TESTIMONY BY WESLEY K. MACHIDA
ADMINISTRATOR, EMPLOYEES' RETIREMENT SYSTEM
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON FINANCE
ON
SENATE BILL NO. 2750, S.D. 1, H.D. 1

MARCH 30, 2012

RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM

Chair Oshiro and Members of the Committee,

The provisions of S.B. 2750, S.D. 1, H.D. 1, address "pension spiking" and represent one way in which public pension funds across the nation have been dealing with their growing pension and unfunded liabilities.

The ERS Board of Trustees strongly supports this bill as it will help to strengthen the integrity and sustainability of the ERS through proper funding, assist in addressing the growing pension liabilities, and eliminate benefit inequities.

The 2011 Legislature took an important step in addressing the growing pension liabilities when it passed the benefit changes for new hires starting after June 30, 2012. Although the changes enacted are significant, they affect the long-term future liabilities of the ERS. The solutions proposed in this bill will address pension liabilities (reported at $23 billion as of June 30, 2011), its effect on the total ERS Unfunded Liability (reported at $8.154 billion as of June 30, 2011) and help to ensure ERS' future sustainability.

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.

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.

One of the changes made to original proposal was to increase the "threshold" criteria of the average final compensation (AFC) period to the comparison period. This change would allow for a greater difference between the spiking AFC years when compared to the comparison years' average. The AFC non-base pay ratio divided by the comparison period non-base pay ratio now must be greater than 135% rather than the original 120% to meet the definition of spiking.

If this change from 120% to 135% is effectuated, the ERS Actuary determined that the present value of potential savings would be reduced by approximately 25%; or, more specifically, a reduction of savings from $116.2 million to approximately $87 million.

The ERS Board of Trustees believes that this proposed legislation is needed to help with the ERS' pension and unfunded liabilities and to mitigate inequities. 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 and urges the committee to consider the impact of the change in the threshold percentage on the ERS' pension and unfunded liabilities.

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

TESTIMONY BY KALBERT K. YOUNG
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON FINANCE
ON
SENATE BILL NO. 2750, S.D. 1, H.D. 1

March 30, 2012

RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM

Senate Bill No. 2750, S.D. 1, H.D. 1, proposes to revise the allowability of certain employee compensation for the calculation of retirement pension if the overall compensation in the final years of service are determined to have been enhanced through means of "spiking." The bill provides definitions for determining that spiking has occurred and establishes the threshold limitations for calculating the effect on an employee's final compensation. In preventing spiking of pension benefits, this bill will also address some of the impact on the unfunded actuarial accrued liability of the Employees' Retirement System (ERS) by limiting the amount of compensation included in "average final compensation" and requires employers to pay the additional costs resulting from spiking.

The Department of Budget and Finance supports this Administration bill which will allow the ERS to minimize the effect of spiking. We would like to recommend that the threshold be established at 120% as proposed in the original Administrative bill. The ERS has an unfunded actuarial accrued liability of $8.164 billion (as of June 30, 2011). The strategy of spiking is not the only contributing factor for the unfunded liability, but there is no doubt that individuals whose retirement pension is bolstered as a result of spiking, have contributed to the overall systems' 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.

Senate Bill No. 2750, S.D. 1, H.D. 1, limits the amount an employee's salary can contribute to determining their annual pension amount, but it 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, that employees' pension benefit is 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 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 House Committee on Finance to support Senate Bill No. 2750, S.D. 1, H.D. 1, with the recommended amendment to establish the threshold at 120%.

TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2012

ON THE FOLLOWING MEASURE:
S.B. NO. 2750, S.D. 1, H.D. 1, RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM.

BEFORE THE:
HOUSE COMMITTEE ON FINANCE

DATE:	Friday, March 30, 2012	**TIME:** 2:00 p.m.
LOCATION:	State Capitol, Room 308	
TESTIFIER(S):	David M. Louie, Attorney General, or Diane S. Kishimoto, Deputy Attorney General	

Chair Oshiro and Members of the Committee:

The Department of the Attorney General supports this bill.

