



EXECUTIVE CHAMBERS
KE KE'ENA O KE KIA'ĀINA

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA

House Committee on Finance

Thursday, March 5, 2026

2:00 p.m.

State Capitol, Conference Room 308 and Videoconference

In Support

House Bill No. 2358, HD1, Relating to Retirement

Chair Todd, Vice Chair Takenouchi, and Members of the House Committee on Finance:

The Office of the Governor supports H.B. No. 2358, HD1, Relating to Retirement. This measure is intended to strengthen the stability of the Department of Law Enforcement by enhancing recruitment, retention, and parity among the State's law enforcement positions through retirement benefits.

Additionally, the Office of the Governor respectfully requests that the Committee consider amendments to H.B. No. 2358, HD1, to broaden the scope of covered positions to include additional emergency services roles that would similarly benefit from enhanced retirement benefits. The proposed amendments would extend support to eligible positions within the Office of the State Fire Marshal and the Department of Defense.

Specifically, the proposed amendments to Chapter 88, Hawai'i Revised Statutes, would:

1. Add four new definitions to include Adjutant General, Deputy Adjutant General, Fire Marshal, and Deputy Fire Marshal to expand the scope of the measure;
2. Amend the existing definition of Law Enforcement Investigations Staff Investigators to ensure that all members who fall within the investigator classification are appropriately included;
3. Remove Section 2 of H.B. No. 2358, HD1, in response to concerns raised by the Employees' Retirement System (ERS) regarding the State's tax-qualified status;
4. Amend the allowance on service retirement for Tier 1 members who have attained age 55 to provide that, effective after June 30, 2026, a member whose last five or more years of credited service before retirement are served as Adjutant General,

Deputy Adjutant General, Director of Law Enforcement, Deputy Director of Law Enforcement, Fire Marshal, or Deputy Fire Marshal shall receive a retirement allowance calculated at 2% of the member's average final compensation (AFC) for each year of credited service in those positions;

5. Remove retroactivity for the Chief Investigator and Chief Special Investigator enrollments and benefits;
6. Include the Adjutant General, Deputy Adjutant General, Fire Marshal, and Deputy Fire Marshal within the same Tier 2 benefit computation structure as currently written for Director of Law Enforcement and Deputy Director of Law Enforcement;
7. Specify the applicable average final compensation calculations for Tier 1 and Tier 2 members in six specified positions.

Our Office provides the attached alternate draft reflecting these proposed amendments for the Committee's consideration.

Mahalo for the opportunity to provide testimony on this measure and for your thoughtful consideration of these recommendations.

A BILL FOR AN ACT

RELATING TO RETIREMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Notwithstanding section 88-99, Hawaii Revised
2 Statutes, the purpose of this Act is to include certain law
3 enforcement investigators as class A members of the employees'
4 retirement system beginning July 1, 2026 and to provide
5 continuation of retirement eligibility and benefits for certain
6 members of part II of Chapter 88, Hawaii Revised Statutes,
7 defined herewithin that were previously credited with Class A or
8 Class B service.

9 SECTION 2. Section 88-21, Hawaii Revised Statutes, is
10 amended as follows:

11 1. By adding six new definitions to be appropriately
12 inserted and to read:

13 ""Adjutant general" means a person appointed by the
14 governor to regularly serve as the director of the department of
15 defense.

16 "Deputy adjutant general" means a person appointed by the
17 adjutant general to regularly serve as the deputy director of
18 defense.

H.B. NO. 2358
Proposed HD 2

1 "Deputy director for law enforcement" means a person
2 appointed by the director of law enforcement to regularly serve
3 as a deputy director of the department of law enforcement.

4 "Deputy fire marshal" means a person appointed by the fire
5 marshal to regularly serve as the deputy state fire marshal of
6 the office of the state fire marshal.

7 "Director of law enforcement" means the person appointed by
8 the governor to regularly serve as director of the department of
9 law enforcement.

10 "Fire marshal" means the person appointed by the state fire
11 marshal selection commission to regularly serve as the
12 administrator of the office of the state fire marshal.

13 2. By amending the definition of "law enforcement
14 investigations staff investigators" to read:

15 ""Law enforcement [~~investigations staff~~] investigators"
16 means those employees in the [~~investigations staff office of~~
17 ~~the~~] department of law enforcement who have been conferred
18 police powers by the director of law enforcement in accordance
19 with section 353C-4 and are in [~~the~~] investigator positions [~~of~~
20 ~~investigator I to VII~~]. To include the Chief Investigator and
21 Chief Special Investigator positions effective July 1, 2026."

1 SECTION 3. Section 88-45, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§88-45 Employee contributions.** After June 30, 1988, each
4 class A and class B member shall contribute seven and eight-
5 tenths per cent of the member's compensation to the annuity
6 savings fund; provided that after June 30, 1989, all
7 firefighters, police officers, corrections officers,
8 investigators of the departments of the prosecuting attorney and
9 of the attorney general, narcotics enforcement investigators,
10 water safety officers not making the election under section 88-
11 271, and law enforcement [~~investigations staff~~] investigators
12 shall contribute twelve and two-tenths per cent of their
13 compensation to the annuity savings fund for service in that
14 capacity; provided further that each class A and class B member
15 who becomes a member after June 30, 2012, shall contribute nine
16 and eight-tenths per cent of the member's compensation to the
17 annuity savings fund, provided further that all firefighters,
18 police officers, corrections officers, investigators of the
19 departments of the prosecuting attorney and of the attorney
20 general, narcotics enforcement investigators, and law
21 enforcement [~~investigations staff~~] investigators who become
22 members after June 30, 2012, shall contribute fourteen and two-

1 tenths per cent of their compensation to the annuity savings
2 fund for service in that capacity."

3 SECTION 4. Section 88-47, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) There shall be four classes of members in the system
6 to be known as class A, class B, class C, and class H, defined
7 as follows:

8 (1) Class A shall consist of:

9 (A) Members first employed as judges before July 1,
10 2031, elected officials, and legislative
11 officers;

12 (B) Investigators of the department of the attorney
13 general, narcotics enforcement investigators,
14 water safety officers not making the election
15 under section 88-271, and law enforcement
16 [~~investigations-staff~~] investigators;

17 (C) Those members in service [~~prior to~~] before July
18 1, 1984, including those who are on approved
19 leave of absence, not making the election to
20 become a class C member as provided in part VII
21 or to become a class H member as provided in part
22 VIII;

H.B. NO. 2358
Proposed HD 2

1 (D) The following members in service [~~prior to~~
2 before July 1, 2006, including those who are on
3 approved leave of absence, not making the
4 election to become a class H member as provided
5 in part VIII:

6 (i) Members whose salaries are set forth in
7 sections 26-52 and 26-53 and their county
8 counterparts, managing directors or an
9 administrative assistant to the mayor, other
10 county department heads, and agency heads
11 appointed and subject to removal by the
12 mayor;

