

TESTIMONY BY WESLEY K. MACHIDA  
EXECUTIVE DIRECTOR, EMPLOYEES' RETIREMENT SYSTEM  
STATE OF HAWAII

TO THE HOUSE COMMITTEE ON FINANCE  
ON  
SENATE BILL 1038, S.D. 2, H.D. 1

MARCH 27, 2014, 3:00 P.M.

RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM

Chair Luke and Members of the Committee:

S.B. 1038, S.D. 2, H.D.1, 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, H.D. 1, 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.

In addition, S.B. 1038, S.D. 2, H.D.1, 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.

Furthermore, the latest amendment under subsection (d) applies to those members, former members, or retirants hired after the effective date of the Act. Even though the ERS Board of Trustees supported and would prefer the prior versions of this

bill that applied to members, former members, or retirants  
irrespective of their date of hire, they strongly support the  
intent of this bill.

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