

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

TO THE HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT
ON

HOUSE BILL NO. 2468

FEBRUARY 5, 2016, 9:30 A.M.

RELATING TO HAWAII DOMESTIC RELATIONS ORDERS

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

H.B. 2468 would authorize the ERS to make direct payments to the spouse or former spouse of an ERS member or retirant when the spouse or former spouse has been awarded all or a portion of the member's or retirant's retirement benefits pursuant to a qualified domestic relations order (QDRO).

The ERS Board of Trustees has not had the opportunity to review H.B. 2468 and therefore has not yet taken a formal position on this proposal; however, the ERS staff has the following comments and concerns:

In order to implement H.B. 2468, the ERS must have the adequate time, funding and resources for rule-making, member and public education, computer upgrades and testing, and the review of potential domestic relations orders. The ERS computer vendor estimated upwards of \$1 million for the modifications, changes, processing, reporting and coding required by this draft legislation. Public pension systems similar to the ERS have indicated that legal and actuarial review and a dedicated professional benefits staff person would be necessary for the accurate and efficient processing of QDROs.

Without the other funding and resource provisions appropriated by sections 4 and 5 of H.B. 2468, the ERS will not be able to implement the requirements and additional payments stipulated by this proposal. The ERS board's support is subject to the provision of these additional resources.

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



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME Local 152, AFL-CIO

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The Twenty-Eighth Legislature, State of Hawaii
House of Representatives
Committee on Labor and Public Employment

Testimony by
Hawaii Government Employees Association

February 5, 2016

H.B. 2468 – 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, 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 qualified domestic relations order (QDRO).

A QDRO 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 QDRO 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.

Respectfully submitted,

Randy Perreira
Executive Director

LABtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 03, 2016 1:39 PM
To: LABtestimony
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HB2468

Submitted on: 2/3/2016

Testimony for LAB on Feb 5, 2016 09:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara L Franklin	Barbara L Franklin, Esq., Attorney at Law	Support	No

Comments: I do support this bill making it easier for domestic relations distributions from a employee's retirement account under orders from Family Court.

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HB2468

Submitted on: 2/4/2016

Testimony for LAB on Feb 5, 2016 09:30AM in Conference Room 309

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

Comments:

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* This is also written testimony
for HB 2468 ✓

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LATE TESTIMONY

TESTIMONY OF THOMAS D. FARRELL
Regarding Senate Bill 2346 Relating to the Employees' Retirement System

Senate Committee on Judiciary and Labor
Senator Gilbert S. C. Keith-Agaran, Chair

LATE

Friday, February 5, 2016 9:00 a.m.
Conference Room 016, State Capitol

Good morning Senator Keith-Agaran and Members of the Committee:

I support SB 2346.

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 do note, however, the drafter persists in wanting to call this animal a "Qualified Domestic Relations Order," notwithstanding that this is a term of art found in ERISA and nowhere else. I guess the term isn't copyrighted or trademarked, so you can name your cat "QDRO" if you want, but I would have chosen a different moniker. I note that HB2468 uses the term "Hawaii Domestic Relations Order."

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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 Committee, ERS upped its estimate to \$2 million---a figure they maintained last March during testimony before your 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 SB 2346 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.