This bill requires a public employee's last State or county employer to pay to the Employees' Retirement System the present value of additional benefits "resulting from spiking," i.e., late career spikes in the employee's compensation attributable to non-base pay compensation such as overtime. The bill also limits the amount of compensation included in the "average final compensation" of Employees' Retirement System members by excluding from the calculation of "average final compensation" late career spikes in an employee's compensation attributable to non-base pay compensation such as overtime. The exclusion applies to employees who become members of the Employees' Retirement System after June 30, 2012. The exclusion of spiked compensation also applies, effective July 1, 2015, to employees who became members of the Employees' Retirement System prior to July 1, 2012. Section 4 of the bill, on pages 10 and 11, provides that the application of the exclusion to current members is subject to the provisos that:

(1) A member's average final compensation shall not be less than what the employee's average final compensation would have been if the member had retired on June 30, 2015; and

(2) Compensation, pay, or salary earned before July 1, 2015, is not subject to the limits imposed by the bill.

We believe that the foregoing provisos provide a defense to a potential legal challenge to the bill under article XVI, section 2, of the State Constitution, which provides that: "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."

In Kaho'ohanohano v. State, 114 Hawai'i 302, 342, 162 P.3d 696, 736 (2007), the Hawai'i Supreme Court recognized that, although article XVI, section 2 prohibits the reduction of benefits attributable to past services: "the intent of article XVI, section 2 was in part to provide the legislature with the flexibility to 'reduce benefits as to . . . persons already in the system in[ ]so[ ]far as their *future services* were concerned.'" (Emphasis and brackets in original.) For current members, this bill applies only to benefits as to future services. The benefits attributable to past services, i.e., the average final compensation based on past services and inclusion of the full amount of compensation for past services in the calculation of average final compensation, are protected by the provisos included in this bill.

This bill does not impair or diminish accrued benefits. The bill protects the retirement benefits that will be accrued as of its July 1, 2015, effective date for current members.

We respectfully request that the Committee pass this bill.

DEPARTMENT OF BUDGET & FISCAL SERVICES

CITY AND COUNTY OF HONOLULU

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PETER B. CARLISLE
MAYOR

MICHAEL R. HANSEN
DIRECTOR

NELSON KOYANAGI, JR.
DEPUTY DIRECTOR

March 30, 2012

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

Dear Chair Oshiro and Members:

Subject: Senate Bill 2750, Senate Draft 1, House Draft 1
Relating to the Employee's Retirement System

The City and County of Honolulu supports efforts to address the $8 billion unfunded liability of the Employees' Retirement System (ERS) in a comprehensive manner. However, we have serious concerns about the anti-spiking provisions in House Bill 2750, Senate Draft 1, House Draft 1, which are intended to address a single factor related to the unfunded liability.

We note that the provisions in this bill are similar to those contained in the anti-spiking measures that have been introduced this year. In prior testimony related to these anti-spiking measures, the ERS has noted that, using the definition under the bill, they estimate that over a three year period, "spiking" has added $39.6 million to the unfunded liability. This is approximately 1/2% of the total unfunded liability. The City understands the value of counting each dollar. The City also understands why the ERS Board—with its focus on reducing the unfunded liability—would advocate for a solution that will bring in additional dollars and limit the monies being paid out. However, we believe the provisions require further review and, perhaps more importantly, we believe a broader viewpoint is needed to analyze the impacts of the proposal—particularly given its disproportionate effects on our public safety and health employees and their agencies.

We believe the following areas of concern and options need to be addressed:

Concerns regarding the additional employer contribution:

- Employers would be required under the bill 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—accordingly, employers are already paying for past spiking.
    - Employers would be required to pay, up front, the additional amount added to the unfunded liability for employees who fail the spiking tests.

