

TESTIMONY BY KANOE MARGOL
INTERIM EXECUTIVE DIRECTOR, EMPLOYEES' RETIREMENT SYSTEM
STATE OF HAWAII

TO THE HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT
ON

HOUSE BILL NO. 1370

FEBRUARY 6, 2015, 9:00 A.M.

RELATING TO DIVORCE

Chair Nakashima, Vice Chair Keohokalole and Members of the
Committee,

H.B. 1370 proposes to require the administrator of the
Employees' Retirement System (ERS) to make direct payments to a
non-member former spouse a portion of the member's pension,
annuity or retirement allowance by a final judgment, order or
divorce decree.

The ERS Board of Trustees has not reviewed this proposal, and
therefore has not formalized their position on this particular
legislation. On previous proposed legislation regarding
payments to non-member payees, however, they have expressed
concern as to the administrative and operational cost of
implementing these types of orders. The Board has a fiduciary
responsibility to the ERS fund and to all of its members, and
will therefore be wary of any legislation that has the potential
of adding to the ERS' \$8.6 billion unfunded liability and
further threaten the stability or sustainability of the ERS.

ERS staff also has technical and operational concerns with
respect to this bill.

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

**FAMILY LAW SECTION
OF THE
HAWAII STATE BAR ASSOCIATION**

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February 4, 2015

To: House Committee on Labor & Public Employment
Representative Mark M. Nakashima, Chair
Representative Jarrett Keohokalole, Vice-Chair

From: Dyan K. Mitsuyama, Vice-Chair/Chair Elect
Family Law Section, Hawaii State Bar Association

Re: Testimony in Support of HB 1370
Hearing: Friday, February 6, 2014 at 9:00 a.m.

Good afternoon, Chair Nakashima, Vice Chair Keohokalole and the members of the Labor & Public Employment Committee, I am Dyan K. Mitsuyama, a partner in Mitsuyama & Rebman, LLLC, which is a law firm concentrating in all family law matters. I have been a licensed attorney here in the State of Hawaii for about 16 years now. I am the current Vice-Chair/Chair-Elect of the Family Law Section of the Hawaii State Bar Association, which is comprised of approximately 136 licensed attorneys state-wide all practicing or expressing an interest in practicing family law.

The Family Law Section supports the intent of this measure as it is much needed to ensure that the division of an Employees' Retirement System member's retirement benefits are correctly divided and promptly paid with the appropriate tax consequences for both the member and the non-member former spouse by way of Court order.

Only private employers are required to abide by the Employee Retirement Income Security Act (ERISA) which provides for non-member former spouses to receive retirement benefits awarded as a result of divorce property division directly from the retirement plan's administrator pursuant to a Qualified Domestic Relations Order (QDRO). The federal government as well though allows for direct payment to former spouses of retirement benefits as a result of divorce by and through a court order. Currently, the Hawaii state system does not provide for that.

This leads to much uncertainty and increased litigation for both the retired member and the non-member former spouse. Personally, through my practice, I have represented both members and non-members in the enforcement of the division of the retirement system's benefits. I have also heard other colleagues mention they too have had cases whereby one former spouse is

seeking collection of past-due retirement payments from the non-member, who may actually assert that he/she have made payments. Currently, there is no system of record-keeping.

Falling in line with the practice for the division of retirement benefits earned in the private sector or federal government will not only be “fair” but it will also decrease litigation in this context. It will assure that the non-member is required to claim the funds received as income on her tax returns and assure that the member will not be held liable for the portion received by the non-member.

NOTE: The comments and recommendations submitted reflect the position/viewpoint of the Family Law Section of the HSBA. The position/viewpoint has not been reviewed or approved by the HSBA Board of Directors, and is not being endorsed by the Hawaii State Bar Association.

TESTIMONY OF THOMAS D. FARRELL
Regarding House Bill 1370, Relating to Divorce

Committee on Labor and Public Employment
Representative Mark M. Nakashima, Chair

Friday, February 6, 2015 9:00 a.m.
Conference Room 309, State Capitol

Dear Representative Nakashima and Members of the Committee:

I support HB 1370.

