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THOMAS WILLIAMS
EXECUTIVE DIRECTOR

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STATE OF HAWAII
EMPLOYEES' RETIREMENT SYSTEM

TESTIMONY BY THOMAS WILLIAMS
EXECUTIVE DIRECTOR, EMPLOYEES' RETIREMENT SYSTEM
STATE OF HAWAII

TO THE HOUSE COMMITTEE ON JUDICIARY
ON

HOUSE BILL NO. 2468

FEBRUARY 16, 2016, 2:00 P.M.

RELATING TO HAWAII DOMESTIC RELATIONS ORDERS

Chair Rhoads, Vice Chair San Buenaventura and Members of the Committee,

H.B. 2468, H.D. 1 would authorize the Employees' Retirement System (ERS) to make direct payments to the spouse or former spouse of an ERS member or retiree when the spouse or former spouse has been awarded all or a portion of the member's or retiree's retirement benefits pursuant to a qualified domestic relations order (QDRO) issued by the courts.

Upon review of H.B. 2468, H.D. 1, the ERS Board of Trustees and ERS staff have the following comments and concerns:

A technical correction needs to be made to page 2, line 12. "Hawaii domestic relations order" should be changed to "qualified domestic relations order" as it is a defined term under the Internal Revenue Code. One of the goals of the bill is to allow "Hawaii domestic relations orders" to be treated as "qualified domestic relations orders" for federal tax purposes.

The successful implementation of H.B. 2468, H.D. 1, must allow adequate time, funding and resources for rule-making, member and public education, computer system upgrades and related testing, along with the review of potential domestic relations orders. Alternate payees represent additional, separate benefit recipients of the System. The payments to alternate payees are not mere deductions from the ERS retiree's benefit. As specified by this bill, each alternate payee will be identified as a separate "pensioner" under the ERS with the alternate payee's own actuarially calculated benefit, post-retirement increases, tax withholding and



Employees' Retirement System
of the State of Hawaii

reporting and entitlement to counseling. Modifications to the ERS's computer system will be necessary to properly administer QDROs.

The ERS computer vendor estimates upwards of \$1 million for the modifications, changes, processing, reporting and coding required by this measure. Public pension systems similar to ours have indicated that legal and actuarial review generally require one or more dedicated professional benefits staff to accurately and efficiently process and track QDROs. The ERS staff estimates that, based on our active, vested and retired population, we could potentially receive 40 QDROs per month. The review and revision of prior court divorce decrees is likely to affect our administrative capabilities even more.

Without the funding and resource provisions appropriated by sections 4 and 5 of H.B. 2468, H.D. 1, ERS will not be able to implement the requirements and additional payments stipulated by this measure. Section 5 provides that the appropriation for implementation of this measure will be made out of the ERS's expense fund. The ERS requests that the appropriation be made from the State's general fund instead of from the ERS expense fund as expenditures from the ERS expense fund will adversely affect our funded status. No matter whether the required resources are expended from the general fund or use ERS dollars, the bill's requirements cannot be implemented without such resources.

The ERS Trustees' support of H.B. 2468, H.D. 1 is subject to the provision of the additional funding and resources described.

Thank you for the opportunity to provide comments on this important measure.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME Local 152, AFL-CIO

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

The Twenty-Eighth Legislature, State of Hawaii
House of Representatives
Committee on Judiciary

Testimony by
Hawaii Government Employees Association

February 16, 2016


H.B. 2468, H.D. 1 – RELATING TO HAWAII
DOMESTIC RELATIONS ORDERS

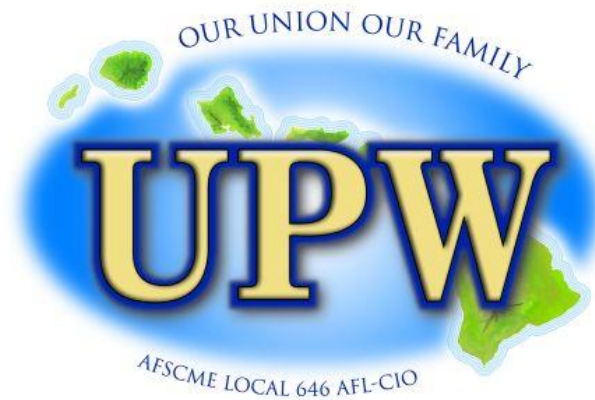
The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the purpose and intent of H.B. 2468, H.D. 1, which authorizes and requires the Employees' Retirement System to make direct payments to a spouse or a former spouse of an ERS member pursuant to a Hawaii domestic relations order.

A domestic relations order is a court ordered decree that recognizes an alternative payee's right to receive all or a portion of a benefits payable. Our members have raised concerns with the current process whereby an individual who is authorized by a domestic relations order to receive payments must rely on his or her former spouse to send the payment. In some cases, the former spouse does not send the full amount due, does not send payment in a timely manner, or does not send it at all, which causes unnecessary hardship to the individual. Passage of this legislation ensures that court orders are followed and that individuals receive regular, direct payment from the ERS instead of relying on a former spouse to send payment.

Thank you for the opportunity to testify in support of H.B. 2468, H.D. 1.

