

SB1038
PROPOSED
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TESTIMONY BY WESLEY K. MACHIDA
ADMINISTRATOR, EMPLOYEES' RETIREMENT SYSTEM
STATE OF HAWAII
TO
THE SENATE COMMITTEE ON JUDICIARY AND LABOR
ON
SENATE BILL 1038, S.D. 1, PROPOSED

FEBRUARY 11, 2014

RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM

Chair Hee, Vice Chair Shimabukuro and Members of the Committee:

S.B. 1038, S.D. 1, as proposed, would require the Employees' Retirement System (ERS) to "forfeit" all or part of the retirement benefits of an ERS member who is convicted of, or pleads guilty or nolo contendere to, a felony. This proposal also applies this forfeiture to members who leave active employment if their conviction or plea includes a crime related to the duties of the member's employment.

The ERS Board of Trustees has not had the opportunity to review this proposal. The ERS therefore does not take a position on the intent of the bill. The purpose of this testimony is to provide technical and operational comments regarding the bill.

The ERS is also concerned about being the agency responsible for determining whether a member's conviction or plea qualifies for forfeiture of retirement benefits. That determination should be made by a court of competent jurisdiction, which would then issue an order to the ERS to suspend or withhold the benefits.

Technical revisions to the wording of the bill are also necessary: the member not "the system" should forfeit the member's retirement benefits. In addition, we suggest revision of the provisions at line 13 through 16 on page 1 (excluding from forfeiture "retirement benefits that are vested on the effective date of this Act") to more closely track the wording of section 2, article XVI of the State Constitution, which provides that "the accrued benefits [of ERS members] shall not be diminished or impaired."

If it is the pleasure of this Committee, the ERS would be happy to provide possible revisions of this proposal.

Thank you for the opportunity to testify on this important legislation.