



HAWAII STATE ETHICS COMMISSION

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

Committee: Committee on Judiciary
Bill Number: H.B. 2747, H.D.3
Hearing Date/Time: March 10, 2020, 10:00 a.m.
Re: Testimony of the Hawai'i State Ethics Commission in **SUPPORT**
of H.B. 2747, H.D.3, Proposing an Amendment to Article XVI, Section
2 of the Constitution of the State of Hawaii

Dear Chair Rhoads, Vice Chair Keohokalole, and Committee Members:

The Hawai'i State Ethics Commission ("Commission") supports H.B. 2747, H.D.3, which would authorize the Legislature to enact laws requiring the forfeiture of employment benefits for public employees convicted of employment-related felonies.

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.

The Commission supports the requirement that any 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 the Commission's testimony on H.B. 2747, H.D.3.

Very truly yours,

Daniel Gluck
Executive Director and General Counsel

Statement Before The
SENATE COMMITTEE ON JUDICIARY

Tuesday, March 10, 2020

10:00 AM

State Capitol, Conference Room 016

in consideration of

HB 2747, HD3

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 RHOADS, Vice Chair KEOHOKALOLE, and Members of the Senate Judiciary Committee

Common Cause Hawaii supports HB 2747, HD3, which proposes an amendment to Article XVI, section 2 of the Hawaii State Constitution to authorize the legislature to enact laws 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, HD3 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, HD3, it is uncertain that a constitutional amendment would be required to effectuate the intent of HB 2747, HD3. 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 as against public policy and public good and permit legislative action without constitutional amendment.

Thank you for the opportunity to testify in support of HB 2747, HD3 with comments, and Common Cause Hawaii respectfully urges the Committee members to support the passage of HB 2747, HD3 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



LATE

HB-2747-HD-3

Submitted on: 3/10/2020 7:20:54 AM

Testimony for JDC on 3/10/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
John Bickel	Testifying for Americans for Democratic Action	Support	No

Comments:

We support this measure as it would improve ethics.

D. Piilani Kaopuiki
838 Hauoli Street
Honolulu, Hawaii 96826

SENATE COMMITTEE ON JUDICIARY

Tuesday March 10, 2020, 10:00 AM, Conference Room 016
HB 2747 HD3, Proposing an amendment to the State constitution

TESTIMONY

Chair Rhoads and Committee Members

I oppose HB 2747 which proposes an amendment to the State constitution to require forfeiture or reduction of pension benefits of a state or county government member, former member, or retiree convicted of a felony related to the member's employment with the government.

A person's retirement pay is sacred to him/her. The pay was earned for the purpose of security during retirement and enjoyment of life following years of work. If a person is convicted of a felony, imprisonment is the punishment for the crime and payment of a debt to society. If the crime was an egregious abuse of a position of employment, a high fine would be appropriate in addition to imprisonment. Payment of the fine may actually come out of the pension, but that payment would not be a direct forfeiture or reduction of pension. Total forfeiture of pension is not appropriate or fair unless the crime occurred throughout the totality of employment and the employee produced no good service to the community. In that case, one should look at the employee's supervisor.

A constitutional amendment is not necessary to address this aim for justice. Existing law should already provide punishment for the crime. The courts could levy a fine based on the extreme betrayal of public trust by public officers required to take an oath of office. The imposition of justice should be with the courts not the legislature.

The constitution is a foundational document and should not be used to remedy unacceptable and bad behavior when constitutional provisions already exist that just need enforcement. Article XIV, Code of Ethics, already contains a directive regarding use of position. Article XVI, section 4, Oath of Office, already contains the oath to faithfully discharge duties. It would be appropriate to have adequate enforcement provisions for those sections in implementing rules. The constitution should not be used for negative purposes.

Mahalo for the opportunity to submit this testimony.

SECTION 1. The legislature finds that the State has no policy mandating the forfeiture or reduction of pension benefits by a public official or employee who has been convicted of a felony arising out of the public official's or public employee's employment. No matter how serious the offense or the extent to which a public official or employee has abused the official's or employee's public office and betrayed the public trust, the existing constitutional provision and laws that govern pension plans for state and county employees make no provision for the forfeiture or reduction of benefits in cases of a felony conviction related to the public employment.

The purpose of this Act is to amend article XVI, section 2, of the Constitution of the State of Hawaii to authorize the legislature to enact laws 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 employment with the State or any political subdivision thereof.

SECTION 2. Article XVI, section 2, of the Constitution of the State of Hawaii is amended to read as follows:

"EMPLOYEES' RETIREMENT SYSTEM

Section 2. Membership in any employees' retirement system of the State or any political subdivision thereof shall be a contractual relationship, the accrued benefits of which shall not be diminished or impaired[.]; provided that the legislature may enact laws 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."

SECTION 3. The question to be printed on the ballot shall be as follows:

"Shall the Hawaii State Constitution be amended to authorize the legislature to enact laws that 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?"

SECTION 4. Constitutional material to be repealed is bracketed and stricken. New constitutional material is underscored.

SECTION 5. This amendment shall take effect on July 1, 2030, and upon compliance with article XVII, section 3, of the Constitution of the State of Hawaii.

Report Title:

Constitutional Amendment; Employees' Retirement System Benefits; Felony

Description:

Proposes a constitutional amendment to article XVI, section 2, of the state constitution to authorize the legislature to enact laws 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. Effective 7/1/2030. (HD3)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

HB-2747-HD-3

Submitted on: 3/8/2020 7:45:42 AM

Testimony for JDC on 3/10/2020 10:00:00 AM

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

Comments:

Dear Chair Rhoads and Members of the Committee of the Judiciary,

I am writing in support of HB2747 HD3.

- HB 2747, HD3 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, HD3, it is uncertain that a constitutional amendment would be required to effectuate the intent of HB 2747, HD3. 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 as against public policy and public good and permit legislative action without constitutional amendment.

Mahalo,

Caroline Kunitake

HB-2747-HD-3

Submitted on: 3/8/2020 11:07:19 AM

Testimony for JDC on 3/10/2020 10:00:00 AM

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

Comments:

Please see testimony of Common Cause of Hawaii, which I support.

Mahalo

HB-2747-HD-3

Submitted on: 3/9/2020 12:49:17 AM

Testimony for JDC on 3/10/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
tlaloc tokuda	Individual	Support	No

Comments:

- i support HB 2747, HD3 because it 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.
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Mahalo

Tlaloc Tokuda

Kailua Kona HI. 96740

HB-2747-HD-3

Submitted on: 3/9/2020 7:56:38 AM

Testimony for JDC on 3/10/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Teri Heede	Individual	Support	No

Comments:

HB-2747-HD-3

Submitted on: 3/9/2020 8:27:36 AM

Testimony for JDC on 3/10/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Edward B Hanel Jr	Individual	Support	No

Comments:

Concur with CommonCause Hawaii comments