

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 LABOR AND TOURISM**

**ON**

**HOUSE BILL NO. 928**

**February 11, 2021  
9:00 A.M.  
Conference Room 312**

**RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM**

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

H.B. 928 amends sections 88-21 and 88-21.5, Hawaii Revised Statutes, to clarify the definition of "compensation" for retirement benefit computation purposes, to help ensure that retirement benefits are computed fairly and equitably for all public employees and to facilitate employer reporting of compensation on a consistent basis. More importantly, it will help ensure ERS compliance with its tax-exempt status qualification requirements. The Board of Trustees of the Employees' Retirement System of the State of Hawaii (ERS) strongly supports this bill.

ERS retirement benefits are based on a formula which includes an employee's (1) membership multiplier, (2) years and months of retirement service credit and (3) average final compensation. This bill clarifies the definition of ERS compensation by amending the definition of "base pay" and "compensation" in chapter 88 with reference to the primary source of all employees' pay information – the employee's personnel action documentation. To determine a common definition of "base pay," the source to which all employers shall refer is the base compensation rate designated by the employee's personnel action report notification or certification.



Employees' Retirement System  
of the State of Hawaii

The ERS receives payroll reports from eight separate employers, consisting of the State of Hawaii and the counties. Currently employers define and report base compensation with varying employer discretion; however, identification of an employee's compensation from a source document as described in this bill, is critical as a reference for the employee, employers and ERS alike.

One of the concerns raised during the 2020 legislative session was the proposal's deletion of "shortage differentials" as noted in Section 3(b)(1)(B). We respectfully request that if a shortage differential is permanent, this permanent differential should be noted as such on the employee's personnel action report or certification. By this designation, the employee's compensation, "the right to which accrues on an hourly, daily, monthly or annual basis," will be recognized and credited as documented.

The definition of base compensation provided by H.B. 928, will also ensure that the ERS meets one of its fundamental tax-exempt qualification requirements – that its benefits be provided in a non-discriminatory manner and that they be "definitely determinable" under Treas. Reg. § 1.401(a)-1(b)(1). The "definitely determinable" requirement is intended to preclude employer discretion in determining benefits. If employers are permitted to use their discretion when determining what should be considered "normal periodic payments of money for service," with the same elements of compensation, then there is a clear question as to whether benefits under the ERS are truly "definitely determinable". This is a tax-qualification concern. By referring to a "base compensation rate designated by the employee's personnel action report notification or certification," H.B. 928 provides a level of "definiteness" that addresses the tax-qualification concern. The administration of this uniform and clarifying definition would be prospective only.

To fairly compute retirement benefits for the employees of all employers and to protect its tax-qualified status, with H.B. 928, the ERS proposes a definition by which all employees' retirement benefits will be computed more consistently, uniformly, fairly and equitably.

On behalf of the ERS Board of Trustees, I encourage you to pass this important legislation.

Thank you for this opportunity to testify.



**HAWAII GOVERNMENT EMPLOYEES ASSOCIATION**

AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

The Thirty-First Legislature, State of Hawaii  
House of Representatives  
Committee on Labor and Tourism

Testimony by  
Hawaii Government Employees Association

February 11, 2021

H.B. 928 – RELATING TO EMPLOYEES' RETIREMENT SYSTEM

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO opposes the intent of one specific section of H.B. 928 which amends the definition of compensation for retirement benefits and **requests an amendment on page 3, line 19 to maintain inclusion of shortage differentials in the definition of compensation.** Without this important amendment to H.B. 928, we must oppose passage of the measure.

