

DAVID Y. IGE  
GOVERNOR



THOMAS WILLIAMS  
EXECUTIVE DIRECTOR

KANOE MARGOL  
DEPUTY EXECUTIVE DIRECTOR

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

TESTIMONY BY THOMAS WILLIAMS  
EXECUTIVE DIRECTOR, EMPLOYEES' RETIREMENT SYSTEM  
STATE OF HAWAII

TO THE HOUSE COMMITTEE ON HEALTH  
ON  
HOUSE BILL NO. 913

JANUARY 31, 2017 at 8:30 A.M.

RELATING TO MEDICAL COVERAGE FOR FIREFIGHTERS

Chair Belatti, Vice Chair Kobayashi and Members of the Committee,

H.B. 913 proposes to provide firefighters who develop cancer expanded benefits including service-connected disability retirement benefits for "hazardous duty related diseases" that are presumed to arise out of and in the course of employment.

Currently, Section 88-79, HRS, provides for service-connected disability benefits for a member who is permanently incapacitated for duty as the natural and proximate result of an accident occurring while in the actual performance of duty or as the cumulative result of an occupational hazard. In addition, Sections 88-84 and 88-85, HRS, provide for ordinary and accidental death benefits to be paid to an ERS member's designated beneficiary, spouse or reciprocal beneficiary, and/or dependent children. Both Sections 88-79 and 88-85, HRS, already include a rebuttable presumption that firefighters, police officers and sewer workers who are permanently incapacitated for duty or who die as a result of any condition or impairment of health caused by any disease of the heart, lungs, or respiratory system, contracted the disease while in the performance of duty and as the result of the inherent occupational hazard of exposure to smoke inhalation, toxic gases, chemical fumes, and other toxic vapors. H.B. 913 proposes to add a new chapter to the Hawaii Revised Statutes that would have the effect of amending Section 88-79 and, perhaps, Section 88-85.

The additional cancer presumption for service-connected disability retirement provided by H.B. 913 represents a benefit enhancement. Under HRS 88-99, there is to be no benefit



Employees' Retirement System  
of the State of Hawaii

enhancement under HRS Chapter 88 until such time as the ERS's assets are 100% of the ERS's actuarial accrued liability. With an unfunded liability of \$12.4 billion and a funded ratio of 54.7% the ERS is far below 100% of its actuarial accrued liability. This bill would be in violation of HRS 88-99.

In addition, the new chapter proposed by H.B. 913 has a number of flaws.

First, it is unclear which provisions of the new chapter proposed by H.B. 913 are to apply to the ERS. The ERS does not provide health coverage as described in section 2 of the new chapter, nor does it provide weekly income and indemnity benefits for a permanent total disability as described in section 6 of the new chapter. The definitions in section 2 of the new chapter are inconsistent with ERS definitions and terminology. The definition of firefighter in section 2 includes federal employees who are not covered the ERS. The ERS does not use "disability" or "total disability" in its statutes. The payments after death described in section 6 of the new chapter are inconsistent with the payments that the ERS makes for ordinary and accidental death benefits under Sections 88-84 and 88-85, HRS. H.B. 913 should be revised to make it clear which provisions of the new chapter apply and do not apply to the ERS. Further, any changes applicable to the ERS should be made through amendments to ERS statutes such as Sections 88-79 and 88-85 rather than through a new chapter outside of HRS Chapter 88.