13 (ii) First deputies appointed by the county
14 attorney and prosecuting attorney;

15 (iii) The county clerk and deputy county clerk of
16 each county;

17 (iv) The directors of the offices of council
18 services of the county of Maui and the city
19 and county of Honolulu;

20 (v) The administrative director of the courts;

21 (vi) The deputy administrative director of the
22 courts;

H.B. NO. 2358
Proposed HD 2

- 1 (vii) The executive officer of the labor and
2 industrial relations appeals board; and
3 (viii) The executive officer of the Hawaii labor
4 relations board;
- 5 (E) All former class A retirants who return to
6 employment after June 30, 1984, requiring the
7 retirant's active membership; and
- 8 (F) All former class B retirants who return to
9 employment requiring the retirant's active
10 membership, except for:
- 11 (i) Former retirants who return in the positions
12 of police officer or firefighter;
- 13 (ii) Former retirants who were members on July 1,
14 1957, who elected not to be covered by the
15 Social Security Act; and
- 16 (iii) Former retirants who were in positions to
17 which coverage under Title II of the Social
18 Security Act was not extended who entered
19 membership after June 30, 1957, but before
20 January 1, 2004;
- 21 (2) Class B shall consist of:

H.B. NO. 2358
Proposed HD 2

- 1 (A) Police officers and firefighters, including
2 former retirants who return to service in such
3 capacity;
- 4 (B) All employees, including former retirants, who
5 were members on July 1, 1957, who elected not to
6 be covered by the Social Security Act; and
- 7 (C) All employees, including former retirants, in
8 positions to which coverage under Title II of the
9 Social Security Act is not extended, who enter
10 membership after June 30, 1957, but before
11 January 1, 2004, not making the election to
12 become a class H member as provided in part VIII;
- 13 (3) Except for members described in paragraphs (1) and
14 (2), class C shall consist of all employees, not
15 making the election to become a class H member as
16 provided in part VIII, who:
- 17 (A) First enter service after June 30, 1984, but
18 before July 1, 2006;
- 19 (B) Reenter service after June 30, 1984, but before
20 July 1, 2006, without vested benefit status as
21 provided in section 88-96(b);
- 22 (C) Make the election to become a class C member as

H.B. NO. 2358
Proposed HD 2

- 1 provided in part VII; or
- 2 (D) Are former class C retirants who return to
- 3 service requiring the retirant's active
- 4 membership; and
- 5 (4) Except for members described in paragraphs (1) and
- 6 (2), class H shall consist of all employees who:
- 7 (A) First enter service after June 30, 2006;
- 8 (B) Reenter service after June 30, 2006, without
- 9 vested benefit status as provided in section 88-
- 10 96(b);
- 11 (C) Make the election to become a class H member as
- 12 provided in part VIII; or
- 13 (D) Are former class H retirants who return to
- 14 service requiring the retirant's active
- 15 membership; or
- 16 (E) Are first employed as a judge after June 30,
- 17 2031."

18 SECTION 5. Section 88-74, Hawaii Revised Statutes, is

19 amended as follows:

20 "**§88-74 Allowance on service retirement.** (a) Upon

21 retirement from service, a member shall receive a maximum

22 retirement allowance as provided in this section.

1 (b) If a member, who became a member before July 1, 2012,
2 has attained age fifty-five, the member's maximum retirement
3 allowance shall be two per cent of the member's average final
4 compensation multiplied by the total number of years of the
5 member's credited service as a class A and class B member,
6 excluding any credited service as a judge, elective officer, or
7 legislative officer, plus a retirement allowance of one and one-
8 fourth per cent of the member's average final compensation
9 multiplied by the total number of years of prior credited
10 service as a class C member, plus a retirement allowance of two
11 per cent of the member's average final compensation multiplied
12 by the total number of years of prior credited service as a
13 class H member; provided that:

14 (1) After June 30, 1968, if the member has at least ten
15 years of credited service of which the last five or
16 more years [~~prior to~~] before retirement is credited
17 service as a firefighter, police officer, or an
18 investigator of the department of the prosecuting
19 attorney;

20 (2) After June 30, 1977, if the member has at least ten
21 years of credited service of which the last five or

H.B. NO. 2358
Proposed HD 2

- 1 more years [~~prior to~~] before retirement is credited
2 service as a corrections officer, ;
- 3 (3) After June 16, 1981, if the member has at least ten
4 years of credited service of which the last five or
5 more years [~~prior to~~] before retirement is credited
6 service as an investigator of the department of the
7 attorney general;
- 8 (4) After June 30, 1989, if the member has at least ten
9 years of credited service of which the last five or
10 more years [~~prior to~~] before retirement is credited
11 service as a narcotics enforcement investigator;
- 12 (5) After December 31, 1993, if the member has at least
13 ten years of credited service of which the last five
14 or more years [~~prior to~~] before retirement is credited
15 service as a water safety officer;
- 16 (6) After June 30, 1994, if the member has at least ten
17 years of credited service, of which the last five or
18 more years [~~prior to~~] before retirement are credited
19 service as a law enforcement [~~investigations staff~~]
20 investigator;
- 21 (7) After June 30, 2002, if the member:

H.B. NO. 2358
Proposed HD 2

- 1 (A) Has at least ten years of credited service as a
2 firefighter;
- 3 (B) Is deemed permanently medically disqualified due
4 to a [~~service related~~] service-related disability
5 to be a firefighter by the employer's physician;
6 and
- 7 (C) Continues employment in a class A or B position
8 other than a firefighter; and
- 9 (8) After June 30, 2004, if the member:
- 10 (A) Has at least ten years of credited service as a
11 police officer;
- 12 (B) Is deemed permanently medically disqualified due
13 to a [service related] service-related disability
14 to be a police officer by the employer's
15 physician; and
- 16 (C) Continues employment in a class A or B position
17 other than a police officer; and
- 18 (9) After June 30, 2026, if the member whose last five or
19 more years before retirement is credited service as
20 an:
- 21 (A) Adjutant general,
22 (B) Deputy adjutant general,

1 (C) Deputy director for law enforcement,
2 (D) Deputy fire marshal,
3 (E) Director of law enforcement, or
4 (F) Fire marshal,
5 then they would be entitled to have the years of
6 service credited under paragraphs (1), (2), (3), (4),
7 (5), (6), (7), and (8) to be calculated as provided
8 under this subsection;

9 then for each year of service as a firefighter, police officer,
10 corrections officer, investigator of the department of the
11 prosecuting attorney, investigator of the department of the
12 attorney general, narcotics enforcement investigator, water
13 safety officer, or law enforcement [~~investigations staff~~]
14 investigator, the retirement allowance shall be two and one-half
15 per cent of the member's average final compensation, provided
16 that members with credited service as an adjutant general,
17 deputy adjutant general, deputy director for law enforcement,
18 deputy fire marshal, director of law enforcement, or fire
19 marshal, would have each year of credit service as an adjutant
20 general, deputy adjutant general, deputy director for law
21 enforcement, deputy fire marshal, director of law enforcement,
22 or fire marshal, the retirement allowance shall be two per cent

1 of the member's average final compensation as computed under
2 section 88-81(f). The maximum retirement allowance for those
3 members shall not exceed eighty per cent of the member's average
4 final compensation. If the member has not attained age fifty-
5 five, the member's retirement allowance shall be computed as
6 though the member had attained age fifty-five, reduced for age
7 as provided in subsection [~~(e)~~] (f);

8 (c) If a member, who became a member [~~prior to~~] before
9 July 1, 2012, has credited service as a judge, the member's
10 retirement allowance shall be computed on the following basis:

11 (1) For a member who has credited service as a judge
12 before July 1, 1999, irrespective of age, for each
13 year of credited service as a judge, three and one-
14 half per cent of the member's average final
15 compensation in addition to an annuity that is the
16 actuarial equivalent of the member's accumulated
17 contributions allocable to the period of service;

18 (2) For a member who first earned credited service as a
19 judge after June 30, 1999, but before July 1, 2012,
20 for each year of credited service as a judge, three
21 and one-half per cent of the member's average final
22 compensation in addition to an annuity that is the

H.B. NO. 2358
Proposed HD 2

1 actuarial equivalent of the member's accumulated
2 contributions allocable to the period of service. If
3 the member has not attained age fifty-five, the
4 member's retirement allowance shall be computed as
5 though the member had attained age fifty-five, reduced
6 for age as provided in subsection [~~(e)~~] (f);

7 (3) For a member who first earned credited service as a
8 judge after June 30, 2012, for each year of credited
9 service as a judge, three per cent of the member's
10 average final compensation in addition to an annuity
11 that is the actuarial equivalent of the member's
12 accumulated contributions allocable to the period of
13 service. If the member has not attained age sixty,
14 the member's retirement allowance shall be computed as
15 though the member had attained age sixty, reduced for
16 age as provided in subsection [~~(i)~~] (k);

17 (4) For a judge with other credited service, as provided
18 in subsection (b). If the member has not attained age
19 fifty-five, the member's retirement allowance shall be
20 computed as though the member had attained age fifty-
21 five, reduced for age as provided in subsection [~~(e)~~]
22 (f); or

1 (5) For a judge with credited service as an elective
2 officer or as a legislative officer, as provided in
3 subsection (d).

4 No allowance shall exceed seventy-five per cent of the member's
5 average final compensation. If the allowance exceeds this
6 limit, it shall be adjusted by reducing the annuity included in
7 paragraphs (1), (2), and (3) and the portion of the accumulated
8 contributions specified in paragraphs (1), (2), and (3) in
9 excess of the requirements of the reduced annuity shall be
10 returned to the member upon the member's retirement or paid to
11 the member's designated beneficiary upon the member's death
12 while in service or while on authorized leave without pay. The
13 allowance for judges under this subsection, together with the
14 retirement allowance provided by the federal government for
15 similar service, shall in no case exceed seventy-five per cent
16 of the member's average final compensation.

17 (d) If a member, who became a member before July 1, 2012,
18 has credited service as an elective officer or as a legislative
19 officer, the member's retirement allowance shall be derived by
20 adding the allowances computed separately under paragraphs (1),
21 (2), (3), (4), (5), and (6) as follows:

H.B. NO. 2358
Proposed HD 2

- 1 (1) For a member who has credited service as an elective
2 officer before July 1, 2012, irrespective of age, for
3 each year of credited service as an elective officer,
4 three and one-half per cent of the member's average
5 final compensation as computed under section 88-
6 81(e)(1), in addition to an annuity that is the
7 actuarial equivalent of the member's accumulated
8 contributions allocable to the period of service;
- 9 (2) For a member, who first earned credited service as an
10 elective officer after June 30, 2012, irrespective of
11 age, for each year of credited service as an elective
12 officer, three per cent of the member's average final
13 compensation as computed under section 88-81(e)(1), in
14 addition to an annuity that is the actuarial
15 equivalent of the member's accumulated contributions
16 allocable to the period of service;
- 17 (3) For a member who has credited service as a legislative
18 officer before July 1, 2012, irrespective of age, for
19 each year of credited service as a legislative
20 officer, three and one-half per cent of the member's
21 average final compensation as computed under section
22 88-81(e)(2), in addition to an annuity that is the

H.B. NO. 2358
Proposed HD 2

- 1 actuarial equivalent of the member's accumulated
2 contributions allocable to the period of service;
- 3 (4) For a member who first earned credited service as a
4 legislative officer after June 30, 2012, irrespective
5 of age, for each year of credited service as a
6 legislative officer, three per cent of the member's
7 average final compensation as computed under section
8 88-81(e) (2), in addition to an annuity that is the
9 actuarial equivalent of the member's accumulated
10 contributions allocable to the period of service;
- 11 (5) If the member has credited service as a judge, the
12 member's retirement allowance shall be computed on the
13 following basis:
- 14 (A) For a member who has credited service as a judge
15 before July 1, 1999, irrespective of age, for
16 each year of credited service as a judge, three
17 and one-half per cent of the member's average
18 final compensation as computed under section 88-
19 81(e) (3), in addition to an annuity that is the
20 actuarial equivalent of the member's accumulated
21 contributions allocable to the period of service;

H.B. NO. 2358
Proposed HD 2

- 1 (B) For a member who first earned credited service as
2 a judge after June 30, 1999, but before July 1,
3 2012, and has attained the age of fifty-five, for
4 each year of credited service as a judge, three
5 and one-half per cent of the member's average
6 final compensation as computed under section 88-
7 81(e)(3), in addition to an annuity that is the
8 actuarial equivalent of the member's accumulated
9 contributions allocable to the period of service.
10 If the member has not attained age fifty-five,
11 the member's retirement allowance shall be
12 computed as though the member had attained age
13 fifty-five, reduced for age as provided in
14 subsection [~~e~~] (f);
- 15 (C) For a member who first earned credited service as
16 a judge after June 30, 2012, but before July 1,
17 2031, and has attained the age of sixty, for each
18 year of credited service as a judge, three per
19 cent of the member's average final compensation
20 as computed under section 88-81(e)(3), in
21 addition to an annuity that is the actuarial
22 equivalent of the member's accumulated

H.B. NO. 2358
Proposed HD 2

1 contributions allocable to the period of service.

