

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

TO THE SENATE COMMITTEE ON JUDICIARY AND LABOR
ON
SENATE BILL NO. 1324

FEBRUARY 10, 2015, 9:15 A.M.

RELATING TO DIVORCE

Chair Keith-Agaran, Vice Chair Shimabukuro and Members of the Committee,

S.B. 1324 proposes to require the "administrator" of 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 Administrative and Legislative Committee of the ERS Board of Trustees opposes this bill.

The primary concern of the Committee is the administrative and operational cost of implementing this proposal. S.B. 1324 does not provide for an appropriation out of the general fund for the planning and expenditures necessary for the implementation of this bill. The Board has a fiduciary responsibility to the ERS fund and to all of its members. They are wary of any legislation that has the potential of adding to the ERS's \$8.6 billion unfunded liability and further threaten the stability or sustainability of the ERS.

The ERS staff also has technical and operational concerns with respect to this bill. For example, S.B. 1324 is too broad in scope and does not provide enough guidance on how or when the member's pension rights should be divided. It would be the ERS's responsibility to review, interpret, clarify, correct and seek legal and actuarial advice if there are problems in interpreting an order – leading to delays, additional costs to the parties and possibly an increased burden on the courts. In addition, the ERS's computer system will need to be modified to calculate and process these multiple variations of benefits, leading to further delays and costs. In fact, the cost to effectuate the changes required by this proposal was estimated upwards of \$2 million.

The proposal should be specific enough to offer clarity and simplicity for all parties involved – the ERS members and non-member former-spouses, the Courts and the ERS. For example, instead of requiring that the final judgment, order, or decree in a divorce action to "clearly identify" the portion awarded to the non-member former spouse, the bill should require that the judgment, order or decree to state a specific amount, percentage or formula. In addition, without more specificity, the bill could be interpreted to allow the non-member former spouse to receive benefits prior to the member's eligibility for retirement. This bill should also provide express authority to the ERS to charge an administrative fee for processing the orders and to pass on third party charges, such as actuary's fees, relating to an order.

If it is the pleasure of this Committee, the ERS staff would be willing to provide language to help provide the clarity that staff believes would facilitate and help to control the cost of implementing this bill.

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

HAWAII
STATE
COMMISSION
ON THE
STATUS
OF
WOMEN



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February 9, 2015

To: Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
Members of the Senate Committee on Judiciary and Labor

From: Cathy Betts, Executive Director
Hawaii State Commission on the Status of Women

Re: Testimony in Support, SB 1324, Relating to Divorce

The Commission supports SB 1324, which would provide statutory authority for state employees' retirement to become divisible, with benefits payable to the former spouse by the administrator of the retirement system.

Currently, state employee retirement benefits are not divisible. Although a valid divorce decree may provide for a spousal split in benefits, our HRS doesn't provide for a system or mechanism to actually pay out the benefits to a former spouse. The Commission is concerned with survivors of domestic violence, who believe that they will receive retirement benefits per their divorce decree. The current process for survivors who are eligible to receive benefits from their former spouse/abuser is to locate their former spouse/abuser to ask for the benefits due to them. This is not the safest or most economical means of ensuring benefits to survivors. A change in statute would allow for the administrator to pay direct benefits to the survivor, thereby avoiding a difficult and traumatizing process.

Thank you for your consideration of this important bill.

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TO: Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice-Chair
Senate Committee on Judiciary & Labor

FROM: Dyan M. Medeiros
E-Mail: d.medeiros@hifamlaw.com
Phone: 524-5183

HEARING DATE: February 10, 2015 at 9:15 a.m.

RE: Testimony in Support of SB1324 Relating to Divorce

Good morning Senator Keith-Agaran, Senator Shimabukuro, and members of the Committee. My name is Dyan Medeiros. I am a partner at Kleintop, Luria & Medeiros, LLP and have concentrated my practice solely in the area of Family Law for more than sixteen (16) years. I am also a past Chair of the Family Law Section of the Hawaii State Bar Association. I submit this testimony in support of SB1324.

SB1324 would solve an ongoing problem for both ERS members and their former spouses, namely the implementation of Court orders dividing ERS retirement benefits. Hawaii law allows the Family Court to award a portion of an ERS member's retirement benefits to their former spouse in divorce cases. This often happens. However, Hawaii law prohibits ERS from paying the former spouse his or her share of those benefits directly.

This means that upon retirement an ERS member must notify his or her former spouse that he or she has retired, must then calculate the amount of retirement benefits that are owed to the former spouse, and then must send a check to the former spouse each month. At the end of each year, the ERS retiree receives a 1099-R showing that he or she has received 100% of their retirement benefits even though they have paid some of it to their former spouse. Whenever an ERS retiree receives a cost-of-living allowance, he or she must re-calculate the amount owed to their former spouse. The former spouse must rely on the ERS retiree to notify them of the retirement and to send a check each month. If the ERS retiree fails to send a check, the former spouse must figure out a way to obtain his or her payment, including by going to


Court. This imposes a significant burden on both the ERS retiree and their former spouses.

SB1324 would end all of this by allowing ERS to send a check each month to the former spouses of ERS retirees. This is something that routinely happens with retirement plans in the private sector and with federal-sponsored retirement plans. There is no reason for ERS members and their former spouses to be denied this same type of benefit.

I would recommend one amendment to SB1324. The reference to “non-member former spouse” should be changed to “former spouse” to eliminate any confusion in cases where both spouses are ERS members.

Thank you.

TO: Senator Gibert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice-Chair
Senate Committee on Judiciary and Labor

FROM: Jessi L.K. Hall


HEARING DATE: February 10, 2015 at 9:15 a.m.

RE: Testimony in Support of SB1324

Good day Senator Keith-Agaran, Senator Shimabukuro, and members of the Committee. My name is Jessi Hall. I am an attorney who practices Family Law. I am also a past Chair of the Family Law Section of the Hawaii State Bar Association. I am here today to testify in support of SB1324.

In determining property division in a Divorce matter, the division of the benefits an employee earns from the Hawaii State Employee Retirement System (ERS) has always been a thorn in our side. The ERS is a wonderful benefit offered to employees, which has a significant marital value. This value is difficult, if not impossible, to perfectly calculate. In turn this usually means instead of offsetting assets, a non-member spouse has to take the award of their marital share of the ERS.

Taking their marital share means that when the member spouse retires, the member needs to pay their former spouse each month their marital share. (Literally cut a check and deliver it to their former spouse in some fashion.) This not only keeps the parties bound often long after the divorce, but completing the calculation is also often done long after the divorce which can lead to miscalculations. As you would expect, those miscalculations often lead to future litigation.

Finally, many members that find themselves in this predicament do not realize that they are paying the tax on the entire amount and that if they do not make the appropriate adjustments; their former spouse will avoid facing any tax effect and essentially receive tax free funds. Also, having the entire amount attributed to the member could undeservingly put them in a higher tax bracket.

It is for the above reasons that I must write in support of SB1324. Thank you for this opportunity to testify.

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: [REDACTED]
Subject: Submitted testimony for SB1324 on Feb 10, 2015 09:15AM
Date: Monday, February 09, 2015 9:13:14 AM

SB1324

Submitted on: 2/9/2015

Testimony for JDL on Feb 10, 2015 09:15AM in Conference Room 016

| 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 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 usually don't), even after the divorce decree orders a split of the retirement. In my case, 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 any funds from him. 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. Thank you.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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