

**HB2487, HD1**

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813  
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DEPUTY CHIEFS

OUR REFERENCE MN-VYH

March 22, 2012

The Honorable Clayton Hee, Chair  
and Members  
Committee on Judiciary and Labor  
The Senate  
State Capitol  
Honolulu, Hawaii 96813

Dear Chair Hee and Members:

Subject: House Bill No. 2487, HD1, Proposed SD1, Relating to the Employees' Retirement System (ERS)

I am Louis M. Kealoha, Chief of Police of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD opposes House Bill No. 2487, HD1, Proposed SD1. We believe that this bill will have a disproportionate and adverse impact on police officers due to the requirements of their job and their assignments. These assignments can vary greatly in the overtime required to achieve the necessary tasks or objectives.

Members of my staff met with the ERS to better understand the proposals of and the calculations used as the basis in this bill. Based on the information provided, our concerns about police officers being unfairly targeted by this bill have been confirmed.

The HPD diligently works to manage the use of overtime and requires its officers to seek approval before accruing overtime. The nature of police work often requires the expenditure of overtime to meet departmental objectives. Officers are mandated by operational needs or safety concerns to work and be placed into situations herein defined as "spiking." The passing of this bill may possibly lead to a large number of retirements, which may adversely impact police operations. For these reasons, the HPD opposes this bill.

As a result, we are requesting that the Committee on Judiciary and Labor hold this bill.

Thank you for the opportunity to testify.

Sincerely,

  
LOUIS M. KEALOHA  
Chief of Police

*Serving and Protecting With Aloha*

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The Honorable Clayton Hee, Chair  
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The Senate  
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Honolulu, Hawaii 96813

Dear Chair Hee and Members:

**Subject: House Bill No. 2487, HD1, Proposed SD1, Relating to the Employees' Retirement System (ERS)**

I am Mark M. Nakagawa, Assistant Chief of the Administrative Bureau of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD opposes House Bill No. 2487, HD1, Proposed SD1. We believe that this bill will have a disproportionate and adverse impact on police officers due to the requirements of their job and their assignments. These assignments can vary greatly in the overtime required to achieve the necessary tasks or objectives.

A meeting was held with the ERS to better understand the proposals of and the calculations used as the basis in this bill. Based on the information provided, our concerns about police officers being unfairly targeted by this bill have been confirmed with the following discoveries:

1. The data utilized by the ERS to try and localize "spiking" was reflective of a time slice in which bargaining units 11 (firefighters) and 12 (police officers) were receiving negotiated pay increases beyond the other bargaining units. The use of this time slice resulted in faulty assumptions being made by the ERS.
2. This section describes spiking test 1 of 2. The proposed language in Subsection (g) (1) of Section 88-81, Hawaii Revised Statutes (HRS), will include most police officers being assigned to patrol duties.

The Honorable Clayton Hee, Chair  
and Members  
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March 22, 2012

3. This section describes spiking test 2 of 2. The proposed language in Subsection (g) (2) of Section 88-81, HRS, allows for as little as a two percent deviation from the final compensation period in relation to the comparison period. The resulting impact will only allow employees who have ten years of consistent non-base pay to avoid being drawn into this "spiking" category.

The HPD diligently works to manage the use of overtime and requires its officers to seek approval before accruing overtime. The nature of police work often requires the expenditure of overtime to meet departmental objectives. Officers are mandated by operational needs or safety concerns to work and be placed into situations herein defined as "spiking." For these reasons, the HPD opposes this bill.


As a result, we are requesting the Committee on Judiciary and Labor to hold this bill.

Thank you for the opportunity to testify.

APPROVED:

Sincerely,

  
LOUIS M. KEALOHA  
Chief of Police

  
MARK M. NAKAGAWA, Assistant Chief  
Administrative Bureau

TESTIMONY BY KALBERT K. YOUNG  
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE  
STATE OF HAWAII  
TO THE SENATE COMMITTEE ON JUDICIARY AND LABOR  
ON  
HOUSE BILL NO. 2487, H.D. 1, PROPOSED S.D. 1

March 22, 2012

RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM

House Bill No. 2487, H.D. 1, Proposed S.D. 1, amends Sections 88-73, 88-74, 88-81, 88-335, and 88-338 of the Hawaii Revised Statutes to correct errors; harmonize service retirement, ordinary disability retirement and ordinary death benefits for members of the Employees' Retirement System (ERS) who become members of the ERS after June 30, 2012; restore parity with respect to age and service requirements for current members who become judges after June 30, 2012; and prevent unexpected increases in pension benefits and in the unfunded actuarial accrued liability of the ERS by limiting the amount of compensation included in "average final compensation" and requiring employers to pay the additional costs resulting from spiking.