2 If the member has not attained age sixty, the
3 member's retirement allowance shall be computed

4 as though the member had attained age sixty,

5 reduced for age as provided in subsection [~~(i)~~]

6 (k); and

7 (D) For a member who first earned credited service as

8 a judge after June 30, 2031, and has attained the

9 age of sixty, for each year of credited service

10 as a judge, one and three-fourths per cent of the

11 member's average final compensation as computed

12 under section 88-81(e)(3), in addition to an

13 annuity that is the actuarial equivalent of the

14 member's accumulated contributions allocable to

15 the period of service. If the member has not

16 attained age sixty, the member's retirement

17 allowance shall be computed as though the member

18 had attained age sixty, reduced for age as

19 provided in subsection [~~(i)~~] (k); and

20 (6) For each year of credited service not included in

21 paragraph (1), (2), (3), (4), or (5), the average

22 final compensation as computed under section 88-

H.B. NO. 2358
Proposed HD 2

1 81(e) (4) shall be multiplied by two per cent for
2 credited service earned as a class A or class H
3 member, two and one-half per cent for credited service
4 earned as a class B member, and one and one-quarter
5 per cent for credited service earned as a class C
6 member. If the member has not attained age fifty-
7 five, the member's retirement allowance shall be
8 computed as though the member had attained age fifty-
9 five, reduced for age as provided in subsection [~~(e)~~.]
10 (f).

11 The total retirement allowance shall not exceed seventy-five per
12 cent of the member's highest average final compensation
13 calculated under section 88-81(e) (1), (2), (3), or (4). If the
14 allowance exceeds this limit, it shall be adjusted by reducing
15 any annuity accrued under paragraphs (1), (2), (3), (4), and (5)
16 and the portion of the accumulated contributions specified in
17 these paragraphs in excess of the requirements of the reduced
18 annuity shall be returned to the member upon the member's
19 retirement or paid to the member's designated beneficiary upon
20 the member's death while in service or while on authorized leave
21 without pay. If a member has service credit as an elective
22 officer or as a legislative officer in addition to service

1 credit as a judge, then the retirement benefit calculation
2 contained in this subsection shall supersede the formula
3 contained in subsection (c).

4
5 ~~(e)~~ (f) Except as provided in subsections (b), (c),
6 ~~[and]~~ (d), and (e), if a member, who became a member before July
7 1, 2012, has not attained age fifty-five at the date of
8 retirement, the member's retirement allowance shall be reduced,
9 for each month the member's age at the date of retirement is
10 below age fifty-five, as follows:

- 11 (1) 0.4166 per cent for each month below age fifty-five
12 and above age forty-nine and eleven months; plus
13 (2) 0.3333 per cent for each month below age fifty and
14 above age forty-four and eleven months; plus
15 (3) 0.2500 per cent for each month below age forty-five
16 and above age thirty-nine and eleven months; plus
17 (4) 0.1666 per cent for each month below age forty;

18 provided that no reduction shall be made if the member has at
19 least twenty-five years of credited service as a firefighter,
20 police officer, corrections officer, investigator of the
21 department of the prosecuting attorney, investigator of the
22 department of the attorney general, narcotics enforcement

1 investigator, law enforcement [~~investigations~~ staff]
2 investigator, sewer worker, or water safety officer, of which
3 the last five or more years prior to retirement is credited
4 service in these capacities.

5 [~~(f)~~] (g) If a member, who becomes a member after June 30,
6 2012, has attained age sixty, the member's maximum retirement
7 allowance shall be one and three-fourths per cent of the
8 member's average final compensation multiplied by the total
9 number of years of the member's credited service as a class A
10 and class B member, excluding any credited service as a judge,
11 elective officer, or legislative officer, plus a retirement
12 allowance of one and one-fourth per cent of the member's average
13 final compensation multiplied by the total number of years of
14 prior credited service as a class C member, plus a retirement
15 allowance of one and three-fourths per cent of the member's
16 average final compensation multiplied by the total number of
17 years of prior credited service as a class H member; provided
18 that:

19 (1) If the member has at least ten years of credited
20 service of which the last five or more years [~~prior~~
21 ~~to~~] before retirement is credited service as a

H.B. NO. 2358
Proposed HD 2

1 firefighter, police officer, or an investigator of the
2 department of the prosecuting attorney;

3 (2) If the member has at least ten years of credited
4 service of which the last five or more years [~~prior~~
5 ~~to~~] before retirement is credited service as a
6 corrections officer;

7 (3) If the member has at least ten years of credited
8 service of which the last five or more years [~~prior~~
9 ~~to~~] before retirement is credited service as an
10 investigator of the department of the attorney
11 general;

12 (4) If the member has at least ten years of credited
13 service of which the last five or more years [~~prior~~
14 ~~to~~] before retirement is credited service as a
15 narcotics enforcement investigator;

16 (5) If the member has at least ten years of credited
17 service, of which the last five or more years [~~prior~~
18 ~~to~~] before retirement is credited service as a law
19 enforcement [~~investigations staff~~] investigator;

20 (6) If the member:
21 (A) Has at least ten years of credited service as a
22 firefighter;

1 (B) Is deemed permanently medically disqualified due
2 to a service related disability to be a
3 firefighter by the employer's physician; and
4 (C) Continues employment in a class A or class B
5 position other than a firefighter; and
6 (7) If the member:
7 (A) Has at least ten years of credited service as a
8 police officer;
9 (B) Is deemed permanently medically disqualified due
10 to a service related disability to be a police
11 officer by the employer's physician; and
12 (C) Continues employment in a class A or class B
13 position other than a police officer,
14 then for each year of service as a firefighter, police officer,
15 corrections officer, investigator of the department of the
16 prosecuting attorney, investigator of the department of the
17 attorney general, narcotics enforcement investigator, or law
18 enforcement [~~investigations-staff~~] investigator, the retirement
19 allowance shall be two and one-fourth per cent of the member's
20 average final compensation. The maximum retirement allowance
21 for those members shall not exceed eighty per cent of the
22 member's average final compensation. If the member has not

H.B. NO. 2358
Proposed HD 2

1 attained age sixty, the member's retirement allowance shall be
2 computed as though the member had attained age sixty, reduced
3 for age as provided in subsection [~~(j)~~] (k).

4 [~~(g)~~] (h) If a member, who becomes a member after June 30,
5 2012, has credited service as a judge, the member's retirement
6 allowance shall be computed on the following basis:

7 (1) For each year of credited service as a judge, three
8 per cent of the member's average final compensation in
9 addition to an annuity that is the actuarial
10 equivalent of the member's accumulated contributions
11 allocable to the period of service. If the member has
12 not attained age sixty, the member's retirement
13 allowance shall be computed as though the member had
14 attained age sixty, reduced for age as provided in
15 subsection [~~(i)~~] (k);

16 (2) For a judge with other credited service, as provided
17 in subsection [~~(f)~~] (g). If the member has not
18 attained age sixty, the member's retirement allowance
19 shall be computed as though the member had attained
20 age sixty, reduced for age as provided in subsection
21 [~~(i)~~] (k); and

1 (3) For a judge with credited service as an elective
2 officer or as a legislative officer, as provided in
3 subsection [~~(h)~~] (i).

