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STATE OF HAWAII | KA MOKU'ĀINA O HAWAII
DEPARTMENT OF LAW ENFORCEMENT
Ka 'Oihana Ho'okō Kānāwai
715 South King Street
Honolulu, Hawaii 96813

TESTIMONY ON HOUSE BILL 806
RELATING TO FIREWORKS

Before the House Committee on Labor

Tuesday, January 28, 2025; 9:00 a.m.

State Capitol Conference Room 309, Via Videoconference

WRITTEN TESTIMONY ONLY

Chair Sayama, Vice Chair Lee, and Members of the Committee:

The Department of Law Enforcement (DLE) supports the intent of House Bill 806. The purposes of this bill are: 1) to appropriate funds for the Honolulu Police Department and Department of Law Enforcement to conduct sting operations on Oahu to enforce fireworks ordinances or laws, and 2) authorize a court to order the forfeiture of one-half of any pension of an Employees' Retirement System member, former member, or retirant upon conviction of the individual for a felony related to certain uses of prohibited fireworks.

DLE presently coordinates the activities of the Illegal Fireworks Task Force. DLE is appreciative of this bill's intent to provide financial support for "sting" operations related to enforcement of fireworks laws. DLE believes that the bill could be made better by the insertion of language that:

- 1) Uses the term "covert operation" rather than "sting operation" and defines the term "covert operation" in statute. "Covert" police operations may be defined as investigative operations that may include the use of undercover officers and/or undercover entities, cooperators, informants and surveillance, while the term, "sting operation" is simply police jargon that refers to police investigations involving some sort of deception. A more specific definition would allow DLE to better determine appropriate use of funding from the bill.

- 2) Provides that proposed funding may be used for investigations and costs related to investigations including, but not limited to: supplies, travel costs, and storage and disposal of evidence.
- 3) Allow for operations proposed to be funded under this bill to be used statewide, rather than just on Oahu.

As well, the DLE supports this bill's intent of creating greater deterrence for the prohibited use of fireworks. This bill proposes to authorize a court to act against an employee's pension. This proposal and other proposals for deterrence are part of important policy discussions that DLE will work with the Legislature this session.

Thank you for the opportunity to submit testimony on this measure.

JON N. IKENAGA
PUBLIC DEFENDER

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January 27, 2025

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H.B. 806: RELATING TO FIREWORKS

Chair Sayama, Vice-Chair Lee, and Members of the Committee on Labor:

The Office of the Public Defender **opposes HB 806.**

The Office of the Public Defender (OPD) agrees that the use of illegal fireworks raises significant concerns regarding public health and safety and understands the desire of the Legislature to address this issue. However, while this bill is well-intentioned, it is unconstitutional.

This bill violates the Equal Protection clauses of both the U.S. and Hawai'i constitutions. Article I, Section 5 of the Hawai'i Constitution, Due Process and Equal Protection states:

No person shall be deprived of life, liberty or property without due process of law, **nor be denied the equal protection of the laws**, nor be denied the enjoyment of the person's civil rights or be discriminated against in the exercise thereof because of race, religion, sex or ancestry.

(Emphasis added). The language of Article I, Section 5 is mirrored by Section 1 of the Fourteenth Amendment to the U.S. Constitution.¹

¹ The Fourteenth Amendment, Section 1 states:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

When a denial of equal protection of the laws is alleged, the Hawai‘i appellate courts apply either a “strict scrutiny” or “rational basis” test.

... This court has applied “strict scrutiny” analysis to “ ‘laws classifying on the basis of suspect categories or impinging upon fundamental rights expressly or impliedly granted by the [c]onstitution,’ ” in which case the laws are “ ‘presumed to be unconstitutional²⁸ unless the state shows compelling state interests which justify such classifications,’ ” *Holdman v. Olim*, 59 Haw. 346, 349, 581 P.2d 1164, 1167 (1978) (citing *Nelson v. Miwa*, 56 Haw. 601, 605 n. 4, 546 P.2d 1005, 1008 n. 4 (1976)), and that the laws are “narrowly drawn to avoid unnecessary abridgments of constitutional rights.” *Nagle*, 63 Haw. at 392, 629 P.2d at 111 (citations omitted).

