, S.D. 1 Relating to the Employees' Retirement System (ERS)

I am Kenneth G. Silva, Fire Chief of the Honolulu Fire Department (HFD). 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 spiking by government employees, the HFD believes that what may be an acceptable limit of overtime in one assignment may not be applicable to another duty assignment. Under these circumstances, employees with normally high overtime should not be classified or penalized for what may appear as spiking.

The Honorable David Ige, Chair
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We have concerns regarding the proposal that employers would be required to pay more than their fair share for their employees who are deemed to have spiked their pensions. Our understanding is that past spiking was considered in the setting of the contribution rates, so employers are already paying for past spiking. We also understand that employees who fail the spiking test will have their pension benefits limited. 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. In addition, special events, such as the recent Asia-Pacific Economic Cooperation conference or a large-scale emergency operation, can directly impact an employee's overtime; however, the overtime is in the performance of essential public safety duties.

Senate Concurrent Resolution 167, Senate Resolution 97 and House Concurrent Resolution 152 requests that a task force convene to investigate, discuss, and review possible methods to reduce the amount of overtime used by county and state employees. The task force is requested to submit a report of its findings and recommendations to the Legislature no later than 20 days prior to the Regular Session of 2013 convening. We support and believe that the task force will assemble relevant information from many stakeholders in order for the legislature to consider a fair and equitable solution to the ERS' unfunded liability. We believe this may minimize the unforeseen consequences of a solution that has not been carefully examined.

The HFD urges your committee's consideration of our comments and suggests a cautious approach to the passage of any version of H.B. 2487, H.D. 1, S.D. 1.

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

Sincerely,



KENNETH G. SILVA
Fire Chief

KGS/LR:cn



Senate Committee on Ways and Means

Thursday, March 29, 2012

9:00 a.m.

HB 2487, HD1, SD1 Relating to the Employees' Retirement System

Dear Chairman Ige and Committee Members:

On behalf of the University of Hawaii Professional Assembly (UHPA) our union is opposed to the passage of HB2487, HD1, SD1 due to the amendments that violate the fundamental principles under which defined pension benefits are determined. The notion that "spiking" is undertaken by individual employees to gain an advantage at retirement is false. The decisions that lead to increases in the wages paid to public employees are entirely in the hands of the public employer. If they do not wish to increase the pension of any individual, then they should choose not to allow them whatever additional work that leads to a higher average salary as part of the formula.

This bill reduces the overall compensation being paid to an individual for work performed.

UHPA encourages the Committee to reject this legislation.

Respectfully submitted,

Kristeen Hanselman
Associate Executive Director

UNIVERSITY OF HAWAII
PROFESSIONAL ASSEMBLY

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HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

The Twenty-Sixth Legislature, State of Hawaii
The Senate
Committee on Ways and Means

Testimony by
Hawaii Government Employees Association
March 29, 2012

H.B. 2487, H.D. 1, S.D. 1 – RELATING TO
THE EMPLOYEES' RETIREMENT SYSTEM

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly opposes the purpose and intent of Part II of H.B. 2487, H.D. 1, S.D. 1 which attempts to prevent unexpected increases in pension benefits and the unfunded actuarial accrued liability of the Employees' Retirement System (ERS) by defining and limiting the amount of compensation included in the average final compensation calculation.

First and foremost, overtime, and therefore by default any definition of "spiking," is strictly an Employer issue, whereby the Employer has direct oversight and control of whom, how much and when overtime is granted to. If the Employer perceives a situation in which an Employee is intentionally attempting to boost their average final compensation, then the Employer has the purview to cease authorizing the overtime. Within the Personal Rights and Representation article in our mutually agreed upon Collective Bargaining Agreements is language that states "the Employee shall have the right to refuse for good cause as determined by the Employer to work overtime" [emphasis added]. Per contract, it is the Employer's prerogative, not the Employee's, to determine if the refusal is for good cause. In some cases, our members are not afforded the option to refuse overtime, and are required to work half-shifts prior to or after their regular shift. In other cases, Employees are required to work back-to-back double shifts due to staff shortages, health and safety compliance, or to staff a 24/7 facility. Our members provide critical services to the community and should be adequately compensated; both immediately in compensatory time off or overtime pay, and also in retirement benefit calculations that accurately reflect the Employee's work. We find it incongruous to force an individual to work overtime and not count the overtime hours toward their final retirement calculation.

However, understanding that the ERS is a singular entity that collects contributions from each Employer and furnishes the retirement benefits to all beneficiaries, we support the provision that the specific Employer who authorizes increased overtime also increase their contribution accordingly, in an effort to curb the unfunded liability. If the Employer authorizes the overtime, it is incumbent upon them to pay all additional costs. It is our utmost desire that the fund remain solvent and structurally in tact for all current and future beneficiaries.

Finally, while we realize and understand the need to address the Employees' Retirement System's unfunded liability, we respectfully request the Committee to consider the percentage of the unfunded actuarial accrued liability that is directly attributed to "spiking" and whether or not the Employer could implement cost-containment measures independent of the Legislature statutorily intervening. It is important to note S.C.R. 34 and S.R. 21 request that the Auditor conduct an audit of departments with high rates of compensation, were both heard in the Senate Special Committee on Accountability. If it becomes law, H.B. 2487, H.D. 1, S.D. 1, in concert with the omnibus changes provided in Act 163, Session Laws of Hawaii 2011 will leave your government workforce with two separate and distinct tiers of employee benefits.

We respectfully urge the committee to defer this measure and request that the necessary audits and studies be conducted so that the Legislature may have all relevant information needed, prior to making statutory amendments. Thank you for the opportunity to testify in strong opposition of this legislation.

