

TESTIMONY BY WESLEY K. MACHIDA
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STATE OF HAWAII

TO THE HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT
ON
SENATE BILL 1038, S.D. 2

MARCH 11, 2014, 9:30 A.M.

RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM

Chair Nakashima and Members of the Committee:

S.B. 1038, S.D. 2, as proposed, allows the court to decree a forfeiture of retirement benefits by the member, former member, or retirant of the Employees' Retirement System (ERS) convicted of a felony that the court finds is related to the employment of the member, former member, or retirant by the State or county.

To ensure that the forfeiture will not violate the constitutional protections under article XVI, section 2, of the Hawaii State Constitution which states that the accrued benefits of ERS members shall not be diminished or impaired, S.B. 1038, S.D. 2 allows for the court's discretion as to the nature of the crime and its relevance to a member's protected benefits upon issuing a decree. These constitutional protections are the result of a contractual relationship between the ERS member and the State or political subdivisions for which the member is employed - a contract that the court would determine to be clearly violated by an employment-related felony conviction. Responsibility to the contractual relationship, and the protections it affords, should be required of all ERS members.

S.B. 1038, S.D. 2 clarifies that the forfeiture is a civil penalty, clarifies when a felony is "related to employment," affirms the Legislature's intent that the bill shall not diminish or impair accrued benefits and excludes benefits that must be non-forfeitable under federal tax law to maintain the ERS's tax-qualified status. .

The ERS Board of Trustees strongly supports this bill.

Thank you for the opportunity to provide testimony on this important legislation.