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**STATE OF HAWAII
EMPLOYEES' RETIREMENT SYSTEM**

TESTIMONY BY THOMAS WILLIAMS
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TO THE SENATE COMMITTEE ON LABOR, CULTURE AND THE ARTS
ON

SENATE BILL NO. 1118

**February 7, 2019
2:45 P.M.
Conference Room 224**

RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM

Chair Taniguchi, Vice Chair Ihara and Members of the Committee,

The present statutory authority for the Employees' Retirement System of the State of Hawaii (ERS) to recover overpayments would benefit from clarification. S.B. 1118 will amend Sections 88-6 and 88-106, HRS to strengthen the ERS's ability to recover overpayments by declaring overpayments to be debts due and owing to ERS, clarifying that overpayments are legally collectable. S.B. 1118 will facilitate rulemaking for maximum recovery, the filing of legal collection actions and liens against real property of overpaid recipients, and the filing of claims against the estate of a deceased recipient.

This bill also provides the Board of Trustees or the Executive Director of the Employees' Retirement System with discretion to waive the recovery of overpayments in cases of bona fide hardship or where the costs of recovery would exceed the amount expected to be recovered.

Primarily, overpayments of ERS benefits are the result of continued payments to deceased retirees and beneficiaries when the ERS is not notified about or was unable to ascertain the death of the recipient. As a defined benefit plan, the ERS provides lifetime benefits to its qualified members and beneficiaries. The ERS usually discovers the death of a recipient by: (1) notification of death by a survivor, (2) notification by financial institution receiving direct deposits, (3) query search of recipients through the Department of Health of the State of Hawaii, and (4) query search of recipients through data information firms LexisNexis; Pension Benefit



Employees' Retirement System
of the State of Hawaii

Information (PBI); and Gabriel, Roeder Smith (GRS), the ERS's actuarial firm. The deaths that are more difficult for the ERS to establish are for those recipients who live on the mainland or in foreign countries. Of the 47,000 retirees, beneficiaries and vested members of the ERS, 6,500 reside on the mainland U.S. or in foreign countries.

Over the past four years, the ERS has averaged between 100 to 200 overpayment cases per year totaling over \$600,000 annually. Voiding payments through financial institutions, requiring notarized verifications from suspected deceased recipients and requests for repayment have reduced current overpayments; however, many large overpayments remain unpaid and uncollectable. In July 2020, the ERS will start issuing payments to alternate payees under qualified domestic relations orders, further increasing the risk for overpaid benefits.

The authority and enforcement proposed by S.B. 1118 will strengthen ERS's ability to pursue and recover benefits that should be retained and protected for the rightful benefit of members and beneficiaries of the System.

The ERS respectfully submits the attached technical amendments to Section 2 of S.B. 1118 to (1) clarify the regulations by which the ERS may recover benefits, (2) allow for the System's flexibility in the adoption of rules "as may be necessary to effectuate the maximum recovery of retirement benefit overpayments," and (3) correct typographical errors in formatting and in reference to "a deceased recipient who has received overpayments that have not been recovered."

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

Thank you for this opportunity to provide testimony on S.B. 1118.

Attachment to ERS Testimony dated February 7, 2019

To: Senate Committee on Labor, Culture and the Arts
From: Employees' Retirement System
Re: Technical Amendments to S.B. 1118

SECTION 2. Section 88-6, Subsection (c)(1):

- (1) In addition to the remedies prescribed elsewhere in this chapter for the recovery of benefits, recovery of an overpayment shall be made in accordance with applicable state law and federal regulations; and

SECTION 2. Section 88-6, Subsection (e):

(d) The system shall adopt rules pursuant to chapter 91 as may be necessary to effectuate the maximum recovery of retirement benefit overpayments, which shall prescribe procedures for:

- (1) Recourse to the civil courts when required;
(2) The filing of liens against the real property of overpaid recipients; and
(3) The filing of claims against the estate of a deceased recipient who has received overpayments that have not been recovered.