Second, the presumption that the new chapter proposes to create is materially different and inconsistent with the rebuttable presumptions already present in ERS statutes. The presumptions in favor of firefighters under Sections 88-79 and 88-85, HRS, may be rebutted by "competent evidence" to the contrary. Under sections 4(b) and 5(c) of the new chapter, the presumption created by H.B. 913 is rebuttable only by "substantial evidence" to the contrary, a higher standard used in workers' compensation law. It would be anomalous to have two different standards for rebutting presumptions in the ERS statutes – one for firefighters with a hazardous duty related disease and one for firefighters, police officers, and sewer workers with conditions or impairments caused by other diseases of the heart, lungs, or respiratory system. In addition, section 5(a) of the new chapter presumes that the death or hazardous duty related disease of a firefighter arises out of and in the course of employment. The "arise out of and in the course of employment" language is not used in the ERS statutes to describe what is required to trigger a grant of service-connected disability retirement or accidental death benefits. Service-connected disability retirement under Section 88-79 and accidental death benefits under Section 88-85 require that a firefighter's permanent incapacity or death be the result of an "accident occurring while in the actual performance of duty at some definite time and place" or the "cumulative result of some occupational hazard." Section 5(b) of the new chapter provides that notwithstanding the existence of non-industrial predisposing or contributing factors, a firefighter permanently incapacitated as a result of a hazardous duty related disease shall receive service-connected disability retirement if he/she has been exposed to a known carcinogen resulting from the performance of job duties. The exclusion of predisposing or contributing factors and the requirement of exposure to a known carcinogen are not present in Section 88-79, HRS. Again, it would be anomalous for different standards and requirements to apply to firemen incapacitated due to a hazardous duty related disease and other firemen,

police officers, and sewer workers with a condition or impairment caused by disease of the heart, lungs, or respiratory system. Finally, section 5(c) of the new chapter states that the presumption shall be extended to a firefighter in perpetuity following termination of service. However, a firefighter's application for ERS service-connected disability retirement must be made while the firefighter is still a member of the ERS (an active employee) and must be made within two years of the date of the firefighter's accident or the date upon which workers' compensation benefits cease, whichever is later. See Section 88-79(a)(2), HRS. An application for accidental death benefits must be made no later than three years after a firefighter's death. See Section 88-85.5(a). Unless corrected, the foregoing differences and inconsistencies will cause confusion and difficulties in the ERS's administration of service-connected disability retirement and accidental death benefits.

Third, under section 7 of the new chapter, a firefighter whose hazardous duty related disease causes permanent total disability receives a weekly benefit equal to one hundred percent of the firefighter's weekly wages. If the same firefighter is also to receive service-connected disability retirement benefits from the ERS, the firefighter would likely receive more than his/her compensation as an active employee. ERS statutes generally limit a retired firefighter to a maximum retirement allowance of 80% of their average final compensation. See Section 88-74(b), HRS.

As of the submittal of this testimony, the Board of Trustees of the Employees' Retirement System (ERS) has not yet reviewed H.B. 913 and therefore has not yet taken a formal position on this cancer presumptive disability legislation; however, staff believes that the ERS Board of Trustees will oppose any legislation which provides for enhanced retirement benefits and the resulting increase in the unfunded liability of the System.

On behalf of the Board of Trustees and staff of ERS we wish to thank you for the opportunity to testify.



An Independent Licensee of the Blue Cross and Blue Shield Association

January 31, 2017

The Honorable Della Au Belatti, Chair  
The Honorable Bertrand Kobayashi, Vice Chair  
House Committee on Health

Re: HB 913 – Relating to Medical Coverage for Firefighters

Dear Chair Belatti, Vice Chair Kobayashi, and Committee Members:

The Hawaii Medical Association (HMSA) appreciates the opportunity to testify on HB 913, that would expand access to comprehensive medical coverage and service-connected disability retirement benefits for hazardous duty related diseases for firefighters. HMSA is empathetic to the dangers and health risks Hawaii's firefighters face. However, we do have concerns with Bill as written, and we offer comments.

As we understand this legislation, HB 913 places the administration of firefighter cancer benefits outside of the Workers Compensation (WC) system. The Bill presumes that if a firefighter contracts a cancer, that cancer was contracted as a result of the firefighter's employment. However, despite potentially being compensable under the WC system, the firefighter further may seek medical service from a non-WC provider, and the firefighter's private health plan will cover the medical benefits at the firefighter's health plan's "usual and customary charge" levels.

HB 913 effectively removes firefighter cancer cases from the WC system, even if the cancer is a result of the firefighter's employment. While we do cover the costs of cancer treatment-related services, bypassing the WC system may result in increased costs for insuring firefighters – a cost to the EUTF and the healthcare system.

While this Bill specifically addresses firefighters with cancer, we additionally are concerned that other groups of employees who similarly face dangerous work conditions (e.g., police officers, wastewater system employees, employees who process solid waste) may argue for their potential WC cases to be administered outside of the WC system.

The impact of this legislation is wide-ranging. It impacts the State's WC system, the EUTF, and the healthcare system. Given that, we would appreciate the opportunity to work with the Committee to clarify and address the concerns which have given rise to this legislation.

Thank you for allowing us to provide testimony on HB 913. Your consideration of our concerns is appreciated.

Sincerely,

Mark K. Oto  
Director, Government Relations.

DAVID Y. IGE  
GOVERNOR

SHAN S. TSUTSUI  
LIEUTENANT GOVERNOR



LINDA CHU TAKAYAMA  
DIRECTOR

LEONARD HOSHIJO  
DEPUTY DIRECTOR

STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
830 PUNCHBOWL STREET, ROOM 321  
HONOLULU, HAWAII 96813  
[www.labor.hawaii.gov](http://www.labor.hawaii.gov)  
Phone: (808) 586-8844 / Fax: (808) 586-9099  
Email: [dllr.director@hawaii.gov](mailto:dllr.director@hawaii.gov)

January 31, 2017

To: The Honorable Della Au Belatti, Chair,  
The Honorable Bertrand Kobayashi, Vice Chair, and  
Members of the House Committee on Health

Date: Tuesday, January 31, 2017  
Time: 8:30 a.m.  
Place: Conference Room 329, State Capitol

From: Linda Chu Takayama, Director  
Department of Labor and Industrial Relations (DLIR)

**Re: H.B. No. 913 Relating to Medical Coverage for Firefighters**

**I. OVERVIEW OF PROPOSED LEGISLATION**

This proposal is intended to improve access for firefighters to comprehensive medical coverage and service-connected disability retirement benefits for hazardous duty related diseases that are presumed to arise out of and in the course of employment. This bill adds a new chapter to the Hawaii Revised Statutes (HRS), entitled "Hazardous Duty Related Diseases Treatment Insurance Benefits."

The department provides comments on the proposal.

**II. CURRENT LAW**

Section 386-3, HRS, defines injury and provides that the employee's employer shall pay compensation to the employee or the employee's dependents as provided in chapter 386 if an employee suffers personal injury either by accident arising out of and in the course of employment, or by disease proximately caused by or resulting from the nature of the employment.

Section 386-73.5, HRS, establishes that the director of labor and industrial relations has original jurisdiction over all controversies and disputes arising out of workers' compensation.

Section 386-85, HRS, provides a presumption of employment and compensation for a work-covered work injury, in the absence of substantial evidence to the contrary.

Section 386-86, HRS, establishes an informal hearing process that is not subject to chapter 91.

### **III. COMMENTS ON THE HOUSE BILL**

- The department appreciates the intent of this proposal to ensure that firefighters receive the proper medical treatment in a timely manner, as well as lessen the impact due to the effects of cancer. However, the department has concerns that this measure will set a precedent in carving out certain classes of workers from the Workers' Compensation law.
- The department recognizes that there may be times a firefighter will receive benefits covered under the proposed measure as well as chapter 386, HRS, creating a dual system. We are unclear of what administrative burden this will create given the Disability Compensation Division's limited staffing and resources.
- The department is concerned with a possible increase of insurance premiums resulting from this measure. In addition, the measure is unclear as to who is responsible for the copayment, deductible, and coinsurance provisions (firefighter or employer).
- The measure addresses the termination of benefits if the firefighter is able to resume work. In the case that the firefighter disagrees with the employer, rules need to be promulgated to address this process. In addition, the measure does not provide for a hearing process, the appeal rights, and whether chapter 91 applies to these procedures. The department has concerns with the July 1, 2017 effective date to address these procedural matters.