The Department of Budget and Finance strongly supports this proposed Senate draft, which combines language from two Administration bills (House Bill No. 2487 and House Bill No. 2488) which will correct errors; harmonize service retirement and benefits; restore parity in judges' age and service requirements; and allow the ERS to minimize the effect of spiking on the \$8.164 billion (as of June 30, 2011) unfunded actuarial accrued liability of the ERS.

The strategy of spiking is not the only contributing factor of the unfunded liability of the ERS, but there is no doubt that individuals whose retirement pensions are bolstered as a result of spiking, have contributed to the overall system's unfunded liability. Spiking can, and does, occur within all governmental employers in the State and is an inequitable financial advantage to certain ERS beneficiaries that is to the detriment of all other beneficiaries of the ERS. House Bill No. 2487, H.D. 1, Proposed S.D. 1, limits the amount an employee's salary can contribute to determining their annual pension amount if an employee is determined to have spiked their compensation, but also places certain responsibility and accountability on employers whose employees' compensation is spiked in the immediate years prior to retirement. Such spiking action is the most detrimental to the funding liability of the ERS. Employers and employees contribute to the ERS amounts equal to a percentage of compensation; however, when employees' compensations are spiked just prior to retirement, pension benefits are enhanced beyond a rate of what either the employer or employee have contributed to the ERS. This contributes to the unfunded liability and is inequitable to the detriment of other beneficiaries because it compromises the overall viability of the ERS.

The Proposed S.D. 1 is very timely and relevant considering that the Senate Special Committee on Accountability is also in the process of reviewing potential abuses in overtime and over payments. Spiking and its contribution to the unfunded liability in the ERS is just one example of how excessive overtime is detrimental to other employees and affects the financial stability of the organization. The Administration believes that stability in the level of benefits received is an important factor in facilitating the ERS' ability to eventually eliminate its unfunded liability and ensure the long-term viability of the system.

The Department of Budget and Finance encourages the Senate Committee on Judiciary and Labor to support House Bill No. 2487, H.D. 1, Proposed S.D. 1.

Committee on Judiciary and Labor  
Senator Clayton Hee, Chair  
Senator Maile S. L. Shimabukuro, Vice Chair

Re: HB 2487 HD1, SD1 RELATING TO THE EMPLOYEE'S RETIREMENT SYSTEM March  
21,2012

Dear Chair Hee and Members of the Committee,

This testimony is submitted on behalf of the City and County of Honolulu Emergency Services Department ("ESD") and its Divisions, Emergency Medical Services ("EMS") and Ocean Safety. My name is Mark K. Rigg, and I am the Deputy Director of ESD. Prior to this appointment, I worked for EMS since 1983, from the time of my internship as an entry level EMT, on through the management ranks, most recently as a District Chief. As a result of my experiences as field level personnel, a line operations supervisor, and today as a cabinet-level administrator, I believe I am well versed in the issues concerning ESD with respect to this proposed legislation.

While ESD and its Divisions support the intent of HB 2487, SD1 in theory, the Department has concerns regarding the impact that passage of such a measure might have on a number of critical elements in our public service agency, including the possible effect on current personnel, retirees, and upon departmental budget and operations. In so much as ESD has only recently seen this bill, and has not been privy to the financial models and analysis employed in support of the proposed legislation, we are unable to effectively evaluate the potential impact upon our Department. As with many of our fellow public service agencies, ESD would like to be involved in any future discussions concerning this issue in order to effectuate a fair and equitable solution.

Due to the nature of our work, we will always incur some degree of overtime. Both EMS and Ocean Safety provide critical services to our community. The delivery of these services is expected by the public and necessary for the well-being and safety of our community. Our operations proceed 24 hours a day, seven days a week, without regard for time, weather, or a litany of other known and unknown conditions that may impact the public. The very nature of staffing a public safety function with a workforce that is primarily subject to a collective bargaining agreement has many built-in constraints. From first-hand experience, I can attest that managing an around-the-clock public safety function while attempting to control and mitigate overtime, is difficult.

Because of the highly inflexible nature of our staffing needs, the line supervisor's toughest decisions often come in the form of deciding which personnel may be "stuck" or unable to leave at the end of their eight-hour shift due to the unavailability of personnel. When faced with the choice between cost containment and the delivery of critical public safety functions, EMS and Ocean Safety management has chosen to permit use of overtime rather than risk the public's health, safety or welfare.

Overtime is also necessary since we have been unable to find sufficient qualified personnel to fill vacant positions. Kapiolani Community College graduates up to 40 EMT students a year and many of them apply to Honolulu City and County EMS for jobs. Unfortunately, after the interview process, suitability, and physical examinations, we are only able to hire between 20 and 25 EMT's a year.

