

TESTIMONY OF THOMAS D. FARRELL
Regarding Senate Bill 2346 SD1 Relating to the Employees' Retirement System

Senate Committee on Ways and Means
Senator Jill N. Tokuda, Chair

Wednesday, February 24, 2016 1:15 p.m.
Conference Room 211, State Capitol

Good morning Senator Tokuda and Members of the Committee:

I support SB 2346 SD 1.

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 your 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

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estimate to \$2 million---a figure they maintained last March during testimony before the Senate Committee on Judiciary and Labor. 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.