

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 FINANCE
ON

HOUSE BILL NO. 913, H.D. 2

March 1, 2017, 1:00 P.M.

RELATING TO MEDICAL COVERAGE FOR FIREFIGHTERS

Chair Luke, Vice Chair Cullen and Members of the Committee,

Section 2 of H.B. No. 913, H.D. 2, creates a new chapter of the Hawaii Revised Statutes ("HRS"), for hazardous duty related disease benefits for firefighters. § -5 of the new chapter ("§ - 5"), entitled "Disability retirement," provides that if a firefighter with one or more years of credited service develops a hazardous duty related disease (cancer) or dies due to a hazardous duty related disease, it shall be presumed that the death or hazardous duty related disease arose out of or in the course of employment, provided that the firefighter shall have taken a physical exam upon becoming a firefighter, or subsequent thereto, that failed to reveal any evidence of the condition.

The Board of Trustees of the Employees' Retirement System (ERS) opposes this legislation as its additional cancer presumption is believed to represent a benefit enhancement. Under HRS 88-99, there is to be no benefit enhancement under HRS Chapter 88 until such time as the assets of the ERS 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. The ERS Board views this bill as a violation of HRS 88-99.

The provisions of H.B. 913, H.D. 2, § -5 are inconsistent with the ERS statutes on service-connected disability retirement (HRS § 88-79) and accidental death benefits (HRS §§ 88-85 and 85.5). These inconsistencies will confuse, complicate, and delay the ERS's administration of disability retirement and accidental death benefits for firefighters, possibly leading to unnecessary and costly litigation. Therefore, the ERS respectfully requests that § -5 and all



Employees' Retirement System
of the State of Hawaii

references to the ERS and its benefit programs be deleted from the new chapter created by H.B. 913, H.D. 2 due to the following:

1. § -5(a) presumes that a firefighter's hazardous duty related disease or death "arise out of and in the course of employment" The words "arise out of and in the course of employment" are not used in the ERS statutes. Under HRS §§ 88-79 and 88-85, service-connected disability retirement and accidental death benefits are granted when a member's permanent incapacity is "the natural and proximate result of an accident occurring while in the actual performance of duty at some definite time and place, or as the cumulative result of some occupational hazard" The presumptions for firefighters, police officers, and sewer workers in HRS §§ 88-79(b) 88-85(b) are similarly related to impairments of health "suffered in the actual performance of duty at some definite time and place ..., and as a result of the inherent occupational hazard of exposure to and inhalation of smoke, toxic gases, chemical fumes, and other toxic vapors" The use of the words "arise out of and in the course of employment" in § -5(a) may not be effective to create a presumption to ERS service-connected disability retirement or accidental death benefits for firefighters with cancer.
2. § -5(a) provides that the benefits awarded upon manifestation of or death from hazardous duty related disease shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits as provided by this chapter and chapter 88. The ERS does not provide hospital, surgical and medical treatment benefits. No ERS statute refers to "disability indemnity" or "death benefits." As they pertain to firefighters, HRS § 88-79 provides "service-connected disability retirement," HRS § 88-84 provides "ordinary death benefits," and HRS §§ 88-85 and 88-85.5 provide "accidental death benefits." The use of the terms "disability indemnity" or "death benefits" in § -5(a) is ambiguous and confusing as far as ERS benefits are concerned.
3. § -5(c) provides that the presumption under subsection (a) shall be rebuttable only by a finding of "substantial evidence to the contrary." The presumptions in favor of firefighters, police officers, and sewer workers in HRS § 88-79(b) and 88-85(b) apply "unless the contrary be shown by competent evidence." The "substantial evidence" standard is used to rebut the statutory presumption in HRS § 386-85 that a claim for workers' compensation is for a covered work injury. The workers' compensation presumption is based on the legislature's decision that "work injuries are among the costs of production which industry is required to bear" and the "socially enforced bargain: the employee giving up his right to recover common law damages from the employer in exchange for the certainty of a statutory award for all work-connected injuries." See Van Ness v. State Dept. of Educ., 131 Hawai'i 545, 558 (2014). Based on the broad humanitarian purposes of workers' compensation, the workers' compensation presumption is construed liberally with all reasonable doubts being resolved in favor of the claimant. Id. ERS members do not give up their right to recover common law damages in exchange for service-connected disability retirement or accidental death benefits, and the Legislature has not decided that such benefits are a cost of production

that industry must bear. Thus, the Legislature should not impose workers' compensation presumption standards on the ERS's disability retirement and accidental death benefit programs as the policies and purposes behind each program are very different. Using workers' compensation standards in § -5 could lead claimants and the courts to impose such standards on other parts of the ERS disability retirement and accidental death benefit programs causing unexpected and expensive consequences for the ERS, the State, and the other public employers.