Also, every January the division pulls about 15 EMT's out of field operations to send them to paramedic school for a year. This loss of field personnel has an immediate effect on increasing our overtime. There is usually a gap of 2 – 3 months that takes place between the start of this class and the finishing of



the class that preceded it. It is during this time that the staffing in the department is critically challenged.

It has not helped that attrition rate has been so high for EMT's. (This is a training level just below paramedic). From 2008 to 2009 we hired 34 EMT's but lost 37 EMT's. For a profit/loss total of (-3).

Furthermore, we are recovering from a huge loss of paramedic personnel in 2005 and 2006 when a "perfect storm" of conditions led to the loss of 15 paramedics to Honolulu Fire Department, plus Hickam Fire/EMS Department and Federal Fire Department when those agencies started up EMS Advanced Life Support ambulance services on the military bases. Honolulu EMS reeled for many years with the loss of so many paramedic level personnel at one time. Rebuilding the paramedic roster is, and will continue to be a challenge as other agencies "shop" for the best personnel to suit their respective organizations. In 2010, Federal Fire Department again recruited away from Honolulu EMS to the tune of seven paramedics.

I would also like to mention that our overtime management is also constrained by our collective bargaining agreements. Simply put, there is little to no management discretion or leeway with respect to the protocol for extending offers of overtime. Any diversion from the specific process, either intentional or as a result of operational necessity, the departments are automatically subject to a potential grievance.

Using EMS as an example, Unit assignments are based upon seniority, as determined through an annual bid. Certain units, often in the more rural or more remote parts of the island, are statistically less busy than their more urban counterparts. In theory, personnel with greater seniority have the ability to choose locations where the pace of work may be slower and more conducive to maintaining the mental and physical energy needed to work overtime assignments. Likewise, there is issue of filling vacant shifts, which may arise due to sickness, vacation, or industrial injury. EMS and Ocean Safety are physically and emotionally demanding job functions, and it is often difficult, at best, to find individuals who are even willing to accept an overtime offer due to fatigue, family obligations or other competing interests.

In closing, we are actively monitoring our use of overtime and taking steps to recruit and train additional personnel in order to reduce the necessity for overtime. However, because we must respond with sufficient personnel whenever an emergency or natural disaster strikes, some degree of overtime is inevitable.

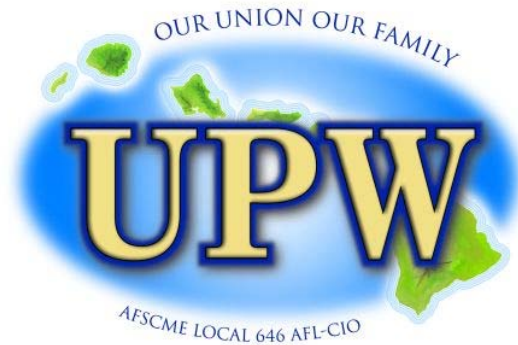
Together with the other public safety agencies, ESD will be seeking further dialogue with ERS board representatives in order to gain a better understanding of this proposal and its impact on our Department and we hope to actively participate in future discussions on this bill.

Thank you for the opportunity to provide this testimony on behalf of ESD.

Sincerely,

MARK K. RIGG

DEPUTY DIRECTOR  
CITY AND COUNTY OF HONOLULU  
EMERGENCY SERVICES DEPARTMENT



THE HAWAII STATE SENATE  
The Twenty-Sixth Legislature  
Regular Session of 2012

COMMITTEE ON JUDICIARY & LABOR  
The Honorable Sen. Clayton Hee, Chair  
The Honorable Sen. Maile S. L. Shimabukuro, Vice Chair

DATE OF HEARING: Thursday, March 22, 2012  
TIME OF HEARING: 10:30 a.m.  
PLACE OF HEARING: Conference Room 016

**TESTIMONY ON HB 2487 HD1 PROPOSED SD1 RELATING TO THE  
EMPLOYEES' RETIREMENT SYSTEM**

By DAYTON M. NAKANELUA,  
State Director of the United Public Workers,  
AFSCME Local 646, AFL-CIO ("UPW")

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 is the exclusive representative for approximately 11,000 public employees, which include blue collar, non-supervisory employees in Bargaining Unit 1 and institutional, health and correctional employees in Bargaining Unit 10, in the State of Hawaii and various counties. The UPW also represents about 1,500 members of the private sector.

UPW opposes HB 2487 HD1 Proposed SD1. This bill harmonizing service retirement, ordinary disability and ordinary death benefits for those who become members after June 30, 2012 and restores parity with age and service requirements for current members who become judges after June 30, 2012. Additionally, the Proposed SD1 would prevent unexpected increases in pension benefits and in the unfunded actuarial accrued liability of the ERS by limiting the amount of compensation included in the "average final compensation" and requiring employers to pay additional costs resulting from "spiking."