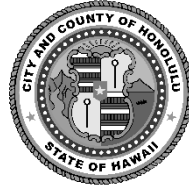
While we do not raise issue with the general intent of clarifying statutory language regarding base pay compensation, we do raise serious concerns and objections over the deletion of the shortage differential category while calculating compensation for post-June 30, 2012 Tier 2 members of the Employees' Retirement System. First and foremost, the deletion of the shortage differential category is a retroactive action that will adversely impact benefits that current employees have already accrued. Additionally, when there is a labor shortage or a challenge to recruit qualified applicants, the employer is authorized to implement a shortage differential to increase the salary of hard-to-fill positions. However, in some cases, the employer will choose to maintain the shortage differential to retain an employee for the duration of the employee's career in lieu of reclassifying the position to the appropriate market rate salary. In these cases, the employee should not be penalized for the employer's inaction to make appropriate adjustments to the base salary.

Thank you for the opportunity to testify on H.B. 928, with the requested amendment.

Respectfully submitted,

Randy Perreira  
Executive Director

DEPARTMENT OF BUDGET AND FISCAL SERVICES  
**CITY AND COUNTY OF HONOLULU**  
530 SOUTH KING STREET, ROOM 208 • HONOLULU, HAWAII 96813  
PHONE: (808) 768-3900 • FAX: (808) 768-3179 • INTERNET: www.honolulu.gov



RICK BLANGIARDI  
MAYOR

ANDREW T. KAWANO  
DIRECTOR DESIGNATE

KELLI J. NISHIMURA  
ACTING DEPUTY DIRECTOR

February 11, 2021

The Honorable Richard H.K. Onishi, Chair  
The Honorable Jackson D. Sayama, Vice Chair  
and Members of the Committee on Labor and Tourism  
House of Representatives  
State Capitol, Room 312  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Onishi, Vice Chair Sayama, and Members of the Committee:

SUBJECT: House Bill No. 928  
Relating to the Employees' Retirement System

House Bill 928 amends the definition of "base pay" and "compensation" for purposes of calculating Employees' Retirement System (ERS) contributions and benefits. The City and County of Honolulu Departments of Budget and Fiscal Services, Human Resources, and Information Technology (the City) jointly submit the following comments.

The City recognizes that calculation of ERS benefits is inherently complex and that all parties might benefit from further clarification. The City is concerned by the changes proposed and notes our concerns below. However, our understanding of the verbal comments from the ERS on a companion measure seem to indicate that some of these concerns may be addressed by communication between the ERS and employer jurisdictions.

First, changing the definition of "base pay" as proposed would mean many normal, recurring, expected payments to City employees (including certain collectively-bargained pay types included in every pay period, such as Standard of Conduct pay) would no longer be reported as "base pay." This change would have a collateral effect of increasing the number of City employees considered to have "spiked" retirement benefits (*i.e.*, earned higher-than-expected non-base compensation during the years used to calculate retirement benefits which requires employers be assessed an additional amount). A "spiking" calculation in these circumstances would result because of the way payments are categorized, and not because of intentional or improper manipulation on the part of employees. In fact, the change in definition, itself, could create a spiking situation as base pay prior to implementing the provisions of the Act would include the differentials and periodic payments, and base pay after implementation would not. The City would prefer that all normal periodic payments and recurring differentials continue to be reported to the ERS as they currently are—as base pay. We understand the ERS may be open to continuing the inclusion of true recurring differentials in the definition of base pay.

The Honorable Richard H.K. Onishi, Chair  
The Honorable Jackson D. Sayama, Vice Chair  
and Members of the Committee on Labor and Tourism  
February 11, 2021  
Page 2

Second, we also have concerns about changing the definition of “compensation” for current employees and would be particularly concerned if this bill would require creation of a “third tier” of ERS benefits for employees. The City notes that a third tier could further complicate the already vast array of differentiated benefits. Many employees already find the differentiated benefits confusing.

Our final concern remains even if the other concerns are addressed—that concern is with the requirement that changes required by the bill be made by December 31, 2021. The City requests that, if the bill moves forward, it provide at least two years before implementation is required, to allow employers enough time to reconfigure programming and test changes in current electronic reporting practices.

Thank you for the opportunity to comment on HB928.