All retirement plans, including ERS, are marital property and are divisible by the Family Court in a divorce action. This legislation does not change that. In most cases, when a non-member is awarded a share of a member's retirement plan, direct payment can be had from the plan administrator. In the private sector, this occurs by way of a "Qualified Domestic Relations Order" and there are similar devices in the case of military and federal Civil Service retirement pay. However, because of the inalienability provisions of Chapter 88, when ERS retirement plans are divided in a divorce, the plan member must make the payment to the former spouse and the plan administrator is not allowed to do so. This bill would reverse that and bring ERS into line with all other retirement plans.

This change would benefit the former spouse as well as the ERS member. In the case of the former spouse, the bill would ensure that he or she gets what the court ordered. In the case of the member, the bill would relieve him or her from a lifetime of writing monthly checks, and would also ensure that the ERS retiree is taxed only on that portion that he or she actually receives.

I recommend three amendments. First, and most importantly, the references to "non-member former spouse" should all be replaced with the phrase "former spouse." This would eliminate any confusion in cases where both spouses are ERS members. Second, and third, I believe the proposed amendments to Section 580-47 and to Chapter 571, Hawaii Revised Statutes, are unnecessary and add nothing to the bill. I would recommend deleting them.

Thank you for the opportunity to testify this morning.

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TO: Representative Mark M. Nakashima, Chair
Representative Jarrett Keohokalole, Vice-Chair
House Committee on Labor and Public Employment

FROM: Jessi L.K. Hall
E-Mail: jhall@coatesandfrey.com
Phone: 524-4854

HEARING DATE: February 6, 2015 at 9:00 a.m.

RE: Testimony in Support of HB1370

Good day Representative Nakashima, Representative Keohokalole, and members of the Committee. My name is Jessi Hall. I am an attorney who practices Family Law. I am also a past Chair of the Family Law Section of the Hawaii State Bar Association. I am here today to testify in support of HB1370.

In determining property division in a Divorce matter, the division of the benefits an employee earns from the Hawaii State Employee Retirement System (ERS) has always been a thorn in our side. The ERS is a wonderful benefit offered to employees, which has a significant marital value. This value is difficult, if not impossible, to perfectly calculate. In turn this usually means instead of offsetting assets, a non-member spouse has to take the award of their marital share of the ERS.

Taking their marital share means that when the member spouse retires, the member needs to pay their former spouse each month their marital share. (Literally cut a check and deliver it to their former spouse in some fashion.) This not only keeps the parties bound often long after the divorce, but completing the calculation is also often done long after the divorce which can lead to miscalculations. As you would expect, those miscalculations often lead to future litigation.

Finally, many members that find themselves in this predicament do not realize that they are paying the tax on the entire amount and that if they do not make the appropriate adjustments, their former spouse will avoid facing any tax effect and essentially receive tax free funds. Also, having the entire amount attributed to the member could undeservingly put them in a higher tax bracket.

It is for the above reasons that I must write in support of HB1370 as it is currently written. Thank you for this opportunity to testify.

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NAOKO C. MIYAMOTO
CATHY Y. MIZUMOTO

TO: Representative Mark Nakashima, Chair
Representative Jarrett Keohokalole, Vice-Chair
House Committee on Labor & Public Employment

FROM: Dyan M. Medeiros
E-Mail: d.medeiros@hifamlaw.com
Phone: 524-5183

HEARING DATE: February 6, 2015 at 9:00 a.m.

RE: Testimony in Support of HB1370 Relating to Divorce

Good morning Representative Nakashima, Representative Keohokalole, and members of the Committee. My name is Dyan Medeiros. I am a partner at Kleintop, Luria & Medeiros, LLP and have concentrated my practice solely in the area of Family Law for more than sixteen (16) years. I am also a past Chair of the Family Law Section of the Hawaii State Bar Association. I submit this testimony in support of HB1370.

HB1370 would solve an ongoing problem for both ERS members and their former spouses, namely the implementation of Court orders dividing ERS retirement benefits. Hawaii law allows the Family Court to award a portion of an ERS member's retirement benefits to their former spouse in divorce cases. This often happens. However, Hawaii law prohibits ERS from paying the former spouse his or her share of those benefits directly.

