



EXECUTIVE CHAMBERS
KE KE'ENA O KE KIA'ĀINA

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA

Committee on Labor
Tuesday, February 17, 2026
9:00 a.m.
State Capitol, Conference Room 309 and Videoconference

In Support
House Bill No. 2358, Relating to Retirement

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

The Office of the Governor supports H.B. No. 2358, Relating Retirement. This bill would allow elected officers to elect whether to participate in the Employees' Retirement System (ERS) following each election.

The Office of the Governor believes this measure will provide elected officers with greater flexibility in retirement planning, allowing adjustments to participation in ERS to reflect changes in personal circumstances, financial goals, or career plans over time.

Additionally, the Office of the Governor respectfully requests that the Committee consider amendments to H.B. No. 2358 to include language intended to add certain law enforcement administrators and employees of the Department of Law Enforcement as Class A members of the ERS. The proposed amendments would also provide guidance regarding the computation of retirement benefits for these positions.

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

1. Add definitions for "Chief Investigator," "Chief Special Investigator," "Deputy Director of Law Enforcement," and "Director of Law Enforcement" to the ERS.
2. Include the Chief Investigator and Chief Special Investigator within the higher public safety employee contribution rate structure.
3. Reclassify the Chief Investigator and Chief Special Investigator of the Department of Law Enforcement to the Class A retirement plan.

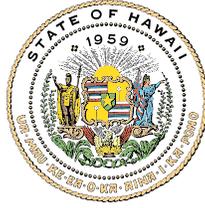
4. Include the Chief Investigator and Chief Special Investigator within the enhanced retirement allowance provisions applicable to certain law enforcement and subject to service requirements.
5. Establish retirement benefit computations for the Director of Law Enforcement and Deputy Director of Law Enforcement and authorize eligibility for applicable early retirement provisions, subject to statutory service and membership requirements.

The proposed amendments to add certain employees of the Department of Law Enforcement to the Class A retirement plan within the ERS are important for recruitment, retention, and parity within the State's law enforcement positions, ensuring that those who have accrued enhanced benefits are able to retain them when advancing into leadership roles. These amendments will provide continuity between investigative and executive service and support stability within the Department of Law Enforcement.

Mahalo for the opportunity to provide testimony on this measure.

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 LABOR
ON
HOUSE BILL NO. 2358**

February 17, 2026

9:00 AM

Conference Room 309 and VIA Videoconference

RELATING TO RETIREMENT.

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

While the Board of Trustees (Board) of the Employees' Retirement System (ERS) has not had the opportunity to review the bill, the ERS staff believes that the Board would strongly oppose the measure as proposed. Administration respectfully advises that this measure poses a clear risk to preserving the ERS's federal tax qualification.

HB 2358 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 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.

HB 2358 raises significant concerns regarding ERS's tax qualified status. First, the measure eliminates the irrevocable nature of the election to be excluded from



Employees' Retirement System
of the State of Hawaii

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 – a approach that is explicitly prohibited as a requirement for tax-exempt status of the pension system.

Thus, HB 2358 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 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 could constitute a 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 opt out option 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, we respectfully recommend amendments be made to section 88-42.6(c)(2) to remove the retiree's election. This would repeal subsection (c) on page 2, lines 1 to 17 in its entirety (and renumber subsection (d)), making re-enrollment mandatory for a retiree returning to an elected position subject to exceptions under section 88-9.

Proposed language for an absolute exclusion for retirees returning to an elected position would similarly not constitute a cash or deferred election and would read as follows:

“(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~~[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.~~

If the retirant's retirement allowance is not suspended, the retirant shall not become a member of the system and shall not earn additional service credit or gain any additional retirement benefits.”

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 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 proposing amending language to Section 88-42.6.

HB-2358

Submitted on: 2/15/2026 8:31:28 PM

Testimony for LAB on 2/17/2026 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Mason Chock	Individual	Support	Written Testimony Only

Comments:

February 15, 2026

RE: Testimony in support of HB 2358

Aloha Chair Sayama, Vice Chair Lee and Honorable Labor Committee Members,

My name is Mason Chock, and I am writing in support of HB2358. The amendment to this section is fair and needed. I am an example of an individual who has held an elected position who is no longer allowed to opt into the ERS system.

I am a former firefighter and former member of the Kaua‘i County Council. In June 2001, I was involved in a helicopter crash while on duty as a rescue specialist, which ultimately ended my firefighting career. Following that incident, I accepted a service-connected disability retirement and have received benefits since that time.

In 2013, I was appointed to serve on the Kaua‘i County Council, where I dedicated the next nine years of my life to public service as an elected official. Due to the nature of this role—two-year terms with a maximum of four consecutive terms—it did not seem practical at the time to give up my existing partial pension and re-enroll in the ERS as I was 42 years old at the time, with term limits and the uncertainty of re-election making it a difficult and one time, final decision.

After terming-out and a four-year break in service, at 55 years old I would like to consider the possibility of once again running for office or continuing my civil service in another capacity. Being closer to retirement age, I would very much like the opportunity to elect back into the ERS system if employed in a government role, however the current law does not allow for this option.

I’ve served the County of Kaua‘i with dedication and integrity for over 20 years in various capacity, and I hope to continue serving my community. At the same time, I must be mindful of my retirement needs as I approach this next chapter. Given the unique circumstances of my career and the practical nature of my request, this bill would allow me to re-enter the ERS system. Thank you for your time and thoughtful consideration.

Mahalo nui,

Mason Chock

Mailing Address: 121 Lihau Street | Kapa`a, HI 96746 | Phone Number: 808-651-7013