Respectfully submitted,


Randy Perreira
Executive Director



THE HAWAII STATE HOUSE OF REPRESENTATIVES
The Twenty-Eighth Legislature
Regular Session of 2016

COMMITTEE ON JUDICIARY

The Honorable Karl Rhoads, Chair
The Honorable Joy A. San Buenaventura, Vice Chair

DATE OF HEARING: Tuesday, February 16, 2016
TIME OF HEARING: 2:00 p.m.
PLACE OF HEARING: State Capitol
415 South Beretania Street
Conference Room 325

**TESTIMONY ON HOUSE BILL 2468 RELATING TO HAWAII
DOMESTIC RELATIONS ORDERS**

By DAYTON M. NAKANELUA,
State Director of the United Public Workers (UPW),
AFSCME Local 646, AFL-CIO

My name is Dayton M. Nakanelua, State Director of the United Public Workers, AFSCME, Local 646, and AFL-CIO. The UPW is the exclusive bargaining representative for approximately 12,000 public employees, which include blue collar, non-supervisory employees in Bargaining Unit 01 and institutional, health and correctional employees in Bargaining Unit 10, in the State of Hawaii and various counties. The UPW also represents about 1,500 members of the private sector.

HB2468 authorizes and requires the ERS to make direct payment, all or a portion, to a spouse or former spouse of an ERS retiree of the retiree's benefits in accordance with a Hawaii Domestic Relations Order. The UPW supports this measure.

Thank you for the opportunity to submit this testimony

TESTIMONY OF THOMAS D. FARRELL

Regarding House Bill 2468, HD1, Relating to Hawaii Domestic Relations Orders

House Committee on Judiciary
Representative Karl Rhoads, Chair

Tuesday, February 16, 2016 2:00 p.m.
Conference Room 325, State Capitol

Good afternoon Representative Rhoads and Members of the Committee:

I support HB 2478, HD1.

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.

This bill is similar to SB 1324 which passed last session, but was vetoed by Governor Ige due to concerns over cost, and that the funding mechanism might jeopardize the tax exempt status of the system. This new version is the product of a year of study by ERS and incorporates pages and pages of technical language as well as detailed language for the pass-through of legal and actuarial costs, together with an appropriation. If this makes ERS happy, so be it.

I understand that even after all of this, ERS will continue to oppose this needed legislation due to the cost of implementation. I have previously testified and continue to believe that ERS's estimates of the cost of implementation are far-fetched and have no basis in reality. In testimony last year before the Senate Ways and Means Committee, ERS claimed that it will take a million dollars to implement this, and in testimony a week later in front of the House Finance

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Testimony on HB 2468, HD1
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Committee, ERS upped its estimate to \$2 million---a figure they maintained last March during testimony before the Senate Judiciary committee. I suggest to you that these numbers are utter nonsense, and are not supported by any serious analysis.

There are about 5,000 divorces per year that are granted in Hawaii. About 1.4M people live in the State of Hawaii. This includes all the military folks that are assigned here. There are about 70,000 state and county employees. If the proportion of divorces involving state or county employees is the same as their proportion to the general population, then 5% of divorces will involve at least one ERS member spouse. That's a potential universe is 250 decrees per year to handle. However, most divorce decrees don't divide pension benefits; this tends to occur only in long marriages where there aren't sufficient assets to award the non-member to offset his/her interest in the member's pension. Perhaps 20% of these divorces would involve division of the ERS pension. That gets it down to about 50 cases per year. While there are potentially hundreds of divorce decrees out there that already divide ERS pensions, none of them will comply with the requirements that HB 2468 will impose without a trip back to Family Court for amendment. Most people aren't going to do that if the retirant is making direct payment in accordance with the existing decree or hasn't retired yet. The bottom line is that it shouldn't take \$2M to process 50 or so divorce decrees a year.

ERS has previously defended their inflated estimate by claiming that this number was given to them by the contractor who has designed their proprietary computer system. They say it takes \$2 million to rewrite the program to allow payment to a third-party non-member. That's nonsense because ERS is making deductions from members' retired pay and sending it to third-parties already. They withhold federal taxes, for example, and send them to the IRS. And they withhold child support when presented with a child support income withholding order, which can come from any one of literally hundreds of child support enforcement agencies throughout the country.

So don't let ERS scare you with big numbers that have no basis in fact. The real reason is that they just don't want to be bothered to do this. Everyone else does, however, and it's time for ERS to join the rest of the world.

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 15, 2016 1:58 PM
To: JUDtestimony
Cc: ashman.janet@gmail.com
Subject: Submitted testimony for HB2468 on Feb 16, 2016 14:00PM

HB2468

Submitted on: 2/15/2016

Testimony for JUD on Feb 16, 2016 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
J. Ashman	Individual	Support	No

Comments: Requiring the employees' retirement system (ERS) to make direct payment to the spouse or former spouse of a member or retirant of the ERS, when the former spouse has been awarded a portion of the retirant's retirement benefits as part of a property division adjudicated, ordered, or decreed by a court in a domestic relations proceeding may be the only way that former spouses and their children ever receive their portion of the marital funds. Please pass this bill.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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