

HB2341 HD1

Measure Title: RELATING TO QUALIFIED DOMESTIC RELATIONS ORDERS.

Report Title: Employees' Retirement System; Qualified Domestic Relations Orders

Description: Allows the Employees' Retirement System to make direct payments to spouses or former spouses of ERS members or retirants to include former spouses or former members with vested benefit status when the former spouse has been awarded all or a portion of ERS retirement benefits as ordered or decreed in a domestic relations proceeding. Makes the ERS benefits payable to an alternate payee. Delays implementation of Act 263, Session Laws of Hawaii 2016, to July 1, 2020. (HB2341 HD1)

Companion: [SB2768](#)

Package: Governor

Current Referral: LBR/JDC, WAM

Introducer(s): SAIKI (Introduced by request of another party)

<u>Sort by</u> <u>Date</u>		<u>Status Text</u>
1/22/2018	H	Pending introduction.
1/24/2018	H	Introduced and Pass First Reading.
1/29/2018	H	Referred to LAB, FIN, referral sheet 9
2/8/2018	H	Bill scheduled to be heard by LAB on Tuesday, 02-13-18 9:45AM in House conference room 309.
2/13/2018	H	The committees on LAB recommend that the measure be PASSED, WITH AMENDMENTS. The votes were as follows: 7 Ayes: Representative(s) Johanson, Holt, Evans, Ichiyama, Keohokalole, Yamashita, Matsumoto; Ayes with reservations: none; Noes: none; and Excused: none.
2/16/2018	H	Reported from LAB (Stand. Com. Rep. No. 673-18) as amended in HD 1, recommending passage on Second Reading and referral to FIN.
2/16/2018	H	Passed Second Reading as amended in HD 1 and referred to the committee(s) on FIN with none voting aye with reservations; none voting no (0) and Representative(s) DeCoite, Ing, Nakamura, Onishi, Woodson excused (5).
2/20/2018	H	Bill scheduled to be heard by FIN on Thursday, 02-22-18 1:30PM in House conference room 308.
2/22/2018	H	The committees on FIN recommend that the measure be PASSED, UNAMENDED. The votes were as follows: 13 Ayes: Representative(s) Luke, Cullen, Cachola, DeCoite, Fukumoto, Gates, Holt, Kobayashi, Lowen, Nakamura, Todd, Yamashita, Ward; Ayes with reservations: none; Noes: none; and 2 Excused: Representative(s) Keohokalole, Tupola.
3/2/2018	H	Reported from FIN (Stand. Com. Rep. No. 941-18), recommending passage on Third Reading.
3/2/2018	H	Passed Third Reading with none voting aye with reservations; none voting no (0) and Representative(s) Ing, San Buenaventura, Say, Yamane excused (4). Transmitted to Senate.
3/6/2018	S	Received from House (Hse. Com. No. 214).
3/6/2018	S	Passed First Reading.
3/6/2018	S	Referred to LBR/JDC, WAM.
3/19/2018	S	The committee(s) on LBR/JDC has scheduled a public hearing on 03-22-18 3:15PM in conference room 229.

S = Senate | **H** = House | **D** = Data Systems | **\$** = Appropriation measure | **ConAm** = Constitutional Amendment

Some of the above items require Adobe Acrobat Reader. Please visit [Adobe's download page](#) for detailed instructions.

DAVID Y. IGE
GOVERNOR



THOMAS WILLIAMS
EXECUTIVE DIRECTOR

KANOE MARGOL
DEPUTY EXECUTIVE DIRECTOR

STATE OF HAWAII
EMPLOYEES' RETIREMENT SYSTEM

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

TO THE SENATE COMMITTEE ON LABOR
AND
THE SENATE COMMITTEE ON JUDICIARY
ON

HOUSE BILL NO. 2341, H.D. 1

March 22, 2018
3:15 P.M.
Conference Room 229

RELATING TO HAWAII QUALIFIED DOMESTIC RELATIONS ORDERS

Chairs Tokuda and Taniguchi, Vice Chairs English and Rhoads, and Members of the Committees,

H.B. 2341, H.D. 1 would amend the authorization and requirement for the Employees' Retirement System ("ERS") to make direct payment to the spouse or former spouse of an ERS member or retirant to include the former spouse of former members with vested benefit status when the former spouse has been awarded all or a portion of ERS retirement benefits as order or decreed by a court in a domestic relations proceeding. In addition, this bill makes consistent the benefits payable to an alternate payee whether the Hawaii qualified domestic relations ordered ("HiDRO") is certified prior to, or after, the member, former member with vested benefit status or retirant, retires. Further, this bill amends the effective date of Act 263, Session Laws of Hawaii, 2016 to July 1, 2020.



