
A BILL FOR AN ACT

RELATING TO FEDERAL TAX QUALIFICATION REQUIREMENTS FOR THE
EMPLOYEES' RETIREMENT SYSTEM.

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

1 SECTION 1. The employees' retirement system of the State
2 of Hawaii is intended to be a tax-qualified retirement plan
3 under Section 401(a) of the Internal Revenue Code of 1986, as
4 amended. The Heroes Earnings Assistance and Relief Tax Act of
5 2008 (HEART Act) Public Law No. 110-245, imposes requirements on
6 tax-qualified retirement plans regarding benefits payable to the
7 survivors of members who die while performing qualified military
8 service.

9 The legislature finds that, although existing provisions of
10 chapter 88, Hawaii Revised Statutes, provide the benefits that
11 the HEART Act requires, chapter 88, Hawaii Revised Statutes,
12 must be amended to include the specific wording required by the
13 HEART Act to maintain the tax-qualified status of the employees'
14 retirement system. The legislature also finds that chapter 88,
15 Hawaii Revised Statutes, should be amended to address in greater
16 detail the requirement of Section 401(a)(9) of the Internal
17 Revenue Code that qualified retirement benefits commence no



1 later than April 1 of the calendar year following the later of
2 the year in which an employees' retirement system member
3 terminates employment or attains age seventy and one-half.

4 SECTION 2. Chapter 88, Hawaii Revised Statutes, is amended
5 by adding a new section to part II to be appropriately
6 designated and to read as follows:

7 "§88- Commencement of benefits on required beginning

8 date. (a) The purpose of this section is to provide for
9 distribution of benefits in accordance with a reasonable and
10 good faith interpretation of Section 401(a)(9) of the Internal
11 Revenue Code. Section 401(a)(9) of the Internal Revenue Code
12 requires that the "entire interest" of a member be distributed
13 or that distribution of the member's benefits begin no later
14 than the member's "required beginning date".

15 (b) For the purposes of this section, "required beginning
16 date" means April 1 of the calendar year following the later of
17 the calendar year in which a member terminates service or a
18 member or former member attains age seventy and one-half.

19 (c) A member or former member's accumulated contributions
20 or hypothetical account balance, as defined in section 88-311,
21 shall be paid to the member or former member, or payment of the
22 benefits payable under part II, VII, or VIII of this chapter



1 shall commence, not later than the member's or former member's
2 required beginning date. The payment or payments shall be made
3 on, or beginning not later than, the member's or former member's
4 required beginning date even if the member or former member does
5 not apply for payment or file a retirement application.

6 (d) If, by a member's or former member's required
7 beginning date:

8 (1) The member or former member's accumulated
9 contributions or hypothetical account balance, as
10 defined in section 88-311, are not paid to the member
11 or former member; or

12 (2) Payment of the benefits payable under part II, VII, or
13 VIII of this chapter do not commence,
14 the system shall pay the service retirement benefits for which
15 the member or former member is eligible pursuant to section 88-
16 73, 88-281, or 88-332, as applicable, retroactive to the
17 member's or former member's required beginning date with regular
18 interest.

19 (e) If the system does not receive a written election from
20 the member or former member under section 88-83, 88-283, or 88-
21 333, as applicable, prior to the later of the member's or former
22 member's required beginning date or sixty days following the



1 receipt by the member or former member of notice from the system
2 that the member or former member must make an election, the
3 following election shall be deemed to have been made as of the
4 member or former member's required beginning date:

5 (1) If the member or former member is unmarried or has no
6 reciprocal beneficiary, the member or former member
7 shall be deemed to have elected the maximum retirement
8 allowance; or

9 (2) If the member or former member is married or has a
10 reciprocal beneficiary, the member or former member
11 shall be deemed to have elected option 3 under section
12 88-83, or option A under section 88-283, as
13 applicable, and to have designated the member's or
14 former member's spouse or reciprocal beneficiary as
15 the member's or former member's beneficiary;

16 provided that, if the system receives the written election after
17 the member's or former member's required beginning date, but
18 within sixty days following receipt by the member or former
19 member of notice from the system that the member or former
20 member must make the election, the written election shall apply,
21 and the member's or former member's retirement benefit shall be
22 recomputed, based on the written election, retroactive to the



1 member or former member's required beginning date. The amount
2 of any underpayment resulting from recomputing the benefit shall
3 bear regular interest. If recomputing the benefit results in an
4 overpayment, payments shall be adjusted so that the actuarial
5 equivalent of the benefit to which the member or former member
6 was correctly entitled shall be paid.

7 (f) If the system does not have current information about
8 the member's or former member's marital or reciprocal
9 beneficiary status at the time of a deemed election, the
10 following presumptions shall apply:

11 (1) If the member or former member was married or had a
12 reciprocal beneficiary at the time the member or
13 former member last provided information to the system
14 about the member's or former member's marital or
15 reciprocal beneficiary status, it shall be presumed
16 that member or former member is still married to the
17 same spouse or is in the same reciprocal beneficiary
18 relationship. If the system does not have information
19 as to the age of the spouse or reciprocal beneficiary,
20 the spouse or reciprocal beneficiary shall be presumed
21 to be forty years younger than the member or former



1 for purposes of computing the member's or former
2 member's benefit; and

3 (2) If the member or former member was unmarried and did
4 not have a reciprocal beneficiary at the time the
5 member or former member last provided information to
6 the system about the member or former member's marital
7 status, it shall be presumed that the member or former
8 member is married and that the spouse of the member or
9 former member is forty years younger than the member
10 or former member.

11 (g) The presumptions in subsection (f) shall cease to
12 apply when the member or former member provides the system with
13 current information as to the member's or former member's
14 marital or reciprocal beneficiary status and the age of the
15 member or former member's spouse or reciprocal beneficiary, if
16 any, on the member or former member's required beginning date.
17 The information shall be provided in a form satisfactory to the
18 system. At that time, the member's or former member's
19 retirement allowance shall be recomputed, retroactive to the
20 member or former member's required beginning date, based on the
21 updated information, but, except as provided in subsection (e),
22 the member or former member shall not be permitted to change the



1 member or former member's retirement allowance option election
2 or beneficiary; provided that the benefit being paid to any
3 member or former member who, on the member or former member's
4 required beginning date, was unmarried and did not have a
5 reciprocal beneficiary, but who was deemed to elect option 3 or
6 option A with an assumed spouse or reciprocal beneficiary, shall
7 be converted to the maximum retirement allowance retroactive to
8 the member or former member's required beginning date. The
9 amount of any underpayment resulting from recomputing the
10 benefit shall bear regular interest. If recomputing the benefit
11 results in an overpayment, payments shall be adjusted so that
12 the actuarial equivalent of the benefit to which the member or
13 former member was correctly entitled shall be paid.

14 (h) If the system cannot locate the member or former
15 member, the member's or former member's benefit shall be payable
16 only until the end of the member's or former member's life
17 expectancy, as determined at the member's or former member's
18 required beginning date. If the member or former member has not
19 by that time made a claim for benefits, the member or former
20 member shall be deemed to be deceased at that time. Interest
21 under subsection (d) shall cease on benefits presumed to be
22 abandoned property pursuant to the Uniform Unclaimed Property



1 Act upon payment of the property to the administrator under the
2 Uniform Unclaimed Property Act.

3 (i) Rules necessary for the purposes of this section shall
4 be adopted as provided in section 88-22.5."

5 SECTION 3. Section 88-22.5, Hawaii Revised Statutes, is
6 amended by amending subsection (a) to read as follows:

7 "(a) The system shall be administered in accordance with
8 the requirements of [~~section~~] Section 401(a)(1), (2), (8), (9),
9 (25), [~~and~~] (31), and (37) of the Internal Revenue Code of 1986,
10 as amended. Without limiting the generality of the foregoing
11 and notwithstanding any provision of chapter 88 to the contrary:

12 (1) Prior to the satisfaction of all liabilities with
13 respect to members and their beneficiaries, no part of
14 the corpus or income of the system shall be used for
15 or diverted to purposes other than for the exclusive
16 benefit of members and their beneficiaries. The
17 payment of reasonable expenses from the expense fund
18 for the administration of the system in accordance
19 with section 88-116 shall be deemed to be for the
20 benefit of members and their beneficiaries;



- 1 (2) Benefits forfeited by a member for any reason shall
2 not be applied to increase the benefits a member or
3 beneficiary would otherwise receive under the system;
- 4 (3) In accordance with section 88- , and rules adopted by
5 the board of trustees, the entire interest of a member
6 shall be distributed or distribution shall begin no
7 later than the member's "required beginning date", as
8 defined in [~~section~~] Section 401(a)(9) of the Internal
9 Revenue Code of 1986, as amended;
- 10 (4) In accordance with rules adopted by the board of
11 trustees, a member or beneficiary may elect, at the
12 time and in the manner prescribed by the board of
13 trustees, to have any portion of an "eligible rollover
14 distribution" paid in a "direct rollover" to an
15 "eligible retirement plan", as such terms are defined
16 in [~~section~~] Section 401(a)(31) of the Internal
17 Revenue Code of 1986, as amended; [~~and~~]
- 18 (5) In the event of the termination of or complete
19 discontinuance of employer contributions to the
20 system, the rights of all members to benefits accrued
21 as of the date of [~~such~~] the termination or



1 discontinuance, to the extent then funded, shall be
2 nonforfeitable[-]; and

3 (6) In the case of a member who dies while performing
4 qualified military service, as defined in Section
5 414(u) of the Internal Revenue Code of 1986, as
6 amended, the survivors of the member shall be entitled
7 to any additional benefits (other than benefit
8 accruals relating to the period of qualified military
9 service) provided under this chapter had the member
10 resumed and then terminated employment on account of
11 death; provided that this paragraph shall not limit
12 the rights to which a member's designated beneficiary,
13 spouse, reciprocal beneficiary, or children are
14 otherwise entitled by this chapter; provided further
15 that the legislature finds that section 88-137
16 provides the benefits required by this paragraph."

17 SECTION 4. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 5. This Act shall take effect upon its approval.



Report Title:

Employees' Retirement System; Qualified Military Service Benefits; Required Distributions

Description:

Adopts language, regarding death benefits for Employees' Retirement System member on qualified military service, required to maintain the tax-qualified status of the Employees' Retirement System and adopts provisions, for the commencement of benefits, required to maintain the tax qualified status of the Employees' Retirement System. (HB1036 HD1)

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