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**STATE OF HAWAII**  
**EMPLOYEES' RETIREMENT SYSTEM**

WRITTEN ONLY

TESTIMONY BY THOMAS WILLIAMS  
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STATE OF HAWAII

TO THE SENATE COMMITTEE ON WAYS AND MEANS  
ON

SENATE BILL NO. 2867, H.D. 1

**February 20, 2020**  
**10:35 A.M.**  
**Conference Room 211**

RELATING TO THE DEFINITION OF COMPENSATION FOR THE PURPOSES OF  
THE EMPLOYEES' RETIREMENT SYSTEM

Chair Dela Cruz, Vice Chair Keith-Agaran, and Members of the Committee,

S.B. 2867, H.D.1 amends sections 88-21 and 88-21.5, Hawaii Revised Statutes, to clarify the definition of "compensation" for retirement benefit computation purposes, to help ensure that retirement benefits are computed fairly and equitably for all public employees and to facilitate employer reporting of compensation on a consistent and timelier basis. It will also help ensure ERS compliance with its tax-exempt status requirements. The Board of Trustees of the Employees' Retirement System of the State of Hawaii (ERS) strongly supports this bill.

ERS retirement benefits are based on a formula which includes an employee's (1) membership multiplier, (2) years and months of retirement service credit and (3) average final compensation. This bill clarifies the definition of ERS compensation by amending the definition of "base pay" and "compensation" in chapter 88 with reference to the primary source of all employees' pay information – the employee's personnel action documentation. To determine a common definition of "base pay," the source to which all employers shall refer is the base compensation rate designated by the employee's personnel action report notification or certification.



Employees' Retirement System  
of the State of Hawaii

The ERS receives payroll reports from eight separate employers, consisting of the State of Hawaii and the counties. Currently employers define and report base compensation with varying employer discretion; however, identification of an employee's compensation from a source document as described in this bill, is critical as a reference for the employee, employers and ERS alike. We would urge this committee to specify that "shortage differentials" as noted in Section 3(b)(1)(B) of this legislation, also be specified and designated on the employee's personnel action report as well.

The definition of base compensation provided by S.B. 2867, H.D. 1 will also ensure that the ERS meets one of its fundamental tax-exempt qualification requirements – that its benefits be "definitely determinable" under Treas. Reg. § 1.401(a)-1(b)(1). The "definitely determinable" requirement is intended to preclude employer discretion in determining benefits. If employers are using their discretion to determine what should be included in "normal periodic payments of money for service," and different employers are doing different things with the same elements of compensation, there may be a question as to whether benefits under the ERS are "definitely determinable". This is a tax-qualification concern. By referring to a "base compensation rate designated by the employee's personnel action report notification or certification," S.B. 2867, H.D. 1 provides a level of "definiteness" that addresses the tax-qualification concern. The administration of this uniform and clarifying definition would be prospective only.

To fairly compute retirement benefits for the employees of all employers and to protect its tax-qualified status, with S.B. 2867, S.D. 1, the ERS proposes a definition by which all employees' retirement benefits will be computed more uniformly, fairly and equitably.

On behalf of the ERS Board of Trustees, I encourage you to pass this important legislation.

Thank you for this opportunity to testify.



**HAWAII GOVERNMENT EMPLOYEES ASSOCIATION**

AFSCME Local 152, AFL-CIO

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The Thirtieth Legislature, State of Hawaii  
The Senate  
Committee on Ways and Means

Testimony by  
Hawaii Government Employees Association


February 20, 2020

S.B. 2867, S.D. 1 – RELATING TO COMPENSATION FOR THE  
PURPOSES OF THE EMPLOYEES' RETIREMENT SYSTEM

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO would like to provide comments on S.B. 2867 which amends the definition of compensation for retirement benefits.

We do not raise issue with the general intent of clarifying statutory language regarding base pay compensation and appreciate the Committee on Labor, Culture and the Arts' amendments to S.B. 2867 which maintain the inclusion of shortage differentials in the definition of compensation as outlined in the S.D. 1 and its accompanying committee report.

Thank you for the opportunity to testify on S.B. 2867.

Respectfully submitted,  


Randy Perreira  
Executive Director