It is this additional language relating to the “average final compensation” and “spiking” that we oppose. UPW has worked with employers, through the collective bargaining process, to keep assigned overtime at a reasonable level. It is, however, important to point out that the employer, not our members, makes the final decision regarding overtime schedules. Employee ERS benefits should not be reduced because employers choose to increase over time versus hiring more staff.

Thank you for the opportunity to testify on this measure.

TESTIMONY BY WESLEY K. MACHIDA  
ADMINISTRATOR, EMPLOYEES' RETIREMENT SYSTEM  
STATE OF HAWAII  
TO THE SENATE COMMITTEE ON FINANCE  
ON  
HOUSE BILL NO. 2487, H.D. 1, S.D. 1 Proposed

MARCH 22, 2012

RELATING TO EMPLOYEES' RETIREMENT SYSTEM

Chair Hee and Members of the Committee,

H.B. 2487, H.D. 1, S.D. 1, proposes to amend sections 88-73, 88-74, 88-81, 88-335, and 88-338 of the Hawaii Revised Statutes to correct typographical errors, to harmonize service retirement, ordinary disability retirement and ordinary death benefits for members of the Employees' Retirement System (ERS) who become members of the ERS after June 30, 2012, and to restore parity with respect to age and service requirements for current members who become judges after June 30, 2012.

The ERS Board of Trustees supports this bill.

This bill makes the following amendments to clarify benefit changes made by Act 163, Session Laws of Hawaii 2011:

- Restores the age and service retirement requirements under sections 88-73(b) and 88-74(c) and (d) for current members who become judges after June 30, 2012 to the same age and service retirement requirements as other Contributory Plan members who became ERS members prior to July 1, 2012.
- Deletes from section 88-74(f) reference to water safety officers. Section 88-74(f) applies to individuals who join the ERS as contributory plan members after June 30, 2012. The category of water safety officers who are Contributory Plan members and who become members of the ERS after June 30, 2012 does not exist.
- Corrects errors in sections 88-74(i) and 88-81(a) and (f).
- Amends section 88-335 to apply the same benefit multiplier (1.75%) for service retirement benefits and ordinary disability benefits for Hybrid Plan members who become ERS members after June 30, 2012.

- Amends section 88-338(a) to make the service requirement for payment of the Hybrid Plan hypothetical account balance as an ordinary death benefit for an individual who becomes a member after June 30, 2012 the same (10 years) as the service requirement for an inter vivos withdrawal by the member after the member has terminated service.

In addition to changes and corrections, this draft proposes measures to curtail "pension spiking," a process whereby public sector employees significantly increase their compensation (through overtime, etc.) in the years immediately preceding retirement in order to receive a larger pension than they otherwise would be entitled to receive, by limiting the amount of non-base pay compensation that may be included in a member's "average final compensation" and to require that employers contribute towards the additional costs associated with these benefit inequities.

The ERS Actuary has determined that the estimated present value of potential savings for the current group of employees who meet the bill's definition of pension spiking is \$116.2 million. In addition, the ERS Actuary has estimated that the impact on future reductions to the pension liabilities for new hires is about 5% for Police and Fire employees, 15% for the "25 years and out" employees, and 2% for general employees. In other words, if pension liabilities were to grow by \$5 billion over the next 10 years for these new employees, then approximately \$150 to \$200 million would be reduced from the growing pension liabilities by addressing pension spiking.

After reviewing the recommendations by the ERS Actuary and the pension spiking laws enacted by other states, the ERS Board took a conservative and balanced approach in its unanimous endorsement of the pension spiking criteria included in this bill:

- For employees who become ERS members after June 30, 2012: Limit the amount of compensation that can be included in the calculation of the member's retirement benefits if the member's non-base pay (such as overtime or bonuses) during the member's "high-five" years exceeds limits based on the average of the member's non-base pay during the last 10 years of the member's service.

- For existing members: Limit the amount of compensation that can be included in the calculation of the member's retirement benefits if the member's non-base pay during the member's "high-three" or "high-five" years exceeds limits as noted above; however, this calculation would only be applied to periods after June 30, 2015.
- For existing members: Require the member's last employer to pay the additional costs resulting from sudden increases in the member's non-base pay during the member's final years of employment.

The ERS Board of Trustees believes that this proposed legislation is necessary to (1) correct, clarify and harmonize the benefit changes made in Act 163, Session Laws of Hawaii 2011, and (2) to help with the ERS' pension and unfunded liabilities. The overall goal is to ensure the sustainability of the ERS and the sufficiency of monies to pay promised benefits. Therefore, the ERS Board strongly supports the passage of this bill.

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