



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2026**

ON THE FOLLOWING MEASURE:
H.B. NO. 2359, RELATING TO RETIRANTS.

BEFORE THE:
HOUSE COMMITTEE ON LABOR

DATE: Tuesday, February 17, 2026 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 309

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Diana Sumarna, Deputy Attorney General, or
Fiamma M. Rago, Deputy Attorney General

Chair Sayama and Members of the Committee:

The Department of the Attorney General (Department) provides the following comments on this bill.

This bill establishes a statewide five-year pilot program, allowing retirants to be rehired as exempt civil service employees into Governor- or Mayor-certified hard-to-staff positions. This bill additionally provides that the reemployed retirants are excluded from the Hawai'i Employer-Union Health Benefits Trust Fund, though without interruption to their pension benefits, while requiring the public employers to contribute to the Employees' Retirement System.

However, this bill, as written, could violate collective bargaining law under chapter 89, Hawaii Revised Statutes (HRS).

Section 4 of this bill amends section 88-9(d), HRS, to add a new paragraph (6) on page 18, line 13, to page 21, line 17, to establish the five-year pilot program. The identified "**labor shortage**" or certified "**hard-to-staff**" positions, as defined on page 21, lines 3-17, are synonymous with the "**labor shortage or difficult-to-fill**" positions, in which retirants are already being reemployed under section 88-9(d)(4), on page 17, lines 1-15. The new paragraph (6)(A), (B), and (C), on page 18, line 13, to page 19, line 16, provides in part that the "hard-to-staff" positions must be identified then annually recertified by either the Governor or a Mayor, while section 88-9(d)(4) states that "the

appropriate jurisdiction" must identify the "difficult-to-fill" positions. The new paragraph (6)(D)(i), on page 19, lines 18-20, also provides in part that a retirant reemployed must not have been employed by the State or a county during the six calendar months preceding the reemployment. By contrast, section 88-9(d)(4), requires a twelve-month non-employment period. Applying different standards to similarly situated retirants could result in inconsistent treatment. To promote fairness and consistency, we recommend revising this bill's new sections to align with the existing statutory mandates.

New section 88-9(d)(6)(F), HRS, on page 20, lines 7-9, provides that the retirants shall be included in the appropriate bargaining units under section 89-6 "for the payment of dues and grievance protections." While the Legislature has authority to amend chapter 89, the Department is concerned that this subparagraph (F) would effectively impose terms and conditions of employment that are ordinarily subject to collective bargaining agreements. Bargaining unit members are afforded the entirety of their respective collective bargaining agreements. We therefore recommend the following wording from the amendment to subparagraph (F) be deleted (shown in bold):

(F) The retirant shall be included in the appropriate bargaining unit under section 89-6 ~~for the payment of dues and grievance protections~~];

New section 88-9(d)(6)(H), HRS, on page 20, line 16, to page 21, line 2, authorizes the Superintendent, for positions in the Department of Education, to establish a salary schedule for retirants. Wages are a mandatory subject of collective bargaining and are governed by the applicable collective bargaining agreements. Thus, to the extent retirants are included in the appropriate bargaining units under chapter 89, HRS, authorizing the Superintendent to establish a separate salary schedule, "without regard to the standard collective bargaining agreement salary step placement," would conflict with chapter 89, HRS. We therefore recommend deleting new section 88-9(d)(6)(H), HRS, in its entirety.

To further clarify, we recommend that the amendments to the definition of "Employee beneficiary" in section 87A-1, HRS, on page 15, lines 15-17, include the following (shown in bold):

"Employee-beneficiary" does not include any retirant employed under section 88-9(d)(6) for the duration of the retirant's employment under that section **for employee-beneficiaries hired after June 30, 2026.**

We also recommend inserting a new section 6 on page 22, line 16, as follows:

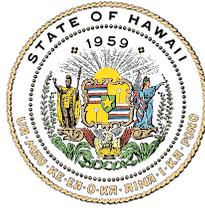
SECTION 6. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

Re-number subsequent sections as appropriate.

