

TESTIMONY BY KANOE MARGOL
INTERIM EXECUTIVE DIRECTOR, EMPLOYEES' RETIREMENT SYSTEM
STATE OF HAWAII

TO THE SENATE COMMITTEE ON WAYS AND MEANS
ON
SENATE BILL NO. 1324, S. D. 1

FEBRUARY 27, 2015, 9:00 A.M.

RELATING TO DIVORCE

Chair Tokuda, Vice Chair Kouchi and Members of the Committee,

S.B. 1324, S.D. 1 proposes to require the Employees' Retirement System (ERS) to make direct payments to a non-member former spouse a portion of the member's pension, annuity or retirement allowance by a final judgment, order or divorce decree.

The ERS Board of Trustees strongly opposes this bill. This proposal provides no benefit to the ERS membership, and that the cost to the ERS of providing this service for a relatively small population of non-members (in dollars, time and resources) would be better spent toward the benefit of ERS members and the System's \$8.6 billion unfunded liability.

One of the primary concerns of the Board is the administrative and operational cost of implementing this proposal. S.B. 1324, S.D. 1 does provide for an appropriation out of the general fund for the planning and expenditures necessary for the implementation of this bill. However, the Board feels that this does not address the on-going and future resources necessary to review, interpret, clarify, correct and seek legal and actuarial advice if there are problems in interpreting an order. Additional staff resources would also be needed to calculate and process these additional benefits. In fact, the cost to effectuate the changes to the ERS computer system required by this proposal was estimated upwards of \$1 million.

The ERS staff also has technical and operational concerns with respect to this bill which are attached for the Committee's consideration.

Thank you for the opportunity to provide testimony on this important measure.

**FAMILY LAW SECTION
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February 26, 2015

To: Senate Committee on Ways & Means
Senator Jill N. Tokuda, Chair
Senator Ronald D. Kouchi, Vice-Chair

From: Dyan K. Mitsuyama, Vice-Chair/Chair Elect
Family Law Section, Hawaii State Bar Association

Re: Testimony in Support of SB 1324 SD1
Hearing: Friday, February 27, 2014 at 9:00 a.m.

Good morning, Chair Tokuda, Vice Chair Kouchi and the members of the Ways & Means Committee. My name is Dyan K. Mitsuyama, a partner in Mitsuyama & Rebman, LLLC, which is a law firm concentrating in all family law matters. I have been a licensed attorney here in the State of Hawaii for about 16 years now. I am the current Vice-Chair/Chair-Elect of the Family Law Section of the Hawaii State Bar Association ("FLS"), which is comprised of approximately 136 licensed attorneys state-wide all practicing or expressing an interest in practicing family law.

FLS submitted testimony in support of this bill's companion, HB1370. I apologize for the late testimony submission for this bill, but thank the committee for the opportunity to submit it now.

The Family Law Section supports the intent of this measure as it is much needed to ensure that the division of an Employees' Retirement System member's retirement benefits are correctly divided and promptly paid with the appropriate tax consequences for both the member and the non-member former spouse by way of Court order.

Only private employers are required to abide by the Employee Retirement Income Security Act (ERISA) which provides for non-member former spouses to receive retirement benefits awarded as a result of divorce property division directly from the retirement plan's administrator pursuant to a Qualified Domestic Relations Order (QDRO). The federal government as well though allows for direct payment to former spouses of retirement benefits as a result of divorce by and through a court order. Currently, the Hawaii state system does not provide for that.

This leads to much uncertainty and increased litigation for both the retired member and the non-member former spouse. Personally, through my practice, I have represented both members and non-members in the enforcement of the division of the retirement system's benefits. I have

also heard other colleagues mention they too have had cases whereby one former spouse is seeking collection of past-due retirement payments from the non-member, who may actually assert that he/she have made payments. Currently, there is no system of record-keeping.

Falling in line with the practice for the division of retirement benefits earned in the private sector or federal government will not only be "fair" but it will also decrease litigation in this context. It will assure that the non-member is required to claim the funds received as income on her tax returns and assure that the member will not be held liable for the portion received by the non-member.

Because it is much needed, the effective date should be sooner than 2059.

NOTE: The comments and recommendations submitted reflect the position/viewpoint of the Family Law Section of the HSBA. The position/viewpoint has not been reviewed or approved by the HSBA Board of Directors, and is not being endorsed by the Hawaii State Bar Association.

SB1324

Submitted on: 2/26/2015

Testimony for WAM on Feb 27, 2015 09:00AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Charles Hite	Individual	Comments Only	No

Comments: Members of the Legislature. I am a practicing Attorney in Hilo, with one of my areas of practice being Family Law. I submit this testimony in support of SB1324. The current law regarding division of retirement benefits of a spouse employed by the State or Counties does not provide for direct payment to the other spouse by the Hawaii Employees Retirement System. In theory, the retired spouse is supposed to pay a share of his/her retirement when payments are received. In practice, payments may not be made or - if they are - there may be disputes on the amount to be paid because the spouse to whom the payment is made must pay taxes on his/her share and the share allocated to the other spouse. The result can be litigation spanning weeks, months, even years. While there may be costs to the Employees Retirement System, there also may be hidden costs to the persons affected - the retiree and his/her divorced spouse - in the form of litigation costs, attorneys fees, etc. Passing this bill may result in some costs, but will make certain that spouses receive their fair shares of retirement, and fix the taxes that each must pay. Thank you for the opportunity to submit this testimony.
Charles Hite

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SB1324

Submitted on: 2/26/2015

Testimony for WAM on Feb 27, 2015 09:00AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Shawna L. Kaanaana	Individual	Support	No

Comments:

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SB1324

Submitted on: 2/26/2015

Testimony for WAM on Feb 27, 2015 09:00AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Sasha Ota	Individual	Support	No

Comments: Please support this bill. There are so many of us in Hawaii (especially women) who are unable to survive financially after long marriages to spouses employed by the state. This unfair policy of allowing state retirees to send a check to their ex-spouses IF THEY FEEL LIKE IT (and they often don't), even after the divorce decree orders a split of the retirement, exacerbates the problem and is disastrous for older women. I speak from experience. In my case, after a 20 year marriage, my ex was given half of my retirement by my former private employer but because ERS doesn't play by the same rules, I will never see my half of his retirement because ERS won't allow me to be paid directly and my ex will not abide by the decree. I cannot afford to hire another attorney and take this back to court. Again. If more ex-spouses knew about this bill, they would flood this hearing room begging you for your support in changing this incredibly inequitable system. Please pass this bill! Thank you.

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