4. § -5(c) provides that the presumption under subsection (a) shall be extended to a firefighter in perpetuity following termination of service. Under HRS § 88-79, service-connected disability retirement can only be applied for by a "member." If a firefighter terminates service and either does not qualify for vested benefit status or requests a return of the firefighter's accumulated contributions, the firefighter ceases to be a member of the system. See HRS §§ 88-96 and 88-61(a). When a firefighter retires, the firefighter ceases to be a member of the system. See HRS § 88-61(b). Allowing non-members to apply for service-connected disability retirement and beneficiaries to apply for accidental death benefits with respect to non-members would violate the provisions of HRS §§ 88-79 and 88-85, would constitute a benefit enhancement in violation of HRS § 88-99, and may create concerns regarding the ERS's tax qualified status.

Other parts of Section 2 of H.B. 913, H.D. 2, provide firefighters with health insurance benefits for hazardous duty related disease (§ -2), total disability benefits of 100% of the firefighter's weekly wages (§ -7), and death benefits for dependents (§§ -8, -9 and -10), without affecting any of the ordinary disability retirement, service-connected disability retirement, and accidental death benefits a firefighter may apply for under current ERS statutes - which already include a presumption for firefighters who are permanently incapacitated or die from any disease of the heart, lungs, or respiratory system. See HRS §§ 88-79(b) and 88.85(b). Thus, the ERS questions the necessity for changing any of the ERS disability retirement and accidental death benefits in H.B. 913, H.D. 2. This is particularly so given the confusion and complications § -5 will cause for the ERS and firefighters.

For the reasons stated above, the ERS requests that § -5 and all references to the ERS and its benefit programs be deleted from the new chapter created by H.B. 913, H.D. 2. Alternatively, the ERS requests that the creation of any new presumption for firefighters with cancer regarding service-connected disability retirement and accidental death benefits be done by separate sections amending HRS §§ 88-79 and 88-85. Those amendments should use the terminology, conditions, and standards that the Legislature has already established for the ERS in HRS §§ 88-79 and 88-85, and which the ERS has incorporated in its rules implementing those statutes.

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

DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LIEUTENANT GOVERNOR



LINDA CHU TAKAYAMA
DIRECTOR

LEONARD HOSHIJO
DEPUTY DIRECTOR

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March 1, 2017

To: The Honorable Sylvia Luke, Chair,
The Honorable Ty J.K. Cullen, Vice Chair, and
Members of the House Committee on Finance

Date: Wednesday, March 1, 2017
Time: 1:00 p.m.
Place: Conference Room 308, State Capitol

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

Re: H.B. No. 913 HD2 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 and notes it contains a fiscal impact.

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 DLIR Director 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

- DLIR 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.
- DLIR 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. Without additional staffing and resources, the same DCD staff that administers the workers' compensation program would administer the new program. This would be a heavy burden on the Department and counterproductive to the intent of the measure to improve timely access to comprehensive medical coverage for firefighters.
- Without the proper data to understand the full scope of Hawaii's firefighters who develop cancer, it is difficult to estimate the necessary staffing and resource levels to administer the new chapter. DLIR provides the following annual estimates to start up the program:

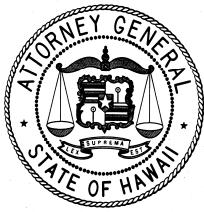
Annual Costs:

Program Specialist I	SR-24	\$57,168	
Hearings Officer V	SR-26	\$61,824	
Office Assistant IV	SR-10	\$29,340	
Medical Advisor		\$50,000	
Attorney General Support		<u>\$40,000</u>	\$238,332
Telephones (\$167 each)		\$ 835	
Computer Software (\$350 each)		<u>\$ 1,750</u>	<u>\$ 2,585</u>

One-time Costs:

Consultant/Contractor to Reprogram Mainframe, Lotus Notes, and HDRD System Programs		\$200,000	
Set up costs (Computer, desk, chair, filing cabinets)		<u>\$23,750</u>	<u>\$223,750</u>
Total Annual Cost			<u>\$240,917</u>
Total One-Time Cost			<u>\$223,750</u>
Total Cost			<u>\$464,667</u>

- 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, the measure should 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.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2017**

ON THE FOLLOWING MEASURE:

H.B. NO. 913, H.D. 2, RELATING TO MEDICAL COVERAGE FOR FIREFIGHTERS.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Wednesday, March 1, 2017 **TIME:** 1:00 p.m.