Thank you for considering our comments.

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 EDUCATION
ON
HOUSE BILL NO. 2359**

February 17, 2026

9:00 AM

Conference Room 309 and VIA Videoconference

RELATING TO EMPLOYMENT OF RETIRANTS.

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

While the Board of Trustees (BOT) has not had a chance to review the bill, the Employees' Retirement System (ERS) appreciates the intent of HB 2359 and is thankful for the opportunity to offer comments suggesting amendments regarding this measure.

HB 2359 proposes to amend Section 88-9 of the Hawaii Revised Statutes (HRS) to allow positions identified by the Governor or Mayors as labor shortage or certified as hard-to-staff for which a term of employment exceeding eighty-nine days would be beneficial to be filled by a retiree without reenrollment into the system after a six-calendar month break.

The ERS would like to respectfully offer the following conforming amendments to the requirements in paragraph (6) starting on page 19, line 17 through page 20, line 6 to mirror paragraphs (4) and (5) to read:



Employees' Retirement System
of the State of Hawaii

- “(D) The retirant was not employed by the State or a county during the twelve calendar months prior to the first day of reemployment;
- (E) No agreement was entered into between the State or a county and the retirant prior to the retirement of the retirant, for the return to work by the retirant after retirement;
- (F) Each employer shall contribute to the pension accumulation fund the required percentage of the rehired retirant's compensation to amortize the system's unfunded actuarial accrued liability;”

with subsequent renumbering as appropriate.

As this bill progresses, the above components are important for the stability and sustainability of the pension system. ERS respectfully suggests the bill be amended to provide for a twelve-calendar month break along with the prohibition on post-retirement agreements to return to work. These provisions would be consistent with existing statutes that currently permit the return of other ERS eligible labor shortage or difficult-to-fill positions identified by the appropriate jurisdiction. This amendment would provide for sufficient employment separation and consistent general application of the retirement statutes which are important components expected as requirements to retain the tax qualified (exempt) status under Internal Revenue Code (IRC) for the State's pension system.

On October 24, 2014, the IRS issued a favorable determination letter confirming ERS's plan terms in chapter 88, HRS, which included the currently established twelve-month break applicable to a retiree providing services in a similar capacity and function to duties prior to retirement, had met the requirements of section 401(a), IRC. Based on indications from tax counsel and the IRS, ERS believes that the twelve-month break duration is prudent to be implemented for positions where retirees return in positions functionally performing the same duties and in the same capacity as those done prior to retirement to avoid an expectation of reemployment.

The inclusion of a six-month break for positions not eligible for membership and a twelve-month break for positions which are eligible for membership, are meant to fulfill both the requirements for a bona fide break and prevention of an expectation for post-retirement employment to prevent an impermissible in-service distribution. The six-month break was implemented for the bona fide break period for positions not eligible for ERS employment, as the employment parameters are either part-time or temporary in nature, due to tax counsel advice to ERS that the IRS does not consider that "retirement does not include a mere reduction in the number of hours that an employee works."

We support the HB 2359 requirements for funding contributions to be required by the employer towards the pension accumulation fund to amortize the system's unfunded accrued liability which mitigates the lost contributions when these positions are filled with unenrolled retirees rather than active members or reenrolled retirees earning retirement benefits. The amount employer(s) will contribute under the proposed

approach will be less than for a conventional employee who is also a ERS member working towards a pension. There is no requirement for the employee to fund the pension accumulation expense.

We continue to believe that the included requirement of an annual report to the legislature by the Director of Human Resources of the appropriate State or County jurisdiction could provide sufficient oversight to ensure determinations are consistent with applicable laws and rules.

Thank you for the opportunity to provide comments and suggested amendments on HB 2359.

HB-2359

Submitted on: 2/14/2026 4:00:47 PM

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

Submitted By	Organization	Testifier Position	Testify
Glen Kagamida	Individual	Support	Written Testimony Only

Comments:

SUPPORT