By contrast, “[w]here ‘suspect’ classifications or fundamental rights are not at issue, this court has traditionally employed the rational basis test.” *Id.* at 393, 629 P.2d at 112. “Under the rational basis test, we inquire as to whether a statute rationally furthers a legitimate state interest.” *Estate of Coates v. Pacific Engineering*, 71 Haw. 358, 364, 791 P.2d 1257, 1260 (1990). “Our inquiry seeks only to determine whether any reasonable justification can be found for the legislative enactment.” *Id.*

Baehr v. Lewin, 74 Haw. 530, 572, 852 P.2d 44, 64 (1993), as clarified on reconsideration (May 27, 1993), and abrogated by Obergefell v. Hodges, 576 U.S. 644, 135 S. Ct. 2584, 192 L. Ed. 2d 609 (2015). In this case, the classification of “state workers” is not a “suspect category” and the “rational basis” test would apply.

There is no rational basis to support the additional penalty of forfeiture of one-half of a convicted person’s employees’ retirement system (ERS) benefits simply because they are an ERS member, former member, or retirant. Section 1 of this bill references Act 84, Sessions Laws of Hawai‘i 2021, as “demonstrate[ing] that the State takes the ethics of its employees seriously.” However, this is too wide of a generalization and does not reflect the stated legislative purpose for Act 84. The legislative history of Act 84 (HRS § 88-74.8) indicates that the purpose of the act was to “uphold the public’s trust in government and democracy” which becomes “strained when public officers and employees participate in misconduct in their employment, while maintaining the benefits of their employment.”² (Emphasis added). Other committees further clarified,

Public employees who have been convicted of a felony **that is directly related to the employee’s position or duties** ultimately lose the trust of the public by misusing their position, and therefore, should no longer

² Stand. Com. Rep. No. 22 on HB670 (2021 Sess.).

by eligible to receive benefit accrued during their employment with the State or county.[³]

* * * *

Your Committees find that public officers and employees are responsible for upholding the public’s trust in government and democracy, and that the public belief in government and democracy become strained when public officers and employees **participate in misconduct in their employment**, while maintaining the benefits of their employment.[⁴]

(Emphases added). To that end, Act 84 authorized the forfeiture of one half of any interest, hypothetical account balance, pension, annuity or retirement allowance of any ERS member, former member or retirant only upon a finding by the court by a preponderance of the evidence that the felony is “related to the employment of the member, former member, or retirant.”⁵ “Related to the employment” was further defined as occurring when the employee of the State or county “**uses or attempts to use the employee’s official position** to commit the felony.” (Emphasis added). Clearly the drafters of Act 84 were aware that the only way to pass constitutional equal protection scrutiny was by requiring that forfeiture only occur based on the rational basis that the State and counties have in

³ Stand. Com. Rep. No. 1256 on HB670 (2021 Sess.)

⁴ Stand. Comm. Rep. No. 1658 on HB670 (2021 Sess.)

⁵ Subsection (c) of HRS § 88-74.8 states:

(c) For the purposes of this section, a felony is “related to the employment” or an employee of the State or a county if the employee uses or attempts to use the employee’s official position to commit the felony, including:

- (1) Felonies in which state or county time, equipment, or other facilities are used in the commission of the felony;
- (2) Bribery;
- (3) Embezzlement, theft, or other unlawful taking, receiving, retaining, or failing to account properly for, any property or funds that belong to the State or any county, or any department, bureau, board, or other agency thereof; or
- (4) Felonies committed against a person over whom the employee, in the course of the employee’s duties, exercises custody or supervision.

ensuring that its employees do not exploit their positions or duties as government employees to commit felonies.

By contrast, the instant bill does not require any connection between the employee's State or county employment and the offense. A felony conviction under HRS § 132D-14 regardless of the circumstances and regardless of whether there is any connection whatsoever to the employee's State or county employment would subject them to forfeiture of half of their ERS benefits. Simply put, there is no rational basis for the instant bill as the mere fact that a person is a State or county employee does not rationally justify subjecting them to enhanced penalties. In addition to being unconstitutional, passing such a bill is a slippery slope. Without the requisite rational basis connecting the employees' position or duties and the crime, future legislation could create a similar forfeiture of ERS benefits for conviction of any felony offense.⁶

Thank you for the opportunity to comment on this measure.

⁶ Indeed if the only justification for such a penalty is the State's general interest in the ethics of its employees, it is not rational to limit its scope to only fireworks-related felonies. The fact that the bill singles out only fireworks-related felonies with no justification for that focus further highlights the lack of a rational basis for the bill.