4 No allowance shall exceed seventy-five per cent of the member's
5 average final compensation. If the allowance exceeds this
6 limit, it shall be adjusted by reducing the annuity included in
7 paragraph (1) and the portion of the accumulated contributions
8 specified in paragraph (1) in excess of the requirements of the
9 reduced annuity shall be returned to the member upon the
10 member's retirement or paid to the member's designated
11 beneficiary upon the member's death while in service or while on
12 authorized leave without pay. The allowance for judges under
13 this subsection, together with the retirement allowance provided
14 by the federal government for similar service, shall in no case
15 exceed seventy-five per cent of the member's average final
16 compensation.

17 [~~(h)~~] (i) If a member, who becomes a member after June 30,
18 2012, has credited service as an elective officer or as a
19 legislative officer, the member's retirement allowance shall be
20 derived by adding the allowances computed separately under
21 paragraphs (1), (2), (3), and (4) as follows:

H.B. NO. 2358
Proposed HD 2

- 1 (1) Irrespective of age, for each year of credited service
2 as an elective officer, three per cent of the member's
3 average final compensation as computed under section
4 88-81(f) (1), in addition to an annuity that is the
5 actuarial equivalent of the member's accumulated
6 contributions allocable to the period of service;
- 7 (2) Irrespective of age, for each year of credited service
8 as a legislative officer, three per cent of the
9 member's average final compensation as computed under
10 section 88-81(f) (2), in addition to an annuity that is
11 the actuarial equivalent of the member's accumulated
12 contributions allocable to the period of service;
- 13 (3) For each year of credited service as a judge, three
14 per cent of the member's average final compensation as
15 computed under section 88-81(f) (3), in addition to an
16 annuity that is the actuarial equivalent of the
17 member's accumulated contributions allocable to the
18 period of service. If the member has not attained age
19 sixty, the member's retirement allowance shall be
20 computed as though the member had attained age sixty,
21 reduced for age as provided in subsection [~~(i)~~] (k);
22 and

H.B. NO. 2358
Proposed HD 2

1 (4) For each year of credited service not included in
2 paragraph (1), (2), or (3), the average final
3 compensation as computed under section 88-81(f)(4)
4 shall be multiplied by one and three-fourth per cent
5 for credited service earned as a class A or class H
6 member, two and one-fourth per cent for credited
7 service earned as a class B member, and one and
8 one-fourth per cent for credited service earned as a
9 class C member. If the member has not attained age
10 sixty, the member's retirement allowance shall be
11 computed as though the member had attained age sixty,
12 reduced for age as provided in subsection [~~(i)~~] (k).

13 The total retirement allowance shall not exceed seventy-five per
14 cent of the member's highest average final compensation
15 calculated under section 88-81(f)(1), (2), (3), or (4). If the
16 allowance exceeds this limit, it shall be adjusted by reducing
17 any annuity accrued under paragraphs (1), (2), and (3) and the
18 portion of the accumulated contributions specified in these
19 paragraphs in excess of the requirements of the reduced annuity
20 shall be returned to the member upon the member's retirement or
21 paid to the member's designated beneficiary upon the member's
22 death while in service or while on authorized leave without pay.

H.B. NO. 2358
Proposed HD 2

1 If a member has service credit as an elective officer or as a
2 legislative officer in addition to service credit as a judge,
3 then the retirement benefit calculation contained in this
4 subsection shall supersede the formula contained in subsection
5 ~~[(g)-]~~ (h).

6 (j) If a member, who became a member after to June 30,
7 2012, has credited service as the adjutant general, deputy
8 adjutant general, director of law enforcement, deputy director
9 of law enforcement, fire marshal, or deputy fire marshal, the
10 member's retirement allowance shall be derived by adding the
11 allowances computed separately as follows:

12 (1) For a member who has credited service as a
13 firefighter, police officer, or investigator of the
14 department of the prosecuting attorney after June 30,
15 2012, for each year of credited service as a
16 firefighter, police officer, or investigator of the
17 department of the prosecuting attorney, two and one-
18 quarter per cent of the member's average final
19 compensation;

20 (2) For a member who has credited service as a corrections
21 officer after June 30, 2012, for each year of credited

H.B. NO. 2358
Proposed HD 2

- 1 service as a corrections officer, two and one-quarter
2 per cent of the member's average final compensation;
- 3 (3) For a member who has credited service as an
4 investigator of the department of the attorney general
5 after June 30, 2012, for each year of credited service
6 as an investigator of the department of the attorney
7 general , two and one-quarter per cent of the member's
8 average final compensation;
- 9 (4) For a member who has credited service as a narcotics
10 enforcement investigator after June 30, 2012, for each
11 year of credited service as a narcotics enforcement
12 investigator, two and one-quarter per cent of the
13 member's average final compensation;
- 14 (5) For a member who has credited service as a law
15 enforcement investigator after June 30, 2012, for each
16 year of credited service as a law enforcement
17 investigator, two and one-quarter per cent of the
18 member's average final compensation;
- 19 (6) For a member who has credited service as the adjutant
20 general, deputy adjutant general, director of law
21 enforcement, deputy director of law enforcement, fire
22 marshal, or deputy fire marshal, for each year of

H.B. NO. 2358
Proposed HD 2

1 credited service as the adjutant general, deputy
2 adjutant general, director of law enforcement, deputy
3 director of law enforcement, fire marshal, or deputy
4 fire marshal, one and three-fourths per cent of the
5 member's average final compensation;

6 (7) For each year of credited service not included in
7 paragraph (1), (2), (3), (4), (5), or (6), the average
8 final compensation calculated under section 88-
9 81(b) (1), (2), or (3) shall be multiplied by one and
10 three-fourths per cent of the member's average final
11 compensation. If the member has not attained age
12 sixty, the member's retirement allowance shall be
13 computed as though the member had attained age sixty,
14 reduced for age as provided in subsection (k).

15 [~~(i)~~] (k) Except as provided in subsections [~~(f)~~], (g),
16 [~~and~~] (h), (i) and (j), if a member, who becomes a member after
17 June 30, 2012, has not attained age sixty at the date of
18 retirement, the member's retirement allowance shall be reduced,
19 for each month the member's age at the date of retirement is
20 below age sixty, as follows:

21 (1) 0.4166 per cent for each month below age sixty and
22 above age fifty-four and eleven months; plus

1 (2) 0.3333 per cent for each month below age fifty-five
2 and above age forty-nine and eleven months; plus
3 (3) 0.2500 per cent for each month below age fifty and
4 above age forty-four and eleven months; plus
5 (4) 0.1666 per cent for each month below age forty-five;
6 provided that no reduction shall be made if the member has
7 attained the age of fifty-five and has at least twenty-five
8 years of credited service as a firefighter, police officer,
9 corrections officer, investigator of the department of the
10 prosecuting attorney, investigator of the department of the
11 attorney general, narcotics enforcement investigator, law
12 enforcement [~~investigations staff~~] investigator, sewer worker,
13 water safety officer, or emergency medical technician, of which
14 the last five or more years [~~prior to~~] before retirement is
15 credited service in these capacities."