Sincerely,

---

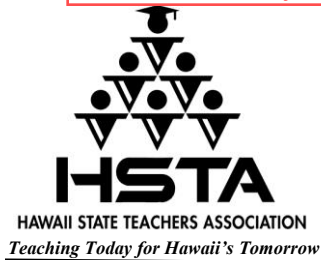
Andrew T. Kawano, Director Designate  
Department of Budget and Fiscal Services

---

Noel T. Ono, Acting Director  
Department of Human Resources

---

Mark D. Wong, Director Designate and CIO  
Department of Information Technology



Corey Rosenlee  
President  
Osa Tui Jr.  
Vice President  
Logan Okita  
Secretary-Treasurer  
Wilbert Holck  
Executive Director

TESTIMONY BEFORE THE HOUSE COMMITTEE ON  
LABOR & TOURISM

RE: HB 928 - RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM

THURSDAY, FEBRUARY 11, 2021

COREY ROSENLEE, PRESIDENT  
HAWAII STATE TEACHERS ASSOCIATION

Chair Onishi and Members of the Committee:

The Hawaii State Teachers Association **opposes HB 928**, relating to the employees' retirement system. This bill would amend the definition of "base pay" to read as follows: "'Base pay" means the [~~normal periodic payments of money for service~~] base compensation pay rate stated in the employer's personnel file as reported to the system or the employee's personnel action report notification or certification, the right to which accrues on a regular basis in proportion to the service performed; [~~recurring differentials;~~] and elective salary reduction contributions under sections 125, 403(b), and 457(b) of the Internal Revenue Code of 1986, as amended."

The Hawaii State Teachers Association **opposes taking out the language, "recurring differentials" on page 1, line 15. The Hawaii Department of Education has recently enacted differentials to attract and retain our teachers in hard to staff areas of special education, Hawaiian Immersion, and hard to staff geographic locations. HSTA also opposed taking out the words 'shortage differentials' on page 3, line 19. The Special Education shortage differentials themselves, helped to decrease vacancies by 66%! The Department also saw a 77% increase in teachers transferring into special education positions.** The Department stated before the House Committee on Lower and Higher Education that they typically have about 200 special education teaching vacancies a year, filling those spots with emergency hires. But this school year, that vacancy rate fell about 66 percent to roughly 69 positions. "I would like to say it's had the desired effect," Cynthia Covell told lawmakers. "So that is one of the lowest (vacancy) rates we've seen in quite a while."

**Part of the reason these differentials worked is the fact that the teachers knew these differential earnings would go toward their calculations toward their retirement earnings as well. It is unfair to change this definition,**



1200 Ala Kapuna Street ♦ Honolulu, Hawaii 96819  
Tel: (808) 833-2711 ♦ Fax: (808) 839-7106 ♦ Web: www.hsta.org

Corey Rosenlee  
President

Osa Tui Jr.  
Vice President

Logan Okita  
Secretary-Treasurer

Wilbert Holck  
Executive Director

**especially now, when we are making gains in licensed special education teachers that are so desperately needed. That also goes for our hard to staff areas and our Hawaiian Immersion teachers. With a simple incentive, we have been able to nearly solve this decades-long problem that cost our state more than \$1 billion in lawsuits known as the Felix Consent Decree.** [In 1993, the federal lawsuit accused the State of Hawaii of failing to provide adequate mental health services to students with special needs, resulting in a settlement known as the Felix Consent Decree. Hawaii spent \$1.2 billion to meet the terms of the decree.]

The Department has also stated that compared to last school year, “we had more teachers stay in SPED because they can transfer out annually during the teacher transfer process.” Typically, they come into SPED and then they transfer out after a few years, some after a year. While last school year saw 1,685 teachers staying in special education teaching lines, this year, the number climbed by 48 positions, with 1,733 educators staying in their SPED positions. In fact, at UH they have so many students who want to become SPED teachers now, they have a waitlist. That’s something we never could have imagined before.

To help recruit and retain our licensed teachers, especially those in our hard to staff positions, the Hawaii State Teachers Association asks your committee to **oppose** this bill.