  - Employees who fail the spiking test will have their pension benefits limited.
    - Employees who fail the spiking tests will receive a refund of their contributions paid, but not used, due to the pension limit.
    - Employers will not receive a refund or credit for the employer contributions paid, but not used, due to the pension limit.
      - This additional amount is excess—over and above that which is necessary to fund any unfunded liability due to the spiking.
- Employers have no guaranteed end to the additional payment.
  - There is no end date for the additional contributions.
    - If the tests are enforced, the additional contributions should diminish and end at some point.
    - If the tests are successfully challenged; however, the additional payments will not end until all "grandfathered" employees retire.
      - In light of our understanding that the law is likely to be challenged and our belief that employers will be forced to pay unequal amounts, there should be an end date to the payments.
- Employers have to make the payment all at once—not over a period of time.
  - Employers should be provided some relief regarding the additional payments by allowing the payments to be made over a period of time.
- Employers are charged for the spiking whether or not it occurred "on their watch".
  - Employers should be charged for when the spiking occurred.

Options for addressing concerns regarding the employer contribution:

- Include a requirement that the assessment of the additional payments will end three years after they begin.
  - This will ensure that if the law is successfully challenged, employers will not be subject to these additional assessments for an extended period of time.
  - This will ensure that those employers assessed excess contribution amounts will have an end to the excess assessments.
- Include a 10 year payment period for the additional assessment amount.
- Replace the requirement that the last employer of the employee be charged for the spiking with a requirement that the employer who employed the employee while spiking occurred will be charged for the spiking.

Concerns regarding the tests:

- The tests do not provide for a level playing field for employees in 24/7 operations.
  - The tests do not adequately consider the overtime payments to employees in 24/7 operations that have more of the characteristics of base pay rather than non-base pay.
- The tests do not consider the unique situations created when employees must respond to declared states of emergency—like the recent flooding.
- The tests do not consider law enforcement employees who must be assigned to different shifts, but must report to court during normal court hours.

Options for addressing concerns regarding the tests:

- Include in the definition of base pay the following for employees in operations that run 24/7 all year:
    - Holiday overtime since these operations must be staffed on all days of the year, employees in these operations must work on Holidays so Holiday Overtime for these employees is more of a recurring payment.
    - Overtime when an employee's normal scheduled hours of work include overtime— Fire Fighters on 24 hour shifts work a schedule that automatically results in overtime. This is a recurring payment.
- Exclude from the spiking tests the following types of payments.
    - Overtime earned during a declared Federal, State or City/County emergency or disaster.
    - Overtime earned by law enforcement personnel who must attend court during their off-duty hours.

We note that even if changes can be made to address the concerns we have been able to identify so far, ultimately we believe the question remains as to what is the acceptable number of good employees, who did their jobs with no intent of gaming the system, who should be given the derogatory label of "spiker" and monetarily penalized with a reduced pension.

In light of the above, the City believes there may be other approaches to address the unfunded liability that may be more equitable to employers and employees. In closing, we would like to reiterate our willingness to continue discussions with the ERS board, other stakeholders and the legislature on the unfunded liability issue and potential ways to address this critical issue.

Yours truly,

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

Noel T. Ono, Director
Department of Human Resources

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LOUIS M. KEALOHA
CHIEF

DAVE M. KAJIHIRO
MARIE A. McCAULEY
DEPUTY CHIEFS

OUR REFERENCE MN-VYH

March 30, 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: Senate Bill No. 2750, SD1, HD1, 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 Senate Bill No. 2750, SD1, HD1. We find that this bill will have a disproportionate and adverse impact on police officers due to the requirements of their duties and assignments, some of which routinely require the expenditure of overtime to complete any given tasks on hand or assigned.

A meeting was held with the ERS to better understand the proposals of and the calculations used as the basis of this bill. Based on the information provided, our concerns about police officers being adversely affected by this bill for merely performing their duties have been validated.

We additionally discovered that 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 unfunded liability impact assumptions being made by the ERS.

Our analysis of the spiking tests have found that the first test will be an automatic "fail" for most officers assigned to patrol duties due to holiday work and court overtime.

