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# 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. The Heroes  
4 Earnings Assistance and Relief Tax Act of 2008 (HEART Act),  
5 Public Law No. 110-245, imposes requirements on tax-qualified  
6 retirement plans regarding benefits payable to the survivors of  
7 members who die while performing qualified military service.

8           The legislature finds that although existing provisions of  
9 chapter 88, Hawaii Revised Statutes, provide the benefits that  
10 the HEART Act requires, chapter 88, Hawaii Revised Statutes,  
11 must be amended to include the specific wording required by the  
12 HEART Act to maintain the tax-qualified status of the employees'  
13 retirement system. The legislature also finds that chapter 88,  
14 Hawaii Revised Statutes, should be amended to address in greater  
15 detail the requirement of section 401(a)(9) of the Internal  
16 Revenue Code that qualified retirement benefits commence no  
17 later than April 1 of the calendar year following the later of



1 the calendar year in which an employees' retirement system  
2 member terminates employment or attains age seventy and one-  
3 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  
18 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, no later than the member's or former member's  
2 required beginning date. The payment or payments shall be made  
3 on, or beginning no 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  
16 88-73, 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  
21 88-333, as applicable, prior to the later of the member's or  
22 former member's required beginning date or sixty days following



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

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

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

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



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

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

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



1 union partner, or reciprocal beneficiary shall be  
2 presumed to be forty years younger than the member or  
3 former for purposes of computing the member's or  
4 former member's benefit; and

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

13 (g) The presumptions in subsection (f) shall cease to  
14 apply when the member or former member provides the system with  
15 current information as to the member's or former member's  
16 marital, civil union, or reciprocal beneficiary status and the  
17 age of the member or former member's spouse, civil union  
18 partner, or reciprocal beneficiary, if any, on the member or  
19 former member's required beginning date. The information shall  
20 be provided in a form satisfactory to the system. At that time,  
21 the member's or former member's retirement allowance shall be  
22 recomputed, retroactive to the member or former member's



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

18 (h) If the system cannot locate the member or former  
19 member, the member's or former member's benefit shall be payable  
20 only until the end of the member's or former member's life  
21 expectancy, as determined at the member's or former member's  
22 required beginning date. If the member or former member has not



1 by that time made a claim for benefits, the member or former  
2 member shall be deemed to be deceased at that time. Interest  
3 under subsection (d) shall cease on benefits presumed to be  
4 abandoned property pursuant to the Uniform Unclaimed Property  
5 Act upon payment of the property to the administrator under the  
6 Uniform Unclaimed Property Act.

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

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

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

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





1 with section 88-116 shall be deemed to be for the  
2 benefit of members and their beneficiaries;

3 (2) Benefits forfeited by a member for any reason shall  
4 not be applied to increase the benefits a member or  
5 beneficiary would otherwise receive under the system;

6 (3) In accordance with section 88- and rules adopted by  
7 the board of trustees, the entire interest of a member  
8 shall be distributed or distribution shall begin no  
9 later than the member's "required beginning date", as  
10 defined in section 401(a)(9) of the Internal Revenue  
11 Code of 1986, as amended;

12 (4) In accordance with rules adopted by the board of  
13 trustees, a member or beneficiary may elect, at the  
14 time and in the manner prescribed by the board of  
15 trustees, to have any portion of an "eligible rollover  
16 distribution" paid in a "direct rollover" to an  
17 "eligible retirement plan", as such terms are defined  
18 in section 401(a)(31) of the Internal Revenue Code of  
19 1986, as amended; [and]

20 (5) In the event of the termination of or complete  
21 discontinuance of employer contributions to the  
22 system, the rights of all members to benefits accrued



1 as of the date of [~~such~~] the termination or  
2 discontinuance, to the extent then funded, shall be  
3 nonforfeitable [~~-~~]; and

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

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

20 SECTION 5. This Act shall take effect upon its approval.  
21



**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. (SD1)

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