LOCATION: State Capitol, Room 308

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Daniel K. Jacob, Deputy Attorney General

Chair Luke and Members of the Committee:

The Department of the Attorney General appreciates the intent of this bill, and provides the following comments.

The purpose of this bill is to provide "firefighters who develop cancer expanded benefits equal to one hundred per cent of average weekly wages, disability indemnity, and death benefits, paid for by the employer."

This bill might be subject to challenge as being in violation of article III, section 14, of the Hawaii Constitution. Under article III, section 14, "Each law shall embrace but one subject, which shall be expressed in its title." The title of this bill is "Relating to Medical Coverage for Firefighters." This bill, however, covers disability indemnification and death benefits in addition to medical coverage.

To address these concerns, we recommend utilizing another bill with an appropriate title that encompasses the subject of the bill or deleting the portion of the bill that does not relate to medical coverage.

Additionally, pursuant to section 1311(d)(3)(B)(ii) of the Patient Protection and Affordable Care Act, a state shall make payments to defray the cost of any additional benefits mandated by the state that are not included within the state selected benchmark plan. Our understanding is that Hawaii's benchmark plan does not provide the coverage required by this bill. Accordingly, if this additional benefit is mandated, the State would be required to defray the cost.

Finally, pursuant to section 23-51, Hawaii Revised Statutes (HRS), before any legislative matter that mandates health insurance coverage for specific health services, specific diseases, or certain providers of health care services as part of an insurance policy can be considered, concurrent resolutions are required to be adopted that request the Auditor to prepare and submit to the Legislature a report that assesses both the social and financial effects of the proposed mandated coverage. Among other things, this bill proposes to mandate certain specific medical insurance coverage for firefighters. Our understanding is that there has been no concurrent resolution adopted regarding this coverage as required by section 23-51, HRS. Accordingly, we recommend either that the bill be held until such time as the concurrent resolutions have been adopted and the Auditor's report has been completed and submitted to the Legislature as required by section 23-51, HRS, or that the Legislature include wording within the bill that exempts this new mandate from the audit requirement set forth in section 23-51, HRS.

Thank you for the opportunity to provide comments.

DEPARTMENT OF HUMAN RESOURCES
CITY AND COUNTY OF HONOLULU
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KIRK CALDWELL
MAYOR



CAROLEE C. KUBO
DIRECTOR

NOEL T. ONO
ASSISTANT DIRECTOR

March 1, 2017

The Honorable Sylvia Luke, Chair
The Honorable Ty J.K. Cullen, Vice Chair
and Members of the Committee on Finance
The House of Representatives
State Capitol, Room 308
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Luke, Vice Chair Cullen, and Members of the Committee:

**SUBJECT: House Bill No. 913, HD2
Relating to Medical Coverage for Firefighters**

H.B. 913, HD2 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 with the bill, especially regarding the indemnity provisions set forth in H.B. 913, HD2.

The bill is clearly designed to provide firefighters who develop cancer with the same indemnity 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, H.B. 913, HD2 fails to recognize and provide the exemption from liability for workplace injuries that employers received under the "grand compromise" that led to workers' compensation laws being enacted over a century ago. 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.

March 1, 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.

H.B. 913, HD2 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, HD2 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. From a public policy standpoint there appears to be no basis for the disparity. Moreover, paying indemnity benefits at 100% of wages creates a significant disincentive for a firefighter to return to work. We would therefore ask that the committee amend this portion of the bill so indemnity benefits are paid at 66 2/3% of average weekly wages rather than 100%.

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



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.hawaii firefighters.org

**HOUSE OF REPRESENTATIVES
THE TWENTY-NINTH LEGISLATURE
REGULAR SESSION OF 2017**

March 1, 2017

Committee on Finance

**Testimony by
Hawaii Fire Fighters Association, Local 1463, IAFF, AFL-CIO**

H. B. No. 913 HD 2 RELATING TO MEDICAL COVERAGE FOR FIREFIGHTERS

The Hawaii Fire Fighters Association (HFFA), Local 1463, IAFF, AFL-CIO represents more than 1,900 professional active-duty and 800 retired fire fighters throughout the State. On behalf of our members, HFFA **supports H. B. No. 913 HD 2** which improves the access for fire fighters to gain comprehensive medical coverage and service-connected disability retirement benefits upon diagnosis with or death from cancer that is presumed to arise out of and in the course of employment.

Thirty-three states and nine Canadian provinces already have cancer presumptive laws that provide fire fighters with medical and service-connected disability benefits. Several studies, as recommended by the International Association of Fire Fighters (IAFF), serve as the basis that demonstrates the need for cancer presumptive legislation locally. These studies are consistent with other previous studies assessing the cancer risks in fire fighters associated with occupational exposure. As a stakeholder participating in the Cancer Presumption Task Force that convened in 2016 as a response to H.C.R. No. 32, H.D. 1, S.D. 1, HFFA is grateful that H. B. No. 913 HD 2 addresses the concerns of the fire service.

