

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

TO THE HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT  
ON  
SENATE BILL 133, S.D. 2

MARCH 17, 2015, 10:00 A.M.

RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM

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

S.B. 133, S.D. 2 allows the court to decree a forfeiture of retirement benefits by the member, former member, or retirant of the Employees' Retirement System (ERS) convicted of a felony that the court finds is related to the employment of the member, former member, or retirant by the State or county.

The Board of Trustees of the ERS strongly supports this proposal.

This bill clearly defines the work-related felonies under which the penalties may be imposed and specifies the forfeiture of ERS benefits that would be applicable. In addition, to ensure that the forfeiture will not violate the constitutional protections under article XVI, section 2, of the Hawaii State Constitution which states that the accrued benefits of ERS members shall not be diminished or impaired, S.B. 133, S.D. 2 expressly protects benefits that accrued prior to the effective date of the act. S.B. 133, S.D.2 also protects benefits to beneficiaries of the member, former member or retirant of the ERS.

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

Date: February 27, 2015

To: Senate Committee on Ways and Means

From: Employees' Retirement System Staff

Re: SB133, Comments for Proposed SD2

RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

SECTION 1. Chapter 88, Hawaii Revised Statutes, is amended by adding a new section to subpart C of part II to be appropriately designated and to read as follows:

"§88- Forfeiture of benefits; felony convictions. (a) If a member, former member, or retirant is convicted of a felony and the court finds that, **by a preponderance of evidence,** the felony is related to the employment of the member, former member, or retirant by the State or any county, the court may decree, **a civil penalty** pursuant to section 706-605(8), a forfeiture by the member, former member, or retirant of all or a portion of any:

**(1)** interest;

**(2)** hypothetical account balance in excess of the amount representing any employee contributions made by or on behalf of the member, former member, or retirant;

(3) pension;

(4) annuity; or

(5) retirement allowance to which the member, former member, or retirant may otherwise be entitled under this chapter; provided that upon the death of the member, former member, or retirant, the designated beneficiary of the member, former member, or retirant may receive benefits to which such beneficiary would otherwise be entitled under this chapter.

(b) Upon receipt of a certified copy of the order decreeing forfeiture, the system shall comply with the order and shall reduce, suspend, or deny payment to the member, former member, or retirant as provided in the order until such time as the system receives a certified order to:

(1) Increase, resume, or make payments to the member, former member, or retirant; or

(2) Quash or reverse the decree of forfeiture.

The system shall not be required to make inquiry into the propriety of the order decreeing forfeiture or recoup any payments made to the member, former member, or retirant prior to receipt by the system of the order decreeing forfeiture.

(c) For the purposes of this section, a felony is "related to the employment" of an employee of the State or a county if the employee uses or attempts to use the employee's official position to commit the felony, including:

(1) Felonies in which state or county time, equipment, or other facilities are used in the commission of the felony;

(2) Bribery;

(3) Embezzlement, theft, or other unlawful taking, receiving, retaining, or failing to account properly for, any property or funds that belong to the State or any county or any department, bureau, board, or other agency thereof; or

(4) A felony committed against a person over whom the employee, in the course of the employee's duties, exercises custody or supervision.

(d) This section shall not impair or diminish benefits accrued prior to the effective date of this section. **This section shall not apply to felonies committed prior to the effective date of this section.**

(e) This section shall not apply to accrued retirement benefits that are non-forfeitable pursuant to sections 88-73(f), 88-281(g), and 88-331(f)."

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect on January 7, 2059.