

JOSH GREEN, M.D.  
GOVERNOR



**LATE**

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 TECHNOLOGY

ON

SENATE BILL NO. 787

**February 6, 2023**

**3 P.M.**

**Conference Room 224 & Videoconference**

RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM.

Chair Moriwaki, Vice Chair Lee and Members of the Committee,

S.B. 787 proposes to amend §88-74.8(a), Hawaii Revised Statutes (HRS) to provide for forfeiture by a member, former member, or retirant of the Employees' Retirement System (ERS), of all 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. §88-74.8(a), HRS, currently provides that a court may decree pursuant to section 706-605(8) a civil penalty of forfeiture of half of a member, former member, or retirant's benefit if convicted of a felony related to his or her employment. On behalf of its Board of Trustees, the ERS staff offers the following comments:

This proposal would require the ERS to comply with a court order decreeing a forfeiture of all or a portion of any interest, hypothetical account balance, pension, annuity or retirement allowance otherwise payable to a member, former member, or retirant of the system convicted of a felony that the court finds is related to the employment of the member, former member, or retirant by the State or county.



Employees' Retirement System  
of the State of Hawaii

As of the date of this testimony, the ERS is not aware of having received any court order that applies §88-74.8 to any member, former member, or retirant.

This proposal purports to not impair or diminish the accrued retirement benefits of members of the ERS prior to the effective date of the proposed amendment and applies prospectively to felonies committed by public employees after the effective date of the proposed amendment.

§88-74.8 took effect on June 24, 2021 and does not affect benefits accrued before June 24, 2021 and does not apply to felonies committed prior to June 24, 2021. See §88-74.8(d) and (e).

The ERS suggests that this proposal be clarified to provide that the proposed amendment shall apply only after the effective date of the proposed amendment.

With this suggested revision, the ERS Board would have no objection to S.B. 787 should this bill be approved.

Thank you for this opportunity to provide testimony.



STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS  
" A Police Organization for Police Officers Only "  
Founded 1971

February 2, 2023

**VIA ONLINE**

The Honorable Sharon Moriwaki  
Chair  
The Honorable Chris Lee  
Vice-Chair  
Senate Committee on Labor and Technology  
Hawaii State Capitol, Rooms 215, 219  
415 South Beretania Street  
Honolulu, HI 96813

Re: **SB 787 – Relating to the Employees’ Retirement System**

Dear Chair Moriwaki, Vice-Chair Lee, and Honorable Committee members:

I serve as the President of the State of Hawaii Organization of Police Officers (“SHOPO”) and write to you on behalf of our Union in **strong opposition** to SB 787. This bill seeks to authorize the forfeiture of all of certain Employees’ Retirement System (“ERS”) benefits, pursuant to court order, for state or county employees and designated beneficiaries who are convicted of an employment-related felony.

As it currently stands, HRS § 88-74.8 allows courts to decree a civil penalty of forfeiture of half of certain ERS benefits where a member, former member, or retirant is convicted of a felony and the court finds that, by a preponderance of the evidence, the felony is related to the employment of the same. HRS § 88-74.8(c) broadly defines the term felony “related to the employment” as follows:

(c) For the purposes of this section, a felony is “related to the employment” of an employee of the State or a county if the employee uses or attempts to use the employee’s official position to commit the felony, including:

- (1) Felonies in which state or county time, equipment, or other facilities are used in the commission of the felony;
- (2) Bribery;
- (3) Embezzlement, theft, or other unlawful taking, receiving, retaining, or failing to account properly for, any property or funds that belong to the State or any county, or any department, bureau, board, or other agency thereof; or

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The Honorable Sharon Moriwaki, Chair  
The Honorable Chris Lee, Vice-Chair  
Senate Committee on Labor and Technology  
Re: **SB 787 – Relating to the Employees’ Retirement System**  
February 2, 2023  
SHOPO Testimony Page 2

(4) Felonies committed against a person over whom the employee, in the course of the employee’s duties, exercises custody or supervision.