Employees' Retirement System
of the State of Hawaii

As funding was not provided through the General Fund or approved from the ERS expense fund for Act 263 when enacted in 2016, this bill is intended to authorize necessary funding and to amend the scope and implementation date of HiDROs by: (1) making consistent the benefit period payable to alternate payees regardless of whether the qualified domestic relations order is certified prior to, or after, the member, former member with vested benefit status or retirant retires, and (2) delays the implementation of Act 263 until July 1, 2020. The ERS views the delayed effective date as necessary to the development and application of the resources needed to support implementation and to cover the costs of computer system modifications, to educate members and other affected parties and to cover increased operational costs for the review of domestic relations orders and to perform or obtain actuarial and other calculations to allocate retirement benefits pursuant to a qualified domestic relations order. Alternative funds to implement the HiDRO Act are included in the ERS's supplemental budget request for fiscal year 2019 under the Department of Budget and Finance.

The Board of Trustees of the Employees' Retirement System supports this legislation.

Thank you for this opportunity to provide testimony on H.B. 2341, H.D. 1.

TESTIMONY OF THOMAS D. FARRELL
Regarding House Bill 2341, HD1, Relating to Qualified Domestic Relations Orders

Committee Labor
Senator Jill N. Tokuda, Chair

Committee on Judiciary
Senator Brian T. Taniguchi, Chair

Thursday, March 22, 2018, 3:15 p.a.m.
Conference Room 229, State Capitol

Good afternoon Senators Tokuda and Taniguchi, and members of the Committees:

For years, the Family Law bar grappled with the dilemma that while ERS pensions are divisible in divorce, the non-member spouse couldn't get direct payment from the plan administrator. This often meant that the non-member former spouse wasn't going to get paid her share at all, and in those cases where the member made payment himself, the member was being taxed on the entire pension, instead of his share.

In 2015, the Legislature passed a bill to bring ERS into line with all other retirement plans in the United States and permit direct payment to the non-member spouse. Governor Ige vetoed it, saying ERS needed more time to assess the costs and implications. Finally, in 2016, the Legislature passed and the Governor signed Act 263. This new version was the product of a year of study by ERS and incorporated pages and pages of technical language as well as detailed language for the pass-through of legal and actuarial costs. One of the compromise provisions was a delay in implementation for two years so that ERS could have time to prepare.

Now we're back again and ERS has new technical changes. Much of this bill is about inserting the phrase "former member with vested benefit status" at forty-two different places in the bill. As a former state employee with fifteen years of service, I would have thought that I was still a member of ERS, even though I am no longer accruing retirement service. However, if ERS isn't sure, and thinks it's better to call people like me a "former member with vested benefit status," so be it.

I also see that ERS wants to gut some of the language that it successfully inserted in Act 263 for determining what the non-member former-spouse will be paid. Instead, they want to have the act say that ERS will pay according to the HDRO. That might be a good idea. However, they also

Divorce ♦ Paternity ♦ Custody ♦ Child Support ♦ TROs ♦ Arbitration
also handling national security cases involving revocation or denial of security clearances

700 Bishop Street, Suite 2000, Honolulu, Hawaii 96813
Telephone 808.535.8468 ♦ Fax 808.585.9568 ♦ on the web at: www.farrell-hawaii.com

want to divide the population into two classes: those receiving benefits and those expecting to receive benefits. The language for dealing with those receiving would then be engrafted onto those who are expecting to receive. I'm not sure what this accomplishes. There hasn't been much discussion about this in testimony or in the committee reports. Frankly I'm wondering why this is necessary.

What I find most objectionable is another two-year delay. ERS says that it can't implement this thing until you give them the money to do so, in an amount unstated in this bill or in their prior testimony. Maybe they'll tell you today, but if they do, don't take those representations at face value.

In past sessions, we heard ERS estimates of the cost of implementation that were far-fetched and had no basis in reality. In testimony before the Senate Ways and Means Committee in 2015, ERS claimed that it would 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 in March of 2016 during testimony before the Senate Committee on Judiciary and Labor. These numbers are utter nonsense and are not supported by any serious analysis.

ERS defended their inflated estimate by claiming that the contractor who designed their proprietary computer system would charge \$2 million to rewrite the program to allow payment to a third-party non-member. ERS is already making deductions from members' retired pay and sending them to third-parties. It withholds federal taxes, for example, and sends them to the IRS. It also withholds child support when presented with a withholding order, which can come from any one of hundreds of child support enforcement agencies throughout the country. Act 263 should affect about 50 cases per year.¹ That shouldn't take \$2M.

The truth is that ERS just doesn't want to have to deal with pension division orders coming from the divorce courts. It got Governor Ige to veto this back in 2015, but he had to give in the next year. So, ERS convinced the legislature to give it a two-year delay in implementation, and I guess the plan is to keep coming back every two years to put a couple more years on the clock, until the legislature finally gives up and repeals the whole thing.

Don't let ERS get away with this.

¹ About 5,000 divorces granted in Hawaii every year. About 1.4M people live in the State of Hawaii. This includes all military personnel and family members 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 is a potential universe of 250 divorce decrees per year. 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.

HB-2341-HD-1

Submitted on: 3/21/2018 3:14:25 PM

Testimony for LBR on 3/22/2018 3:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Testifying for Oahu County Committee on Legislative Priorities of the Democratic Party of Hawai'i	Support	No

Comments: