

JAN 25 2006

S.B. NO. 2700

A BILL FOR AN ACT

RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the largest asset a
2 married couple accumulates over the life of their marriage, with
3 the possible exception of a home, is not infrequently a pension
4 plan of one of the parties. The longer the marriage, the
5 greater the chance that the pension amount will increase. For
6 spouses who divorce, access to a former spouse's pension can be
7 a significant financial resource in retirement. It can make the
8 difference between financial security and a slide into poverty.

9 The legislature also finds that it is well documented that
10 women face a substantial and increasing risk of poverty as they
11 age. Women generally live longer and are more apt to live alone
12 and, therefore, must stretch their financial resources further
13 than men. Longevity, however, is not the only reason women are
14 economically vulnerable. Several factors - historical patterns
15 of economic dependence on men, caregiving responsibilities
16 (women spend approximately ten years out of the workforce due to
17 caregiving responsibilities), intermittent, often low-wage or
18 nonexistent paid employment histories, and limited eligibility



1 and participation in pension plans - have maintained women's
2 disadvantage. Frequently, the economic impact of divorce on
3 women is substantial. For married women who already have
4 limited economic resources, divorce almost invariably means a
5 decline in income.

6 Although it is difficult to estimate how many marriages
7 will end in divorce, examining the design and efficacy of
8 existing retirement income "safety nets" and "safeguards" is an
9 important first step to addressing the challenge of ensuring the
10 financial security of divorced women as they age.

11 The legislature believes that what has come to be known
12 under the federal Employees Retirement Income Security Act as
13 "qualified domestic relations orders" can serve as a retirement
14 security "safeguard" for women. A qualified domestic relations
15 order is a domestic relations court order, judgment, or decree
16 under a state domestic relations law that relates to the
17 provisions for a spouse, former spouse, or a dependent of child
18 support, alimony payments, and marital property rights.
19 Qualified domestic relations orders allow retirement benefit
20 distributions to be made to individuals who are not plan
21 participants. Distributions may be made to fulfill family
22 obligations or marital property settlements. However, qualified



1 domestic relations orders apply only to private pension plans
2 qualified under the Employee Retirement Income Security Act.

3 Unfortunately, the development and implementation of a
4 qualified domestic relations order is a complicated and costly
5 process involving several players with, often, conflicting
6 interests. It is essential to have legal representation that is
7 competent to shepherd, in as timely a manner as possible, the
8 process of identifying, fairly valuing, and dividing a spouse's
9 pension. The decisions women make at the time of a divorce will
10 have long lasting consequences on their financial future and the
11 future of their family.

12 The legislature realizes, however, that for a number of
13 reasons, it cannot blithely enact legislation requiring the
14 employees' retirement system to implement qualified domestic
15 relations orders on the same basis as the federal law. Such an
16 effort would likely result in forcing a solution that does not
17 fit well. As beneficial to divorcing parties as the
18 availability of such orders may be, the employees' retirement
19 system can be expected to have some concerns that are both
20 reasonable and very legitimate, including:

21 (1) Whether the very act of requiring the employees'
22 retirement system to implement a particular element of



1 the Employee Retirement Income Security Act (to which
2 it is not subject), namely, qualified domestic
3 relations orders, will open other questions as to
4 whether the employees' retirement system is somehow
5 subject to the federal law in its entirety;

6 (2) Whether the employees' retirement system will at least
7 technically be required to be joined as a party in
8 virtually every divorce action involving a state or
9 county government employee or retiree whose retirement
10 assets are subject to division;

11 (3) Whether and to what extent the employees' retirement
12 system may have difficulty implementing certain orders
13 when the parties, the courts, or both attempt to be
14 creative; and

15 (4) Potential difficulties in trying to apply the
16 requirements of the court decrees to the myriad of
17 retirement options available to state and county
18 employees.

19 The legislature is mindful of the fact that the employees'
20 retirement system has done an excellent job of carrying out its
21 fiduciary duties in managing the assets of the retirement system
22 for the benefit of Hawaii's state and county employees and that



1 establishment of a system for recognition of some equivalent of
2 qualified domestic relations orders may primarily benefit people
3 who are not members of the retirement system. However, the
4 legislature also recognizes that its actions with respect to the
5 retirement system cannot always be exclusively for the benefit
6 of state and county employees and retirees. As the policy
7 making body for all of the people of the State of Hawaii, the
8 legislature cannot stand idly by and allow former spouses to
9 sink into poverty and dependence upon the welfare system due to
10 their inability to obtain a portion of what at times may be the
11 only significant asset of a marriage.

12 It is not the intent of this Act to subject state and
13 county employees to any greater level of property division in
14 the event of divorce than applies under current state domestic
15 relations law. To the extent that pension interests are
16 divisible, state and county employees and retirees are subject
17 to that divisibility like anyone else. The purpose of this Act
18 is to make that divisibility more meaningful by having the
19 retirement system directly involved in the payment of benefits.
20 In at least some cases, the ability of the employee or retiree
21 to have the retirement system make payments directly to a former
22 spouse may be preferable to the expense and difficulty of



1 arranging to pay in a lump sum the present value of the
2 retirement benefits years before those benefits will even be
3 received by the divorcing employee.

4 The purpose of this Act is therefore to direct the
5 employees' retirement system of the State of Hawaii to develop
6 procedures to implement, as nearly as is reasonably practicable,
7 a state equivalent of what are referred to as "qualified
8 domestic relations orders" under the federal Employee Retirement
9 Income Security Act.

10 SECTION 2. Prior to December 31, 2006, the employees'
11 retirement system shall develop procedures and draft, if
12 necessary, proposed legislation that enables the employees'
13 retirement system to accept and comply with a state equivalent
14 of what are referred to as "qualified domestic relations orders"
15 under the Employee Retirement Income Security Act.

16 SECTION 3. The employees' retirement system shall report
17 on its compliance with this Act and submit findings and
18 recommendations, and, if necessary, proposed legislation to the
19 legislature not later than twenty days prior to the convening of
20 the 2007 regular session.

21 SECTION 4. In enacting this Act, the legislature intends
22 that the employees' retirement system:




1 (1) Not be subject to the requirements of the federal
 2 Employee Retirement Income Security Act with respect
 3 to qualified domestic relations orders or any other
 4 aspect of the federal law; and

5 (2) Not have to be made a party to any litigation
 6 involving divorced or divorcing parties for purposes
 7 of implementing any state equivalent of what are
 8 referred to as "qualified domestic relations orders"
 9 under the Employee Retirement Income Security Act,
 10 unless and to the extent the employees' retirement
 11 system determines that it would be beneficial or
 12 preferable to the employees' retirement system to be
 13 made a party.

14 SECTION 5. This Act shall take effect upon its approval.
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Report Title:

Qualified Domestic Relations Order; Employees' Retirement System

Description:

Requires the employees' retirement system to establish procedures and draft proposed legislation to enable the system's acceptance of and compliance with a state equivalent of what are referred to as "qualified domestic relations orders" under the Employee Retirement Income Security Act. Requires the employees' retirement system to submit the report to the legislature prior to the 2007 regular session.

