

DAVID Y. IGE
GOVERNOR



THOMAS WILLIAMS
EXECUTIVE DIRECTOR

KANOE MARGOL
DEPUTY EXECUTIVE DIRECTOR

**STATE OF HAWAII
EMPLOYEES' RETIREMENT SYSTEM**

WRITTEN ONLY

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

TO THE SENATE COMMITTEE ON JUDICIARY
ON
SENATE BILL NO. 2402, S.D. 1

**February 24, 2020
12:15 P.M.
Conference Room 016**

RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM

Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee,

S.B. 2402, S.D. 1 proposes to add a new section to subpart C of part II of Chapter 88, Hawaii Revised Statutes to provide for forfeiture by a member, former member, or retirant of the Employees' Retirement System (ERS) of the State of Hawaii, of one-half of any interest, hypothetical account balance, pension, annuity or retirement allowance otherwise payable to the member, former member or retirant if the member, former member or retirant is convicted of a felony related to the employment of the member, former member or retirant. Further, S.B. 2402, S.D. 1 allows the court to order, upon the death of the convicted member, former member or retirant, that the beneficiary receive one-half of the benefits to which the beneficiary may have otherwise been entitled. On behalf of the ERS Board of Trustees, we offer the following comments and concerns:

As this proposal would require the ERS to comply with a court order declaring a forfeiture of retirement benefits based on these types of felony convictions, the ERS board is supportive of this fair and judicial method of forfeiture decisions.

We have concerns, however, that the S.D. 1 amendment on the reduction of beneficiary benefits under Section 2, to "one-half" the benefit "to which the beneficiary would



Employees' Retirement System
of the State of Hawaii

otherwise be entitled under this chapter,” may not address what the Committee on Labor, Culture and the Arts had intended.

The Committee noted their concerns regarding the “effect of the forfeiture of retirement benefits on the beneficiaries of the retiree.” Beneficiary benefits differ in accordance with the benefit the member or former member would receive or, in the case of the retirant, the optional method of retirement selected. If the intent of S.B. 2402, S.D.1 is to preserve the full benefit to which the beneficiary is entitled to receive, your Committee may want to amend the “one-half” in Section 2, 88-____(a) as noted below:

"§88-____ Forfeiture of benefits; felony convictions.

(a) If a member, former member, or retirant is convicted of a felony and the court finds that the felony is related to the employment of the member, former member, or retirant by the State or any county, the court may order, as a civil penalty pursuant to section 706-605(8), a forfeiture by the member, former member, or retirant of one-half of any:

(1) Interest;

(2) Hypothetical account balance in excess of the amount representing any employee contributions made by or on behalf of the member, former member, or retirant;

(3) Pension;

(4) Annuity; or

(5) Retirement allowance,

to which the member, former member, or retirant may otherwise be entitled under this chapter; provided that upon the death of the member, former member, or retirant, the designated beneficiary of the member, former member, or retirant may receive **one-half such** benefits to which the beneficiary would otherwise be entitled under this chapter.

An alternative version of this preservation of ERS beneficiary benefits is also provided by H.B. 1998, H.D. 1:

“to which the member, former member, or retirant may otherwise be entitled under this chapter; provided that upon the death of the member, former member, or retirant, the designated beneficiary of the member, former member, or retirant may receive benefits to which the beneficiary would otherwise be entitled under this chapter; provided further that the designated beneficiary was not also convicted of a felony based on the same set of circumstances as the member, former member, or retirant penalized under this section.”

Upon this Committee’s review that the concerns regarding its effect on ERS beneficiaries are sufficiently addressed, the ERS Board of Trustees would be supportive of S.B. 2402, S.D. 1, should this Act be approved.

Thank you for this opportunity to provide testimony.

Statement Before The
SENATE COMMITTEE ON JUDICIARY
Monday, February 24, 2020
12:15 PM
State Capitol, Conference Room 016

in consideration of
SB 2402, SD1
RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM.

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

Common Cause Hawaii supports SB 2402, SD1, which would authorize (1) a court to order the forfeiture of one-half of the Employees' Retirement System (ERS) benefits of an ERS member, former member, or retirant upon conviction of the individual for a felony related to the State or county employment of the individual and (2) designated beneficiaries to receive one-half of the ERS benefits upon the death of the ERS member, former member, or retirant convicted of the felony.

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 government – to show people that their government is acting for the people's interest versus serving their own interests.

In a recent [Honolulu Star-Advertiser poll](#) published on Sept. 22, 2019, a majority of local residents feel that Hawaii's elected officials do not care what they think and generally do not have high ethical standards. This must change for people to have confidence in our government.

SB 2402, SD1 will show that government takes ethics seriously. Public employees are also public servants. They 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 people and democracy will suffer.

SB 2402, SD1 is **not** about punishment or retribution. It is about ethics and restoring the public's trust in government. SB 2402, SD1 is not about revenge, because families of the convicted governmental employees who rely on the pensions are protected under the bill. Due process is afforded, and only 50% of the pension is forfeited pursuant to court order, under SB 2402, SD1.

Much concern is given to what may be lost by a convicted government employee and dependents. We also need to consider that much is lost by the public - the people - when a government employee abuses his/her position of power, trust, and authority. As we have seen, democracy is fragile; people need to have confidence in our government. Please act to restore that trust through ethics reform.

As for worries about the constitutionality of SB 2402, SD1 as it pertains to Article XVI, sec. 2 of the Hawaii State Constitution, the legislature may adopt laws . . .

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). SB 2402, SD1 specifically states that “[t]his section shall not impair or diminish benefits accrued prior to the effective date of this section.” Page 4, lines 13-14.