These officers are the first of the first responders in our community. We find that the second test has a very narrow tolerance level that causes as little as a two percent deviation in the relationship between non-base pay and base pay to meet the "spiking" definition.[1] Most importantly, the formula used in the second test is mathematically flawed in that a numerical result cannot be obtained from an employee who does not receive non-base pay during the "comparison period."

The HPD fully recognizes the exigency of the unfunded liability facing the ERS and appreciates the effort to address the issue. We also do not condone any malicious effort by any employee to "play" the system for personal gain. We do, however, remain very concerned that this attempt to address so called "spiking" employees will ensnare many of our employees who are merely performing those duties that are required of our department in meeting public safety needs.

As a result, we are requesting the Committee on Finance to hold this bill.

Thank you for the opportunity to testify.

APPROVED:

for LOUIS M. KEALOHA
Chief of Police

Sincerely,

MARK M. NAKAGAWA, Assistant Chief
Administrative Bureau

[1] As an example, an employee receiving a base pay rate of $50,000 per year with an additional $4,500 of non-base pay during the comparison period would fail the test by averaging $5,500 in non-base pay during the average final compensation period.

HOUSE OF REPRESENTATIVES
THE TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2012

COMMITTEE ON FINANCE
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Rep. Marilyn B. Lee, Vice Chair

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Rep. Linda Ichiyama	Rep. Gil Riviere
Rep. Jo Jordan	Rep. Gene Ward
Rep. Derek S.K. Kawakami	

NOTICE OF HEARING

DATE: Friday, March 30, 2012
TIME: 2:00 P.M.
PLACE: Conference Room 308
State Capitol
415 South Beretania Street

AGENDA # 1

SB 2220, SD1, HD1 (HSCR1153-12) Status	RELATING TO THE BOILER AND ELEVATOR SAFETY LAW. Establishes the Boiler and Elevator Special Fund for the purpose of collecting and depositing fees charged for permits, inspections, and certificates of boilers, pressure systems, elevators, and kindred equipment, and amusement rides to provide sufficient operating funds for the Boiler and Elevator Inspection Branch. Requires repayment of the start-up general revenues deposited into the special fund within five years. Effective upon approval except for fees and appropriations which are effective on July 1, 2012.	LAB/ERB, FIN
SB 2323, SD1 (HSCR1020-12) Status	MAKING APPROPRIATIONS FOR PUBLIC EMPLOYMENT COST ITEMS. Appropriates funds for registered professional nurses within collective bargaining unit 9 and their excluded counterparts.	LAB, FIN
SB 2324, SD1 (HSCR1054-12) Status	MAKING APPROPRIATIONS FOR PUBLIC EMPLOYMENT COST ITEMS. Appropriates funds for officers and employees within collective bargaining units 2, 3, 4, 6, 8, and 13, and their excluded counterparts.	LAB, FIN
SB 2214, SD2, HD1 (HSCR1094-12) Status	RELATING TO COLLECTIVE BARGAINING. Clarifies provisions that negotiations relating to contributions to the Hawaii Employer-Union Health Benefits Trust Fund shall be to agree upon amounts that the State and counties shall contribute toward the payment of costs for a health benefits plan and group life insurance benefits for active public employees; clarifies that a decision of an arbitration panel shall be final.	LAB, FIN
SB 2750, SD1, HD1 (HSCR1202-12) Status	RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM. Prevents unexpected increases in pension benefits and in the unfunded actuarial accrued liability of the Employees' Retirement System by limiting the amount of compensation included in "average final compensation" and requires employers to pay the additional costs resulting from spiking. Effective July 1, 2012.	LAB, FIN

HONOLULU FIRE DEPARTMENT

CITY AND COUNTY OF HONOLULU

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PETER B. CARLISLE
MAYOR

KENNETH G. SILVA
FIRE CHIEF

EMMIT A. KANE
DEPUTY FIRE CHIEF

March 29, 2012

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

Dear Chair Oshiro:

Subject: S.B. 2750, S.D. 1, H.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.