16 SECTION 5. Section 88-74.6, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "**§88-74.6 Unreduced allowance on service retirement; when**
19 **applicable.** In addition to those positions identified in
20 section [~~88-74(e)~~] 88-74(f) and notwithstanding any law in this
21 part that requires a member to attain age fifty-five to qualify

1 for an unreduced service retirement allowance, if a member, who
2 became a member before July 1, 2012, has at least:

3 (1) Thirty years of credited service through June 30,
4 2003;

5 (2) Twenty-nine years of credited service on or after
6 July 1, 2004;

7 (3) Twenty-eight years of credited service on or after
8 July 1, 2005;

9 (4) Twenty-seven years of credited service on or after
10 July 1, 2006;

11 (5) Twenty-six years of credited service on or after
12 July 1, 2007; or

13 (6) Twenty-five years of credited service on or after
14 July 1, 2008,

15 as an emergency medical technician, of which the last five or
16 more years [~~prior to~~] before retirement is credited service in
17 that capacity, then upon retirement and irrespective of age,
18 that member's service retirement allowance shall not be reduced
19 for actuarial purposes."

20 SECTION 6. Section 88-76, Hawaii Revised Statutes, is
21 amended to read as follows:

1 **"§88-76 Allowance on ordinary disability retirement.** Upon
2 retirement for ordinary disability, a member shall receive a
3 maximum retirement allowance of one and three-fourths per cent
4 of the member's average final compensation for each year of
5 credited service; except that for each year of credited service
6 as a judge, an elective officer, or a legislative officer, the
7 member shall receive a maximum retirement allowance computed as
8 provided in section 88-74(c), (d), [~~(g), or~~] (h), or (i), as
9 applicable. The minimum retirement allowance payable under this
10 section shall be thirty per cent of the member's average final
11 compensation."

12 SECTION 7. Section 88-81, Hawaii Revised Statutes, is
13 amended to read as follows:

14 **"§88-81 Average final compensation.** (a) Average final
15 compensation is the average annual compensation, pay, or salary
16 upon which a member has made contributions as required by parts
17 II, VII, and VIII of this chapter.

18 (b) The average final compensation of members shall be
19 calculated as follows:

20 (1) For employees who become members before January 1,
21 1971:

H.B. NO. 2358
Proposed HD 2

- 1 (A) During the member's five highest paid years of
2 credited service, including vacation pay, or the
3 three highest paid years of credited service
4 excluding vacation pay, whichever is greater; or
- 5 (B) If the member has fewer than three years of
6 credited service, during the member's actual
7 years of credited service;
- 8 (2) For employees who become members after December 31,
9 1970, but before July 1, 2012:
- 10 (A) During the member's three highest paid years of
11 credited service, excluding vacation pay; or
- 12 (B) If the member has fewer than three years of
13 credited service, during the member's actual
14 years of credited service; and
- 15 (3) For employees who become members after June 30, 2012:
- 16 (A) During the member's five highest paid years of
17 credited service, excluding vacation pay; or
- 18 (B) If the member has fewer than five years of
19 credited service, during the member's actual
20 years of credited service.

H.B. NO. 2358
Proposed HD 2

1 (c) In computing the compensation of a judge, the
2 compensation paid to the judge by the United States as well as
3 by the Territory shall be included.

4 (d) For service rendered as a member of the legislature
5 from and after November 5, 1968, the actual annual salary of a
6 member shall be the only amount used for determining the
7 member's average final compensation. For service rendered as a
8 member of the legislature prior to November 5, 1968, and after
9 admission of this State into the Union, the annual compensation
10 of a member shall be computed, for the purpose of determining
11 the member's average final compensation, as follows:

12 (1) During a year in which a general session was held, it
13 shall be deemed to have been an amount equal to four
14 times the salary of a member of the legislature for a
15 general session; and

16 (2) During a year in which a budget session was held, it
17 shall be deemed to have been an amount equal to six
18 times the salary of a member of the legislature for a
19 budget session.

20 For service rendered as a member of the legislature prior to the
21 admission of this State into the Union, the annual compensation
22 of a member shall be deemed to have been four times the salary

1 of a member of the legislature for a regular session for each
2 year during the member's term of office.

3 (e) If a member, who became a member before July 1, 2012,
4 has credited service rendered as an elective officer or as a
5 legislative officer, the member's average final compensation
6 shall be computed separately for each category of service as
7 follows:

- 8 (1) For the three highest paid years of credited service
9 as an elective officer, or if the member has fewer
10 than three years of credited service in that capacity,
11 then the member's actual years of credited service;
- 12 (2) For the three highest paid years of credited service
13 as a legislative officer, or if the member has fewer
14 than three years of credited service in that capacity,
15 then the member's actual years of credited service;
- 16 (3) For the three highest paid years of credited service
17 as a judge, or if the member has fewer than three
18 years of credited service in that capacity, then the
19 member's actual years of credited service; and
- 20 (4) For the three highest paid years of credited service
21 not included in paragraph (1), (2), or (3), or if the
22 member has fewer than three years of credited service

1 in that capacity, then the member's actual years of
2 credited service.

3 (f) If a member, who became a member before July 1, 2012,
4 has credited service rendered as the adjutant general, deputy
5 adjutant general, director of law enforcement, deputy director
6 of law enforcement, fire marshal, or deputy fire marshal, the
7 member's average final compensation for that credited service
8 shall be computed as the three highest paid, or if the member
9 has fewer than three years of credited service in that capacity,
10 then the member's actual years of credited service, as the
11 adjutant general, deputy adjutant general, director of law
12 enforcement, deputy director of law enforcement, fire marshal,
13 or deputy fire marshal;

14 [~~(f)~~] (g) If a member, who becomes a member after June 30,
15 2012, has credited service rendered as an elective officer or as
16 a legislative officer, the member's average final compensation
17 shall be computed separately for each category of service as
18 follows:

19 (1) For the five highest paid years of credited service as
20 an elective officer, or if the member has fewer than
21 five years of credited service in that capacity, then
22 the member's actual years of credited service;

H.B. NO. 2358
Proposed HD 2

1 (2) For the five highest paid years of credited service as
2 a legislative officer, or if the member has fewer than
3 five years of credited service in that capacity, then
4 the member's actual years of credited service;

5 (3) For the five highest paid years of credited service as
6 a judge, or if the member has fewer than five years of
7 credited service in that capacity, then the member's
8 actual years of credited service; and

9 (4) For the five highest paid years of credited service
10 not included in paragraph (1), (2), or (3), or if the
11 member has fewer than five years of credited service
12 in that capacity, then the member's actual years of
13 credited service.

14 (h) If a member, who becomes a member after June 30, 2012,
15 has credited service rendered as the adjutant general, deputy
16 adjutant general, director of law enforcement, deputy director
17 of law enforcement, fire marshal, or deputy fire marshal, the
18 member's average final compensation shall be computed separately
19 for each category of service as follows:

20 (1) For the five highest paid years of credited service as
21 the adjutant general, deputy adjutant general,
22 director of law enforcement, deputy director of law

H.B. NO. 2358
Proposed HD 2

1 enforcement, fire marshal, or deputy fire marshal, or
2 if the member has fewer than five years of credited
3 service in that capacity, then the member's actual
4 years of credited service;

5 (2) For the five highest paid years of credited service as
6 a firefighter, police officer, investigator of the
7 department of the prosecuting attorney, corrections
8 officer, investigator of the department of the
9 attorney general, narcotics enforcement investigator,
10 or law enforcement investigator, or if the member has
11 fewer than five years of credited service in that
12 capacity, then the member's actual years of credited
13 service;

14 (3) For the five highest paid years of credited service
15 not included in paragraph (1) or (2), or if the member
16 has fewer than five years of credited service in that
17 capacity, then the member's actual years of credited
18 service.

19 SECTION 8. This Act does not affect the rights and duties
20 that matured or were vested, penalties that were incurred, and
21 proceedings that were begun before its effective date, including
22 but not limited to any membership that was terminated, credited

H.B. NO. 2358
Proposed HD 2

1 service that was forfeited, retirement that was finalized, or
2 benefits that were paid.

3 SECTION 9. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 10. This Act shall take effect upon approval.

6

7

8

INTRODUCED BY: _____

9

BY REQUEST

H.B. NO. 2358

Proposed HD 2

Report Title:

DLE; Retirement for Public Officers and Employees; Allowances; Pension and Retirement Systems

Description:

Adds definitions for certain Department of Law Enforcement employees. Establishes guidance for the computation of retirement benefits for the Chief Investigator, Chief Special Investigator, Director of Law Enforcement, and Deputy Directors of the Department of Law Enforcement.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



MIKE LAMBERT
Director

ERNEST J. ROBELLO
Deputy Director
Administration

SYLVIA LUKE
LT GOVERNOR
KA HOPE KIA'ĀINA

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

JARED K. REDULLA
Deputy Director
Law Enforcement

TESTIMONY ON HOUSE BILL 2358, HOUSE DRAFT 1
RELATING TO RETIREMENT
Before the House Committee on
FINANCE
Thursday, March 5, 2026, 2:00 p.m.
State Capitol Conference Room 308
Testifier: Ernest Robello

Chair Todd, Vice Chair Takenouchi, and members of the Committee:

The Department of Law Enforcement (DLE) supports House Bill 2358, House Draft 1. This bill provides elective officers with the option to be members of the Employees' Retirement System after each election, repealing the previous condition that such a choice was irrevocable and could be made only once. Additionally, it includes the Chief Investigator and Chief Special Investigator of the Department of Law Enforcement as class A members of the pension and retirement system and establishes guidance for the computation of retirement benefits for the Chief Investigator, Chief Special Investigator, Director of Law Enforcement, and Deputy Directors of Law Enforcement.

The DLE supports this bill for several reasons. First, the inclusion of the DLE's Chief Investigator and Chief Special Investigator as class A members of the pension and retirement system is a significant and positive step. This change appropriately recognizes the critical roles these positions play in law enforcement and aligns their retirement benefits with the level of responsibility and risk associated with their duties.

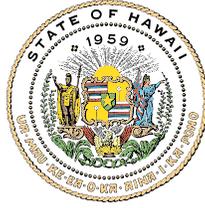
Furthermore, establishing guidance on computing retirement benefits for key DLE leadership positions, including the Director and Deputy Directors, ensures fairness and consistency in retirement calculations for these essential roles. This provision will aid in the recruitment and retention of top-tier law enforcement professionals by offering competitive and clearly defined retirement benefits.

These changes are in line with the DLE's ongoing efforts to enhance the professionalism and effectiveness of law enforcement in Hawaii. By improving retirement benefits and options for key personnel, this bill supports the DLE's mission to provide the highest level of law enforcement service to the public, as outlined in Act 278 of 2022.

Thank you for the opportunity to testify in support of this bill.

JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LIEUTENANT GOVERNOR



KALBERT K. YOUNG
EXECUTIVE DIRECTOR

GAIL STROHL
DEPUTY EXECUTIVE DIRECTOR

**STATE OF HAWAII
EMPLOYEES' RETIREMENT SYSTEM**

TESTIMONY BY KALBERT YOUNG
EXECUTIVE DIRECTOR, EMPLOYEES' RETIREMENT SYSTEM
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON FINANCE
ON
HOUSE BILL NO. 2358 HB1

March 5, 2026

2:00 PM

Conference Room 308 and VIA Videoconference

RELATING TO RETIREMENT.

Chair Todd, Vice Chair Takenouchi, and Members of the Committee,

While the full Board of Trustees (Board) of the Employees' Retirement System (ERS) has not had the opportunity to review the bill, the Legislative Committee of the Board recommends **strong opposition** to the measure as proposed. Tax counsel has reviewed the measure and advised that the removal of the one-time irrevocable election for ERS membership under Section 2 would pose a clear risk to preserving the ERS's federal tax qualification. Further review of affected statute has led to identification of additional concerns for which we respectfully offer amendments to address.

HB 2358 HD1 proposes amendments to Hawai'i Revised Statute (HRS) Section 88-42.6 regarding membership of elective officers. Section 88-42.6 currently provides that an elective officer shall be a member of the ERS; however, an elective officer may make a one-time irrevocable election to be excluded from membership. HB 2358 HD1 proposes to (1) provide elective officers with the option to be members of the ERS after each election; and (2) remove the requirement that the election to be excluded from membership be one-time and irrevocable.



Employees' Retirement System
of the State of Hawaii

HB 2358 HD1 raises significant concerns regarding ERS's tax qualified status. First, the measure eliminates the irrevocable nature of the election to be excluded from membership, which the US Treasury Regulation expressly requires. Second, it allows elected officers to make multiple elections, not just one. This results in both (1) a modification of a prior election and (2) an election made after the employee is already eligible for ERS membership. This approach would allow members to potentially move back and forth and back into the system – an approach that is explicitly prohibited as a requirement for tax-exempt status of the pension system.

Thus, HB 2358 HD1 would likely create a cash or deferred election for at least some elected officers. This would jeopardize the ERS's tax qualified status. This means that the IRS could disqualify the plan, which would result in all benefits and investment earnings being immediately taxable. These changes could also result in ERS' pick-up contributions being deemed invalid, causing employee contributions to be taxable. The loss of the tax-exempt status would be fatal to the system and fatally detrimental to employees and existing retirees.

Moreover, the review of section 88-42.6 brought forth further concern regarding the existing membership election provided to retirees returning to service as an elected official under (c)(2). This election for retirees to continue to receive retirement benefits or re-enroll in the ERS and make tax-deferred contributions would constitute a prohibited cash or deferred election.