DEPARTMENT OF HUMAN RESOURCES  
**CITY AND COUNTY OF HONOLULU**  
650 SOUTH KING STREET, 10<sup>TH</sup> FLOOR • HONOLULU, HAWAII 96813  
TELEPHONE: (808) 768-8500 • FAX: (808) 768-5563 • INTERNET: www.honolulu.gov/hr

**LATE**

KIRK CALDWELL  
MAYOR



CAROLEE C. KUBO  
DIRECTOR

NOEL T. ONO  
ASSISTANT DIRECTOR

January 31, 2017

The Honorable Della Au Belatti, Chair  
and Members of the Committee  
on Health  
The House of Representatives  
State Capitol, Room 329  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Au Belatti and Members of the Committee:

**SUBJECT: House Bill No. 913  
Relating to Medical Coverage for Firefighters**

H.B. 913 is intended to provide firefighters who develop cancer with (a) improved access to comprehensive medical coverage, (b) a presumption of work-relatedness for service-connected disability retirement benefits and (c) indemnity benefits outside of workers' compensation. As fully set forth below, the City and County of Honolulu has serious concerns, especially regarding the indemnity provisions set forth in H.B. 913.

With respect to indemnity, H.B. 913 is clearly designed to provide firefighters who develop cancer with the same benefits, albeit in a higher amount, that the individuals would have received under Hawaii's workers' compensation law had the injuries been deemed work-related. However, the bill fails to recognize and provide the corresponding benefit that employers receive under the "grand compromise" that led to workers' compensation laws being enacted over a century ago, i.e. the exemption from liability for workplace injuries for employers. Absent any such exclusivity provision, the State and counties would be subject to lawsuits from firefighters and their dependents for their injuries while also being required to provide indemnity benefits to these individuals. This would clearly result in double recovery for firefighters and/or their dependents to the fiscal detriment of the government entities that employ them.

The Honorable Della Au Belatti, Chair  
and Members of the Committee  
on Health  
The House of Representatives  
January 31, 2017  
Page 2

The bill similarly fails to provide any mechanism whereby the City could either institute a third-party lawsuit against the parties responsible for the hazardous duty related disease or authorize the right of a first lien against any recovery should the firefighter receive a judgment or settlement. This deficiency creates the potential for double recovery for the employee and/or the individual's dependents.

The bill also leaves open the question of who has jurisdiction should a dispute arise under the newly proposed chapter. While a few of the provisions covering indemnity benefits appear to give the decision-making responsibility to the Director of Labor and Industrial Relations, jurisdiction over all other issues related to compensability and indemnity are not addressed, nor is jurisdiction for those that may arise regarding the health coverage, health screening and disability retirement provisions set forth in the bill. Given the disparate components of the legislation, it is difficult to even assess where that responsibility should be placed.

The City is also concerned that H.B. 913 requires total disability benefits to be paid at 100% of the firefighter's weekly wages. Under workers' compensation, the same benefits would be paid at 66 2/3% of the firefighter's average weekly wages. There appears to be no basis from a public policy standpoint for the disparity and we would ask that the committee amend this portion of the bill accordingly.

Finally, we note there are areas of the bill that need to be clarified and/or amended. For example, "Section -8" of Section 2 refers to a "maximum weekly benefit rate" which is neither defined in the section or in "Section -1."

While the City supports the intent of the bill, we believe that additional discussions among the interested stakeholders should occur in light of the concerns expressed above. We would therefore request that decision-making on the bill be deferred until those issues can be properly addressed.

Thank you for the opportunity to testify.

Sincerely,



Carolee C. Kubo  
Director



**Bernard P. Carvalho, Jr.**  
Mayor



**Robert F. Westerman**  
Fire Chief

**Wallace G. Rezendes, Jr.**  
Managing Director

**Kilipaki K. F. Vaughan**  
Deputy Fire Chief

**KAUA'I FIRE DEPARTMENT**  
**County of Kaua'i, State of Hawai'i**  
4444 Rice Street, Suite 315, Lihu'e, Hawai'i 96766  
TEL (808) 241-4980 FAX (808) 241-6508



January 30, 2017

The Honorable Della Au Belatti, Chair  
Committee on Health  
House of Representatives  
State Capitol, Room 402  
Honolulu, Hawaii 96813

Dear Chair Belatti:

**Subject: House Bill (HB) 913 Relating to Medical Coverage for Firefighters**

I am Robert F. Westerman, Vice-Chair of the Hawaii State Fire Council (SFC) and Fire Chief of the Kauai Fire Department (KFD). The SFC and the KFD support HB 913, which proposes to provide fire fighters who develop cancer with expanded benefits that improving access to comprehensive medical coverage and disability benefits for hazardous duty-related diseases.

Over the last decade, the fire profession has experienced an increase in fire fighter deaths related to cancer. The University of Cincinnati and the National Institute for Occupational Safety and Health conducted studies as a result of the initial findings. They are the most comprehensive investigations into cancer-related diseases incurred by career fire fighters to date and support the initial findings. The State of Hawaii (State) cancer taskforce performed an investigative study with assistance from medical insurance companies and found that fire fighters in the State are also experiencing elevated levels of exposure to the effects of cancer-related diseases correlating Hawaii's information with the national studies.

If passed, this bill will provide the fire fighter and their family with the financial and moral support they need during this crisis.

The SFC and the KFD urge your committee's passage of HB 913 for the welfare of our fire fighters.

Please contact me at (808) 241-4975 or [rwesterman@kauai.gov](mailto:rwesterman@kauai.gov) should you have any questions or require additional information regarding this matter.

Sincerely,

Robert Westerman  
Fire Chief, County of Kaua'i

RFW/eld

**January 31, at 8:30 a.m.**  
**Conference Room 313**

**House Committee on Health**

To: Representative Della Au Belatti, Chair  
Representative Bertrand Kobayashi, Vice Chair

From: Jen Chahanovich  
CEO, Wilcox Memorial Hospital

**Re: Testimony in Support – HB 313**

My name is Jen Chahanovich and I am the chief executive officer of Wilcox Memorial Hospital. Founded in 1938, Wilcox Memorial Hospital is a not-for-profit hospital dedicated to providing the Kaua'i community with accessible, quality health care. Wilcox is the largest medical facility on Kaua'i and has been recognized as one of the nation's best small hospitals. With 185 physicians on staff, Wilcox Memorial Hospital offers island residents and visitors expert diagnosis and treatment for more than 22 specialties. It is a state-of-the-art acute care facility with a full suite of services including emergency, OB/GYN, pediatrics, cardiology, gastroenterology, ophthalmology, pulmonology, nephrology, orthopedics, neurology, internal medicine and family practice.

I am writing in **support** of HB 313 which appropriates funds for one ambulance unit each for the County of Kaua'i and the County of Hawai'i, including equipment, supplies, and personnel costs. Timely access to life-saving health care is essential for all communities. The availability of ambulances and emergency medical personnel are critical components to making sure patients are transported to hospitals as quickly as possible and greatly improves outcomes. The appropriation provided in this measure will enhance the delivery of emergency medical services and remove some of the barriers to obtaining needed services.

Thank you for the opportunity to testify.



## HAWAII FIRE FIGHTERS ASSOCIATION

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS LOCAL 1463, AFL-CIO  
1018 PALM DRIVE, HONOLULU, HAWAII 96814-1929  
TELEPHONE (808) 949-1566 FAX: (808) 952-6003  
WEBSITE: [www.hawaiifirefighters.org](http://www.hawaiifirefighters.org)

THE HOUSE OF REPRESENTATIVES  
THE TWENTY-NINTH LEGISLATURE  
REGULAR SESSION OF 2017  
January 31, 2017

**LATE**

Committee on Health

Testimony by  
Hawaii Fire Fighters Association

H.B. No. 913                      Relating to Medical Coverage for Fire Fighters

The Hawaii Fire Fighters Association (HFFA), Local 1463, IAFF, AFL-CIO, representing approximately 2,000 active-duty professional fire fighters throughout the State, supports H.B. No. 913.

H.B. No. 913 proposed to improve access to comprehensive medical coverage and service-connected disability retirement benefits for hazardous duty related diseases that are presumed to arise out of and in the course of employment for fire fighters.

As a stakeholder participating on the Task Force convened in 2016 in response to H.C.R. No. 32, H.D. 1, S.D. 1, HFFA is grateful that H.B. No. 913 addresses the concerns of the fire service.

Thank you for the opportunity to testify and HFFA respectfully requests favorable consideration of these measures.