Respectfully submitted,


for Randy Perreira
Executive Director



March 28, 2012

Via email: WAMTestimony@Capitol.hawaii.gov mailed

The Honorable David Ige
Chair
Senate Committee on Ways and Means
Hawaii State Capitol, Room 215
415 South Beretania Street
Honolulu, HI 96813

Re : HB 2487 HD1 SD1, Employees Retirement System
Hearing Date : March 29, 2012, Thursday, 9:00 a.m.

Dear Chair Ige:

I write to you on behalf of the State of Hawaii Organization of Police Officers ("SHOPO") in **strong** opposition to HB 2487, HD1 SD1.

As you know, HB 2487, HD1 SD1 is the bill relating to what the legislature has referred to as "spiking." The term "spiking" references the intentional manipulation and abuse of overtime earnings by an individual employee. The Senate's Ways and Means Committee explained that "spiking" was the practice of "abnormally inflating" an employee's pension benefits through late career overtime compensation.

We have been told by the ERS that the purported objective of this bill is to put an end to "spiking." The problem is that the statistical information provided by the ERS to SHOPO and the Honolulu Police Department ("HPD") is factually incomplete and inconclusive. We have reviewed the data provided by the ERS, but cannot determine from the information provided how many individuals, if any, among the police/fire group have engaged in intentional "spiking" practices. We are also unable to discern from the data provided whether any other category of employees have engaged in intentional "spiking." We have asked the ERS for additional information on this issue, but nothing further has been provided to date. If the information was available, we would have expected the ERS to have provided the same to us.

If we do not know to what extent intentional "spiking" exists or how it was allowed to happen, then we really do not know what the extent or cause of the problem is. If we do not know what the cause of the "spiking" problem is, then we cannot in good conscience say this bill is the solution and passing this bill would be irresponsible on everyone's part. We cannot make decisions off a single EMS news story and react in a knee jerk fashion. That is not responsible law making. At this point, we are all simply shooting in the dark with this bill. It is my understanding that this was the very reason why Senator Clayton Hee's Committee on Judiciary and Labor set the effective date of the bill for the year 2050. His committee received

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The Honorable David Ige
Chair, Senate Committee on Ways and Means
Re: HB 2487, HD1 SD1, Employees Retirement System (Spiking)
March 29, 2012
Testimony of Tenari Maafala, SHOPO President

testimony from several public unions in opposition to the bill, indicating “a lack of understanding of how the calculations in this measure were derived, concerns on how this measure will impact their union members’ future benefits; and a desire for all stakeholders to discuss this measure and work out an equitable solution.” Senator Hee’s committee further acknowledged that “additional time is needed to research the impact this measure may have on existing pension and retirement laws, especially on the laws relating to the determination of employer normal cost and accrued liability contributions, and the amount of annual contributions by the State and counties.” His committee also needed “further time to consider applying similar fiduciary responsibilities under the federal Employee Retirement Income Security Act to the Board of Trustees of the Employees’ Retirement System,” and to perhaps “hold the Board of Trustees more accountable when making decisions that address the system’s unfunded liability and future pension benefits of all public employees in the State.” We agree with the committee’s comments and do not believe the legislature can pass this bill without first having all of the pertinent information being made available.

HPD has also voiced its opposition to this bill because they have internal mechanisms and controls in place that precludes abusive overtime practices. If we are talking about abusive overtime practices, in our mind that is a management issue. When I read in the newspaper that the State cannot account for over \$2 million in salary overpayments to employees who did not work to earn that pay, that is a definite management problem similar to allowing an individual employee to abuse overtime. We should not be penalized for management’s failures and believe the same reasons why your committee deferred the House companion bill continue to hold true for this bill.

In addition, the legislature passed major legislation last year that overhauled the retirement system, yet, the ERS comes forward asking for more. We also question how much this bill would actually affect the ERS’ unfunded liability and remind your committee that it was SHOPO in 2002, not the ERS, that stepped up to the plate and filed the suit that ended the practice of “legislative skimming” of \$342,000,000.00, at that point and time. This practice had been occurring for years and contributed significantly to the ERS’s current unfunded liability. We have been told that had the legislature not skimmed the funds from the ERS, the ERS would be fully funded today.

We, as police officers, have been responsible and accountable beneficiaries to the ERS system. Our officers are the highest contributors to the ERS and have the most dangerous jobs in the community. We believe this bill will have a disproportionate negative effect on our police officers who are forced to work overtime in the interest of protecting the community at large. In the matter of a four month span, we have lost two fine police officers who were killed in the line of duty. Due to the nature of our jobs, we are forced to work overtime which sacrifices precious time away from our families. I cannot begin to tell you the countless family activities our police officers miss due to the demands of our job that often requires working overtime, not because we want to, but because it is required. The APEC summit is a good example where overtime will have spiked for almost all our officers, yet that was not because of any intentional manipulation of the system.

The Honorable David Ige
Chair, Senate Committee on Ways and Means
Re: HB 2487, HD1 SD1, Employees Retirement System (Spiking)
March 29, 2012
Testimony of Tenari Maafala, SHOPO President

In summary, the men and women of SHOPO strongly oppose HB 2487, HD1 SD1 and ask that it be deferred. We do not have sufficient information to say it is a good bill or that it will be an effective bill. Our salaries do not come anywhere close to compensating our officers for their sacrifices and willingness to give their lives to protect our community. Our retirement pension is simply something that makes it a little easier on our officers when they finally hang up their gun and retire. We do not feel we are a burden on the retirement system or that we are guilty of "spiking" practices. At the very least, our officers should be excluded from this bill due to the unique demands of our jobs.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tenari R. Maafala".

TENARI MA'AFALA
SHOPO President