This bill seeks to increase potential forfeiture to *all* of certain ERS benefits (i.e., interest, pension, annuity or retirement allowance). Although we appreciate the intent of the Legislature and agree that public officers and employees are responsible for upholding the public’s trust in government and democracy, we are concerned that this bill, without also addressing the broad definition of felony “related to the employment” in HRS § 88-74.8(c), is overbroad and does not take into account the heightened risk exposure to our officers who are merely doing their jobs while on-duty.

While we certainly condemn such egregious and disgraceful conduct that former Chief Louis Kealoha was convicted of as well any other officers convicted of such severe violations, this bill applies to bribery, embezzlement and crimes by supervisors exercised against their subordinates as well as broadly to “Felonies in which state or county time, equipment, or other facilities are used in the commission of the felony.” This is especially problematic for our officers, who are on the front lines battling crime 24 hours a day, seven (7) days a week, 365 days a year. Our officers are at risk every day they go to work and can inadvertently make an error in judgment that would cost them their entire retirement under this bill. They are involved in high intensity life and death situations where things can go wrong even when they do everything right and according to their training.

If I may give you an example of the extraordinary risk exposure our police officers shoulder every day they report to work. A prime example involves the three (3) officers who were involved in the Sykap shooting. The prosecutor believed our officers had committed murder. If they had been convicted of those felony charges, our officers would have lost everything although they followed their training and did what they believed was the best course of action under the highly charged circumstances.

As you may know, our county police departments are experiencing a severe staffing crisis. As currently drafted, this bill may potentially compound this crisis by potentially discouraging and disincentivizing individuals from becoming police officers, which in turn will further hinder the respective county departments’ ability to recruit new officers. It will also further incentivize our officers who hit twenty-five (25) years of service to retire right away rather than risk their retirement pensions earned over the many years.

The Honorable Sharon Moriwaki, Chair  
The Honorable Chris Lee, Vice-Chair  
Senate Committee on Labor and Technology  
Re: **SB 787 – Relating to the Employees’ Retirement System**  
February 2, 2023  
SHOPO Testimony Page 3

We fully understand, appreciate, and absolutely support the need to repair public trust in government and democracy. However, given the heightened risk exposure of our officers, we have reservations with this bill and are unable to support it without further amendments that address its overly broad application in HRS § 88-74.8(c)(1) and that more narrowly tailor its application to certain crimes such as bribery and embezzlement where a public official should suffer such a penalty.

If the legislature is going to address the need to repair public trust in government and democracy, raising the already high stakes for our officers to include all of their retirement for just doing their job is not the answer nor the approach we should take to address such issues. We thank you for allowing us to be heard and to share our concerns on this bill and hope your committee will unanimously reject this bill if the suggested amendments are not made.

Respectfully submitted,

ROBERT “BOBBY” CAVACO  
SHOPO President

**SB-787**

Submitted on: 2/3/2023 8:27:51 AM

Testimony for LBT on 2/6/2023 3:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Victor K. Ramos	Individual	Oppose	Written Testimony Only

Comments:

OPPOSE as currently written. I agree that employees should be held accountable for their actions related to their employment. My hesitancy is the language allows for retro action to be taken. How far back will you go and is there evidence to substantiate this action?

**LATE**

**SB-787**

Submitted on: 2/6/2023 5:48:59 AM

Testimony for LBT on 2/6/2023 3:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Faith Tuipulotu	Individual	Support	Written Testimony Only

Comments:

I support SB 787.

**LATE**

**SB-787**

Submitted on: 2/6/2023 5:56:25 AM

Testimony for LBT on 2/6/2023 3:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Mosese Tio Tuipulotu	Individual	Support	Written Testimony Only

Comments:

I support SB 787.



**LATE**

**SB-787**

Submitted on: 2/6/2023 8:21:03 AM

Testimony for LBT on 2/6/2023 3:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Rosie F Davis	Individual	Support	Written Testimony Only

Comments:

Aloha,

I support this bill SB787.

Mahalo nui, Rosie

**LATE**

**SB-787**

Submitted on: 2/6/2023 12:47:18 PM

Testimony for LBT on 2/6/2023 3:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Lorna Dudoit	Individual	Support	Written Testimony Only

Comments:

We support SB 787