



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

TO THE HOUSE COMMITTEE ON FINANCE  
ON  
HOUSE BILL NO. 382

FEBRUARY 18, 2015, 2:00 P.M.

RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM

Chair Luke, Vice Chair Nishimoto and Members of the Committee,

H.B. 382 proposes to require the Employees' Retirement System (ERS) to make direct payments to a non-member alternate payee all or a portion of the member's death or retirement benefits or refund of contributions as required by a qualified domestic relations order.

The Board of Trustees of the Employees' Retirement System opposes this bill.

The primary concern of the Board is the administrative and operational cost of implementing this proposal. H.B. 382 does not provide for an appropriation out of the general fund for the planning and expenditures necessary for the implementation of this bill. The Board has a fiduciary responsibility to the ERS fund and to all of its members. They are wary of any legislation that has the potential of adding to the ERS's \$8.6 billion unfunded liability and further threaten the stability or sustainability of the ERS.

The ERS will incur administrative, legal and actuarial costs in reviewing domestic relations orders authorized by the bill. In addition to these ongoing costs, the ERS will incur significant costs in modifying its computer system to track the domestic relations orders and to calculate and process the benefits payable to the alternate payee. In fact, the cost to effectuate the changes required by this bill was estimated in excess of \$2 million.

This bill is broad in scope and anticipates that implementation will be by administrative rules adopted by the ERS. ERS staff therefore requests that the definition of "qualified domestic relations order" be amended to read as follows to clarify the ERS's rulemaking authority:

"Qualified domestic relations order" means a domestic relations order  
that:

- (1) Creates or recognizes the right of an alternate payee, or assigns to an alternate payee, the right to receive all or a portion of the benefits payable by the system with respect to a member or retiree;



- (2) Directs the system to disburse benefits to the alternate payee; and
- (3) Meets such other requirements as may be specified by the system.

ERS staff also requests that the bill be amended to:

- (1) Authorize the ERS to assess administrative fees and costs, not only for the administration of payments pursuant to a qualified domestic relations order, but also for the review of a domestic relations order to determine whether it is a "qualified domestic relations order"; and
- (2) Expressly provided that the court does not have jurisdiction over the ERS with respect to a divorce or other domestic relations action in which an alternate payee's right to receive all or a portion of the benefits payable to an ERS member or retirant and that a party to any such action who attempts to make the ERS a party to the action shall be liable to the ERS for the ERS's costs and attorney's fees.

ERS staff also draws the Committee's attention to two technical defects in the bill:

- (1) Lines 8 and 9 on page 1 refer to "allowances for the cost of living." Although the ERS pays a post retirement allowance that annually increases the original retirement benefit payable to retirants by a specified percentage, this is may not necessarily be a cost of living adjustment.
- (2) The amendment to section 88-91 at lines 3 and 4 on page 4 could be read as applying to the exemption of ERS benefits from State taxes instead of to the exemption from execution, garnishment, process or assignment.

If it is the pleasure of this Committee, the ERS staff would be willing to provide language for the amendments that ERS staff is requesting and to correct the technical defects.

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



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February 14, 2015

To: House Committee on Finance  
Representative Sylvia Luke, Chair  
Representative Scott Y. Nishimoto, Vice-Chair

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

Re: Testimony in Support of HB 382  
Hearing: Wednesday, February 18, 2014 at 2:0 p.m.

Good afternoon, Chair Luke, Vice Chair Nishimoto and the members of the Finance 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 measure would mandate that an Alternate Payee may receive his/her share of retirement benefits directly from the State ERS system with the implementation of a QDRO.

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.

We strongly support this measure. We suggest though that the effective date be sooner than 2018.

*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 382, Relating to the Employees Retirement System

Committee Finance  
Representative Sylvia Luke, Chair

Wednesday, February 18, 2015 2:00 p.m.  
Conference Room 308, State Capitol

Dear Representative Luke and Members of the Committee:

I support the intent of HB 382, but as drafted, the bill is fatally flawed. If you report it out of committee, you should replace it with the language of HB 1370, HD1, which recently emerged from the Committee on Labor and Public Employment.

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.

Unfortunately, HB 382 has technical drafting flaws that are fatal. The bill attempts to create a "Qualified Domestic Relations Order" that would apply to ERS pensions. However, a QDRO is exclusively a creation of federal law and applies only to ERISA-protected pension and retirement plans. By definition, these are private sector, not public sector plans. As written, this bill simply will not work. HB 1370, HD 1 has been favorably reported from the Committee on Labor and Public Employment, and addresses the problem with more appropriate language.

Thank you for the opportunity to testify this morning.

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**SUPPLEMENTAL TESTIMONY OF THOMAS D. FARRELL**  
Regarding House Bill 382, Relating to the Employees Retirement System

Committee on Finance  
Representative Sylvia Luke, Chair

Wednesday, February 18, 2015 2:00 p.m.  
Conference Room 308, State Capitol

Dear Representative Luke and Members of the Committee:

Since the submission of my testimony on Monday, Representative San Buenaventura was kind enough to call me and we had a useful discussion about this bill.

In my prior testimony, I had suggested that the Committee simply kill HB 382 and let HB 1370 SD 1 go forward. However, HB 1370 has no less than three House committee referrals, and there is a distinct possibility that it will not clear all three committees by the necessary deadline. Therefore, it would make sense to keep HB 382 alive by favorably reporting it from your committee, and I would support that.

While I still believe that HB 382, in its current form has technical drafting flaws you could eliminate this problem by amending the bill to gut the existing language and replace it with the language of HB 1370, HD 1.

Thank you for the opportunity to supplement my testimony.

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TO: Representative Sylvia Luke, Chair  
Representative Scott Y. Nishimoto, Vice-Chair  
House Committee on Finance

**LATE**

FROM: Dyan M. Medeiros  
E-Mail: [d.medeiros@hifamlaw.com](mailto:d.medeiros@hifamlaw.com)  
Phone: 524-5183

HEARING DATE: February 18, 2015 at 2:00 p.m.

RE: Testimony in Support of HB382 Relating to the Employees' Retirement System

Good morning Representative Luke, Representative Nishimoto, 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 HB382.

HB382 would be a start to solving 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.



HB382 would end this by allowing ERS to send a check each month to the former spouses of ERS retirees once certain requirements are met. 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.

HB382 is only the beginning of a resolution since it requires ERS to promulgate specific rules implementing the statute. A start, however, is desperately needed in this area. For these reasons, I support HB382.

Thank you.