UNITED PUBLIC WORKERS

AFSCME Local 646, AFL-CIO

**HOUSE OF REPRESENTATIVES
THE THIRTY-THIRD LEGISLATURE
REGULAR SESSION OF 2025**

COMMITTEE ON LABOR
Rep. Jackson D. Sayama, Chair
Rep. Mike Lee, Vice Chair

Tuesday, January 28, 2024, 9:00 AM
Conference Room 309 & Videoconference

Re: Testimony on HB806 – RELATING TO FIREWORKS

Chair Sayama, Vice Chair Lee, and Members of the Committee:

The United Public Workers, AFSCME Local 646, AFL-CIO (“UPW”) is the exclusive bargaining representative for approximately 14,000 public employees, which includes 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.

UPW **opposes** Part III of HB640, which authorizes a court to order the forfeiture of one-half of any pension of an Employees' Retirement System (“ERS”) member, former member, or retirant upon conviction of the individual for a felony related to certain uses of prohibited fireworks.

This bill appears to mirror Act 84, Session Laws of Hawaii (“SLH”) 2021, which authorized a court to order the forfeiture of one-half of the ERS benefits of an ERS member, former member, or retirant upon conviction of the individual for a felony related to the State or county employment of the individual. In Section 88-74.8, Hawaii Revised Statutes, which was created by Act 84, SLH 2021, there is a clear nexus between the felony conviction and the civil penalty, which is that the State or county employee used or attempted to use their official position to commit the felony they were convicted of.

In HB640, there is no nexus between the felony conviction under Section 132D-14 and the forfeiture of ERS benefits. We understand that there is need to find creative solutions to address the proliferation of illegal fireworks use, particularly in the wake of the Aliamanu New Year’s Eve explosion of 2024, but we believe this measure is overreaching and unfairly targets current, former, and retired public employees. We humbly request that this committee amend this measure by removing Part III.

Mahalo for this opportunity to testify in support of this measure.

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HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
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The Thirty-Third Legislature, State of Hawaii
The House of Representatives
Committee on Labor

Testimony by
Hawaii Government Employees Association

January 28, 2025

H.B. 806 — RELATING TO FIREWORKS

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly opposes the concept of H.B. 806, Section 4, which authorizes a court to order the forfeiture of one-half of any pension of an Employees' Retirement System (ERS) member, former member, or retirant upon conviction of the individual for a felony related to certain uses of prohibited fireworks.

While we have no objections and can understand the proposed appropriation of funds to the respective law enforcement agencies to enforce firework ordinance or laws, we have serious concerns that this measure would also aim to specifically single out and grant authority to the courts to reduce a public employee's pension by one half. **Our members pensions are earned benefits that they have paid into for decades and should not be touched.** We find it troubling and inequitable to propose a punishment solely for a specific group of individuals and no other groups, even if the specific felony has no connection to that individuals' duties and responsibilities within their respective public position. Tinkering with their pension may have significant impact on their post-employment lively hood for decades. Is there data that indicates that the vast majority of public employees and retirees participate in illegal fireworks? We find Section Four of this measure to be extremely distrustful to the many current and retired public servants that have and continue to serve our community, therefore we respectfully request that Section 4 of this bill be omitted.

Thank you for the opportunity to provide testimony in opposition of H.B. 806.

Respectfully submitted,

Randy Perreira
Executive Director

HB-806

Submitted on: 1/24/2025 11:43:27 PM

Testimony for LAB on 1/28/2025 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Teresa Parsons	Individual	Support	Written Testimony Only

Comments:

Committee Representatives.

I stand in **STRONG** support of measures like HB 806 which strengthens laws to stop the rampant use of explosive fireworks. As a combat Veteran, the unpredictable and excessively loud explosions trigger my PTSD and renders me unable to concentrate for hours afterwards.

I can manage the traditional rolls of red firecrackers, but not the large aerials and percussive explosives. The frequent, random and unpredictable presence of these deadly incendiary devices is unacceptable.

Please, please pass this bill to provide teeth to the laws for this type of explosive. It has **NO** place in our communities.

Mahalo for allowing the opportunity to share my story.

HB-806

Submitted on: 1/25/2025 5:26:26 PM

Testimony for LAB on 1/28/2025 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Beverly Heiser	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Sayama, Vice Chair Lee and Committee Members,

I STRONGLY SUPPORT HB806 that would appropriate funds for the Honolulu Police Department (HPD) and the Department of Law Enforcement (DLE) to conduct sting operations on Oahu to enforce fireworks ordinances or laws; and authorizes a court to order the forfeiture of one-half of any pension of an Employees' Retirement System (ERS) member, or retiring upon conviction of the individual for a felony related to certain uses of prohibited fireworks.

This bill provides the strong deterrents that are needed. The sting operations will unveil buyers and sellers, and will make it easier to enforce the law based on simply possessing fireworks. Depending on the amount, 25 pounds or more is a Class C felony, and under 25 pounds a misdemeanor that can be punishable by fines and prison. This makes so much more sense than taking videos and trying to go after people igniting fireworks, because once fireworks explode there is no admissible evidence and these type of cases cannot be prosecuted. To forfeit one-half of any pension of ERS members if convicted of a felony related to certain uses of prohibited fireworks should make anyone think twice.

The Aliamanu tragedy was sad and it is hopeful that the lives loss and those suffering with life changing critical injures were not for nothing, but will provide the wake-up call to get serious about the use of illegal fireworks. This all starts with legislators creating laws to invoke stiffer penalties, higher fines, and enforcement to the fullest extent of the law, in order to instill a fear of getting caught and to induce deterrence. This may require more appropriations committed this year to be effective, but how do you put a price on lives loss, life changing deformities and psychological issues that may require medical attention for the rest of one's life? Yes, Enough is Enough.

Any law that exists will do nothing unless all are able to do their part to cite, enforce, arrest, confiscate, prosecute and report violators. That includes, HPD, LPD, Judges, Prosecutors, the Public, and anyone else involved in the process. Lax penalties and leniency have not proved to be effective. Dropping cases for first time offenders has been happening, has not worked and sends the wrong message to violators. Judges and Prosecutors need to get tough.

Please support HB806 and thank you for the opportunity to testify.

HB-806

Submitted on: 1/25/2025 5:47:26 PM

Testimony for LAB on 1/28/2025 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Samuel M Mitchell	Individual	Support	Written Testimony Only

Comments:

I support the intent of HB 80 but I think taking away 1/2 of a persons state retirement is to harsh. I propose that it be reworded to say up to 1/2 of the retirement pay be taken away for persons caught selling illegal fireworks that are greater than 50 lbs.. I also think allowing the state & city police to do sting operations may work but you need to require video & voice recording to verify the person age and where he live's.

Samuel Mitchell

Makikiki NB-10 & Nextdoor Stop all illegal Fireworks Group

HB-806

Submitted on: 1/26/2025 12:39:29 AM

Testimony for LAB on 1/28/2025 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Brett Kulbis	Individual	Comments	Written Testimony Only

Comments:

Chair Sayama and Committee Members,

My name is Brett Kulbis, I'm a 26yr Navy Veteran and Retired Civil Servant. I live in Ewa Beach.

While I like the intent of this bill, I believe the appropriation is to open and should be amended:

1. Appropriations should also include all counties and not just be limited to the City and County of Honolulu. While Honolulu has the most issues, the other counties also have the issue and need support.
2. Appropriation for City and County of Honolulu should be earmarked for the hiring of more officers or payment of overtime for officers needed on holidays when use of fireworks peaks. It has been reported for years that HPD is short anywhere between 200-300 officers.
3. Appropriations for DLE should be earmarked for the hiring of full time officers specifically within the Illegal Fireworks Taskforce. It has been reported that the task force has 11 positions that are currently being filled by officers on a part-time basis. I'm sure this has been done, but how much money did Governor Green or AG Lopez ask for in their budgets, and is this appropriation really needed for DLE.

Respectfully, I encourage you to consider making these amendments before voting on HB-806.

HB-806

Submitted on: 1/27/2025 10:05:26 AM

Testimony for LAB on 1/28/2025 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Gordon B. Lindsey	Individual	Support	Written Testimony Only

Comments:

I am in support of HB806 because a special task force is needed to find and confiscate all illegal fireworks. However, the language used to take a portion of earnings from only a government worker would be unfair. Everyone, who violates should pay a hefty fine.

HB-806

Submitted on: 1/27/2025 3:06:51 PM

Testimony for LAB on 1/28/2025 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Master Shelby "Pikachu" Billionaire	Kingdom of The Hawaiian Islands	Support	Written Testimony Only

Comments:

Dear Members of the Hawaii House of Representatives,

I am writing to express my support for House Bill No. 806, which takes proactive steps towards mitigating the dangers posed by illegal fireworks through targeted enforcement and punitive measures. This legislation addresses a pressing public safety issue that has led to loss of life, property damage, and environmental degradation in our communities.