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 S.B. 2750, S.D. 1, H.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

Fire Chief

Renwick J. Victorino
Deputy Fire Chief

County of Hawai'i
HAWAI'I FIRE DEPARTMENT
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March 27, 2012

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

Dear Chair Oshiro:

Subject: S.B. 2750, S.D. 1, H.D. 1, Relating to the Employees' Retirement System (ERS)

I am Darren J. Rosario, Fire Chief of the Hawaii Fire Department of the County of Hawaii (HCFD). The HCFD opposes this bill and requests your consideration of the following concerns.

The HCFD's overtime is operationally driven due to emergency services provided on a 24 hours per day, 7 days per week basis. The HCFD budgets holiday and non-holiday 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. Non-holiday 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 HCFD consistently operates within its budget on holiday and non-holiday overtime costs.

While we respect the legislature's attempt to minimize the impact of spiking by government employees, the HCFD believes that what may be an acceptable limit of overtime in one assignment may not be applicable to another duty assignment.

William P. Kenoi
Mayor

Darren J. Rosario
Fire Chief

Renwick J. Victorino
Deputy Fire Chief

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March 27, 2012

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

Dear Chair Oshiro:

Subject: S.B. 2750, S.D. 1, H.D. 1, Relating to the Employees' Retirement System (ERS)

I am Darren J. Rosario, Fire Chief of the Hawaii Fire Department of the County of Hawaii (HCFD). The HCFD opposes this bill and requests your consideration of the following concerns.

The HCFD's overtime is operationally driven due to emergency services provided on a 24 hours per day, 7 days per week basis. The HCFD budgets holiday and non-holiday 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. Non-holiday 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 HCFD consistently operates within its budget on holiday and non-holiday overtime costs.

While we respect the legislature's attempt to minimize the impact of spiking by government employees, the HCFD believes that what may be an acceptable limit of overtime in one assignment may not be applicable to another duty assignment.

HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

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

AFSCME
LOCAL 152, AFL-CIO

The Twenty-Sixth Legislature, State of Hawaii
House of Representatives
Committee on Finance

Testimony by
Hawaii Government Employees Association
March 30, 2012

S.B. 2750, S.D. 1, H.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 S.B. 2750, S.D. 1, H.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 to whom, how much and when overtime is granted. 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 <u>as determined by the Employer</u> 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 intact 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, and both were heard in the Senate Special Committee on Accountability. Additionally, S.C.R. 167/S.R. 97 and H.C.R. 152 request the Department of Human Resources Development to convene a task force to examine management policies regarding the use of overtime. If it becomes law, S.B. 2750, S.D. 1, H.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 prior to making statutory amendments. Thank you for the opportunity to testify in strong opposition of S.B. 2750, S.D. 1, H.D. 1.

Respectfully submitted,

for Randy Perreira
Executive Director

House Committee on Finance

Friday, March 30, 2012

2:00 p.m.

SB 2750, SD1, HD1, Relating to the Employees' Retirement System.

Dear Chairman Oshiro and Committee Members:

On behalf of the University of Hawaii Professional Assembly (UHPA), our union is opposed to the passage of this legislation on the grounds that it is patently unfair and the bill violates the fundamental principles under which the define pension benefit is to be determined. It is indisputable that the anecdotal examples given of "spiking" by public employees to gain an advantage at retirement are a reflection of the available workforce rather than the manipulative efforts of any individual public employee. The decisions that lead to increases in the wages being paid any public employee are entirely in the hands of the public employer. If they do not wish to increase the pension of any individual, then they should not choose to allow them whatever additional work that leads to a higher average salary as a part of the formula. This bill would simply reduce the overall compensation being paid to an individual for work performed.

UHPA encourages the deferring of this measure to undertake a more studied and less volatile discussion of the unfunded liability of the ERS.

Respectively submitted,

Kristeen Hanselman
Associate Executive Director

UNIVERSITY OF HAWAII
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