The system rules must not permit participating employees or retirees to have an option to opt out of the plan, as the option to elected out is viewed by the IRS as a cash or deferred election. See Revenue Ruling 2006 43. Treas. Reg. 1.401(k)-1(a)(3) defines a cash or deferred election as any direct or indirect election (or modification of an earlier election) by an employee to choose between receiving cash or having the amount contributed to a trust or used to provide deferred benefits. Treas. Reg. section 1.401(k)-1(a)(3)(v) includes a narrow exception for a one-time irrevocable election made no later than the employee's first becoming eligible for the employer's plan. To meet this exception, the election must (1) be irrevocable and (2) occur at the earliest point of eligibility for any plan sponsored by the employer.

Therefore, to remove the retiree's election, we respectfully recommend that subsection (c) of 88-42.6 HRS be repealed in its entirety and offer clarifying amendments to read:

"[§88-42.6] Membership of elective officers. (a) An elective officer shall be a member of the employees' retirement system; provided that an elective officer shall have a one-time election to be excluded from membership in the employees' retirement system[.] as stated in subsection (b) below.

(b) Unless the elective officer is a member of the system, a former member of the system, or a retirant, in which case no election shall be provided, an elective officer shall make the election to be excluded from membership in the system no later than thirty days following the elective officer's taking office. The

election shall be irrevocable. If the elective officer fails to make an election to be excluded from membership in the system within the period allowed for making the election or if the elective officer is a member or former member of the system, the elective officer shall become a member effective as of the date the elective officer takes office.

~~[(c) Notwithstanding section 88-21, 88-98, 88-273(c), or 88-344, or any other law to the contrary, the retirement allowance of a retirant who returns to service as an elective officer shall not be suspended and the retirant shall not become a member of the system and shall not earn additional service credit or gain any additional retirement benefits, assuming the retirant has been retired for at least twelve consecutive months prior to return to service and there was no pre-arrangement of the retirant's reemployment before termination of employment. if the retirant:~~

~~(1) Retired pursuant to section 88-73(d); or~~

~~(2) Has been retired for at least twelve consecutive months prior to return to service and elects to have the retirement allowance continue. The election whether or not to have the retirant's retirement allowance continue shall be irrevocable and shall be made no later than thirty days following the retirant's first return to service as an elective officer.]~~

~~[(d) An elective officer who retired pursuant to section 88-73(d) shall not be eligible for membership in the system while serving as an elective officer.]"~~

Review of section 88-42.6 HRS by tax counsel has raised further concerns over the references to 88-73(d) HRS that allow a legislative member to receive a service retirement allowance while continuing to fill their elective position would violate the Internal Revenue Code (IRC) requirement of a bona fide break in service before returning to work without a suspension of pension. Therefore, ERS further recommends an amendment to repeal section 88-73(d) as well as a conforming amendment to repeal section 88-42.6(d) as above.

"§88-73 Service retirement. (a) Any member who:

(1) Became a member before July 1, 2012, and has at least five years of credited service and has attained age fifty-five;

(2) Became a member before July 1, 2012, and has at least twenty-five years of credited service;

(3) Has at least ten years of credited service, which includes service as a judge before July 1, 1999, an elective officer, or a legislative officer;

(4) Becomes a member after June 30, 2012, and has at least ten years of credited service and has attained age sixty; or

(5) Becomes a member after June 30, 2012, and has at least twenty-five years of credited service and has attained age fifty-five, shall become eligible to receive a retirement allowance after the member has terminated service.

(b) Any member who first earned credited service as a judge after June 30, 1999, but before July 1, 2012, and who has at least five years of credited

service and has attained age fifty-five or has at least twenty-five years of credited service shall become eligible to receive a retirement allowance after the member has terminated service. Any member who first earned credited service as a judge after June 30, 2012, and has at least ten years of credited service and has attained age sixty or has at least twenty-five years of credited service and has attained age fifty-five shall be eligible to receive a retirement allowance after the member has terminated service.

(c) A member may retire upon the written application specifying the date of retirement, which shall not be less than thirty days nor more than one hundred fifty days subsequent to the date of filing. Retirement shall be effective on the first day of a month, except for the month of December when retirement on the first or last day of the month shall be allowed.

~~[(d) Any member of the legislature who attains age sixty-five may retire and receive a service retirement allowance although the member continues to fill the elective position.]~~

~~[(e)]~~ (d) In the case of a class A or B member who also has prior credited service under part VII or part VIII, total credited service as a class A, class B, class C, and class H member shall be used to determine the eligibility for retirement allowance.

~~[(f)]~~ (e) A member's right to the member's accrued retirement benefit is nonforfeitable upon the attainment of normal retirement age and the completion of the requisite years of credited service.

For the purpose of this subsection:

"Normal retirement age" means age sixty-five.

"Requisite years of credited service" means five years for class A and B members who became members before July 1, 2012, and ten years for class A and B members who became members after June 30, 2012."

The ERS is a qualified governmental plan under the Internal Revenue Code (IRC). To maintain its qualified governmental plan status, the ERS plan must be administered according to its "plan provisions" or "plan documents" set forth at HRS Chapter 88 (including HRS section 88-22.5), as well as IRC section 401(a). Section 88-22.5 provides that "the [ERS] shall be administered in accordance with the requirements of section 401(a)... of the Internal Revenue Code of 1986, as amended."

The ERS has a "pick-up" arrangement through its qualified beneficial tax status, whereby mandatory employee contributions to the ERS are "picked up" by the employers and treated as tax-deferred "employer" contributions under IRC Section 414(h)(2). See HRS Sections 88-46 and 88-326.

The legislative history of HRS Section 88-42.6 indicates that the purpose of the statute was "to ensure that the Employees' Retirement System complies with federal tax laws and retains its status as a tax-qualified retirement plan under the Internal Revenue Code that provides favorable tax treatment for employee contributions." S.S.C.R. No. 2398 (2008).

The Legislature specifically indicated that elimination of optional membership and implementation of the one-time irrevocable election to be excluded from ERS membership were intended to protect ERS's tax qualified status.

See 2008 Haw. Sess. Laws Act 47 § 2 at 164.

The purpose of this bill is to protect the tax-qualified status of the Employees' Retirement System (ERS) by, among other things:

- (1) Eliminating optional membership in the ERS for elective officers;
- (2) Implementing a one-time irrevocable election by elective officers who choose to be excluded from membership in the ERS; ...

H.S.C.R. No. 1236-08; H.S.C.R. No. 772-08.

Your Committee finds that this measure is necessary to maintain the tax-qualified status of the Employees' Retirement System. The tax-qualified status is presently endangered by provisions in the law that allow elective officers to exercise their option to join the system at any time during their term of office and allow them to withdraw from membership while remaining in office.

S.S.C.R. No. 2785 (2008).

The ERS has consulted with its tax counsel regarding the potential negative impact of HB 2358 HD1 on the ERS's tax qualified status, and they have indicated in writing that they share our concerns.

Thank you for this opportunity to provide testimony in strong opposition to this bill and the committees consideration of amending language to Sections 88-42.6 and 88-73 HRS.