Support for the Bill w/ Reservations (Detailed Below)

- **Enhanced Enforcement:** The appropriation of funds for sting operations by the Honolulu Police Department and the Department of Law Enforcement is a commendable initiative to curb the rampant use of illegal fireworks. Such measures will undoubtedly help in reducing the immediate public safety risks associated with fireworks.
- **Deterrence Through Penalties:** The provision allowing for the forfeiture of half of a state employee's pension upon conviction for fireworks-related felonies sends a strong message about accountability and the seriousness with which we treat this issue. It particularly underscores the state's commitment to ethical governance and public safety.

Reservations and Areas for Improvement:

However, despite my support, I have reservations due to several critical omissions in the bill. Here's an analysis of House Bill No. 806 with a focus on identifying gaps concerning ports, customs, border patrol, and international shipping corruption, relating to House Bill No. 806.

Analysis of Missing Elements:

1. Ports and Customs:
 - Gap: The bill does not address the importation of fireworks through ports, which is a critical entry point for illegal fireworks. There's no mention of how customs should handle or detect illegal fireworks shipments.
 - Implication: Without focusing on customs procedures, the bill misses an opportunity to tackle the source of illegal fireworks, which often come from abroad.
2. Customs & Border Patrol: (CBP, as seen on National Geographic "How to Catch a Smuggler")
 - Gap: There's no mention of how border patrol or similar agencies might prevent the cross-state or international transport of illegal fireworks into Hawaii.
 - Implication: This leaves a potential vulnerability where fireworks might be smuggled from neighboring states or countries, bypassing local enforcement efforts.
3. Corruption in International Shipping: (Matson, Stevedores, Unions, Black Market)
 - Gap: The bill lacks provisions or acknowledgment of the potential corruption within international shipping that could facilitate the smuggling of illegal fireworks.
 - Implication: Without addressing potential corruption or oversight in shipping, the effectiveness of the bill's enforcement strategies might be undermined.
4. Cartels, Triads, and Organized Crime:
 - Gap: There's no specific mention or strategy to deal with organized crime groups potentially involved in the fireworks black market, even though these groups often exploit such markets.
 - Implication: Organized crime could continue to operate or even grow within this market without targeted law enforcement strategies.
5. China and Smuggled Goods:
 - Gap: Given that many fireworks come from China, the bill does not discuss how to manage or prevent smuggling from this or other significant sources of fireworks.
 - Implication: This oversight might allow continued importation of fireworks through established smuggling routes or corrupt practices.
6. Recent Corruption at Ports (e.g., LA Port Smuggling):
 - Gap: The bill does not leverage recent events of smuggling or corruption at ports to strengthen its approach to fireworks control.
 - Implication: Learning from other regions' experiences with port security could enhance local strategies to prevent similar issues in Hawaii.

Recommendations for Improvement:

- **Port Security Enhancements:** The bill should include provisions for enhanced port security or cooperation with customs to better screen incoming shipments for illegal fireworks.
- **Border Patrol Collaboration:** Propose measures or partnerships with border protection agencies to monitor and intercept illegal fireworks at entry points into Hawaii.
- **Addressing Shipping Corruption:** Include strategies or funding for investigations into potential corruption in the shipping industry, particularly for fireworks imports.
- **Organized Crime Focus:** Develop specific law enforcement tactics aimed at dismantling the involvement of organized crime in the illegal fireworks trade, possibly including multi-agency task forces.
- **International Cooperation:** Suggest mechanisms for cooperation with countries like China to control the export of fireworks or at least to ensure they are not smuggled into Hawaii.
- **Learning from Recent Incidents:** Use recent smuggling cases at other ports as case studies to improve local enforcement tactics, possibly through intelligence sharing with federal agencies or neighboring states.

In conclusion, while H.B. No. 806 takes significant steps toward combating the illegal use of fireworks through local enforcement and severe penalties, it overlooks critical points of entry and corruption in the supply chain. Addressing these gaps could make the legislation more robust and effective in reducing the availability and use of illegal fireworks in Hawaii.

Sincerley,

Master Shelby "Pikachu" Billionaire

Kingdom of The Hawaiian Islands, HRM