Thank you for the opportunity to testify in support of SB 2402, SD1, and Common Cause Hawaii respectfully urges the Committee members to pass SB 2402, SD1 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



Pono Hawai'i Initiative

LATE

Josh Frost - President • Patrick Shea - Treasurer • Kristin Hamada
Nelson Ho • Summer Starr

Monday, February 24, 2020

Relating to the Employees' Retirement System
Testifying in Support

Aloha Chair and members of the committee,

The Pono Hawai'i Initiative (PHI) **supports SB2402, SD1 Relating to the Employees' Retirement System**, which authorizes a court to order the forfeiture of an Employee's Retirement System benefits upon the conviction of the individual for a felony to the State or County. Authorizes designated beneficiaries to receive ERS benefits upon the death of the ERS member.

This measure takes ethics seriously and holds public employees to a higher standard. The public should have confidence in its public servants. Families of the convicted governmental employees who rely on the pensions are still protected on this measure and due process is afforded.

For all these reasons, we urge you to vote in favor of this measure.

Mahalo for the opportunity,
Gary Hooser
Executive Director
Pono Hawai'i Initiative

SB-2402-SD-1

Submitted on: 2/22/2020 4:51:49 PM

Testimony for JDC on 2/24/2020 12:15:00 PM

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

Comments:

This would show that government takes ethics seriously & is not about punishment

SB-2402-SD-1

Submitted on: 2/23/2020 8:18:18 AM

Testimony for JDC on 2/24/2020 12:15:00 PM

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

Comments:

Concur with CommonCause Hawaii's comments concerning this bill.

SB-2402-SD-1

Submitted on: 2/23/2020 10:55:23 AM

Testimony for JDC on 2/24/2020 12:15:00 PM

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

Comments:

Dear Chair Rhoads and Members of the Committee on Judiciary,

I am writing in support of SB2402, SD1.

- In a recent [Honolulu Star-Advertiser poll](#) published on Sept. 22, 2019, a majority of local residents feel that Hawaii's elected officials do not care what they think and generally do not have high ethical standards. This must change for people to have confidence in our government.
- SB 2402, SD1 will show that government takes ethics seriously. Public employees are also public servants. They 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 people and democracy will suffer.
- SB 2402, SD1 is **not** about punishment or retribution. It is about ethics and restoring the public's trust in government. SB 2402, SD1 is not about revenge, because families of the convicted governmental employees who rely on the pensions are protected under the bill. Due process is afforded, and only 50% of the pension is forfeited pursuant to court order, under SB 2402, SD1.
- Much concern is given to what may be lost by a convicted government employee and dependents. We also need to consider that much is lost by the public - the people - when a government employee abuses his/her position of power, trust, and authority. As we have seen, democracy is fragile; people need to have confidence in our government. Please act to restore that trust through ethics reform.

- As for worries about the constitutionality of SB 2402, SD1 as it pertains to Article XVI, sec. 2 of the Hawaii State Constitution, the legislature may adopt laws . . .

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Thank you for the opportunity to testify in support of SB 2402, SD1, and please pass SB 2402, SD1 out of your Committee.

Mahalo,

Caroline Kunitake

SB-2402-SD-1

Submitted on: 2/23/2020 11:58:53 AM

Testimony for JDC on 2/24/2020 12:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Donna Ambrose	Individual	Support	No

Comments:

Hawai'i residents have lost confidence in the State's elected and appointed officials when it comes to ethical conduct. The threat of losing pension benefits may be enough to dissuade someone from committing crimes while in office. If that's not enough incentive, and an official misuses his/her authority, the eventual loss of pension benefits will help restore taxpayers' faith in government.

LATE

SB-2402-SD-1

Submitted on: 2/23/2020 6:39:56 PM

Testimony for JDC on 2/24/2020 12:15:00 PM

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

Comments:

Dear **Senate Judiciary Committee**,

1. [SB2402](#), Pension forfeiture for government employees convicted for job related felonies. The Senate Draft 1 (SD1) reduced the forfeiture to 50% of benefits. Half a loaf is better than none based on concerns for dependents who need the pensions. We **SUPPORT!**
- In a recent [Honolulu Star-Advertiser poll](#) published on Sept. 22, 2019, a majority of local residents feel that Hawaii's elected officials do not care what they think and generally do not have high ethical standards. This must change for people to have confidence in our government.
 - SB 2402, SD1 will show that government takes ethics seriously. Public employees are also public servants. They 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 people and democracy will suffer.
 - SB 2402, SD1 is **not** about punishment or retribution. It is about ethics and restoring the public's trust in government. SB 2402, SD1 is not about revenge, because families of the convicted governmental employees who rely on the pensions are protected under the bill. Due process is afforded, and only 50% of the pension is forfeited pursuant to court order, under SB 2402, SD1.
 - Much concern is given to what may be lost by a convicted government employee and dependents. We also need to consider that much is lost by the public - the people - when a government employee abuses his/her position of power, trust, and authority. As we have seen, democracy is fragile; people need to have confidence in our government. Please act to restore that trust through ethics reform.

- As for worries about the constitutionality of SB 2402, SD1 as it pertains to Article XVI, sec. 2 of the Hawaii State Constitution, the legislature may adopt laws . . .

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- Thank you for the opportunity to testify in support of SB 2402, SD1, and please pass SB 2402, SD1 out of your Committee.

Tlaloc TOkiuda

Kailua Kona HI 96740

LATE

SB-2402-SD-1

Submitted on: 2/24/2020 8:10:29 AM

Testimony for JDC on 2/24/2020 12:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Golojuch Jr	Individual	Support	No

Comments: