



HAWAI‘I STATE ETHICS COMMISSION

State of Hawai‘i · Bishop Square, 1001 Bishop Street, ASB Tower 970 · Honolulu, Hawai‘i 96813

Committee: Committee on Finance
Bill Number: H.B. 2747, H.D.2
Hearing Date/Time: February 19, 2020, 3:00 p.m.
Re: Testimony of the Hawai‘i State Ethics Commission with **COMMENTS**
on H.B. 2747, H.D.2, Proposing an Amendment to Article XVI, Section
2 of the Constitution of the State of Hawaii

Dear Chair Luke, Vice Chair Cullen, and Committee Members:

The Hawai‘i State Ethics Commission (“Commission”) has not had an opportunity to discuss H.B. 2747, such that it does not take a position on the proposed constitutional amendment at this time. However, the undersigned submits the following comments for the Committee’s consideration.

The Commission has, at times, discussed the possible need for increased penalties – including pension forfeiture – for employment-related misconduct. Although employment-related felonies for State employees are quite rare, an increased penalty may serve as an additional deterrent that will help promote the public’s trust in government officials. Furthermore, I believe the Commission would support the requirement that pension forfeiture occur only after a court concludes that an employee committed a felony, and not upon a lower standard.

Thank you for your continuing support of the Commission’s work and for considering this testimony on H.B. 2747, H.D.2.

Very truly yours,

Daniel Gluck
Executive Director and General Counsel

Statement Before The
HOUSE COMMITTEE ON FINANCE
Wednesday, February 19, 2020
3:00 PM
State Capitol, Conference Room 308

in consideration of

HB 2747, HD2

PROPOSING AN AMENDMENT TO ARTICLE XVI, SECTION 2, OF THE HAWAII STATE CONSTITUTION, TO AUTHORIZE THE LEGISLATURE TO REQUIRE THE FORFEITURE OR REDUCTION OF PENSION BENEFITS OF A MEMBER, FORMER MEMBER, OR RETIRANT OF THE EMPLOYEES' RETIREMENT SYSTEM WHO IS CONVICTED OF A FELONY RELATED TO THE MEMBER'S, FORMER MEMBER'S, OR RETIRANT'S EMPLOYMENT WITH THE STATE OR ANY POLITICAL SUBDIVISION THEREOF.

Chair LUKE, Vice Chair CULLEN, and Members of the House Finance Committee

Common Cause Hawaii supports HB 2747, HD2, which proposes an amendment to Article XVI, section 2 of the Hawaii State Constitution to authorize the legislature to require the forfeiture or reduction of benefits of any member, former member, or retirant of the employees' retirement system who is convicted of a felony related to the member's, former member's, or retirant's employment with the State or any political subdivision thereof.

Common Cause Hawaii is a nonprofit, nonpartisan, grassroots organization dedicated to reforming government and strengthening democracy. Common Cause Hawaii works to restore faith in our government and our democracy that has been shattered in the last few years through ethics, accountability, and transparency reforms. These reforms are probably the most important tools to restoring the people's trust in their elected leaders and their government – to show people that their government is acting for the people's interest versus serving their own interests.

HB 2747, HD2 will demonstrate to the people that power will be held accountable. We cannot forget that public employees are public servants. Public employees cannot defraud the public and destroy our confidence in government and still reap the benefits of their criminal misconduct. If this were to occur, then the only losers are the people and democracy.

Thus, while Common Cause Hawaii supports HB 2747, HD2, it is uncertain that a constitutional amendment would be required to effectuate the intent of HB 2747, HD2. First, Hawaii's pension laws have been amended many times through the years without a constitutional amendment.

Second, if the legislature does not limit or reduce benefits already accrued to the member by permitting the benefits to be provided to the member's designee upon the member's passing, this is permitted under the Hawaii State Constitution.

It should be noted that the...provision would not limit the legislature in effecting a reduction in the benefits of a retirement system provided that reduction did not apply to benefits already accrued. In other words, the legislature could

reduce benefits as to (1) new entrants into a retirement system, or (2) as to persons already in the system in so far as their future services were concerned. It could not, however, reduce the benefits attributable to past services. Further, the section would not limit the legislature in making general changes in the system, applicable to past members, so long as the changes did not necessarily reduce the benefits attributable to past services.

Hawaii Constitutional Convention Studies (1978); Article XIV: General and Miscellaneous Provisions, Yvonne Y. Izu, at pg. 55, LRB publisher (internal citations omitted).

Third, upon becoming a member of the retirement system, the employee enters into a contractual agreement, the terms of which are set forth in Hawaii laws. Breaches of the contract, such as a felony conviction, may operate to void any agreement and permit legislative action without constitutional amendment.

Thank you for the opportunity to testify in support of HB 2747, HD2 with comments, and Common Cause Hawaii respectfully urges the Committee members to support the passage of HB 2747, HD2 out of your Committee. If you have further questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma
Executive Director, Common Cause Hawaii





AMERICANS FOR DEMOCRATIC ACTION

OFFICERS	DIRECTORS		MAILING ADDRESS
John Bickel, President	Melodie Aduja	Chuck Huxel	P.O. Box 23404 Honolulu Hawai'i 96823
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Marsha Schweitzer, Treasurer	Ken Farm	Jenny Nomura	
Doug Pyle, Secretary	Stephanie Fitzpatrick	Dave Nagaji	

February 15, 2020

TO: Chair Luke and members of Finance Committee

RE: HB 2747 HD 2 (& HB 1998)

Support for hearing on February 19

Americans for Democratic Action is an organization founded in the 1950s by leading supporters of the New Deal and led by Patsy Mink in the 1970s. We are devoted to the promotion of progressive public policies.

We support HB 2747 HD 2 as it would propose a constitutional amendment to authorize the forfeiture of certain employees' retirement system benefits. We believe this bill will begin to show that our government is working to solve the issues self-dealing and abuse of office by public servants. Unfortunately many people have that impression

This logic applies to HB 1998 as well.

Thank you for your favorable consideration.

Sincerely,
John Bickel, President



HB-2747-HD-2

Submitted on: 2/15/2020 4:58:02 PM

Testimony for FIN on 2/19/2020 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Caroline Kunitake	Individual	Support	No

Comments:

Dear Chair Luke and Members of the Committee on Finance,

I am writing in support of HB2747 HD2 with comments.

- HB 2747, HD2 will demonstrate to the people that power will be held accountable. We cannot forget that public employees are public servants. Public employees cannot defraud the public and destroy our confidence in government and still reap the benefits of their criminal misconduct. If this were to occur, then the only losers are the people and democracy.
- Thus, while Common Cause Hawaii supports HB 2747, HD2, it is uncertain that a constitutional amendment would be required to effectuate the intent of HB 2747, HD2. First, Hawaii's pension laws have been amended many times through the years without a constitutional amendment.
- Second, if the legislature does not limit or reduce benefits already accrued to the member by permitting the benefits to be provided to the member's designee upon the member's passing, this is permitted under the Hawaii State Constitution.
- It should be noted that the...provision would not limit the legislature in effecting a reduction in the benefits of a retirement system provided that reduction did not apply to benefits already accrued. In other words, the legislature could reduce benefits as to (1) new entrants into a retirement system, or (2) as to persons already in the system in so far as their future services were concerned. It could not, however, reduce the benefits attributable to past services. Further, the section would not limit the legislature in making general changes in the system, applicable to past members, so long as the changes did not necessarily reduce the benefits attributable to past services.
- Hawaii Constitutional Convention Studies (1978); Article XIV: General and Miscellaneous Provisions, Yvonne Y. Izu, at pg. 55, LRB publisher (internal citations omitted).
- Third, upon becoming a member of the retirement system, the employee enters into a contractual agreement, the terms of which are set forth in Hawaii laws. Breaches of the contract, such as a felony conviction, may operate to void any agreement and permit legislative action without constitutional amendment.

Mahalo,

Caroline Kunitake

HB-2747-HD-2

Submitted on: 2/16/2020 1:34:36 AM

Testimony for FIN on 2/19/2020 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara Best	Individual	Support	No

Comments:

I agree with Common Cause, so please see their testimony

LATE

HB-2747-HD-2

Submitted on: 2/18/2020 8:27:34 PM

Testimony for FIN on 2/19/2020 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara Shimei	Indivisible Hawaii	Support	No

Comments:

IN SUPPORT

Public trust in government is low and sinking lower. In these trying times, it is critical to restore confidence in the ethics of our government.

Holding an office of public trust is not the same as a job in the private sector. We cannot endorse the deliberate abuse of government position and power by permitting retention of a benefit paid by taxpayer dollars, at the expense of the people the government was created to serve.

The corruption addressed in this bill is rare but it clearly does exist and all steps must be taken to eradicate it.