HFFA appreciates the Committee's favorable consideration of this measure and ask that you **pass H. B. No. 913 HD 2**. Thank you for the opportunity to testify.

SHOPO



PRESIDENT
Tenari R. Ma'afala

VICE PRESIDENT
Malcolm Lutu

TREASURER
James "Kimo" Smith

SECRETARY
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DIRECTORS AT LARGE
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TO: The Honorable Sylvia Luke, Chair
House Committee on Finance

The Honorable Ty J.K. Cullen, Vice-Chair
House Committee on Finance

Members of the House Committee on Finance

FROM: Tenari Ma'afala, President 
State of Hawaii Organization of Police Officers

DATE: February 28, 2017

SUBJECT: Testimony on H.B. No. 913 H.D.2, Relating to Medical Coverage
for Firefighters

HEARING: Wednesday, March 1, 2017
1:00 p.m. Conference Room 308

This bill creates a new chapter in the Hawaii Revised Statutes providing expanded benefits for firefighters who develop cancer, along with a presumption that the cancer arose out of and in the course of employment as a firefighter. The State of Hawaii Organization of Police Officers ("SHOPO") supports H.B. 913 H.D.2 with amendments to extend its applicability to county police officers.

Workers compensation claims for Hawaii's county police officers demonstrate exposure to biochemical hazards when arriving as first responders at fires and other hazardous materials events. Police officers have searched burning houses and buildings, prior to firefighters arrival, and have brought injured and/or helpless victims to safety, at the same time being exposed to hazardous fumes. They have done so, despite not having proper breathing apparatus and other safety equipment.

SHOPO proposes amendments as follows, under Section 2. "Chapter Hazardous Duty Related Diseases Treatment Insurance Benefits", subsection 1, add definition "'Police officer' means all county employees whose principal duties include prevention of crime and enforcement of criminal laws." Thereafter, in subsections 2 through 7, 10 and 11, where there is "firefighter", add "and police officer".

SHOPO stands in support of firefighters receiving these proposed benefits, and also requests that amendments be made to include police officers.



An Independent Licensee of the Blue Cross and Blue Shield Association

March 1, 2017

The Honorable Sylvia Luke, Chair
The Honorable Ty J. K. Cullen, Vice Chair
House Committee on Finance

Re: HB 913, HD2 – Relating to Medical Coverage for Firefighters

Dear Chair Luke, Vice Chair Cullen, and Members of the Committee:

The Hawaii Medical Association (HMSA) appreciates the opportunity to testify on HB 913, HD2, 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, and we offer comments.

As we understand this legislation, HB 913, HD2, 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 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. 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.

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

Thank you for allowing us to provide these comments on this measure.

Sincerely,

Mark K. Oto
Director, Government Relations

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 28, 2017 8:04 AM
To: FINTestimony
Cc: ccarper@honolulu.gov
Subject: Submitted testimony for HB913 on Mar 1, 2017 13:00PM

HB913

Submitted on: 2/28/2017

Testimony for FIN on Mar 1, 2017 13:00PM in Conference Room 308

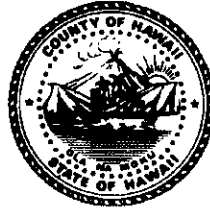
Submitted By	Organization	Testifier Position	Present at Hearing
Carol-Louise Carper	Individual	Support	Yes

Comments: Assistant Chief Socrates Bratakos will testify.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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Harry Kim
Mayor



Wil Okabe
Managing Director

Barbara J. Kossow
Deputy Managing Director

County of Hawai'i
Office of the Mayor

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LATE

February 28, 2017

Representative Sylvia Luke
Finance Committee
Hawai'i State Capitol
Honolulu, HI 96813

Dear Chair Luke and Members:

RE: **HB 913, HD 2**
Relating to Medical Coverage for Firefighters

As you may know, my son is a firefighter and I have been intimately involved in medical issues that may arise for these dedicated public servants. With that conflict of interest acknowledged, I would like to offer my support for HB 913, HD2.

HB 913 was the product of a state task force on which Hawaii County was represented by our Fire Chief and a Fire Captain. It would provide expanded, employer-financed medical, disability indemnity, and death benefits to firefighters who develop cancer as a result of exposure to carcinogens in the line of duty. I believe these benefits are warranted, and I urge your support for this measure.

Respectfully submitted,

Harry Kim
Mayor