This means that upon retirement an ERS member must notify his or her former spouse that he or she has retired, must then calculate the amount of retirement benefits that are owed to the former spouse, and then must send a check to the former spouse each month. At the end of each year, the ERS retiree receives a 1099-R showing that he or she has received 100% of their retirement benefits even though they have paid some of it to their former spouse. Whenever an ERS retiree receives a cost-of-living allowance, he or she must re-calculate the amount owed to their former spouse. The former spouse must rely on the ERS retiree to notify them of the retirement and to send a check each month. If the ERS retiree fails to send a check, the former spouse must figure out a way to obtain his or her payment, including by going to

Court. This imposes a significant burden on both the ERS retiree and their former spouses.

HB1370 would end all of this by allowing ERS to send a check each month to the former spouses of ERS retirees. This is something that routinely happens with retirement plans in the private sector and with federal-sponsored retirement plans. There is no reason for ERS members and their former spouses to be denied this same type of benefit.

I would recommend one amendment to HB1370. The reference to “non-member former spouse” should be changed to “former spouse” to eliminate any confusion in cases where both spouses are ERS members.

Thank you.

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 05, 2015 8:11 AM
To: LABtestimony
Cc: charles@noyhawaii.com
Subject: Submitted testimony for HB1370 on Feb 6, 2015 09:00AM

HB1370

Submitted on: 2/5/2015

Testimony for LAB on Feb 6, 2015 09:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Charles Hite	Individual	Support	No

Comments: To the Hawaii State Legislature, I submit this testimony in my individual capacity in support of HB 1370. This bill would change the statutory provisions applicable to payment of retirement benefits to employees in the State Hawaii Retirement System to allow the Hawaii Retirement system to pay benefits directly to a divorced spouse upon submission of an appropriate court order. Currently, the law is that although a portion of retirement benefits of a County or State employee can be awarded to the divorced spouse of a County or State employee, the payment still is actually paid only to the retired employee spouse. The employee spouse is then to pay a portion to the non-employee spouse. Current statutory law does not permit the Hawaii Retirement System to legally divide retirement benefits for divorced spouses pursuant to a Qualified Domestic Relations Order. In my view, the current system has drawbacks which the current bill hopefully will address and remedy. Essentially, the employee spouse is still taxed on the entire monthly retirement amount, including the amount payable to the employee spouse. This system can lead to misunderstandings and litigation on how much the share of each spouse should be. Two direct payments - one to each spouse, and based upon a Qualified Domestic Relations Order approved by the Family Court - will not only fix the appropriate monthly amounts for each spouse, but the taxes on the amounts awarded to each spouse as well. It is hoped that this bill will at least reduce the litigation involving retirement benefits of retired County or State employees. In this regard, some cases can take years to resolve. Thank you for this opportunity to submit testimony in my individual capacity. Charles Hite

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From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 05, 2015 9:02 AM
To: LABtestimony
Cc: sasha_98@ymail.com
Subject: Submitted testimony for HB1370 on Feb 6, 2015 09:00AM

HB1370

Submitted on: 2/5/2015

Testimony for LAB on Feb 6, 2015 09:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Sasha Ota	Individual	Support	No

Comments: This bill is long overdue to provide parity. Please support it.

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Sent: Thursday, February 05, 2015 9:24 AM
To: LABtestimony
Cc: cynthialinet@gmail.com
Subject: Submitted testimony for HB1370 on Feb 6, 2015 09:00AM

HB1370

Submitted on: 2/5/2015

Testimony for LAB on Feb 6, 2015 09:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
cynthia linet, esq	Individual	Support	No

Comments: As a family law attorney, in private practice for almost 20 years in Hawaii, I know the importance of QDROs. Without the ability to provide for the dispersal of funds to a former spouse through a QDRO, the intended former spouse is at the mercy of the pensioner to do the right thing. And because the parties are no longer together, there is much incentive to refuse to pay. It's time that this injustice is remedied.

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