**BOARD OF TRUSTEES**  
RODERICK BECKER, *CHAIRPERSON*  
AUDREY HIDANO *VICE-CHAIRPERSON*  
GORDON MURAKAMI, *SECRETARY-TREASURER*  
LINDA CURRIVAN MUSTO  
WESLEY MACHIDA  
CELESTE Y.K. NIP  
JAMES NISHIMOTO  
VIRGINIA PRESSLER  
CLIFFORD UWAINE

**ADMINISTRATOR**  
DEREK M. MIZUNO

**ASSISTANT ADMINISTRATOR**  
DONNA A. TONAKI

**LATE**

**STATE OF HAWAII**  
**HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND**  
P.O. BOX 2121  
HONOLULU, HAWAII 96805-2121  
Oahu (808) 586-7390  
Toll Free 1(800) 295-0089  
www.eutf.hawaii.gov

**TESTIMONY BY DEREK MIZUNO**  
**ADMINISTRATOR, HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND**  
**DEPARTMENT OF BUDGET AND FINANCE**  
**STATE OF HAWAII**  
**TO THE HOUSE COMMITTEE ON HEALTH**  
**ON**  
**HOUSE BILL NO. 913**

January 31, 2017, 8:30 a.m.

RELATING TO MEDICAL COVERAGE FOR FIREFIGHTERS

Chair Belatti, Vice Chair Kobayashi, and Members of the Committee:

The Hawaii Employer-Union Health Benefits Trust Fund (EUTF) Board of Trustees has not had an opportunity to take a position on this bill. The EUTF Board's next meeting is February 21, 2017.

However, the EUTF staff seeks clarification on how the firefighters' hazardous duty related diseases are covered:

1. Under workers' compensation with provider reimbursement based on the usual and customary charged comparable to mutual benefit societies, health maintenance organizations, and the EUTF OR
2. Under the firefighters EUTF or private insurance coverage.

If coverage for the firefighters' hazardous duty related diseases is under the EUTF or private insurance, the levels of coverage will differ based on the plan selected.

The EUTF alone has six different medical plans and three different prescription drug

plans with differing levels of coverage. The EUTF staff respectfully requests clarification regarding this matter.

Thank you for the opportunity to testify.

DAVID Y. IGE  
GOVERNOR

SHAN S. TSUTSUI  
LIEUTENANT GOVERNOR



LINDA CHU TAKAYAMA  
DIRECTOR

LEONARD HOSHINO  
DEPUTY DIRECTOR

STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
830 PUNCHBOWL STREET, ROOM 321  
HONOLULU, HAWAII 96813  
[www.labor.hawaii.gov](http://www.labor.hawaii.gov)  
Phone: (808) 586-8844 / Fax: (808) 586-9099  
Email: [dlir.director@hawaii.gov](mailto:dlir.director@hawaii.gov)

**LATE**

January 30, 2017

The Honorable Della Au Belatti, Chair  
Committee on Health  
House of Representatives  
State Capitol, Room 402  
Honolulu, Hawaii 96813

Dear Chair Belatti:

Subject: House Bill (HB) 913 Relating to Medical Coverage for Firefighters

I am Manuel P. Neves, Chair of the Hawaii State Fire Council (SFC) and Fire Chief of the Honolulu Fire Department (HFD). The SFC and the HFD support HB 913, which proposes to provide fire fighters who develop cancer with expanded benefits that improving access to comprehensive medical coverage and disability benefits for hazardous duty-related diseases.

Over the last decade, the fire profession has experienced an increase in fire fighter deaths related to cancer. The University of Cincinnati and the National Institute for Occupational Safety and Health conducted studies as a result of the initial findings. They are the most comprehensive investigations into cancer-related diseases incurred by career fire fighters to date and support the initial findings. The State of Hawaii (State) cancer taskforce performed an investigative study with assistance from medical insurance companies and found that fire fighters in the State are also experiencing elevated levels of exposure to the effects of cancer-related diseases correlating Hawaii's information with the national studies.

If passed, this bill will provide the fire fighter and their family with the financial and moral support they need during this crisis.

The SFC and the HFD urge your committee's passage of HB 913 for the welfare of our fire fighters.

The Honorable Della Au Belatti, Chair  
Page 2  
January 30, 2017

Should you have questions, please contact SFC Administrator Socrates Bratakos at 723-7105 or [sbratakos@honolulu.gov](mailto:sbratakos@honolulu.gov).

Sincerely,



MANUEL P. NEVES  
Chair

MPN/LR:clc